Principles of European Law

Study Group on a European Civil Code

Commercial Agency, Franchise and Distribution Contracts (PEL CAFDC)

prepared by
Martijn W. Hesselink
Jacobien W. Rutgers
Odavia Bueno Díaz
Manola Scotton
Muriel Veldman

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Foreword

The Study Group on a European Civil Code has taken upon itself the task of drafting common European principles for the most important aspects of the law of obligations and for certain parts of the law of property in moveables which are especially relevant for the functioning of the common market. It was founded in 1999 as a successor body to the Commission on European Contract Law, on whose work the Study Group is building.

The two groups pursue identical aims. However, the Study Group has a more far-reaching focus in terms of subject-matter and as an ultimate goal it aspires to a consolidated composite text of the material worked out by itself and the Commission on European Contract Law. Both groups have undertaken to ascertain and formulate European standards of 'patrimonial' law for the Member States of the European Union. The Commission on European Contract has already achieved this for the field of general contract law (*Lando and Beale* [eds.], Principles of European Contract Law, Parts I and II combined and revised, The Hague, 2000; *Lando/Clive/Prüm/Zimmermann* [eds.], Principles of European Contract Law Part III, The Hague, 2003). These Principles of European Contract Law (PECL) are being adopted with adjustments by the Study Group on a European Civil Code to take account of new developments and input from its research partners. The Study Group is itself dovetailing its principles with those of the PECL, extending their encapsulation of standards of patrimonial law in three directions: (i) by developing rules for specific types of contracts; (ii) by developing rules for extra-contractual obligations, i. e. the law of tort/delict, the law of unjustified enrichment, and the law of benevolent intervention in another's affairs (*negotiorum gestio*); and (iii) by developing rules for fundamental questions in the law on mobile assets – in particular transfer of ownership and security for credit.

Like the Commission on European Contract Law's Principles of European Contract Law, the results of the research conducted by the Study Group on a European Civil Code seek to advance the process of Europeanisation of private law. We have undertaken this endeavour on our own personal initiative and merely present the results of a pan-European research project. It is a study in comparative law in so far as we have always taken care to identify the legal position in the Member States of the European Union and to set out the results of this research in the introductions and notes. That of course does not mean that we have only been concerned with documenting the pool of shared legal values or that we simply adopted the majority position among the legal systems where common ground was missing. Rather we have consistently striven to draw up "sound and fitting" principles, that is to say, we have also recurrently developed proposals and concepts for the further development of private law in Europe.

The working methods of the Commission on European Contract Law and the Study Group on a European Civil Code are or were likewise quite similar. The Study Group, however, has had the benefit of Working (or Research) Teams – groups of younger legal scholars under the supervision of a senior member of the Group (a Team Leader) which undertook the basic comparative legal research, developed the drafts for discussion and

assembled the extensive material required for the notes. Furthermore, to each Working Team was allocated a consultative body – an Advisory Council. These bodies – deliberately kept small in the interests of efficiency – were formed from leading experts in the relevant field of law who are representative of the major European legal systems. The proposals drafted by the Working Teams and critically scrutinised and improved in a series of meetings by the respective Advisory Council were submitted for discussion on a revolving basis to the actual decision-making body of the Study Group on a European Civil Code, the Co-ordinating Group. Until June 2004 the Co-ordinating Group consisted of representatives from all the jurisdictions belonging to the EU immediately prior to its enlargement in Spring 2004 and in addition legal scholars from Estonia, Hungary, Norway, Poland, Slovenia and Switzerland. Representatives from the Czech Republic, Malta, Latvia and Lithuania joined us after the June meeting 2004 in Warsaw. However, due to reasons of time and capacity, it was only occasionally possible to summarise in the notes the current legal position in the new Member States of the EU. We are keen to fill the outstanding gaps (of which we are only too painfully aware) at a later point in time.

Besides its permanent members, other participants in the Co-ordinating Group with voting rights included all the Team Leaders and – when the relevant material was up for discussion – the members of the Advisory Council concerned. The results of the deliberations during the week-long sitting of the Co-ordinating Group were incorporated into the text of the articles and the commentaries which returned to the agenda for the next meeting of the Co-ordinating Group (or the next but one depending on the work load of the the Group and the Team affected). Each part of the project was the subject of debate on manifold occasions, some stretching over many years. Where a unanimous opinion could not be achieved, majority votes were taken. As far as possible the Articles drafted in English were translated into the other languages either by members of the Team or third parties commissioned for the purpose. The number of languages into which the articles could be translated admittedly varies considerably from volume to volume. That is in part a consequence of the fact that not all Working Teams were equipped with the same measure of financial support. We also had to resign ourselves to the absence of a perfectly uniform editorial style. Our editing guidelines provided a common basis for scholarly publication, but at the margin had to accommodate preferences of individual teams. However, this should not cause the reader any problems in comprehension.

Work on these Principles had begun long before the European Commission published its Communication on European Contract Law (in 2001), its Action Plan for a more coherent European contract law (in 2003), and its follow-up Communication "European Contract Law and the revision of the *acquis*: the way forward" (in 2004). (All of these documents concerning European contract law are available on the Commission's website: http://europe.eu.int/comm/consumers/cons_int/safe_shop/fair_bus_pract/cont_law/index_en.htm). These documents for their part were published before we formed the Network of Excellence, together with other European research groups and institutions, which will collaborate in the preparation of an academic Common Frame of Reference with the support of funds from the European Community's Sixth Framework Programme. The texts laid before the public by the Study Group on a European Civil Code are therefore not necessarily identical with those which the Network of Excellence will propose to the European Commission for adoption in the Common

Frame of Reference. Rather they represent for the time being texts which the Study Group considers should serve as the starting point for the comprehensive process of discussion and consultation envisaged for the coming years. Whether that process will require any changes to our texts (and, if so, which changes) is something which will have to be weighed up carefully in a spirit of academic independence after a review of the arguments. The political domain can then determine at a later date which of our proposals, if any, it wishes to take up.

In order to leave no room for misunderstanding, it is important to stress that these Principles have been prepared by impartial and independent-minded scholars whose sole interest has been a devotion to the subject-matter. None of us have been rewarded for taking part or mandated to do so. None of us would want to give the impression that we claim any political legitimation for promoting harmonisation of the law. Our legitimation is confined to curiosity and an interest in Europe. In other words, the volumes in this series are to be understood exclusively as the results of scholarly legal research within large international teams. Like every other scholarly legal work, they restate the current law and introduce possible models for its further development; no less, but also no more. We are not a homogenous group whose every member is an advocate of the idea of a European Civil Code. We are, after all, only a *Study* Group. The question whether a European Civil Code is or is not desirable is a political one to which each member can only express an individual view.

Osnabrück, June 2005 *Christian v. Bar*

Our Sponsors

The project of the Study Group on a European Civil Code represents a research endeavour in legal science of extraordinary magnitude. Without the generous financial support of many organisations its realisation would not have been possible.

Our thanks go first of all to the *Deutsche Forschungsgemeinschaft (DFG)*, which has supplied the lion's share of the financing including the salaries of the Working Teams based in Germany and the direct travel costs for the meetings of the Coordinating Group and the numerous Advisory Councils. The work of the Dutch Working Teams was financed by the *Nederlandse Organisatie voor Wetenschappelijk Onderzoek (NWO)* and by the *Universiteit van Amsterdam*. Further personnel costs were met by the Flemish *Fonds voor Wetenschappelijk Onderzoek-Vlaanderen (FWO)*, the *Onassis-Foundation*, the Austrian *Fonds zur Förderung der wissenschaftlichen Forschung* and the *Fundação Calouste Gulbenkian*.

In addition we have consistently been able to fall back on funds made available to the respective organisers of the week long sittings of the Coordinating Group by the relevant university or other sources within the country concerned. It is therefore with the deepest gratitude that I must also mention the *Consiglio nazionale forense* (Rom) and the *Istituto di diritto privato* of the *Università di Roma La Sapienza*, which co-financed the meeting in Rome (June 2000). The session in Salzburg (December 2000) was supported by the Austrian *Bundesministerium für Bildung, Wissenschaft und Kultur*, the *Universität Salzburg* and the *Institut für Rechtspolitik* of the *Universität Salzburg*. The discussions in Stockholm (June 2001) were assisted by the *Department of Law, Stockholm University*, the *Supreme Court Justice Edward Cassel's Foundation* and *Stiftelsen Juridisk Fakultetslitteratur (SJF)*. The meeting in Oxford (December 2001) had the support of *Shearman & Sterling*, the *Hulme Trust*, *Berwin Leighton Paisner* and the *Oxford University Press (OUP)*. The session in Valencia (June 2002) was made possible by the *Asociación Nacional de Registradores de la Propiedad, Mercantil y Bienes Muebles*, the *Universitat de València*, the *Ministerio Español de Ciencia y Tecnología*, the *Facultad de Derecho* of the *Universitat de València*, the *Departamento de Derecho Internacional*, *Departamento de Derecho Civil* and the *Departamento de Derecho Mercantil "Manuel Broseta Pont"* of the *Universitat de València*, the law firm *Cuatrecasas*, the *Generalitat Valenciana*, the *Corts Valencianes*, the *Diputación Provincial de Valencia*, the *Ayuntamiento de Valencia*, the *Colegio de Abogados de Valencia* and *Aranzadi Publishing Company*. The subsequent meeting in Oporto (December 2002) was substantially assisted by the *Universidade Católica Portuguesa – Centro Regional do Porto*. For the week long session in Helsinki (June 2003) we were able to rely on funds from *Suomen Kultuurirahasto* (Finnish Cultural Foundation), the *Niilo Helanderin Säätiö* (Niilo Helander Foundation), the *Suomalainen Lakimeisyhdistys* (Finnish Lawyers Association), the Ministry of Justice and the Ministry for Foreign Affairs, the *Nordea Bank*, *Roschier Holmberg* Attorneys Ltd., *Hannes Snellman* Attorneys Ltd., the *Department of Private Law* and the *Institute of International Commercial Law (KATTI) of Helsinki University*. The session in Leuven (December 2003) was supported by *Katholieke Universiteit Leuven, Faculteit Rechtsgeleerdheid*, and the *FWO Vlaanderen Fonds voor We-*

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Preface to this volume

These principles are the result of a truly European project.

They were prepared by the Amsterdam sub-team within the Dutch Working Team of the Study Group on a European Civil Code. Each junior researcher within the Amsterdam Team was responsible for a specific subject, Muriel Veldman for commercial agency (chapter 2), Odavia Bueno Díaz for franchising (chapter 3) and Manola Scotton for distribution (chapter 4). This responsibility included the actual drafting (and redrafting after discussion) of the articles and comments. I was responsible for the general provisions (chapter 1).

The drafts were presented and discussed, on several occasions, during the two-weekly meetings of the entire Dutch Working Team. The Dutch Working Team consisted of junior researchers from virtually all the Member States (at the time) and was led by Professors Ewoud Hondius, Maurits Barendrecht and myself. The members of the Dutch Team also produced the country reports which provided the basis for the comparative Notes.

Once the drafts were approved they were discussed with the Advisory Council which was composed of Professors Johnny Herre, Jérôme Huet and Peter Schlechtriem who came to the Netherlands for several meetings which usually lasted several days. During the last two, they were joined by Professors Hugh Beale, Eric Clive and Christina Ramberg from the Drafting Group.

After amendment, the drafts were submitted to the Co-ordinating Committee. They were discussed during meetings in Valencia (June 2002), Porto (December 2002) and Helsinki (June 2003) which were chaired by Professor Marcel Fontaine. The final reading of these principles took place during the meeting in Helsinki in June 2003 where the present text was adopted.

Since then the Working Team worked on the editing of the Comments and the Notes. The bulk of this enormous and crucial task was taken care of by Dr. Jacobien Rutgers, the Co-ordinator of the Amsterdam team. The Notes are based on country reports which were prepared by the members of the Dutch Team.

In the meantime some very important political developments have taken place. In February 2003 the European Commission published its Action Plan on European contract law where it announced that it would adopt a 'Common Frame of Reference' (CFR) which would be prepared by scholars. Subsequently, in 2005 the task of preparing the CFR was entrusted to a Network of Excellence (NoE) in which the Study Group on a European Civil Code participates. As a result, the present principles will become the basis for the academic draft CFR that the NoE will submit to the Commission in 2007.

For that reason, these principles were discussed with the stakeholders within the CFR Net, during a Workshop in Brussels in March 2005. However, it is important to point out that the comments from the stakeholders have not been taken into account in the present publication. They will be addressed in a separate response which may contain revised drafts of some articles.

The present principles have both the benefits and the drawbacks of an academic project. On the one hand they have been prepared by a large, international group of independent scholars without any pressure from special interest groups or national governments. On the other, however, they lack the democratic legitimacy of true legislation.

I would like to warmly thank the members of the Amsterdam Team, the Dutch team, the Advisory Council, the Drafting Group and the Co-ordinating Committee for their contributions to this wonderful European collaboration – a unique experience.

To embark upon telling anecdotes from the many discussions, dinners and receptions across Europe would be totally out of place, I suppose. Therefore, I will refrain from doing that, with some regret. However, I cannot resist the temptation to express my feeling that if the wonderful atmosphere during all these European gatherings is only slightly representative of European collaboration, the future of Europe is very bright.

Amsterdam, August 2005 *Martijn W. Hesselink*

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Text of Articles

English
Commercial Agency, Franchise and Distribution Contracts

Chapter 1:
General Provisions

Section 1:
Scope of Chapter 1

Article 1:101: Scope
This Chapter applies to commercial agency, franchise and distribution contracts and with appropriate modifications to other contracts where one party, engaged in business independently uses its skills and efforts to bring another party's products on to the market.

Section 2:
Obligations

Article 1:201: Pre-Contractual Information
(1) Each party must provide the other party with adequate information a reasonable time before the contract is concluded. If it does not, Paragraph (3) applies.
(2) Adequate information means information which is sufficient to enable the other party to decide on a reasonably informed basis whether or not to enter into a contract of the type and on the terms under consideration.
(3) If a party's failure to comply with Paragraph 1 leads the other party to conclude a contract when the first party knew or could reasonably be expected to have know that the other party, had it been provided with adequate and timely information, would not have entered the contract, or would have entered the contract only on fundamentally different terms, the remedies for mistake under PECL Chapter 4 apply.
(4) Parties may not derogate from this provision.

Article 1:202: Co-Operation
(1) In commercial agency, franchise and distribution contracts and in other long-term commercial contracts the obligation to co-operate (art. 1:202 PECL) is fundamental and particularly intense. It requires the parties in particular to collaborate actively and loyally and to co-ordinate their respective efforts in order to achieve the objectives of the contract.
(2) Parties may not derogate from this provision.

Article 1:203: Information during Performance

(1) During the contract each party must provide the other in due time with all the information which the first party has and the second party needs in order to achieve the objectives of the contract.
(2) Parties may not derogate from this provision.

Article 1:204: Confidentiality

(1) A party who receives confidential information from the other, must keep such information confidential and must not disclose the information to third parties either during or after the end of the contract period.
(2) A party who receives confidential information from the other must not use such information for other purposes than the objectives of the contract.
(3) Any information which a party already had in its possession or which has been disclosed to the general public, and any information which must necessarily be disclosed to customers as a result of the operation of the business is not be regarded as confidential information for this purpose.

Section 3:
Ending and Termination

Article 1:301: Contract for a Definite Period

(1) A contract for a definite period ends upon the expiry of the period determined by the contract. Unless the parties agreed otherwise, such a contract cannot be ended unilaterally beforehand.
(2) A party is free not to renew a contract for a definite period. However, if the other party has given notice in due time that it wishes to renew the contract, the party who wishes not to renew the contract must give the other party notice of its decision not to renew within a reasonable time before the expiry of the contract period.
(3) A contract for a definite period which continues to be performed by both parties after the contract period has expired becomes a contract for an indefinite period.

Article 1:302: Unilateral Ending of a Contract for an Indefinite Period

(1) Either party to a contract for an indefinite period may end the contract by giving notice of reasonable length (art. 6:109 PECL).
(2) Whether a notice is of reasonable length depends, among other factors, on
    (a) the time the contract has lasted,
    (b) reasonable investments made,
    (c) the time it will take to find a reasonable alternative, and
    (d) usages.
(3) A notice period of one month for each year during which the contract has lasted, with a maximum of 36 months, is presumed to be reasonable.
(4) The notice period for the principal, the franchisor or the supplier is to be no shorter than one month for the first year, two months for the second, three months for the third, four months for the fourth, five months for the fifth and six months for the sixth and subsequent years during which the contract has lasted. Parties may not derogate from this provision.

(5) Agreements on longer notice periods than those laid down in Paragraphs 2 and 3 are valid provided that the agreed period to be observed by the principal, franchisor or supplier is no shorter than that to be observed by the commercial agent, the franchisee or the distributor.
(6) The aggrieved party is not entitled to specific performance of the contract during the notice period. However, the court may order specific performance of contractual and post-contractual obligations which do not depend on co-operation.

Article 1:303: Damages for Non-Observance of Notice Period

(1) In the case of the non-observance of the notice periods mentioned in art. 1:301 (2) and 1:302 (1), the aggrieved party is entitled to damages.
(2) The general measure of damages is such sum which corresponds to the benefit which the aggrieved party would have obtained during the non-observed period of notice.
(3) The yearly benefit is presumed to be equal to the average benefit which the aggrieved party has obtained from the contract during the previous 3 years or, if the contract has lasted for a shorter period, during that period.
(4) The general rules on damages for non-performance (art. 9:501 ff PECL) apply accordingly.

Article 1:304: Termination for Non-Performance

(1) A party may terminate the contract for non-performance only if the other party's non-performance is fundamental within the meaning of Article 8:103 (b) and Article 8:103 (c) PECL (art. 9:301 PECL).
(2) Parties may not derogate from this provision.

Article 1:305: Indemnity for Goodwill

(1) When the contract comes to an end for any reason (including termination by either party for non-performance), a party is entitled to an indemnity from the other party for goodwill if and to the extent that
  (a) the first party has significantly increased the other party's volume of business and the other party continues to derive substantial benefits from that business, and
  (b) the payment of the indemnity is reasonable having regard to all the circumstances.
(2) The grant of an indemnity does not prevent a party from seeking damages under Article 1:303.

Article 1:306: Stock, Spare Parts and Materials

If the contract is ended, terminated or avoided by either party, the principal, franchisor or supplier must repurchase the commercial agent's, franchisee's or distributor's remaining stock, spare parts and materials at a reasonable price, unless the commercial agent, franchisee or distributor can reasonably resell them.

Section 4:
Other General Provisions

Article 1:401: Right of Retention
In order to secure its rights to remuneration, compensation, damages and indemnity the commercial agent, franchisee or distributor has a right of retention over the movables of the principal, franchisor or supplier which are in its possession as a result of the contract, until the (former) principal, franchisor or supplier has fulfilled its obligations.

Article 1:402: Signed Written Document
Each party is entitled to receive from the other, on request, a signed written document setting out the terms of the contract.

Chapter 2:
Commercial Agency

Section 1:
General

Article 2:101: Scope
This Chapter applies to contracts under which one party (the commercial agent) agrees to act on a continuing basis as a self-employed intermediary to negotiate or to conclude contracts on behalf of another party (the principal) and the principal agrees to remunerate the commercial agent for the commercial agent's activities.

Section 2:
Obligations of the Commercial Agent

Article 2:201: Negotiate and Conclude Contracts
The commercial agent must make reasonable efforts to negotiate contracts on behalf of the principal and to conclude the contracts which the commercial agent was instructed to conclude.

Article 2:202: Instructions
The commercial agent must follow the principal's reasonable instructions, provided they do not substantially affect the commercial agent's independence.

Article 2:203: Information during Performance
The obligation to inform (Article 1:203) requires the commercial agent in particular to provide the principal with information concerning:
(a) the contracts negotiated or concluded,
(b) the relevant market conditions,
(c) the solvency of and other characteristics relating to customers.

Article 2:204: Accounting

(1) The commercial agent must maintain proper accounts relating to the contracts negotiated or concluded on behalf of the principal.
(2) If the commercial agent represents more than one principal, the commercial agent must, in particular, maintain independent accounts for each principal the commercial agent represents.
(3) If the principal has important reasons to doubt that the commercial agent maintains proper accounts, the commercial agent must allow an independent accountant to have reasonable access to the commercial agent's books upon the principal's request. The principal must pay for the services of the independent accountant.

Section 3: Obligations of the Principal

Article 2:301: Entitlement to Commission During the Contract

(1) The commercial agent is entitled to commission on contracts concluded with customers during the period of the agency contract, if
  (a) the contract with the customer has been concluded as a result of the commercial agent's efforts; or
  (b) the contract has been concluded with a third party whom the commercial agent has previously acquired as a customer for contracts of the same kind; or
  (c) the commercial agent is entrusted with a certain geographical area or group of customers, and the contract has been concluded with a customer belonging to that area or group.
(2) The entitlement arises only if
  (a) the principal has or should have performed the principal's obligations under the contract with the customer; or
  (b) the customer has performed the customer's obligations under the contract or justifiably withholds performance (Article 9:201 PECL).
(3) The parties may not derogate from Paragraph 2 (b) to the detriment of the commercial agent.

Article 2:302: Entitlement to Commission After the Contract

(1) The commercial agent is entitled to commission on contracts concluded with customers after the agency contract has been ended or terminated, if
  (a) the contract with the customer is mainly the result of the commercial agent's efforts during the period of the agency contract, and the contract with the customer was concluded within a reasonable period after the agency contract ended; or
  (b) the conditions of Article 2:301 Paragraph 1 would have been satisfied except that the contract with the customer was not concluded during the period of the agency contract, and the customer's offer reached the principal or the commercial agent before the agency contract had been ended or terminated.
(2) The entitlement arises only if
  (a) the principal has or should have performed its obligations under the contract with the customer; or

(b) the customer has performed its obligations under the contract or justifiably withholds performance (Article 9:201 PECL).

(3) The parties may not derogate from Paragraph 2 (b) to the detriment of the commercial agent.

Article 2:303: Prevailing Entitlement to Commission

The commercial agent is not entitled to the commission referred to in Article 2:301, if the previous commercial agent is entitled to that commission pursuant to Article 2:302, unless it is reasonable that the commission is shared between the two commercial agents.

Article 2:304: Moment when Commission is to be Paid

(1) The principal must pay the commercial agent's commission before the last day of the month following the quarter in which the commercial agent became entitled to it.

(2) The parties may not derogate from this provision to the detriment of the commercial agent.

Article 2:305: Entitlement to Commission Extinguished

(1) The commercial agent's entitlement to commission in accordance with Articles 2:301 and 2:302 can be extinguished only if and to the extent that it is established that the contract with the customer will not be performed and that fact is due to a reason for which the principal is not accountable.

(2) Upon the extinguishing of the commercial agent's entitlement to commission, the commercial agent must refund any commission which the commercial agent has already received.

(3) The parties may not derogate from Paragraph 1 to the detriment of the commercial agent.

Article 2:306: Remuneration

Any remuneration which (partially) depends upon the number or value of contracts is presumed to be commission within the meaning of this Chapter.

Article 2:307: Information during Performance

The obligation to inform (Article 1:203) requires the principal in particular to provide the commercial agent with information concerning:

(a) the characteristics of the goods or services,

(b) the prices and conditions of sale or purchase.

Article 2:308: Information on Acceptance, Rejection and Non-Performance

(1) The principal must inform the commercial agent, within a reasonable period, of

(a) the principal's acceptance or rejection of a contract which the commercial agent has negotiated on the principal's behalf; and

(b) any non-performance of a contract which the commercial agent has negotiated or concluded on the principal's behalf.

(2) The parties may not derogate from this provision to the detriment of the commercial agent.

Article 2:309: Warning of Decreased Volume of Contracts

(1) The principal must warn the commercial agent within a reasonable time when the principal foresees or ought to foresee that the volume of contracts that the principal will be able to conclude or perform will be significantly lower than the commercial agent had reason to expect.

(2) The parties may not derogate from this provision to the detriment of the commercial agent.

Article 2:310: Commission Statement and Extract from the Books

(1) The principal must supply the commercial agent in reasonable time with a statement of the commission to which the commercial agent is entitled. This statement must set out how the amount of the commission has been calculated.
(2) For the purpose of calculating commission, the principal must provide the commercial agent upon request with an extract from the principal's books.
(3) The parties may not derogate from this provision to the detriment of the commercial agent.

Article 2:311: Accounting

(1) The principal must maintain proper accounts relating to the contracts negotiated or concluded by the commercial agent.
(2) If the principal has more than one commercial agent, the principal must, in particular, maintain independent accounts for each commercial agent.
(3) The principal must allow an independent accountant to have reasonable access to the principal's books upon the commercial agent's request, if
    (a) the principal does not comply with the principal's obligations under Article 2:310 Paragraphs 1 and 2, or
    (b) the commercial agent has important reasons to doubt that the principal maintains proper accounts.
(4) The commercial agent must pay the independent accountant.

Article 2:312: Amount of Indemnity

(1) The commercial agent is entitled to an indemnity for goodwill on the basis of Article 1:305 which must amount to:
    (a) the average commission on contracts with new customers and on the increased volume of business with existing customers calculated for the last 12 months, multiplied by:
    (b) the number of years the principal is likely to continue to derive benefits from these contracts in the future.
(2) The resulting indemnity must be amended in accordance with:
    (a) the average rate of migration in the commercial agent's territory; and
    (b) the average interest rates.
(3) In any case, the indemnity must not exceed one year's remuneration, calculated from the commercial agent's average annual remuneration over the preceding five years or, if the contract has been in existence for less than five years, from the average during the period in question.
(4) The parties may not derogate from this provision to the detriment of the commercial agent.

Article 2:313: Del Credere Clause

(1) An agreement whereby the commercial agent guarantees that a customer will pay the price of the products forming the subject-matter of the contract(s) which the commercial agent has negotiated or concluded (del credere clause) is only valid if and to the extent that:
    (a) the clause is concluded in writing, and

(b) the clause covers particular contracts which were negotiated or concluded by the commercial agent or such contracts with particular customers who are specified in the agreement, and
(c) the clause is reasonable with regard to the interests of the parties.

(2) The commercial agent is entitled to be paid a commission of a reasonable amount on contracts to which the del credere guarantee applies (del credere commission).

Chapter 3: Franchise

Section 1: General

Article 3:101: Scope

This Chapter applies to contracts under which one party (the franchisor) grants the other party (the franchisee), in exchange for remuneration, the right to conduct a business (franchise business) within the franchisor's network for the purposes of selling certain products on the franchisee's behalf and in the franchisee's name, and whereby the franchisee has the right and the obligation to use the franchisor's tradename or trademark and other intellectual property rights, the know-how and the business method.

Article 3:102: Pre-Contractual Information

(1) The obligation to disclose pre-contractual information (Article 1:201) requires the franchisor in particular to provide the franchisee with adequate and timely information concerning:
(a) the franchisor's company and experience,
(b) the relevant intellectual property rights,
(c) the characteristics of the relevant know-how,
(d) the commercial sector and the market conditions,
(e) the particular franchise method and its operation,
(f) the structure and extent of the franchise network,
(g) the fees, royalties or any other periodical payments,
(h) the terms of the contract.

(2) If the franchisor's non-compliance with Paragraph 1 does not give rise to a fundamental mistake under Article 4:103 PECL, the franchisee may recover damages in accordance with Article 4:117(2) and (3) PECL, unless the franchisor had reason to believe that the information was adequate or had been given in reasonable time.

(3) The parties may not derogate from this provision.

Section 2: Obligations of the Franchisor

Article 3:201: Intellectual Property Rights

(1) The franchisor must grant the franchisee a right to use the intellectual property rights to the extent necessary to operate the franchise business.

(2) The franchisor must make reasonable efforts to ensure the undisturbed and continuous use of the intellectual property rights.
(3) The parties may not derogate from this provision.

Article 3:202: Know-How

(1) Throughout the duration of the contract, the franchisor must provide the franchisee with the know-how which is necessary to operate the franchise business.
(2) The parties may not derogate from this provision.

Article 3:203: Assistance

(1) The franchisor must provide the franchisee with assistance in the form of training courses, guidance and advice, in so far as necessary for the operation of the franchise business, without additional charge for the franchisee.
(2) The franchisor must provide further assistance, in so far as reasonably requested by the franchisee, at a reasonable cost.

Article 3:204: Supply

(1) When the franchisee is obliged to purchase the products exclusively from the franchisor, or from a supplier designated by the franchisor, the franchisor must ensure that the products ordered by the franchisee are supplied within a reasonable time, in so far as practicable, and provided that the order is reasonable.
(2) Paragraph 1 also applies to cases where the franchisee, although not legally obliged to purchase from the franchisor or from a supplier designated by the franchisor, is in fact required to do so.
(3) The parties may not derogate from this provision.

Article 3:205: Information during the Performance

The obligation to inform (Article 1:203) requires the franchisor in particular to provide the franchisee with information concerning:
(a) the relevant market conditions,
(b) the commercial results of the franchise network,
(c) the characteristics of the products,
(d) the prices and terms for the sale of products,
(e) any recommended prices and terms for the resale of products,
(f) any relevant communication between the franchisor and customers in the territory,
(g) any advertising campaigns relevant to the operation of the franchise.

Article 3:206: Warning of Decreased Supply Capacity

(1) When the franchisee is obliged to purchase the products exclusively from the franchisor, or from a supplier designated by the franchisor, the franchisor must warn the franchisee within a reasonable time when the franchisor foresees or ought to foresee, that the franchisor's supply capacity or the supply capacity of the designated suppliers will be significantly less than the franchisee had reason to expect.
(2) Paragraph 1 also applies to cases where the franchisee, although not legally obliged to purchase from the franchisor or from a supplier designated by the franchisor, is in fact required to do so.
(3) The parties may not derogate from this provision to the detriment of the franchisee.

Article 3:207: Reputation of Network and Advertising

(1) The franchisor must make reasonable efforts to promote and maintain the reputation of the franchise network.
(2) In particular, the franchisor must design and co-ordinate the appropriate advertising campaigns aiming at the promotion of the franchise network.
(3) The activities of promotion and maintenance of the reputation of the franchise network are to be carried out without additional charge to the franchisee.

Section 3:
Obligations of the Franchisee

Article 3:301: Fees, Royalties and Other Periodical Payments

(1) The franchisee must pay to the franchisor fees, royalties or other periodical payments agreed upon in the contract.
(2) If fees, royalties or any other periodical payments are to be determined unilaterally by the franchisor, Article 6:105 PECL applies.

Article 3:302: Information during the Performance

The obligation to inform (Article 1:203) requires the franchisee in particular to provide the franchisor with information concerning:
(a) any claims brought or threatened by third parties in relation to the franchisor's intellectual property rights.
(b) any infringements by third parties of the franchisor's intellectual property rights.

Article 3:303: Business Method and Instructions

(1) The franchisee must make reasonable efforts to operate the franchise business according to the business method of the franchisor.
(2) The franchisee must follow the franchisor's reasonable instructions in relation to the business method and the maintenance of the reputation of the network.
(3) The franchisee must take reasonable care not to harm the franchise network.
(4) The parties may not derogate from this provision.

Article 3:304: Inspection

(1) The franchisee must grant the franchisor reasonable access to the franchisee's premises to enable the franchisor to check that the franchisee is complying with the franchisor's business method and instructions in so far as it is necessary to achieve the objectives of the contract.
(2) The franchisee must grant the franchisor reasonable access to the accounting books of the franchisee.

Chapter 4:
Distribution

Section 1:
General

Article 4:101: Scope and Definitions
(1) This Chapter applies to exclusive distribution, selective distribution and exclusive purchasing contracts.
(2) A distribution contract is a contract under which one party (the supplier) agrees to supply the other party (the distributor) with products on a continuing basis and the distributor agrees to purchase them and to sell them in the distributor's name and on the distributor's behalf.
(3) An exclusive distribution contract is a distribution contract under which the supplier agrees to supply products to only one distributor within a certain territory or to a certain group of customers.
(4) A selective distribution contract is a distribution contract under which the supplier agrees to supply products, either directly or indirectly, only to distributors selected on the basis of specified criteria.
(5) An exclusive purchasing contract is a distribution contract under which the distributor agrees to purchase products only from the supplier or from a party designated by the supplier.

Section 2:
Obligations of the Supplier

Article 4:201: Supply
The supplier must supply the products ordered by the distributor, in so far as it is practicable and provided that the order is reasonable.

Article 4:202: Information during the Performance
The obligation to inform (Article 1:203) requires the supplier to provide the distributor with information concerning:
(a) the characteristics of the products,
(b) the prices and terms for the sale of the products,
(c) any recommended prices and terms for the resale of the products,
(d) any relevant communication between the supplier and customers,
(e) any advertising campaigns relevant to the operation of the business.

Article 4:203: Warning of Decreased Supply Capacity
(1) The supplier must warn the distributor within a reasonable time when the supplier foresees or ought to foresee that the supplier's supply capacity will be significantly less than the distributor had reason to expect.
(2) In exclusive purchasing contracts, parties may not derogate from this provision to the detriment of the distributor.

Article 4:204: Advertising Materials
The supplier must provide the distributor, at a reasonable price, with all the advertising materials the supplier has which are needed for the proper distribution and promotion of the products.

Article 4:205: Reputation of the Products
The supplier must make reasonable efforts not to damage the reputation of the products.

Section 3:
Obligations of the Distributor

Article 4:301: Distribution
In exclusive and selective distribution contracts, in so far as it is practicable, the distributor must make reasonable efforts to promote the sales of the products.

Article 4:302: Information during the Performance
In exclusive and selective distribution contracts, the obligation to inform (Article 1:203) requires the distributor in particular to provide the supplier with information concerning:
(a) any claims brought or threatened by third parties in relation to the supplier's intellectual property rights,
(b) any infringements by third parties of the supplier's intellectual property rights.

Article 4:303: Warning of Decreased Requirement
In exclusive and selective distribution contracts, the distributor must warn the supplier within a reasonable time when the distributor foresees or ought to foresee that the distributor's requirement will be significantly less than the supplier had reason to expect.

Article 4:304: Instructions
In exclusive and selective distribution contracts, the distributor must follow reasonable instructions from the supplier which are designed to secure the proper distribution of the products or to maintain the reputation or the distinctiveness of the products.

Article 4:305: Inspection
In exclusive and selective distribution contracts, the distributor must provide the supplier with reasonable access to the distributor's premises to enable the supplier to check that the distributor is complying with the standards agreed upon in the contract and with reasonable instructions.

Article 4:306: Reputation of the Products
In exclusive and selective distribution contracts, the distributor must make reasonable efforts not to damage the reputation of the products.

Dutch[1]

Agentuur-, Franchise- en Distributieovereenkomsten

Hoofdstuk 1:
Algemene Bepalingen

Titel 1:
Toepassingsgebied Hoofdstuk 1

Artikel 1:101: Toepassingsgebied
Dit Hoofdstuk is van toepassing op agentuur-, franchise- en distributieovereenkomsten en, mutatis mutandis, op andere overeenkomsten waarbij de ene partij, handelend in de uitoefening van een zelfstandig bedrijf, haar vaardigheden en inspanningen gebruikt om een product van een andere partij op de markt te brengen.

Titel 2:
Verplichtingen

Artikel 1:201: Pre-contractuele informatie
(1) Iedere partij moet de andere partij binnen een redelijke termijn voor het sluiten van de overeenkomst voorzien van adequate informatie. Als een partij nalaat aan deze verplichting te voldoen is lid 3 van toepassing.
(2) Adequate informatie is informatie die de andere partij redelijkerwijs in staat stelt een afgewogen beslissing te nemen ten aanzien van het al dan niet aangaan van een dergelijke overeenkomst en onder de voorgestelde voorwaarden.
(3) Wanneer het schenden door een partij van haar verplichting op grond van lid 1 de ander doet besluiten een overeenkomst te sluiten, terwijl de eerstgenoemde partij wist of redelijkerwijs had behoren te weten dat de andere partij, indien deze had beschikt over adequate en tijdige informatie, de overeenkomst niet zou zijn aangegaan of alleen onder wezenlijk andere voorwaarden, is hetgeen in Hoofdstuk 4 PECL bepaalt omtrent remedies bij dwaling, van toepassing.
(4) Partijen kunnen niet van deze bepaling afwijken.

Artikel 1:202: Samenwerking
(1) Bij agentuur-, franchise- en distributieovereenkomsten en andere commerciële duurovereenkomsten is de verplichting tot samenwerking fundamenteel en bijzonder intens. Ze vereist in het bijzonder een actieve en loyale samenwerking van partijen en de coördinatie van hun beider inspanningen met het oog op het verwezenlijken van de doelstellingen van de overeenkomst.
(2) Partijen kunnen niet van deze bepaling afwijken.

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[1] Vertaling voorgesteld door *Bastiaan van Zelst*.

Artikel 1:203: Informatie gedurende de nakoming

(1) Gedurende de overeenkomst moet iedere partij de ander tijdig voorzien van alle informatie waarover zij beschikt en die de wederpartij nodig heeft om de doelstelllingen van de overeenkomst te verwezenlijken.
(2) Partijen kunnen niet van deze bepaling afwijken.

Artikel 1:204: Geheimhouding

(1) Een partij die vertrouwelijke informatie van de ander ontvangt, moet deze informatie geheim houden en mag de informatie niet met derden delen, noch tijdens noch na het einde van de overeenkomst.
(2) Een partij die vertrouwelijke informatie ontvangt van de andere partij mag deze informatie niet gebruiken voor andere doeleinden dan de die van de overeenkomst.
(3) Alle informatie waarover een partij al beschikte of die openbaar is gemaakt, en alle informatie die noodzakelijkerwijs aan klanten beschikbaar moet worden gesteld bij het voeren van de onderneming is geen vertrouwelijke informatie in de zin van dit artikel.

Titel 3:
Opzegging en ontbinding

Artikel 1:301: Overeenkomst voor bepaalde tijd

(1) Een overeenkomst voor bepaalde tijd eindigt door het verlopen van de overeengekomen termijn. Tenzij partijen anders zijn overeengekomen, kan een dergelijke overeenkomst niet voortijdig eenzijdig worden opgezegd.
(2) Een partij is vrij om een overeenkomst voor bepaalde tijd niet te verlengen. Als echter de andere partij tijdig heeft aangegeven de overeenkomst te willen verlengen, moet de partij die de overeenkomst niet wil verlengen, de andere partij hiervan binnen een redelijke termijn voor het aflopen van de overeenkomst op de hoogte stellen.
(3) Een overeenkomst voor bepaalde tijd die na het aflopen van de overeengekomen termijn door beide partijen wordt uitgevoerd, wordt een overeenkomst voor onbepaalde tijd.

Artikel 1:302: Eenzijdige opzegging overeenkomst voor onbepaalde tijd

(1) Iedere partij bij een overeenkomst voor onbepaalde tijd kan deze door een kennisgeving opzeggen tegen een redelijke termijn (artikel 6:109 PECL).
(2) Of een opzegtermijn redelijke is hangt, onder meer, af van
    (a) de tijd die de overeenkomst heeft geduurd,
    (b) redelijke investeringen,
    (c) de tijd die nodig is om een redelijke alternatief te vinden, en
    (d) gewoonten en gebruiken.
(3) Een opzegtermijn van één maand voor ieder jaar dat de overeenkomst heeft geduurd, met een maximum van zesendertig maanden, wordt verondersteld redelijk te zijn.
(4) De opzeggingstermijn voor de principaal, de franchisegever of de leverancier mag niet korter zijn dan één maand voor het eerste jaar, twee maanden voor het tweede jaar, drie maanden voor het derde jaar, vier maanden voor het vierde jaar, vijf maanden voor het vijfde jaar en zes maanden voor het zesde en de daarop volgende jaren die de overeenkomst heeft geduurd. Partijen kunnen niet van deze bepaling afwijken.

(5) Bedingen betreffende een langere opzegtermijn dan bepaald in de leden 2 en 3 zijn geldig indien de overeengekomen termijn voor opzegging door de principaal, de franchisegever of de leverancier niet korter is dan die voor opzegging door de handelsagent, de franchisenemer of de distributeur.
(6) De benadeelde partij heeft geen recht op nakoming van de overeenkomst gedurende de opzeggingstermijn. Echter, de rechter kan nakoming bevelen van contractuele en post-contractuele verplichtingen die niet afhankelijk zijn van samenwerking.

Artikel 1:303: Schadevergoeding voor het niet in acht nemen opzegtermijn

(1) Ingeval de opzegtermijn van artikel 1:301 (2) of 1:302 (1) niet in acht wordt genomen, heeft de daardoor benadeelde partij recht op schadevergoeding.
(2) Als algemene maatstaf voor de schadevergoeding geldt de som die overeenkomt met het voordeel dat de benadeelde partij zou hebben behaald gedurende de niet in acht genomen opzeggingstermijn.
(3) Het voordeel gedurende een jaar wordt verondersteld gelijk te zijn aan het gemiddelde voordeel dat de benadeelde partij uit de overeenkomst heeft behaald gedurende de drie voorgaande jaren of, indien de overeenkomst korter heeft geduurd, gedurende de tijd die het contract heeft geduurdde periode.
(4) De algemene regels met betrekking tot niet-nakoming (artikel 9:501 ff PECL) zijn van overeenkomstige toepassing.

Artikel 1:304: Ontbinding wegens wanprestatie

(1) Een partij mag de overeenkomst alleen wegens ontbinden wanprestatie indien de wanprestatie fundamenteel is in de zin van de artikelen 8:103 (b) en 8:103 (c) PECL (artikel 9:301 PECL).
(2) Partijen kunnen niet van deze bepaling afwijken.

Artikel 1:305: Goodwillvergoeding

(1) Als de overeenkomst eindigt, heeft een partij, onafhankelijk van de reden voor het eindigen van de overeenkomst (inclusief de ontbinding door een van partijen wegens wanprestatie), recht op een goodwillvergoeding door de andere partij voorzover:
  (a) de eerste partij de omzet van de andere partij aanzienlijk heeft doen toenemen en de andere partij daar een voortdurend en substantieel voordeel van heeft, en
  (b) de vergoeding, gezien alle omstandigheden van het geval, redelijk is.
(2) De toekenning van een goodwillvergoeding doet niet af aan een eventueel recht van partij op schadevergoeding op grond van artikel 1:303.

Artikel 1:306: Voorraden, Reserveonderdelen en Materialen

Als de overeenkomst is opgezegd, ontbonden of vernietigd door een van partijen moet de principaal, franchisegever of leverancier de overgebleven voorraden, reserveonderdelen en materialen van de handelsagent, franchisenemer of distributeur overnemen tegen een redelijke prijs, tenzij de handelsagent, franchisenemer of distributeur deze redelijkerwijs zelf kan verkopen.

Titel 4:
Overige algemene bepalingen

Artikel 1:401: Retentierecht
De handelsagent, franchisenemer of distributeur heeft een retentierecht met betrekking tot de roerende zaken van de principaal, franchisegever of leverancier die hij ingevolge de overeenkomst in onder zich heeft, teneinde zijn rechten op beloning, goodwillvergoeding, of schadeloosstelling zeker te stellen, totdat de (voormalige) principaal, franchisegever of leverancier aan zijn verplichtingen heeft voldaan.

Artikel 1:402: Getekend schriftelijk document
Iedere partij heeft het recht om, op haar verzoek, van de andere partij een ondertekend schriftelijk document te ontvangen waarin de voorwaarden van de overeenkomst zijn weergegeven.

Hoofdstuk 2:
Handelsagentuur

Titel 1:
Algemeen

Artikel 2:101: Toepassingsgebied
Dit Hoofdstuk is van toepassing op overeenkomsten waarbij de ene partij (de handelsagent) zich verbindt om op duurzame basis als zelfstandige tussenpersoon over de totstandkoming van overeenkomsten te onderhandelen of deze af te sluiten op naam van een andere partij (de principaal) waarbij de principaal zich verbindt de handelsagent te belonen voor zijn inspanningen.

Titel 2:
Verplichtingen van de handelsagent

Artikel 2:201: Het onderhandelen over en het afsluiten van overeenkomsten
De handelsagent is gehouden tot redelijke inspanningen bij het onderhandelen over de totstandkoming van overeenkomsten op naam van de principaal en, voorzover hem dat is opgedragen, bij het sluiten van zulke overeenkomsten.

Artikel 2:202: Instructies
De handelsagent moet de redelijke instructies van de principaal opvolgen mits deze de onafhankelijkheid van de handelsagent niet aanzienlijk beïnvloeden.

Artikel 2:203: Informatie gedurende de overeenkomst
Op grond van de informatieplicht (Artikel 1:203) is de handelsagent in het bijzonder gehouden de principaal te informeren met betrekking tot:
(a) overeenkomsten waarover hij heeft onderhandeld of die hij heeft gesloten,

(b) relevante marktomstandigheden,
(c) de kredietwaardigheid en andere relevante kenmerken van klanten.

Artikel 2:204: Boekhouding

(1) De handelsagent is verplicht een behoorlijke boekhouding te voeren met betrekking tot de overeenkomsten waarover hij op naam van de principaal onderhandeld heeft of die hij op naam van de principaal heeft gesloten.
(2) Indien de handelsagent meer dan één principaal vertegenwoordigt, is hij, in het bijzonder, gehouden onderscheiden boekhoudingen te voeren voor iedere principaal die hij vertegenwoordigt.
(3) Indien de principaal goede reden heeft om te betwijfelen dat de handelsagent een behoorlijke boekhouding voert, moet de handelsagent op verzoek van de principaal een onafhankelijke accountant redelijke toegang verschaffen tot de boekhouding. De principaal draagt de kosten van de diensten van de onafhankelijke accountant.

Titel 3:
Verplichtingen van de principaal

Artikel 2:301: Recht op provisie gedurende de overeenkomst

(1) De handelsagent heeft recht op provisie voor overeenkomsten die zijn afgesloten met klanten tijdens de duur van de agentuurovereenkomst wanneer
   (a) de overeenkomst met de klant is gesloten als gevol van de inspanningen van de handelsagent; of
   (b) de overeenkomst is gesloten met een derde die de handelsagent eerder heeft verworven als klant voor soortgelijke overeenkomsten, of
   (c) de handelsagent een bepaald afzetgebied of een bepaalde groep van klanten is toevertrouwd en de overeenkomst is gesloten met een klant uit dat gebied of die groep.
(2) Het recht op provisie ontstaat alleen indien
   (a) de principaal zijn verplichtingen uit de overeenkomst met de klant is nagekomen; of
   (b) de klant zijn verplichten uit de overeenkomst is nagekomen danwel op goede gronden zijn prestatie heeft opschort (Artikel 9:201 PECL).
(3) Partijen kunnen niet ten nadele van de handelsagent afwijken van lid 2 sub b.

Artikel 2:302: Recht op provisie na afloop van de overeenkomst

(1) De handelsagent heeft recht op provisie over overeenkomsten die zijn gesloten met klanten nadat de agentuurovereenkomst is ontbonden of opgezegd, i
   (a) het totstandkomen van de overeenkomst met de klant hoofdzakelijk het gevolg is van de inspanningen van de handelsagent ten tijdens de agentuurovereenkomst en de overeenkomst met de klant is gesloten binnen een redelijke termijn na de beëindiging van de agentuurovereenkomst; of
   (b) aan de voorwaarden van Artikel 2:301 zou zijn voldaan ware het niet dat de overeenkomst met de klant niet is gesloten ten tijde van de looptijd van de agentuurovereenkomst terwijl het het aanbod van de klant de principaal of de handelsagent wel heeft bereikt voordat de agentuurovereenkomst is opgezegd of ontbonden.

(2) Het recht op provisie ontstaat alleen indien
   (a) de principaal zijn verplichtingen uit de overeenkomst met de klant is nagekomen; of
   (b) de klant zijn verplichten uit de overeenkomst is nagekomen danwel op goede gronden zijn prestatie heeft opschort (Artikel 9:201 PECL).
(3) Partijen kunnen niet ten nadele van de handelsagent afwijken van lid 2 (b).

Artikel 2:303: Provisie bij opvolging

De handelsagent heeft geen recht op de in Artikel 2:301 genoemde provisie als zijn voorganger ingevolge Artikel 2:302 recht heeft op deze provisie, tenzij het redelijk is de provisie tussen de twee handelsagenten te verdelen.

Artikel 2:304: Moment waarop provisie moet worden betaald

(1) De principaal moet de provisie aan de handelsagent voldoen voor de laatste dag van de maand die volgt op het kwartaal waarin de handelsagent recht kreeg op de provisie.
(2) Partijen kunnen niet ten nadele van de handelsagent afwijken van deze bepaling.

Artikel 2:305: Verlies recht op provisie

(1) Na het verlies van zijn recht op provisie moet de handelsagent alle reeds ontvangen provisie restitueren.
(2) Partijen kunnen niet van lid 1 ten nadele van de handelsagent afwijken.

Artikel 2:306: Beloning

Elke beloning die (gedeeltelijk) afhankelijk is van het aantal of de waarde van de overeenkomsten wordt verondersteld provisie in de zin van dit Hoofdstuk te zijn.

Artikel 2:307: Informatie tijdens de nakoming

De informatieplicht (Artikel 1:203) verplicht de principaal in het bijzonder de handelsagent te voorzien van informatie met betrekking tot:
(a) eigenschappen van de goederen of diensten,
(b) prijzen en voorwaarden van koop of verkoop.

Artikel 2:308: Informatie over aanvaarding, verwerping en wanprestatie

(1) De principaal moet de handelsagent binnen een redelijke termijn informeren over
   (a) de aanvaarding of verwerping van een overeenkomst waarover de handelsagent op naam van de principaal heeft onderhandeld; en
   (b) iedere tekortkoming in de nakoming van een overeenkomst waarover de handelsagent op naam van de principaal heeft onderhandeld of die hij op naam van de principaal heeft gesloten.
(2) Partijen kunnen niet ten nadele van de handelsagent afwijken van deze bepaling.

Artikel 2:309: Waarschuwing ingeval van verminderde hoeveelheid overeenkomsten

(1) De principaal moet de handelsagent binnen een redelijke termijn waarschuwen wanneer hij voorziet of zou moeten voorzien dat het aantal overeenkomsten dat de principaal zal kunnen afsluiten of nakomen aanzienlijk lager is dan de handelsagent redelijkerwijs mag verwachten.
(2) Partijen kunnen niet ten nadele van de handelsagent afwijken van deze bepaling.

Artikel 2:310: Provisieoverzicht en uittreksel uit de boekhouding

(1) De principaal moet de handelsagent binnen een redelijke termijn een overzicht verstrekken van de provisie waarop de handelsagent recht heeft. Dit overzicht moet inzichtelijk maken hoe het bedrag van de verschuldigde de provisie is berekend.
(2) Ten behoeve van de berekening van de provisie moet de principaal de handelsagent, op diens verzoek, voorzien van een uittreksel uit de boekhouding van de principaal.
(3) Partijen kunnen niet ten nadele van de handelsagent afwijken van deze bepaling.

Artikel 2:311: Boekhouding

(1) De principaal moet een behoorlijke boekhouding voeren met betrekking tot de overeenkomsten waarover de handelsagent heeft onderhandeld of die door hem zijn gesloten.
(2) Als de principaal meer dan één handelsagent heeft moet hij, in het bijzonder, onderschieden boekhoudingen voeren voor iedere handelsagent.
(3) De principaal moet een onafhankelijke accountant redelijke toegang geven tot de boekhouding, wanneer de handelsagent daarom verzoekt, wanneer
   (a) de principaal niet voldoet aan zijn verplichtingen op grond van Artikel 2:310 leden 1 en 2, of
   (b) de handelsagent gegronde redenen heeft om te betwijfelen of de principaal een behoorlijke boekhouding voert.
(4) Een accountantscontrole als genoemd in lid 3 komt voor rekening van de handelsagent.

Artikel 2:312: Hoogte goodwillvergoeding

(1) De handelsagent heeft recht op een vergoeding voor goodwill op basis van Artikel 1:305 ter hoogte van:
   (a) de gemiddelde provisie over overeenkomsten met nieuwe klanten en over toegenomen handelmet bestaande klanten berekend over de laatste twaalf maanden, vermenigvuldigd met:
   (b) het aantal jaren dat de principaal naar verwachting voordeel zal hebben van deze overeenkomsten.
(2) De vergoeding moet worden aangepast in overeenstemming met:
   (a) het gemiddelde migratiepercentage in het afzetgebied van de handelsagent; en
   (b) het gemiddelde rentepercentage.
(3) In elk geval mag de vergoeding niet hoger zijn dan de beloning voor één jaar, berekend naar de gemiddelde beloning van de handelsagent over de voorafgaande vijf jaar of, indien de overeenkomst korter heeft geduurd, over die periode.
(4) Partijen kunnen niet ten nadele van de handelsagent afwijken van deze bepaling.

Artikel 2:313: Del credere beding

(1) Een overeenkomst waarbij de handelsagent zich garant stelt voor de betaling door de klant van de prijs van de producten die onderwerp van de overeenkomsten zijn waarover de handelsagent heeft onderhandeld of die door hem zijn gesloten (del credere beding), is alleen geldig indien en voorzover:
   (a) het beding schriftelijk is overeengekomen, en
   (b) het beding specifieke overeenkomsten betreft waarover de handelsagent heeft onderhandeld of die door hem zijn gesloten of overeenkomsten die zijn gesloten met bepaalde klanten die zijn gespecificeerd in het beding, en
   (c) de clausule redelijk is, gezien de belangen van partijen.

(2) De handelsagent heeft recht op een redelijke provisie over overeenkomsten waarop de del credere-garantie van toepassing is (del credere provisie).

Hoofdstuk 3:
Franchise

Titel 1:
Algemeen

Artikel 3:101: Toepassingsgebied
Dit Hoofdstuk is van toepassing op overeenkomsten waarbij de ene partij (de franchisegever) de andere partij (de franchisenemer) tegen vergoeding het recht verleent, een onderneming te drijven (franchise onderneming) binnen het netwerk van de franchisegever met als doel de verkoop van specifieke producten op naam en voor rekening van de franchisenemer en waarbij de franchisenemer het recht en de verplichting heeft om de handelsnaam of het handelsmerk en andere intellectuele eigendomsrechten, knowhow en de werkwijze van franchisegever te gebruiken.

Artikel 3:102: Precontractuele informatie
(1) De verplichting om precontractuele informatie te verschaffen (Artikel 1:201) vereist van de franchisenemer in het bijzonder dat hij de franchisegever tijding voorziet van adequate informatie met betrekking tot:
   (a) het bedrijf en de ervaring van de franchisegever,
   (b) de relevante intellectuele eigendomsrechten,
   (c) de eigenschappen van de relevante know-how,
   (d) de handelssector en de marktomstandigheden,
   (e) de betreffende franchise-methode en haar werking,
   (f) de structuur en de omvang van het franchise-netwerk,
   (g) de fee, royalties en andere periodieke betalingen,
   (h) de voorwaarden van de overeenkomst.

(2) Zelfs indien de niet-naleving van lid 1 door de franchisegever niet leidt tot een fundamentele dwaling als bedoeld in Artikel 4:103 PECL, heeft de franchisenemer recht op schadevergoeding in overeenstemming met Artikel 4:117 (2) en (3) PECL, tenzij de franchisegever mocht aannemen dat de informatie adequaat was en binnen een redelijk termijn gegeven.

(3) Partijen kunnen niet van deze bepaling afwijken.

Titel 2:
Verplichtingen van de franchisegever

Artikel 3:201: Intellectuele eigendomsrechten
(1) De franchisegever moet de franchisenemer het recht verlenen gebruik te maken van de intellectuele eigendomsrechten voorzover dit noodzakelijk is om de franchise-onderneming te drijven.

(2) De franchisegever moet zich inspannen om de franchisenemer het ongestoord en voortdurend gebruik van de intellectuele eigendomsrechten te verzekeren.

(3) Partijen kunnen niet van deze bepaling afwijken.

Artikel 3:202: Knowhow

(1) Tijdens van de gehele duur van de overeenkomst moet de franchisegever de franchisenemer voorzien van de knowhow doe noodzakelijk is om de franchise-onderneming te drijven.
(2) Partijen kunnen niet van deze bepaling afwijken.

Artikel 3:203: Hulp

(1) De franchisegever moet de franchisenemer, zonder bijkomende kosten voor de franchisenemer, helpen in de vorm van opleidingscursussen, richtlijnen en advies, voorzover dit noodzakelijk is voorzover dit noodzakelijk is om de franchise-onderneming te kunnen drijven.
(2) De franchisegever moet, op een redelijk verzoek van de franchisenemer, tegen een redelijke prijs, verdere hulp verlenen.

Artikel 3:204: Levering

(1) Wanneer de franchisenemer verplicht is om producten exclusief af te nemen van de franchisegever of van een door hem aangewezen leverancier, moet de franchisegever verzekeren dat de door de franchisenemer bestelde producten worden geleverd binnen een redelijke termijn, voorzover dit uitvoerbaar is en mits de bestelling redelijk is.
(2) Lid 1 is ook van toepassing op gevallen waarin de franchisenemer, hoewel niet rechtens verplicht om af te nemen van de franchisegever of een door hem aangewezen leverancier, in feite daartoe wel genoodzaakt is.
(3) Partijen kunnen niet van deze bepaling afwijken.

Artikel 3:205: Informatie gedurende de nakoming

De informatieplicht (Artikel 1:203) vereist van de franchisegever in het bijzonder dat hij de franchisenemer voorziet van informatie met betrekking tot:
(a) de relevante marktomstandigheden,
(b) de commerciële resultaten van het franchise-netwerk,
(c) de eigenschappen van de producten,
(d) de prijzen en voorwaarden van de verkoop van producten,
(e) alle geadviseerde prijzen en voorwaarden voor de doorverkoop van producten,
(f) alle relevante communicatie tussen de franchisegever en cliënten in het afzetgebied,
(g) alle reclamecampagnes die relevant zijn voor het drijven van de franchise.

Artikel 3:206: Waarschuwing ingeval van verminderde leveringscapaciteit

(1) Wanneer de franchisenemer verplicht is producten exclusief af te nemen van de franchisegever of van een door hem aangewezen leverancier, moet de franchisegever de franchisenemer binnen een redelijke termijn waarschuwen wanneer hij voorziet of zou moeten voorzien dat zijn leveringscapaciteit of de leveringscapaciteit van de aangewezen leveranciers substantieel lager zal zijn dan de franchisenemer redelijkerwijs mocht verwachten.
(2) Lid 1 is ook van toepassing op gevallen waarin de franchisenemer, hoewel niet rechtens verplicht om af te nemen van de franchisegever of een door hem aangewezen leverancier, in feite daartoe wel genoodzaakt is.
(3) Partijen kunnen niet ten nadele van de franchisenemer van deze bepaling afwijken.

Artikel 3:207: Reputatie van het netwerk en reclame

(1) De franchisegever moet zich inspannen om de reputatie van het netwerk te bevorderen en hoog te houden.
(2) In het bijzonder moet de franchisegever passende reclamecampagnes, ontwerpen en coördineren die gericht zijn op de promotie van het franchise-netwerk.
(3) De activiteiten voor de promotie en het behoud van de reputatie van het franchise-netwerk moeten worden uitgevoerd zonder bijkomende kosten voor de franchisenemer.

Titel 3:
Verplichtingen van de Franchisenemer

Artikel 3:301: Fees, royalties en andere periodieke betalingen

(1) De franchisenemer moet franchisegever de overeengekomen fees, royalties en andere periodieke betalingen betalen.
(2) Wanneer fees, royalties of andere periodieke betalingen eenzijdig worden vastgesteld door de franchisegever is Artikel 6:105 PECL van toepassing.

Artikel 3:302: Informatie gedurende de nakoming

De informatieplicht (Artikel 1:203) vereist van de franchisenemer in het bijzonder, de franchisegever te voorzien van informatie met betrekking tot:
(a) iedere vordering die is ingediend of waarmee is gedreigd door derden met betrekking tot de intellectuele eigendomsrechten van de franchisegever.
(b) iedere inbreuk door een derde op de intellectuele eigendomsrechten van de franchisegever.

Artikel 3:303: Werkwijze en instructies

(1) De franchisenemer moet zich inspannen om de franchise-onderneming te drijven in overeenstemming met de werkwijze van de franchisegever.
(2) De franchisenemer moet redelijke instructies opvolgen die de franchisegever hem geeft met betrekking tot de werkwijze en het hoog houden van de reputatie van het netwerk.
(3) De franchisenemer moet redelijke zorg betrachten teneinde het franchise-netwerk geen schade te berokkenen.
(4) Partijen kunnen niet van deze bepaling afwijken.

Artikel 3:304: Inspectie

(1) De franchisenemer moet, voorzover dit noodzakelijk is om de doelen van het contract te verwezenlijken, de franchisegever redelijke toegang verlenen tot zijn bedrijfsruimte teneinde de franchisegever in staat te stellen te controleren of de franchisenemer de werkwijze en instructies van de franchisegever opvolgt.
(2) The franchisee must grant the franchisor reasonable access to the accounting books of the franchisee.
(3) De franchisenemer moet de franchisegever redelijke toegang bieden tot zijn boekhouding.

Hoofdstuk 4:
Distributie

Titel 1:
Algemeen

Artikel 4:101: Toepassingsgebied en definities
(1) Dit hoofdstuk is van toepassing op exclusieve distributie, selectieve distributie en exclusieve koopovereenkomsten.
(2) Een distributieovereenkomst is een overeenkomst waarbij de ene partij (de leverancier) zich verbindt om de andere partij (de distributeur) gedurende zekere tijd producten te leveren en waarbij de distributeur zich verbindt om deze producten te kopen en op eigen naam en voor eigen rekening te verkopen.
(3) Een exclusieve distributieovereenkomst is een distributieovereenkomst waarbij de leverancier zich verbindt om producten te leveren aan slechts één distributeur in een bepaald afzetgebied of met een bepaalde groep klanten.
(4) Een selectieve distributieovereenkomst is een distributieovereenkomst waarbij de leverancier zich verbindt om slechts producten te leveren, direct dan wel indirect, aan distributeurs die zijn geselecteerd op basis van gespecificeerde criteria.
(5) Een exclusieve koopovereenkomst is een overeenkomst waarbij de distributeur zich verbindt om alleen producten van de leverancier of van een door de leverancier aangewezen partij te kopen.

Titel 2:
Verplichtingen van de leverancier

Artikel 4:201: Levering
De leverancier moet de door de distributeur bestelde producten leveren voorzover dit doenlijk is is en mits de bestelling redelijk is.

Artikel 4:202: Informatie gedurende de nakoming
De informatieplicht (Artikel 1:203) brengt met zich dat de leverancier de distributeur moet voorzien van informatie met betrekking tot:
(a) de eigenschappen van de producten,
(b) de prijzen en de verkoopvoorwaarden van de producten,
(c) alle geadviseerde prijzen en voorwaarden voor de doorverkoop van producten,
(d) alle relevante communicatie tussen de leverancier en klanten,
(e) alle reclamecampagnes die relevant zijn voor het drijven van de onderneming.

Artikel 4:203: Waarschuwing ingeval van verminderde leveringscapaciteit
(1) De leverancier moet de distributeur binnen een redelijke termijn waarschuwen wanneer hij voorziet of zou moeten voorzien dat zijn leveringscapaciteit aanzienlijk lager zal zijn dan de distributeur redelijkerwijs mocht verwachten.
(2) Bij een exclusieve koopovereenkomst mogen partijen niet ten nadele van de distributeur van deze bepaling afwijken.

Artikel 4:204: Reclamemateriaal
De leverancier moet de distributeur tegen een redelijke prijs voorzien van alle reclamematerialen die de leverancier heeft, die nodig zijn voor de behoorlijke distributie en promotie van de producten.

Artikel 4:205: Reputatie van de producten
De leverancier moet zich inspannen om de reputatie van de producten niet te schaden.

Titel 3:
Verplichtingen van de distributeur

Artikel 4:301: Distributie
Bij exclusieve en selectieve distributieovereenkomsten moet de distributeur zich, voorzover doenlijk, een redelijke inspanning leveren om de verkoop van de producten te bevorderen.

Artikel 4:302: Informatie gedurende de nakoming
Bij exclusieve en selectieve distributieovereenkomsten brengt de informatieplicht (Artikel 1:203) van de distributeur in het bijzonder met zich dat de distributeur de leverancier voorziet van informatie met betrekking tot:
(a) iedere vordering die is ingediend of waarmee is gedreigd door derden met betrekking tot de intellectuele eigendomsrechten van de leverancier,
(b) iedere inbreuk door een derde op de intellectuele eigendomsrechten van de leverancier.

Artikel 4:303: Waarschuwing bij verminderde leveringsbehoefte
Bij exclusieve en selectieve distributieovereenkomsten moet de distributeur de leverancier binnen een redelijke termijn waarschuwen wanneer hij voorziet of zou moeten voorzien dat zijn leveringsbehoefte aanzienlijk lager is dan de leverancier redelijkerwijs mocht verwachten.

Artikel 4:304: Aanwijzingen
Bij exclusieve en selectieve distributieovereenkomsten moet de distributeur de redelijke instructies van de leverancier opvolgen die bedoeld zijn om de behoorlijke distributie van de producten te verzekeren of om de reputatie of het onderscheidend karakter van de producten te behouden.

Artikel 4:305: Inspectie
Bij exclusieve en selectieve distributieovereenkomsten moet de distributeur de leverancier redelijke toegang verlenen tot zijn bedrijfsruimten teneinde de leverancier in staat te stellen te controleren of de distributeur de overeengekomen normen en redelijke instructies naleeft.

Artikel 4:306: Reputatie van de producten
Bij exclusieve en selectieve distributieovereenkomsten moet de distributeur zich inspannen om de reputatie van de producten niet te schaden.

French[2]

Contrats d'Agence Commerciale, de Franchise et de Distribution

Chapitre 1: Dispositions générales

Section 1: Champ d'application du chapitre 1

Article 1:101: Champ d'application

Le présent chapitre s'applique aux contrats d'agence commerciale, de franchise et de distribution ainsi que, sous réserve des modifications adéquates, aux autres contrats dans lesquels une partie, engagée dans des activités commerciales à titre indépendant, consacre ses compétences et ses efforts à mettre les produits de l'autre partie sur le marché.

Section 2: Obligations

Article 1:201: Informations précontractuelles

(1) Chacune des parties doit fournir à l'autre les informations adéquates dans un délai raisonnable avant la conclusion du contrat. À défaut, le paragraphe 3 sera applicable.
(2) Par informations adéquates, il faut entendre des informations suffisantes pour permettre à l'autre partie de décider, sur la base d'informations raisonnables, de conclure ou non un contrat du type et aux conditions envisagés.
(3) Si le manquement d'une partie aux obligations énoncées au paragraphe 1 amène l'autre à conclure un contrat alors que la première partie savait, ou aurait raisonnablement dû savoir que l'autre, si elle avait disposé d'informations adéquates en temps opportun, n'aurait pas conclu le contrat ou ne l'aurait conclu qu'à des conditions fondamentalement différentes, les recours pour erreur du Chapitre 4 des PDEC seront applicables.
(4) Les parties ne peuvent déroger aux présentes dispositions.

Article 1:202: Coopération

(1) L'obligation de coopérer (art. 1:202 des PDEC) dans les contrats d'agence commerciale, de franchise et de distribution ainsi que dans d'autres contrats commerciaux de longue durée, est fondamentale et particulièrement stricte. Elle requiert notamment des parties une collaboration active et loyale ainsi qu'une coordination de leurs efforts respectifs afin de réaliser les objectifs du contrat.
(2) Les parties ne peuvent déroger aux présentes dispositions.

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[2] Traduction proposée par *Jacques Ghestin*.

Article 1:203: Informations durant l'exécution

(1) Pendant la durée du contrat, chaque partie doit fournir à l'autre, en temps opportun, toutes les informations dont la première partie dispose et qui sont nécessaires à la seconde afin de réaliser les objectifs du contrat.
(2) Les parties ne peuvent déroger à cette disposition.

Article 1:204: Confidentialité

(1) Une partie qui reçoit des informations confidentielles de l'autre doit en préserver la confidentialité et ne peut les divulguer à des tiers, que ce soit pendant la durée du contrat ou après son terme.
(2) Une partie qui reçoit des informations confidentielles de l'autre ne peut les utiliser à d'autres fins que les objectifs visés par le contrat.
(3) Les informations dont disposait déjà une partie ou qui faisaient partie du domaine public, ainsi que celles qui devaient nécessairement être communiquées aux clients par suite de l'exercice des activités commerciales ne sont pas considérées comme des informations confidentielles pour l'application des paragraphes 1 et 2.

Section 3:
Terme et résiliation

Article 1:301: Contrat à durée déterminée

(1) Un contrat conclu pour une durée déterminée prend fin à l'expiration de celle-ci. A défaut de convention contraire, il ne peut être unilatéralement mis fin à un tel contrat avant cette échéance.
(2) Une partie est libre de ne pas renouveler un contrat à durée déterminée. Toutefois, si l'autre partie lui a notifié son souhait, en temps opportun, de renouveler le contrat, la partie qui ne le souhaite doit l'aviser de sa décision dans un délai raisonnable avant l'arrivée du terme.
(3) Un contrat à durée déterminée qui continue d'être exécuté par les deux parties après l'arrivée du terme devient un contrat à durée indéterminée.

Article 1:302: Résiliation unilatérale d'un contrat à durée indéterminée

(1) Chacune des parties à un contrat à durée indéterminée peut résilier celui-ci en donnant un préavis d'une durée raisonnable (art. 6:109 des PDEC).
(2) La durée raisonnable d'un préavis dépend, entre autres facteurs :
    (a) de la durée pendant laquelle le contrat a été en vigueur,
    (b) des investissements raisonnables effectués
    (c) du temps nécessaire pour trouver une autre solution raisonnable, et
    (d) des usages.
(3) Un préavis d'un mois pour chaque année pendant laquelle le contrat a été en vigueur, avec un maximum de 36 mois, est réputé raisonnable.
(4) Le préavis pour le commettant, le franchiseur ou le fournisseur ne peut être inférieur à un mois pour la première année, deux mois pour la deuxième année, trois mois pour la troisième année, quatre mois pour la quatrième année, cinq mois pour la cinquième année et six mois pour la sixième année ainsi que les années suivantes pendant lesquelles le contrat a été en vigueur. Les parties ne peuvent déroger aux présentes dispositions.

(5) Des conventions stipulant des préavis plus longs que ceux qui résultent des paragraphes 2 et 3 sont valables à condition que le préavis à observer par le commettant, le franchiseur ou le fournisseur ne soit pas plus court que celui à observer par l'agent commercial, le franchisé ou le distributeur.
(6) La partie lésée n'a pas droit à l'exécution forcée du contrat durant la période de préavis. Toutefois, le tribunal peut ordonner l'exécution forcée des obligations contractuelles et post-contractuelles qui n'impliquent pas la coopération des parties.

Article 1:303: Dommages-intérêts pour non-respect du préavis

(1) En cas de non-respect des délais de préavis énoncés à l'art. 1:301.2) et 1:302.1), la partie lésée a droit à des dommages-intérêts.
(2) La mesure générale des dommages-intérêts est égale à la somme correspondant au profit que la partie lésée aurait obtenu pendant le délai de préavis non respecté.
(3) Le profit annuel est supposé être égal au profit moyen que la partie lésée a tiré du contrat au cours des 3 années précédentes ou, si le contrat a duré moins longtemps, au cours de cette période.
(4) Les règles générales en matière de dommages-intérêts pour non-exécution (art. 9:501 ff des PDEC) s'appliquent.

Article 1:304: Résiliation pour non-exécution

(1) Une partie ne peut résilier le contrat pour non-exécution que si le défaut d'exécution de l'autre partie revêt une importance fondamentale au sens de l'article 8:103.b) et de l'article 8:103.c) des PDEC (art. 9:301 des PDEC).
(2) Les parties ne peuvent déroger à cette disposition.

Article 1:305: Indemnité pour «Goodwill»

(1) Lorsqu'il est mis un terme au contrat pour un motif quelconque (y compris la résiliation par l'une ou l'autre des parties pour non-exécution), une partie a le droit de percevoir de l'autre une indemnité pour «Goodwill» si, et dans la mesure où
  (a) la première partie a sensiblement accru le volume des affaires de l'autre partie et cette dernière continue à tirer des profits substantiels de cette activité, et si
  (b) le paiement de l'indemnité est raisonnable eu égard à toutes les circonstances.
(2) L'octroi d'une indemnité n'empêche pas une partie de chercher à obtenir des dommages-intérêts en vertu de l'article 1:303.

Article 1:306: Stock, pièces de rechange et matériaux

Si l'une des parties met un terme, résilie ou annule le contrat, le commettant, le franchiseur ou le fournisseur doit racheter le reste du stock, des pièces de rechange et des matériaux de l'agent commercial, du franchisé ou du distributeur à un prix raisonnable, sauf si l'agent commercial, le franchisé ou le distributeur peut raisonnablement les revendre.

Section 4:
Autres dispositions générales

Article 1:401: Droit de rétention
Afin de garantir ses droits à rémunération, compensation, dommages-intérêts et indemnité, l'agent commercial, le franchisé ou le distributeur dispose d'un droit de rétention sur les objets mobiliers du commettant, du franchiseur ou du fournisseur qui sont en sa possession jusqu'à ce que ledit commettant, franchiseur ou fournisseur ait satisfait à ses obligations.

Article 1:402: Document écrit et signé
Chaque partie a le droit de recevoir de l'autre partie, sur demande, un document écrit et signé exposant les conditions du contrat.

Chapitre 2:
Agence commerciale

Section 1:
Dispositions générales

Article 2:101: Champ d'application
Le présent chapitre s'applique aux contrats en vertu desquels une partie (l'agent commercial) convient d'agir de façon continue en tant qu'intermédiaire indépendant pour négocier ou conclure des contrats pour le compte d'une autre partie (le commettant) qui s'engage en contrepartie à rémunérer l'agent commercial pour ses activités.

Section 2:
Obligations de l'agent commercial

Article 2:201: Négocier et conclure des contrats
L'agent commercial doit fournir des efforts raisonnables pour négocier des contrats pour le compte du commettant et conclure ceux qu'il a reçu instruction de conclure.

Article 2:202: Instructions
L'agent commercial doit se conformer aux instructions raisonnables du commettant dans la mesure où elles ne portent pas atteinte, de façon substantielle, à son indépendance.

Article 2:203: Informations durant l'exécution
L'obligation d'informer (article 1:203) requiert en particulier que (de) l'agent commercial (qu'i)l communique au commettant des informations concernant:
(a) les contrats négociés ou conclus,
(b) les conditions pertinentes du marché,
(c) la solvabilité et autres caractéristiques concernant les des clients.

Article 2:204: Comptabilité

(1) L'agent commercial doit tenir à jour une comptabilité adéquate concernant les contrats négociés ou conclus pour le compte du commettant.
(2) Si l'agent commercial représente plus d'un commettant, il doit, tout particulièrement, tenir à jour des comptes indépendants pour chacun des commettants qu'il représente.
(3) Si le commettant a des motifs importants de douter de la tenue de comptes adéquats par l'agent commercial, ce dernier doit, à la demande du commettant, laisser un accès raisonnable à ses registres à un comptable indépendant. Le commettant doit payer les services du comptable indépendant.

Section 3:
Obligations du commettant

Article 2:301: Droit à commission pendant la durée du contrat

(1) L'agent commercial a droit à une commission sur les contrats conclus avec les clients pendant la durée du contrat d'agence, si
  (a) le contrat avec le client résulte principalement des efforts de l'agent commercial; ou si
  (b) le contrat a été conclu avec un tiers dont la clientèle avait été précédemment acquise par l'agent commercial pour des contrats du même type ; ou si
  (c) l'agent commercial est chargé d'un certain territoire géographique ou groupe de clients, et si le contrat a été conclu avec un client faisant partie de ce territoire ou groupe, et
(2) Une commission n'est due que si
  (a) le commettant a exécuté ou aurait dû exécuter les obligations qui lui incombaient en vertu du contrat avec le client; ou
  (b) le client a exécuté ses obligation résultant du contrat ou s'est abstenu de les exécuter pour des motifs justifiés (Article 9:201 des PDEC).
(3) Les parties ne peuvent déroger au paragraphe 2 sous b) au détriment de l'agent commercial.

Article 2:302: Droit à une commission après le contrat

(1) L'agent commercial a le droit de percevoir une commission sur les contrats conclus avec les clients lorsque le contrat d'agence a pris fin ou a été résilié, si
  (a) le contrat avec le client résulte principalement des efforts de l'agent commercial pendant la durée du contrat d'agence, et si le contrat avec le client a été conclu pendant un délai raisonnable après l'expiration de ce contrat; ou si
  (b) les conditions visées à l'article 2:301, paragraphe 1, auraient été remplies si ce n'est que le contrat avec le client n'a pas été conclu pendant la durée du contrat d'agence, alors que l'offre du client est parvenue au commettant ou à l'agent commercial avant que le contrat d'agence prenne fin ou ait été résilié.
(2) Le droit à commission n'a lieu que si
  (a) le commettant a exécuté ou aurait dû exécuter les obligations qui lui incombaient en vertu du contrat avec le client; ou si
  (b) le client a exécuté ses obligations résultant du contrat ou s'est abstenu de les exécuter pour des
  motifs justifiés (Article 9:201 des PDEC).
(3) Les parties ne peuvent déroger au paragraphe 2 sous b) au détriment de l'agent commercial.

Article 2:303: Droits concurrents de plusieurs agents sur une même commission

L'agent commercial n'a pas droit à la commission visée à l'article 2:301 si le précédent agent commercial avait droit à cette commission conformément à l'article 2:302, à moins qu'il soit raisonnable de la partager entre les deux agents commerciaux.

Article 2:304: Moment du paiement de la commission

(1) Le commettant doit payer la commission de l'agent commercial au plus tard le dernier jour du mois qui suit le trimestre pendant lequel celui-ci a pu y prétendre.
(2) Les parties ne peuvent déroger à cette disposition au détriment de l'agent commercial.

Article 2:305: Extinction du droit à une commission

(1) Le droit de l'agent commercial à une commission conformément aux articles 2:301 et 2:302 ne peut s'éteindre que si, et dans la mesure où il est établi que le contrat avec le client ne sera pas exécuté et pour un motif qui n'est pas imputable au commettant.
(2) En cas d'extinction du droit de l'agent commercial à une commission, celui-ci doit rembourser toute commission qu'il aurait déjà perçue.
(3) Les parties ne peuvent déroger au paragraphe 1 au détriment de l'agent commercial.

Article 2:306: Rémunération

Toute rémunération qui dépend (en partie) du nombre ou de la valeur des contrats est réputée être une commission au sens du présent chapitre.

Article 2:307: Informations durant l'exécution

L'obligation d'informer (article 1:203) requiert notamment du commettant qu'il communique à l'agent commercial des informations concernant:
(a) les caractéristiques des produits ou services,
(b) les prix et conditions de vente ou d'achat.

Article 2:308: Informations sur l'acceptation, le refus et la non-exécution

(1) Le commettant doit informer l'agent commercial, dans un délai raisonnable, de
  (a) son acceptation ou de son refus d'un contrat négocié par l'agent commercial pour le compte du commettant; et de
  (b) toute non-exécution d'un contrat négocié ou conclu par l'agent commercial pour le compte du commettant.
(2) Les parties ne peuvent déroger aux présentes dispositions au détriment de l'agent commercial.

Article 2:309: Avertissement relatif à la diminution du volume des contrats

(1) Le commettant doit prévenir l'agent commercial dans un délai raisonnable, lorsque le commettant prévoit ou devrait prévoir que le volume des contrats qu'il sera en mesure de conclure ou d'exécuter sera nettement plus faible que le volume auquel l'agent commercial pouvait (avait des raisons de) croire.
(2) Les parties ne peuvent déroger aux présentes dispositions au détriment de l'agent commercial.

Article 2:310: Informations relatives à la commission par le biais d'un relevé de compte et d'un extrait des registres

(1) Le commettant doit fournir à l'agent commercial, dans un délai raisonnable, un relevé de compte relatif à la commission à laquelle l'agent commercial a droit. Ce relevé doit préciser la façon dont le montant de la commission a été calculé.
(2) Aux fins du calcul de la commission, le commettant doit fournir à l'agent commercial, sur demande, un extrait de ses registres.
(3) Les parties ne peuvent déroger aux présentes dispositions au détriment de l'agent commercial.

Article 2:311: Comptabilité

(1) Le commettant doit tenir à jour des comptes adéquats concernant les contrats négociés ou conclus par l'agent commercial
(2) Si le commettant a plus d'un agent commercial, le commettant doit, tout particulièrement, tenir à jour des comptes indépendants pour chacun.
(3) Le commettant doit accorder à un comptable indépendant un accès raisonnable à ses registres, à la demande de l'agent commercial, si

le commettant ne respecte pas les obligations dont il est tenu en vertu de l'article 2:310, paragraphes 1 et 2, ou si

l'agent commercial a des motifs importants de douter de la tenue de comptes adéquats par le commettant.

L'agent commercial doit payer le comptable indépendant.

Article 2:312: Montant de l'indemnité

(1) L'agent commercial a droit à une indemnité pour le «Goodwill» sur base de l'article 1:305, laquelle doit s'élever à:
    (a) la commission moyenne sur les contrats conclus avec de nouveaux clients et sur l'augmentation du volume des affaires avec les clients existants, calculée pour les 12 derniers mois, multipliée par:
    (b) le nombre d'années pendant lesquelles le commettant devrait continuer à tirer profit de ces contrats à l'avenir.
(2) L'indemnité qui en résulte doit être corrigée conformément:
    (a) au taux moyen de migration sur le territoire de l'agent commercial; et
    (b) aux taux d'intérêts moyens.
(3) En tout état de cause, l'indemnité ne peut excéder la rémunération d'une année, calculée à partir de la rémunération annuelle moyenne de l'agent commercial au cours des cinq dernières années ou, si le contrat existe depuis moins de cinq ans, à partir de la moyenne pendant la période en question.
(4) Les parties ne peuvent déroger aux présentes dispositions au détriment de l'agent commercial.

Article 2:313: Clause de ducroire

(1) Une convention par laquelle l'agent commercial garantit qu'un client paiera le prix des produits faisant l'objet du (des) contrat(s) négocié(s) ou conclu(s) par l'agent commercial (clause de ducroire) n'est valable que si et dans la mesure où:
   (a) la clause est conclue par écrit, et si
   (b) la clause couvre des contrats particuliers qui ont été négociés ou conclus par l'agent commercial ou des contrats avec des clients particuliers qui sont spécifiés dans la convention, et si
   (c) la clause est raisonnable eu égard aux intérêts des parties.

(2) L'agent commercial a le droit de percevoir une commission d'un montant raisonnable sur les contrats auxquels la garantie de ducroire s'applique (commission de ducroire).

Chapitre 3:
Franchise

Section 1:
Dispositions générales

Article 3:101: Champ d'application

Le présent chapitre s'applique aux contrats en vertu desquels une partie (le franchiseur) accorde à l'autre partie (le franchisé), en contrepartie d'une rémunération, le droit d'exercer des activités commerciales (franchise) au sein du réseau du franchiseur dans le but de vendre certains produits pour le compte du franchisé et au nom du franchisé, et en vertu desquels le franchisé a le droit et l'obligation d'utiliser l'enseigne ou la marque du franchiseur ainsi que d'autres droits de propriété intellectuelle, le savoir-faire et la méthode commerciale.

Article 3:102: Informations précontractuelles

(1) L'obligation de dévoiler des informations précontractuelles (Article 1:201) requiert notamment du franchiseur qu'il fournisse au franchisé des informations adéquates et en temps opportun concernant:
   (a) l'entreprise et l'expérience du franchiseur,
   (b) les droits de propriété intellectuelle pertinents,
   (c) les caractéristiques du savoir-faire pertinent,
   (d) le secteur commercial et les conditions du marché,
   (e) la méthode de franchise particulière et sa mise en œuvre,
   (f) la structure et l'étendue du réseau de franchise,
   (g) les droits, redevances ou tout autre paiement périodique,
   (h) les conditions du contrat.

(2) Si le non-respect des dispositions du paragraphe 1 par le franchiseur ne constitue pas une erreur fondamentale en vertu de l'article 4:103 des PDEC, le franchisé peut obtenir des dommages-intérêts conformément à l'article 4:117(.2) et (3) des PDEC, sauf si le franchiseur pouvait de croire que les informations étaient adéquates ou avaient été communiquées en temps opportun.

(3) Les parties ne peuvent déroger aux présentes dispositions.

Section 2:
Obligations du franchiseur

Article 3:201: Droits de propriété intellectuelle
(1) Le franchiseur doit permettre au franchisé d'utiliser les droits de propriété intellectuelle dans la mesure nécessaire pour exercer les activités sous franchise.
(2) Le franchiseur doit consentir des efforts raisonnables pour assurer l'usage paisible et continu des droits de propriété intellectuelle.
(3) Les parties ne peuvent déroger aux présentes dispositions.

Article 3:202: Savoir-faire
(1) Pendant toute la durée du contrat, le franchiseur doit communiquer au franchisé le savoir-faire nécessaire pour exercer les activités sous franchise.
(2) Les parties ne peuvent déroger à la présente disposition.

Article 3:203: Assistance
(1) Le franchiseur doit apporter au franchisé une assistance sous la forme de cours de formation, d'une orientation et de conseils, dans la mesure nécessaire à l'exercice des activités sous franchise, sans frais supplémentaires pour le franchisé.
(2) Le franchiseur doit apporter un supplément d'assistance dans la mesure où le franchisé en fait une demande raisonnable, pour un coût raisonnable.

Article 3:204: Approvisionnement
(1) Lorsque le franchisé est tenu d'acheter les produits exclusivement auprès du franchiseur, ou d'un fournisseur désigné par le franchiseur, ce dernier doit veiller à ce que les produits commandés par le franchisé lui soient fournis dans un délai raisonnable, dans la mesure du possible et à condition que la commande soit raisonnable.
(2) Le paragraphe 1 s'applique également dans les cas où le franchisé, bien que n'étant pas soumis à l'obligation légale d'acheter auprès du franchiseur ou d'un fournisseur désigné par le franchiseur, est en fait obligé de le faire.
(3) Les parties ne peuvent déroger aux présentes dispositions.

Article 3:205: Informations durant l'exécution
L'obligation d'informer (article 1:203) requiert notamment du franchiseur qu'il communique au franchisé des informations concernant:
(a) les conditions pertinentes du marché,
(b) les résultats commerciaux du réseau de franchise,
(c) les caractéristiques des produits,
(d) les prix et conditions de vente des produits,
(e) tous prix et conditions recommandés pour la revente des produits,
(f) toute communication pertinente entre le franchiseur et les clients sur le territoire,
(g) toute campagne publicitaire pertinente pour l'exploitation de la franchise.

Article 3:206: Avertissement relatif à une diminution de la capacité d'approvisionnement
(1) Lorsque le franchisé est obligé d'acheter les produits exclusivement auprès du franchiseur, ou d'un fournisseur désigné par le franchiseur, le franchiseur doit prévenir le franchisé, dans

un délai raisonnable, lorsqu'il prévoit ou devrait prévoir que sa capacité d'approvisionnement, ou la capacité d'approvisionnement des fournisseurs désignés, sera sensiblement inférieure à celle que le franchisé pouvait (avait des raisons) d'espérer.
(2) Le paragraphe 1 s'applique également dans les cas où le franchisé, bien que n'étant pas soumis à l'obligation légale d'acheter auprès du franchiseur ou d'un fournisseur désigné par le franchiseur, est en fait obligé de le faire.
(3) Les parties ne peuvent déroger aux présentes dispositions au détriment du franchisé.

Article 3:207: Renommée du réseau et publicité

(1) Le franchiseur doit consentir des efforts raisonnables pour la promotion et le maintien de la renommée du réseau de franchise.
(2) En particulier, le franchiseur doit concevoir et coordonner des campagnes publicitaires appropriées visant à la promotion du réseau de franchise.
(3) Les activités de promotion et de maintien de la renommée du réseau de franchise doivent être réalisées sans supplément de frais pour le franchisé.

Section 3: Obligations du franchisé

Article 3:301: Droits, redevances et autres paiements périodiques

(1) Le franchisé doit payer au franchiseur les droits, redevances ou autre paiement périodique tels que convenus dans le contrat.
(2) Si les droits, redevances ou tout autre paiement périodique doivent être déterminés unilatéralement par le franchiseur, l'article 6:105 des PDEC sera applicable.

Article 3:302: Informations durant l'exécution

L'obligation d'informer (article 1:203) requiert notamment du franchisé qu'il communique au franchiseur des informations concernant:
(a) toute plainte que des tiers portent ou menacent de porter eu égard aux droits de propriété intellectuelle du franchiseur;
(b) toute violation des droits de propriété intellectuelle du franchiseur par des tiers.

Article 3:303: Méthode commerciale et instructions

(1) Le franchisé doit consentir des efforts raisonnables pour exercer les activités sous franchise conformément à la méthode commerciale du franchiseur.
(2) Le franchisé doit se conformer aux instructions raisonnables du franchiseur en ce qui concerne la méthode commerciale et la renommée du réseau.
(3) Le franchisé doit raisonnablement veiller à ne pas porter préjudice au réseau de franchise.
(4) Les parties ne peuvent déroger aux présentes dispositions.

Article 3:304: Inspection

(1) Le franchisé doit accorder au franchiseur un accès raisonnable à ses locaux afin de permettre au franchiseur de vérifier que le franchisé se conforme à sa méthode commerciale et à ses instructions.
(2) Le franchisé doit accorder au franchiseur un accès raisonnable à ses registres comptables.

Chapitre 4:
Distribution

Section 1:
Dispositions générales

Article 4:101: Champ d'application et définitions
(1) Le présent chapitre s'applique aux contrats de distribution exclusifs, de distribution sélectifs et d'achat exclusifs.
(2) Un contrat de distribution est un contrat en vertu duquel une partie (le fournisseur) convient de fournir à l'autre partie (le distributeur) des produits de façon continue et en vertu duquel le distributeur convient de les acheter et de les vendre au nom et pour le compte du distributeur.
(3) Un contrat de distribution exclusif est un contrat de distribution en vertu duquel le fournisseur convient de ne fournir des produits qu'à un seul distributeur dans un certain territoire ou à un certain groupe de clients.
(4) Un contrat de distribution sélectif est un contrat de distribution en vertu duquel le fournisseur convient de ne fournir, soit directement soit indirectement, des produits qu'à des distributeurs sélectionnés sur base de critères spécifiques.
(5) Un contrat d'achat exclusif est un contrat de distribution en vertu duquel le distributeur convient de n'acheter des produits qu'au seul fournisseur ou à une seule partie désignée par le fournisseur.

Section 2:
Obligations du fournisseur

Article 4:201: Approvisionnement
Le fournisseur doit fournir les produits commandés par le distributeur, dans la mesure du possible et à condition que la commande soit raisonnable.

Article 4:202: Informations durant l'exécution
L'obligation d'informer (article 1:203) requiert du fournisseur qu'il communique au distributeur des informations concernant:
(a) les caractéristiques des produits,
(b) les prix et conditions de vente des produits,
(c) tous prix et conditions recommandés pour la revente des produits,
(d) toute communication pertinente entre le fournisseur et les clients,
(e) toute campagne publicitaire pertinente pour l'exercice des activités.

Article 4:203: Avertissement relatif à une diminution de la capacité d'approvisionnement
(1) Le fournisseur doit prévenir le distributeur, dans un délai de temps raisonnable, lorsque le fournisseur prévoit ou devrait prévoir que la capacité d'approvisionnement du fournisseur, sera sensiblement inférieure à celle que le distributeur pouvait (avait des raisons d') espérer.

(2) Dans les contrats d'achat exclusifs, les parties ne peuvent déroger à cette disposition au détriment du distributeur.

Article 4:204: Matériaux publicitaires

Le fournisseur doit fournir au distributeur, à un prix raisonnable, tous les matériaux publicitaires dont il (le fournisseur) dispose et qui sont nécessaires pour la bonne distribution et la promotion des produits.

Article 4:205: Renommée des produits

Le fournisseur doit consentir des efforts raisonnables pour ne pas porter préjudice à la renommée des produits.

Section 3: Obligations du distributeur

Article 4:301: Distribution

Dans les contrats de distribution exclusifs et sélectifs, le distributeur doit, dans la mesure du possible, consentir des efforts raisonnables pour promouvoir la vente des produits.

Article 4:302: Information durant l'exécution

Dans les contrats de distribution exclusifs et sélectifs, l'obligation d'informer (Article 1:203) requiert notamment du distributeur qu'il communique au fournisseur des informations concernant:

(a) toute plainte que des tiers portent ou menacent de porter eu égard aux droits de propriété intellectuelle du fournisseur,

(b) toute violation des droits de propriété intellectuelle du fournisseur par des tiers.

Article 4:303: Avertissement concernant une diminution des besoins

Dans les contrats de distribution exclusifs et sélectifs, le distributeur doit prévenir le fournisseur, dans un délai raisonnable, lorsqu'il prévoit ou devrait prévoir que ses besoins seront sensiblement inférieurs à ceux que le fournisseur pouvait (avait des raisons d') espérer.

Article 4:304: Instructions

Dans les contrats de distribution exclusifs et sélectifs, le distributeur doit se conformer aux instructions raisonnables du fournisseur visant à assurer la bonne distribution des produits et à maintenir la renommée ou le caractère distinctif des produits.

Article 4:305: Inspection

Dans les contrats de distribution exclusifs et sélectifs, le distributeur doit accorder au fournisseur un accès raisonnable à ses locaux afin de permettre au fournisseur de vérifier que le distributeur se conforme aux normes convenues ainsi qu'aux instructions raisonnables qui lui ont été données.

Article 4:306: Renommée des produits

Dans les contrats de distribution exclusifs et sélectifs, le distributeur doit consentir des efforts raisonnables pour ne pas porter préjudice à la renommée des produits.

German[3]

Handelsvertreter-, Franchise- und Vertriebsverträge

Kapitel 1:
Allgemeine Bestimmungen

Abschnitt 1:
Geltungsbereich von Kapitel 1

Artikel 1:101: Geltungsbereich
Dieses Kapitel ist anzuwenden auf Handelsvertreter-, Franchise- und Vertriebsverträge sowie – mit entsprechenden Anpassungen – auf sonstige Verträge, in denen eine der Parteien als unabhängiger Unternehmer ihre Fähigkeiten und Bemühungen einsetzt, um die Produkte der anderen Vertragspartei auf den Markt zu bringen.

Abschnitt 2:
Pflichten

Artikel 1:201: Informationen vor Vertragsabschluss
(1) Jede der Parteien ist verpflichtet, die andere Partei innerhalb einer angemessenen Frist vor Vertragsabschluss mit angemessenen Informationen zu versorgen. Bei Nichterfüllung diesier Pflicht gilt Absatz (3).
(2) Unter „angemessenen Informationen" werden Informationen verstanden, die genügen, um die andere Partei in die Lage zu versetzen, auf der Grundlage angemessener Informationen zu entscheiden, ob sie einen Vertrag des erwogenen Typs und zu den erwogenen Bedingungen eingehen soll oder nicht.
(3) Führt die Nichterfüllung der Pflicht nach Absatz 1 durch eine der Parteien dazu, dass die andere Partei einen Vertrag abschließt, obwohl die erste Vertragspartei wusste oder obwohl von ihr vernünftigerweise hätte erwartet werden dürfen, zu wissen, dass die andere Partei, wäre sie angemessen und rechtzeitig informiert worden, den Vertrag nicht oder nur zu grundlegend anderen Bedingungen abgeschlossen hätte, dann gelten die Rechtsfolgen des Irrtums gemäß PECL Kapitel 4.
(4) Abweichende Vereinbarungen der Parteien sind nicht zulässig.

Artikel 1:202: Zusammenarbeit
(1) Bei Handelsvertreter-, Franchise- und Vertriebsverträgen sowie bei sonstigen langfristigen Handelsverträgen ist die Pflicht zur Zusammenarbeit (Art. 1:202 PECL) von grundlegender Bedeutung und besonders intensiv. Sie verpflichtet die Parteien insbesondere, aktiv und

[3] Übersetzung vorgeschlagen von *Ole Böger*.

loyal zusammenzuarbeiten und ihre jeweiligen Bemühungen zu koordinieren, um die Vertragsziele zu verwirklichen.
(2) Abweichende Vereinbarungen der Parteien sind nicht zulässig.

Artikel 1:203: Informationen während der Laufzeit des Vertrages

(1) Während der Laufzeit des Vertrages muss jede der Parteien die andere zur gebotenen Zeit mit sämtlichen Informationen versorgen, über welche die erste Partei verfügt und welche die andere zur Verwirklichung der Vertragsziele benötigt.
(2) Abweichende Vereinbarungen der Parteien sind nicht zulässig.

Artikel 1:204: Vertraulichkeit

(1) Wenn eine Vertragspartei von der anderen Partei vertrauliche Informationen erhält, muss sie diese vertraulich behandeln und darf die Informationen weder während der Laufzeit des Vertrages noch nach Ablauf des Vertrages an Dritte weitergeben.
(2) Wenn eine der Vertragsparteien von der anderen Partei vertrauliche Informationen erhält, darf sie diese zu keinen anderen Zwecken als den Vertragszielen verwenden.
(3) Informationen, über die eine der Vertragsparteien bereits verfügte oder die der Allgemeinheit zugänglich gemacht worden sind, sowie Informationen, deren Weitergabe an die Kunden im Zuge der Geschäftstätigkeit notwendig ist, sind nicht als vertrauliche Informationen im Sinne dieser Bestimmung zu betrachten.

Abschnitt 3:
Vertragsbeendigung und Kündigung

Artikel 1:301: Vertrag auf bestimmte Zeit

(1) Ein für eine bestimmte Zeit geschlossener Vertrag endet mit Ablauf des im Vertrag festgelegten Zeitraums. Sofern die Parteien keine abweichende Vereinbarung getroffen haben, kann ein derartiger Vertrag nicht vorzeitig einseitig beendet werden.
(2) Es steht jeder der Vertragsparteien frei, einen auf bestimmte Zeit geschlossenen Vertrag nicht zu verlängern. Wenn allerdings eine der Vertragsparteien der anderen Partei innerhalb einer angemessenen Frist mitgeteilt hat, dass sie den Vertrag verlängern möchte, dann muss die andere Partei, die den Vertrag nicht verlängern möchte, diese Entscheidung der erstgenannten Partei innerhalb einer angemessenen Frist vor Ablauf des Vertragszeitraums mitteilen.
(3) Ein auf bestimmte Zeit geschlossener Vertrag, den beide Parteien nach Ablauf der Laufzeit des Vertrages weiterhin erfüllen, wird ein Vertrag auf unbestimmte Zeit.

Artikel 1:302: Einseitige Beendigung eines auf unbestimmte Zeit geschlossenen Vertrags

(1) Jede der Vertragsparteien eines Vertrages auf unbestimmte Zeit kann diesen Vertrag unter Wahrung einer angemessenen Frist durch Kündigung beenden (Art. 6:109 PECL).
(2) Was unter einer „angemessenen Kündigungsfrist" zu verstehen ist, hängt u. a. von folgenden Faktoren ab:
   (a) der abgelaufenen Laufzeit des Vertrags,
   (b) vorgenommenen angemessenen Investitionen,
   (c) der erforderlichen Zeit, um eine angemessene Alternative zu finden, sowie von
   (d) Gebräuchen.

(3) Eine Kündigungsfrist von einem Monat für jedes abgelaufene Jahr der Laufzeit des Vertrages, höchstens aber von 36 Monaten, gilt als angemessen.
(4) Die Kündigungsfrist für den Auftraggeber, den Franchisegeber oder den Lieferanten darf nicht weniger als einen Monat im ersten Jahr, zwei Monate im zweiten, drei Monate im dritten, vier Monate im vierten, fünf Monate im fünften und sechs Monate im sechsten und den folgenden Jahren der Laufzeit des Vertrages betragen. Abweichende Vereinbarungen der Parteien sind nicht zulässig.
(5) Vereinbarungen über längere Kündigungsfristen als die in Absatz 2 und 3 festgelegten sind gültig, sofern die von dem Auftraggeber, dem Franchisegeber oder dem Lieferanten zu beachtende Kündigungsfrist nicht kürzer ist als die von dem Handelsvertreter, dem Franchisenehmer oder dem Vertreiber zu beachtende Frist.
(6) Die durch die Kündigung benachteiligte Partei hat während der Kündigungsfrist keinen Anspruch auf Erbringung der vertraglich geschuldeten Leistung. Das Gericht kann jedoch die Erfüllung der Pflichten während der Laufzeit des Vertrages sowie der nachvertraglichen Pflichten, für die keine Zusammenarbeit erforderlich ist, anordnen.

Artikel 1:303: Schadensersatz bei Nichtbeachtung der Mitteilungs- und Kündigungsfristen

(1) Im Falle der Nichtbeachtung der Kündigungsfristen der in den Artikeln 1:301 (2) und 1:302 (1) genannten Fristen hat die benachteiligte Vertragspartei Anspruch auf Schadensersatz.
(2) Der geschuldete Schadenersatz ist regelmäßig derjenige Betrag, welcher dem Gewinn entspricht, den die benachteiligte Partei während der Dauer der nichtbeachteten Kündigungsfrist erzielt hätte.
(3) Als Jahresgewinn gilt der Durchschnittsgewinn, den die benachteiligte Vertragspartei durch den Vertrag während der 3 vorhergehenden Jahre erzielt hat, bzw. bei kürzerer Vertragsdauer der Durchschnitt für den betreffenden Zeitraum.
(4) Die allgemeinen Bestimmungen über Schadensersatz bei Nichterfüllung (Art. 9:501 ff PECL) gelten entsprechend.

Artikel 1:304: Aufhebung des Vertrages

(1) Eine Vertragspartei ist zur Aufhebung des Vertrages wegen Nichterfüllung nur dann berechtigt, wenn die Nichterfüllung durch die andere Partei wesentlich im Sinne von Artikel 8:103 (b) sowie Artikel 8:103 (c) PECL (Art. 9:301 PECL) ist.
(2) Abweichende Vereinbarungen der Parteien sind nicht zulässig.

Artikel 1:305: Kundschaftsentschädigung (Goodwill)

(1) Bei Vertragsbeendigung aus jedwedem Grunde (einschließlich Aufhebung durch eine der Vertragsparteien wegen Nichterfüllung) hat eine Vertragspartei Anspruch auf Kundschaftsentschädigung (Goodwill) durch die andere Partei, wenn und soweit:
   (a) die erste Vertragspartei das Geschäftsvolumen der anderen Partei deutlich ausgeweitet hat und die andere Partei weiterhin Gewinne aus diesem Geschäft erzielt; und
   (b) die Zahlung einer Entschädigung unter Berücksichtigung sämtlicher Umstände angemessen ist.
(2) Die Gewährung einer Entschädigung hindert eine Vertragspartei nicht daran, Schadensersatz gemäß Artikel 1:303 zu fordern.

Artikel 1:306: Lager, Ersatzteile und Material

Wenn der Vertrag durch eine der Vertragsparteien beendet, gekündigt, aufgehoben oder angefochten wird, muss der Auftraggeber, Franchisegeber oder Lieferant die verbleibende Menge an Lagerbestand, Ersatzteilen und Material des Handelsvertreters, Franchisenehmers oder Vertreibers zu einem angemessenen Preis zurückkaufen, außer wenn der Handelsvertreter, Franchisenehmer oder Vertreiber diesen Bestand zu einem angemessenen Preis weiterverkaufen kann.

Abschnitt 4:
Sonstige allgemeine Bestimmungen

Artikel 1:401: Zurückbehaltungsrecht

Zur Sicherung seiner Ansprüche auf Vergütung, Abfindung, Schadensersatz und Entschädigung hat der Handelsvertreter, Franchisenehmer oder Vertreiber ein Zurückbehaltungsrecht an dem beweglichen Eigentum des Auftraggebers, Franchisegebers oder Lieferanten, das sich infolge des Vertrages in seinem Besitz befindet, bis der (ehemalige) Auftraggeber, Franchisegeber oder Lieferant seine Pflichten erfüllt hat.

Artikel 1:402: Unterzeichnetes Schriftstück

Jede der Vertragsparteien hat Anspruch darauf, von der anderen Partei – auf Verlangen – ein unterzeichnetes Schriftstück zu erhalten, in dem die Vertragsbedingungen festgelegt sind.

Kapitel 2:
Handelsvertretervertrag

Abschnitt 1:
Allgemeines

Artikel 2:101: Anwendungsbereich

Dieses Kapitel ist anzuwenden auf Verträge, in denen eine Vertragspartei (der Handelsvertreter) sich verpflichtet, als selbständiger Gewerbetreibender ständig für eine andere Person (den Auftraggeber) Verträge zu vermitteln oder abzuschließen, während der Auftraggeber sich verpflichtet, den Handelsvertreter für dessen Tätigkeit zu vergüten.

Abschnitt 2:
Pflichten des Handelsvertreters

Artikel 2:201: Aushandeln und Abschluss von Verträgen

Der Handelsvertreter muss angemessene Anstrengungen zur Vermittlung von Verträgen für den Auftraggeber sowie zum Abschluss der Verträge unternehmen, zu deren Abschluss er angewiesen wurde.

Artikel 2:202: Anweisungen

Der Handelsvertreter muss den angemessenen Anweisungen des Auftraggebers Folge leisten, sofern diese keine erhebliche Beeinträchtigung der Selbständigkeit des Handelsvertreters darstellen.

Artikel 2:203: Informationspflicht während der Laufzeit der Vertrages

Aufgrund seiner Informationspflicht (Artikel 1:203) muss der Handelsvertreter den Auftraggeber insbesondere informieren über:

(a) vermittelte oder abgeschlossene Verträge,
(b) die Marktbedingungen,
(c) die Zahlungsfähigkeit und sonstige Eigenschaften der Kunden.

Artikel 2:204: Buchführung

(1) Der Handelsvertreter ist zu einer ordnungsgemäßen Buchführung über die für den Auftraggeber vermittelten oder abgeschlossenen Verträge verpflichtet.
(2) Wenn der Handelsvertreter für mehr als einen Auftraggeber tätig ist, muss der Handelsvertreter insbesondere eine getrennte Buchführung für jeden von ihm vertretenen Auftraggeber unterhalten.
(3) Hat der Auftraggeber gewichtige Gründe, daran zu zweifeln, dass der Handelsvertreter eine ordnungsgemäße Buchführung unterhält, muss der Handelsvertreter auf Verlangen einem unabhängigen Buchhalter angemessenen Einblick in die Bücher des Handelsvertreters gewähren. Die Kosten für die Leistungen des unabhängigen Buchhalters hat der Auftraggeber zu tragen.

Abschnitt 3:
Pflichten des Auftraggebers

Artikel 2:301: Provisionsanspruch während der Laufzeit des Vertrages

(1) Der Handelsvertreter hat Anspruch auf Provision für während der Laufzeit des Handelsvertretervertrags mit Kunden abgeschlossene Verträge, wenn
  (a) der Vertrag mit dem Kunden infolge der Bemühungen des Handelsvertreters abgeschlossen worden ist, oder
  (b) der Vertrag mit einer dritten Partei abgeschlossen worden ist, die der Handelsvertreter zuvor als Kunde für Verträge der gleichen Art akquiriert hat, oder
  (c) dem Handelsvertreter ein bestimmtes geographisches Gebiet oder eine bestimmte Kundengruppe anvertraut worden ist und der Vertrag mit einem Kunden abgeschlossen worden ist, der dem betreffenden Bereich bzw. der betreffenden Gruppe angehört.
(2) Der Anspruch entsteht nur, wenn
  (a) der Auftraggeber die Pflichten des Auftraggebers im Rahmen des Vertrags mit dem Kunden erfüllt hat oder hätte erfüllen müssen; oder
  (b) der Kunde die Pflichten des Kunden aus dem Vertrag erfüllt hat oder berechtigterweise die Leistung des Kunden zurückbehält (Artikel 9:201 PECL).
(3) Die Parteien dürfen nicht zum Nachteil des Handelsvertreters von der Bestimmung des Absatzes 2 Buchstabe (b) abweichende Vereinbarungen treffen.

Artikel 2:302: Provisionsanspruch nach Ende der Laufzeit des Vertrages

(1) Der Handelsvertreter hat Anspruch auf Provision für nach Ende des Handelsvertretervertrages mit Kunden abgeschlossene Verträge, wenn
   (a) der Vertrag mit dem Kunden hauptsächlich infolge der Bemühungen des Handelsvertreters während der Laufzeit des Handelsvertretervertrages abgeschlossen worden ist, und der Vertrag mit dem Kunden innerhalb einer angemessenen Frist nach Ende des Handelsvertretervertrages abgeschlossen worden ist, oder
   (b) die Bedingungen gemäß Artikel 2:301 Absatz 1 erfüllt gewesen wären, außer dass der Vertrag mit dem Kunden nicht während der Laufzeit des Handelsvertretervertrages abgeschlossen worden ist, jedoch das Angebot des Kunden beim Auftraggeber oder beim Handelsvertreter vor Ende des Handelsvertretervertrages eingegangen ist.

(2) Der Anspruch entsteht nur, wenn
   (a) der Auftraggeber die Verpflichtungen des Auftraggebers im Rahmen des Vertrages mit dem Kunden erfüllt hat oder hätte erfüllen müssen; oder
   (b) der Kunde die Pflichten des Kunden aus dem Vertrag erfüllt hat oder berechtigterweise die Leistung des Kunden zurückbehält (Artikel 9:201 PECL).

(3) Die Parteien dürfen nicht zum Nachteil des Handelsvertreters von der Bestimmung des Absatzes 2 Buchstabe (b) abweichende Vereinbarungen treffen.

Artikel 2:303: Vorrangiger Provisionsanspruch

Der Handelsvertreter hat keinen Anspruch auf die in Artikel 2:301 genannte Provision, wenn der vorhergehende Handelsvertreter auf die betreffende Provision einen Anspruch gemäß Artikel 2:302 hat, außer wenn es angemessen ist, die Provision zwischen den beiden Handelsvertretern zu teilen.

Artikel 2:304: Zeitpunkt, zu dem die Provision zu bezahlen ist

(1) Der Auftraggeber muss die Provision des Handelsvertreters spätestens am letzten Tag des Monats zahlen, der auf das Quartal folgt, in dem der Handelsvertreter den Anspruch auf Provision erworben hat.

(2) Die Parteien dürfen nicht zum Nachteil des Handelsvertreters von dieser Bestimmung abweichende Vereinbarungen treffen.

Artikel 2:305: Erlöschen des Provisionsanspruchs

(1) Der Anspruch des Handelsvertreters auf Provision gemäß Artikel 2:301 und 2:302 kann nur erlöschen, wenn und soweit feststeht, dass es nicht zur Erfüllung des Vertrages mit dem Kunden kommen wird und dass diese Tatsache nicht durch den Auftraggeber zu verantworten ist.

(2) Bei Erlöschen des Provisionsanspruchs des Handelsvertreters muss dieser etwaige bereits erhaltene Provisionen zurückerstatten.

(3) Die Parteien dürfen nicht zum Nachteil des Handelsvertreters von der Bestimmung des Absatzes 1 abweichende Vereinbarungen treffen.

Artikel 2:306: Vergütung

Jede Vergütung, die (teilweise) von der Anzahl oder dem Wert von Verträgen abhängt, gilt als Provision im Sinne dieses Kapitels.

Artikel 2:307: Informationspflicht während der Vertragserfüllung

Aufgrund seiner Informationspflicht (Artikel 1:203) muss der Auftraggeber den Handelsvertreter insbesondere informieren über:

(a) die Eigenschaften der Waren oder Dienstleistungen,
(b) die Preise sowie die Kauf- und Verkaufsbedingungen.

Artikel 2:308: Informationen über Annahme, Ablehnung und Nichterfüllung

(1) Der Auftraggeber muss den Handelsvertreter – innerhalb einer angemessenen Frist – über folgende Punkte informieren:
   (a) die Annahme oder Ablehnung eines durch den Handelsvertreter im Namen des Auftraggebers ausgehandelten Vertrags durch den Auftraggeber, und
   (b) die etwaige Nichterfüllung eines durch den Handelsvertreter im Namen des Auftraggebers ausgehandelten oder abgeschlossenen Vertrages.

(2) Die Parteien dürfen nicht zum Nachteil des Handelsvertreters von dieser Bestimmung abweichende Vereinbarungen treffen.

Artikel 2:309: Warnung vor verringerten Vertragsvolumina

(1) Der Auftraggeber muss den Handelsvertreter innerhalb einer angemessenen Frist warnen, wenn der Auftraggeber vorhersieht oder vorhersehen müsste, dass das Volumen der Verträge, die der Auftraggeber wird abschließen oder erfüllen können, deutlich geringer ausfallen wird, als der Handelsvertreter annehmen dürfte.

(2) Die Parteien dürfen nicht zum Nachteil des Handelsvertreters von dieser Bestimmung abweichende Vereinbarungen treffen.

Artikel 2:310: Informationen über die Provision mittels Abrechnung und Buchauszug

(1) Der Auftraggeber muss dem Handelsvertreter innerhalb einer angemessenen Frist eine Abrechnung über die Provision liefern, auf die der Handelsvertreter Anspruch hat. Aus dieser Abrechnung muss hervorgehen, wie der Provisionsbetrag errechnet wurde.

(2) Zur Berechnung der Provision muss der Auftraggeber dem Handelsvertreter auf Anfrage einen Auszug aus den Büchern des Auftraggebers liefern.

(3) Die Parteien dürfen nicht zum Nachteil des Handelsvertreters von dieser Bestimmung abweichende Vereinbarungen treffen.

Artikel 2:311: Buchführung

(1) Der Auftraggeber ist zu einer ordnungsgemäßen Buchführung über die durch den Handelsvertreter vermittelten oder abgeschlossenen Verträge verpflichtet.

(2) Sind für den Auftraggeber mehrere Handelsvertreter tätig, so muss der Auftraggeber insbesondere eine getrennte Buchführung für jeden Handelsvertreter unterhalten.

(3) Der Auftraggeber muss auf Anforderung des Handelsvertreters einem unabhängigen Buchprüfer angemessenen Einblick in die Bücher des Auftraggebers gewähren, wenn
   (a) der Auftraggeber die Pflichten des Auftraggebers gemäß Artikel 2:310 Absatz 1 und 2 nicht erfüllt, oder
   (b) dem Handelsvertreter gewichtige Gründe vorliegen, um daran zu zweifeln, dass der Auftraggeber eine ordnungsgemäße Buchführung unterhält.

Die Kosten der Tätigkeit des unabhängigen Buchprüfers trägt der Handelsvertreter.

Artikel 2:312: Höhe der Entschädigung

(1) Der Handelsvertreter hat Anspruch auf Kundschaftsentschädigung (Goodwill) auf der Grundlage des Artikel 1:305, die sich berechnet aus:
   (a) der durchschnittlichen Provision auf Verträge mit neuen Kunden sowie auf die Ausweitung des Geschäftsvolumens mit vorhandenen Kunden, berechnet für die letzten 12 Monate, multipliziert mit:
   (b) der Zahl der Jahre, in denen der Auftraggeber wahrscheinlich in Zukunft Gewinne aus diesen Verträgen erzielen wird.

(2) Die so ermittelte Entschädigung ist anzupassen entsprechend:
   (a) den durchschnittlichen Wanderungsbewegungen im Gebiet des Handelsvertreters; und
   (b) den durchschnittlichen Zinssätzen.

(3) In keinem Fall darf die Entschädigung die Vergütung für ein Jahr übersteigen, berechnet aufgrund der durchschnittlichen jährlichen Vergütung des Handelsvertreters während der vorangegangenen fünf Jahre oder, wenn der Vertrag seit weniger als fünf Jahren besteht, aufgrund des Durchschnitts während des betreffenden Zeitraums.

(4) Die Parteien dürfen nicht zum Nachteil des Handelsvertreters von dieser Bestimmung abweichende Vereinbarungen treffen.

Artikel 2:313: Delkredere-Klausel

(1) Eine Vereinbarung, in welcher der Handelsvertreter garantiert, dass ein Kunde den Preis für die Waren zahlen wird, die Gegenstand des/der vom Handelsvertreter vermittelten oder abgeschlossenen Vertrages/Verträge sind (Delkredere-Klausel), ist nur gültig, wenn und soweit:
   (a) diese Klausel schriftlich abgeschlossen wird, und
   (b) die Klausel sich auf bestimmte vom Handelsvertreter vermittelte oder abgeschlossene Verträge bezieht, oder auf derartige Verträge mit bestimmten Kunden, die in der Vereinbarung bezeichnet werden, und
   (c) die Klausel im Hinblick auf die Interessen der Vertragsparteien angemessen ist.

(2) Der Handelsvertreter hat Anspruch auf eine Provision in angemessener Höhe für Verträge, auf die sich die Delkredere-Garantie erstreckt (Delkredere-Provision).

Kapitel 3:
Franchisevertrag

Abschnitt 1:
Allgemeines

Artikel 3:101: Geltungsbereich

Dieses Kapitel ist anzuwenden auf Verträge, in denen eine Vertragspartei (der Franchisegeber) der anderen Partei (dem Franchisenehmer) gegen eine Vergütung das Recht gewährt, ein Unternehmen (Franchisebetrieb) innerhalb des Netzwerkes des Franchisegebers zu betreiben, mit dem Ziel des Verkaufs bestimmter Produkte auf Rechnung und im Namen des Franchisenehmers, wobei der Franchisenehmer das Recht und die Pflicht hat, den Handelsnamen oder das Warenzeichen sowie sonstige geistige Eigentumsrechte, das Know-how und die Geschäftsmethode des Franchisegebers zu benutzen.

Artikel 3:102: Informationen vor Vertragsabschluss

(1) Aufgrund seiner Informationspflicht vor Vertragsabschluss (Artikel 1:201) muss der Franchisegeber den Franchisenehmer insbesondere angemessen und rechtzeitig informieren über:
   (a) das Unternehmen und die Erfahrung des Franchisegebers,
   (b) die relevanten geistigen Eigentumsrechte,
   (c) die Eigenschaften des relevanten Know-hows,
   (d) den Wirtschaftszweig und die Marktbedingungen,
   (e) die spezielle Franchisemethode und deren Anwendung,
   (f) die Struktur und den Umfang des Franchisenetzes,
   (g) die Gebühren, Lizenzgebühren und sonstige regelmäßige Zahlungen,
   (h) die Vertragsbedingungen.

(2) Sofern eine Nichterfüllung von Absatz 1 durch den Franchisegeber keinen Irrtum gemäß Artikel 4:103 PECL zur Folge hat, hat der Franchisenehmer Anspruch auf Schadensersatz gemäß Artikel 4:117 (2) und (3) PECL, es sei denn, der Franchisegeber hatte Grund zur Annahme, dass die Informationen angemessen waren bzw. innerhalb einer angemessenen Frist geliefert wurden.

(3) Abweichende Vereinbarungen der Parteien sind nicht zulässig.

Abschnitt 2:
Pflichten des Franchisegebers

Artikel 3:201: Geistige Eigentumsrechte

(1) Der Franchisegeber muss dem Franchisenehmer das Recht einräumen, die geistigen Eigentumsrechte in dem zur Führung des Franchisebetriebes erforderlichen Ausmaß zu nutzen.

(2) Der Franchisegeber muss angemessene Anstrengungen unternehmen, um die ungestörte und laufende Nutzung der geistigen Eigentumsrechte zu gewährleisten.

(3) Abweichende Vereinbarungen der Parteien sind nicht zulässig.

Artikel 3:202: Know-how

(1) Während der gesamten Laufzeit des Vertrages muss der Franchisegeber dem Franchisenehmer das zur Führung des Franchisebetriebs erforderliche Know-how zur Verfügung stellen.

(2) Abweichende Vereinbarungen der Parteien sind nicht zulässig.

Artikel 3:203: Unterstützung

(1) Der Franchisegeber muss dem Franchisenehmer Unterstützung in Form von Schulungen, Anleitung und Beratung gewähren, soweit dies für die Führung des Franchisebetriebs erforderlich ist, und zwar ohne zusätzliche Kosten für den Franchisenehmer.

(2) Der Franchisegeber muss weitere Unterstützung gewähren, soweit diese vom Franchisegeber angemessenerweise angefordert wird, und zwar zu angemessenen Kosten.

Artikel 3:204: Belieferung

(1) Wenn der Franchisenehmer verpflichtet ist, die Produkte vom Franchisegeber oder von einem durch den Franchisegeber benannten Lieferanten zu beziehen, muss der Franchise-

geber gewährleisten, dass die durch den Franchisenehmer bestellten Produkte innerhalb einer angemessenen Frist geliefert werden, soweit dies praktisch durchführbar ist und soweit es sich um eine angemessene Bestellung handelt.
(2) Absatz 1 gilt auch für Fälle, in denen der Franchisenehmer zwar nicht rechtlich dazu verpflichtet ist, die Produkte vom Franchisegeber oder von einem durch den Franchisegeber benannten Lieferanten zu beziehen, aber tatsächlich dazu gezwungen ist.
(3) Abweichende Vereinbarungen der Parteien sind nicht zulässig.

Artikel 3:205: Informationen während der Laufzeit des Vertrages

Aufgrund seiner Informationspflicht (Artikel 1:203) muss der Franchisegeber den Franchisenehmer insbesondere informieren über:
(a) die Marktbedingungen,
(b) die wirtschaftlichen Ergebnisse des Franchisenetzwerkes,
(c) die Eigenschaften der Produkte,
(d) die Preise und Bedingungen für den Verkauf von Produkten,
(e) etwaige Preisempfehlungen und Bedingungen für den Weiterverkauf von Produkten,
(f) relevante Kontakte zwischen dem Franchisegeber und Kunden im betreffenden Gebiet,
(g) Werbekampagnen.

Artikel 3:206: Warnung vor verringerter Lieferkapazität

(1) Wenn der Franchisenehmer verpflichtet ist, die Produkte vom Franchisegeber oder von einem durch den Franchisegeber benannten Lieferanten zu beziehen, muss der Franchisegeber den Franchisenehmer innerhalb einer angemessenen Frist warnen, wenn der Franchisegeber vorhersieht oder vorhersehen müsste, dass die Lieferkapazität des Franchisegebers bzw. der durch den Franchisegeber benannten Lieferanten deutlich geringer sein wird, als der Franchisenehmer annehmen durfte.
(2) Absatz 1 gilt auch für Fälle, in denen der Franchisenehmer zwar nicht rechtlich dazu verpflichtet ist, die Produkte vom Franchisegeber oder von einem durch den Franchisegeber benannten Lieferanten zu beziehen, aber tatsächlich dazu gezwungen ist.
(3) Die Parteien dürfen nicht zum Nachteil des Franchisenehmers von dieser Bestimmung abweichende Vereinbarungen treffen.

Artikel 3:207: Guter Ruf des Netzwerks sowie Werbung

(1) Der Franchisegeber muss angemessene Anstrengungen unternehmen, um den guten Ruf des Franchisenetzwerks zu fördern und zu erhalten.
(2) Insbesondere muss der Franchisegeber die geeigneten Werbekampagnen zur Förderung des Franchisenetzwerks ausarbeiten und koordinieren.
(3) Die Aktivitäten zur Förderung und Erhaltung des guten Rufs des Franchisenetzwerks sind ohne zusätzliche Kosten für den Franchisenehmer durchzuführen.

Abschnitt 3:
Pflichten des Franchisenehmers

Artikel 3:301: Gebühren, Lizenzgebühren und sonstige regelmäßige Zahlungen

(1) Der Franchisenehmer muss an den Franchisegeber die im Vertrag vereinbarten Gebühren, Lizenzgebühren und sonstigen regelmäßigen Zahlungen leisten.

(2) Wenn Gebühren, Lizenzgebühren und sonstige regelmäßige Zahlungen einseitig durch den Franchisegeber zu bestimmen sind, ist Artikel 6:105 PECL anzuwenden.

Artikel 3:302: Informationen während der Laufzeit des Vertrages

Aufgrund seiner Informationspflicht (Artikel 1:203) muss der Franchisenehmer den Franchisegeber insbesondere informieren über:

(a) durch Dritte erhobene oder angedrohte Ansprüche hinsichtlich der geistigen Eigentumsrechte des Franchisegebers,
(b) Verletzungen der geistigen Eigentumsrechte des Franchisegebers durch Dritte.

Artikel 3:303: Geschäftsmethode und Anweisungen

(1) Der Franchisenehmer muss angemessene Anstrengungen unternehmen, den Franchisebetrieb gemäß der Geschäftsmethode des Franchisegebers zu führen.
(2) Der Franchisenehmer muss die angemessenen Anweisungen des Franchisegebers hinsichtlich der Geschäftsmethode und der Erhaltung des guten Rufs des Franchisenetzwerks befolgen.
(3) Der Franchisenehmer muss angemessene Anstrengungen unternehmen, um dem Franchisenetzwerk keinen Schaden zuzufügen.
(4) Abweichende Vereinbarungen der Parteien sind nicht zulässig.

Artikel 3:304: Inspektion

(1) Der Franchisenehmer muss dem Franchisegeber angemessenen Zugang zu den Geschäftsräumen des Franchisenehmers gewähren, damit der Franchisegeber in der Lage ist zu überprüfen, dass der Franchisenehmer sich an die Geschäftsmethode und die Anweisungen des Franchisegebers hält.
(2) Der Franchisenehmer muss dem Franchisegeber angemessenen Zugang zu der Buchhaltung des Franchisenehmers gewähren.

Kapitel 4:
Vertriebsvertrag

Abschnitt 1:
Allgemeines

Artikel 4:101: Anwendungsbereich und Definitionen

(1) Dieses Kapitel ist anzuwenden auf Alleinvertriebsverträge, selektive Vertriebsverträge sowie Alleinbezugsverträge.
(2) Ein Vertriebsvertrag ist ein Vertrag, in dem eine Vertragspartei (der Lieferant) sich verpflichtet, die andere Partei (den Vertreiber) laufend mit Produkten zu beliefern, während der Vertreiber sich verpflichtet, diese Produkte zu kaufen sowie im Namen und auf Rechnung des Vertreibers zu verkaufen.
(3) Ein Alleinvertriebsvertrag ist ein Vertriebsvertrag, in dem der Lieferant sich verpflichtet, innerhalb eines bestimmten Gebiets oder für eine bestimmte Kundengruppe Produkte nur an einen einzigen Vertreiber zu liefern.

(4) Ein selektiver Vertriebsvertrag ist ein Vertriebsvertrag, in dem der Lieferant sich verpflichtet, Produkte direkt oder indirekt nur an Vertreiber zu liefern, die auf Grund festgelegter Kriterien ausgewählt sind.
(5) Ein Alleinbezugsvertrag ist ein Vertriebsvertrag, in dem der Vertreiber sich verpflichtet, Produkte nur vom Lieferanten oder von einem durch den Lieferanten benannten Dritten zu beziehen.

Abschnitt 2:
Pflichten des Lieferanten

Artikel 4:201: Belieferung
Der Lieferant muss die durch den Vertreiber bestellten Produkte liefern, soweit dies praktisch durchführbar ist und soweit die Bestellung angemessen ist.

Artikel 4:202: Informationen während der Laufzeit des Vertrages
Aufgrund seiner Informationspflicht (Artikel 1:203) muss der Lieferant den Vertreiber insbesondere informieren über:
(a) die Eigenschaften der Produkte,
(b) die Preise und Bedingungen für den Verkauf der Produkte,
(c) etwaige Preisempfehlungen und Bedingungen für den Weiterverkauf der Produkte,
(d) etwaige relevante Kontakte zwischen dem Lieferanten und Kunden,
(e) etwaige für den Betrieb des Vertreibers relevante Werbekampagnen.

Artikel 4:203: Warnung vor verringerter Lieferkapazität
(1) Der Lieferant muss den Vertreiber innerhalb einer angemessenen Frist warnen, wenn der Lieferant vorhersieht oder vorhersehen müsste, dass die Lieferkapazität des Lieferanten deutlich geringer sein wird, als der Vertreiber annehmen durfte.
(2) Bei Alleinbezugsverträgen dürfen die Parteien nicht zum Nachteil des Vertreibers von dieser Bestimmung abweichende Vereinbarungen treffen.

Artikel 4:204: Werbematerial
Der Lieferant muss den Vertreiber zu einem angemessenen Preis mit allem Werbematerial versorgen, über welche der Lieferant verfügt und die zum ordnungsgemäßen Vertrieb sowie zur Absatzförderung der Produkte erforderlich ist.

Artikel 4:205: Guter Ruf der Produkte
Der Lieferant muss angemessene Anstrengungen unternehmen, um den guten Ruf der Produkte nicht zu schädigen.

Abschnitt 3:
Pflichten des Vertreibers

Artikel 4:301: Verpflichtung zum Vertrieb
Bei Alleinvertriebsverträgen und selektiven Vertriebsverträgen muss der Vertreiber – soweit praktisch durchführbar – angemessene Anstrengungen zur Absatzförderung der Produkte unternehmen.

Artikel 4:302: Informationen während der Laufzeit des Vertrages
Bei Alleinvertriebsverträgen und selektiven Vertriebsverträgen muss der Vertreiber aufgrund seiner Informationspflicht (Artikel 1:203) den Lieferanten insbesondere informieren über:
(a) durch Dritte vorgebrachte oder angedrohte Forderungen hinsichtlich der geistigen Eigentumsrechte des Lieferanten,
(b) Verletzungen der geistigen Eigentumsrechte des Lieferanten durch Dritte.

Artikel 4:303: Warnung vor verringertem Bedarf
Bei Alleinvertriebsverträgen und selektiven Vertriebsverträgen muss der Vertreiber den Lieferanten innerhalb einer angemessenen Frist warnen, wenn der Vertreiber vorhersieht oder vorhersehen müsste, dass der Bedarf des Vertreibers deutlich geringer ausfallen wird, als der Lieferant annehmen durfte.

Artikel 4:304: Anweisungen
Bei Alleinvertriebsverträgen und selektiven Vertriebsverträgen muss der Vertreiber angemessene Anweisungen des Lieferanten befolgen, die darauf abzielen, den ordnungsgemäßen Vertrieb der Produkte zu gewährleisten oder den guten Ruf oder die Unterscheidungskraft der Produkte zu bewahren.

Artikel 4:305: Inspektion
Bei Alleinvertriebsverträgen und selektiven Vertriebsverträgen muss der Vertreiber dem Lieferanten angemessenen Zugang zu den Geschäftsräumen des Vertreibers gewähren, damit der Lieferant in der Lage ist zu überprüfen, dass der Vertreiber die vertraglich vereinbarten Standards einhält und die erteilten angemessenen Anweisungen befolgt.

Artikel 4:306: Guter Ruf der Produkte
Bei Alleinvertriebsverträgen und selektiven Vertriebsverträgen muss der Vertreiber angemessene Anstrengungen unternehmen, den guten Ruf der Produkte nicht zu schädigen.

Italian[4]
Contratti di Agenzia Commerciale, Affiliazione Commerciale e Distribuzione

Capitolo 1:
Disposizioni generali

Sezione 1:
Campo di applicazione del Capitolo 1

Articolo 1:101: Campo di applicazione
Questo Capitolo si applica ai contratti di agenzia commerciale, affiliazione commerciale e distribuzione, nonché, con le dovute modifiche, per altri contratti in cui una parte autonomamente dedita ad un'attività utilizza le proprie capacità e i propri sforzi per commercializzare sul mercato i prodotti della controparte.

Sezione 2:
Obblighi

Articolo 1:201: Informazioni precontrattuali
(1) Ciascuna parte deve fornire alla controparte informazioni adeguate con ragionevole anticipo sulla conclusione del contratto. Nei casi in cui ciò non avviene viene applicato il paragrafo tre (3).
(2) Le informazioni sono intese come adeguate quando sono sufficienti per consentire alla controparte di decidere su basi ragionevolmente informate se aderire o meno ad un contratto del tipo e con i termini in esame.
(3) Se l'inosservanza del paragrafo 1 da parte di una delle parti induce la controparte a concludere un contratto, mentre la prima parte sapeva o poteva ragionevolmente aspettarsi che la controparte, se avesse ricevuto tempestive ed adeguate informazioni, non avrebbe aderito al contratto, o avrebbe aderito al contratto solo con termini fondamentalmente differenti, vigono i rimedi giuridici all'errore come illustrati nel Capitolo 4 PECL (Principles of European Contract Law – Principi della legge europea sui contratti).
(4) Le parti non possono derogare a questa disposizione.

Articolo 1:202: Collaborazione
(1) Nei contratti di agenzia commerciale, affiliazione commerciale e distribuzione, come in altri contratti commerciali a lungo termine, l'obbligo di collaborazione (art. 1:202 PECL) è

4 Proposta da *Manola Scotton*.

fondamentale e particolarmente profondo. Richiede in particolare alle parti di collaborare attivamente e lealmente, e di coordinare i loro rispettivi sforzi al fine di raggiungere gli obiettivi del contratto.

(2) Le parti non possono derogare a questa disposizione.

Articolo 1:203: Informazioni in corso di esecuzione

(1) Durante il contratto ciascuna parte deve fornire alla controparte nei tempi dovuti tutte le informazioni che la prima parte ha a disposizione e che la seconda necessita al fine di raggiungere gli obiettivi del contratto.

(2) Le parti non possono derogare a questa disposizione.

Articolo 1:204: Riservatezza

(1) Una parte che riceve informazioni riservate dalla controparte deve mantenere tali informazioni riservate e non deve rivelare tali informazioni a terzi, né durante né dopo la conclusione del contratto.

(2) Una parte che riceve informazioni riservate dalla controparte non deve utilizzare tali informazioni per scopi diversi da quelli che sono gli obiettivi del contratto.

(3) Qualsiasi informazione che una parte deteneva già o che è stata rivelata al grande pubblico, e qualsiasi informazione che deve necessariamente essere rivelata ai clienti in seguito all'esercizio dell'attività, non deve essere considerata come un'informazione riservata a questo scopo.

Sezione 3:
Cessazione e termine

Articolo 1:301: Contratto a tempo determinato

(1) Un contratto a tempo determinato termina allo scadere del periodo definito dal contratto. Se le parti non si accordano diversamente, un contratto di questo tipo non può essere terminato in anticipo unilateralmente, salvo il caso di cessazione per motivo urgente ed importante (art. 1:304).

(2) Una parte è libera di non rinnovare un contratto a tempo determinato. Comunque, se la controparte ha dato comunicazione per tempo riguardo la propria intenzione di rinnovare il contratto, la parte che non desidera rinnovarlo deve avvisare la controparte riguardo la propria decisione di non rinnovare il contratto con adeguato anticipo rispetto alla scadenza del periodo di contratto.

(3) Un contratto a tempo determinato che entrambe le parti continuano ad adempiere dopo che la scadenza del contratto diventa un contratto a tempo indeterminato.

Articolo 1:302: Cessazione unilaterale di un contratto a tempo indeterminato

(1) Ciascuna parte in un contratto a tempo indeterminato può terminare il contratto dando un preavviso di adeguata lunghezza (art. 6:109 PECL).

(2) I fattori che, tra gli altri, determinano se un preavviso è di lunghezza adeguata dipendono
(a) da quanto tempo dura il contratto,
(b) dai ragionevoli investimenti che sono stati fatti,
(c) dal tempo che sarebbe necessario per trovare una ragionevole alternativa, e
(d) dagli usi.

(3) Un periodo di preavviso della durata di un mese per ogni anno di durata del contratto, con un massimo di 36 mesi, può essere ritenuto ragionevole.
(4) Il periodo di preavviso per preponente, affiliante o fornitore non deve essere inferiore ad un mese per il primo anno, due mesi per il secondo, tre mesi per il terzo, quattro mesi per il quarto, cinque mesi per il quinto e sei mesi per il sesto e per i successivi anni di durata del contratto. Le parti non possono derogare a questa disposizione.
(5) Accordi riguardo al periodo di preavviso più lunghi di quelli indicati nei paragrafi 2 e 3 sono validi purché il periodo concordato che deve essere rispettato dal preponente, dall'affiliante o dal fornitore non sia più breve di quello che deve essere rispettato dall'agente commerciale, dall'affiliato o dal distributore.
(6) La parte lesa non ha la facoltà di pretendere specifiche prestazioni contrattuali durante il periodo di preavviso. Comunque, la corte potrebbe disporre l'esecuzione specifica di obblighi contrattuali e post-contrattuali che non dipendono dalla collaborazione.

Articolo 1:303: Danni derivanti dall'inosservanza del periodo di preavviso

(1) In caso di inosservanza dei periodi di preavviso menzionati negli art. 1:301 (2) e 1:302 (1), la parte lesa ha il diritto di pretendere un risarcimento danni.
(2) In generale la misura dei danni è quella somma che corrisponde al vantaggio che la parte lesa avrebbe ottenuto durante il periodo di preavviso non rispettato.
(3) Si presume che il vantaggio annuo corrisponda al vantaggio medio che la parte lesa ha ottenuto dal contratto nel corso dei tre anni precedenti o, se il contratto è stato di durata inferiore, durante tale periodo.
(4) Le norme generali sui danni per inadempienza (art. 9:501 segg. PECL) vengono applicate di conseguenza.

Articolo 1:304: Resoluzione per inadempimento

(1) Una parte può risolvere il contratto per inadempimento solo se l'inadempimento della controparte è da considerarsi fondamentale ai sensi dell'Articolo 8:103 (b) e dell'Articolo 8:103 (c) PECL (art. 9:301 PECL).
(2) Le parti non possono derogare a questa disposizione.

Articolo 1:305: Indennizzo per la clientela

(1) Quando un contratto giunge al termine per qualsiasi ragione (inclusa la risoluzione di una delle parti per inadempimento), una parte ha diritto ad un indennizzo dalla controparte per la clientela, se e nella misura in cui
  (a) la prima parte ha notevolmente incrementato il volume d'affari della controparte, e la controparte continua a derivare considerevoli vantaggi da tale attività, e
  (b) il pagamento dell'indennizzo è ragionevole in considerazione di tutte le circostanze.
(2) La concessione di un indennizzo non impedisce ad una parte di richiedere risarcimento danni conformemente all'Articolo 1:303.

Articolo 1:306: Scorte, parti di ricambio e materiali

Se il contratto viene terminato, risolto o invalidato da una delle parti, il preponente, l'affiliato o il fornitore deve riacquistare ad un prezzo ragionevole dall'agente commerciale, dall'affiliato o dal distributore le scorte, le parti di ricambio e i materiali rimanenti, a meno che l'agente commerciale, l'affiliato o il distributore non possano ragionevolmente rivenderli.

Sezione 4:
Altre disposizioni generali

Articolo 1:401: Diritto di ritenzione
Al fine di tutelare i propri diritti alla remunerazione, alla compensazione, ai danni e all'indennizzo, l'agente commerciale, l'affiliato o il distributore ha il diritto di trattenere beni mobili del preponente, affiliante o fornitore che sono in suo possesso in seguito al contratto, finché il (precedente) preponente, dell'affiliante o del fornitore non ha adempiuto ai propri obblighi.

Articolo 1:402: Documento scritto firmato
Ciascuna parte ha il diritto di ricevere dall'altra, su richiesta, un documento scritto e firmato che illustra i termini del contratto.

Capitolo 2:
Agenzia commerciale

Sezione 1:
Informazioni generali

Articolo 2:101: Campo di applicazione
Questo capitolo si applica ai contratti nei quali una parte (l'agente commerciale) accetta di agire su base continuativa in veste di intermediario indipendente, allo scopo di negoziare o concludere contratti per conto di una controparte (il preponente), e il preponente accetta di remunerare l'agente commerciale per le sue attività.

Sezione 2:
Obblighi dell'agente commerciale

Articolo 2:201: Negoziare e concludere contratti
L'agente commerciale deve fare ragionevoli sforzi per negoziare contratti per conto del preponente, e per concludere i contratti che l'agente commerciale ha avuto disposizioni di concludere.

Articolo 2:202: Istruzioni
L'agente commerciale deve seguire le istruzioni ragionevoli del preponente, purché non incidano in maniera considerevole sull'indipendenza dell'agente commerciale.

Articolo 2:203: Informazioni in corso di esecuzione
L'obbligo di informare (Articolo 1:203) richiede in particolare all'agente commerciale di fornire al preponente le informazioni riguardanti:
(a) i contratti negoziati o conclusi,
(b) le condizioni di mercato rilevanti,
(c) la solvibilità ed altre caratteristiche relative ai clienti.

Articolo 2:204: Contabilità

(1) L'agente commerciale deve tenere adeguate registrazioni contabili relative ai contratti negoziati o conclusi per conto del preponente.
(2) Se l'agente commerciale ha la rappresentanza di più di un preponente, l'agente commerciale deve, in particolare, tenere registrazioni contabili distinte per ciascun preponente che egli rappresenta.
(3) Se il preponente ha particolari ragioni di dubitare che l'agente commerciale tenga adeguate registrazioni contabili, l'agente commerciale deve consentire che un contabile indipendente possa avere ragionevole accesso ai libri dell'agente commerciale su richiesta del preponente. Il preponente deve pagare per i servizi prestati dal contabile indipendente.

Sezione 3:
Obblighi del preponente

Articolo 2:301: Diritto alla provvigione durante il contratto

(1) L'agente commerciale ha il diritto di ricevere una provvigione sui contratti conclusi con i clienti nel corso del contratto di agenzia, se
  (a) il contratto con il cliente è stato concluso in seguito agli sforzi operati dall'agente commerciale; oppure
  (b) il contratto è stato concluso con un terzo che l'agente commerciale ha precedentemente acquisito come cliente per contratti dello stesso tipo; oppure
  (c) all'agente commerciale è stata assegnata una determinata area geografica o un gruppo di clienti, e il contratto è stato concluso con un cliente che rientra in tale area o tale gruppo, e
(2) Il diritto sussiste solo se
  (a) il preponente ha o avrebbe dovuto adempiere agli obblighi del preponente ai sensi del contratto con il cliente; oppure
  (b) il cliente ha adempiuto agli obblighi del cliente ai sensi del contratto, oppure nega l'adempimento in maniera giustificabile (Articolo 9:201 PECL).
(3) Le parti non possono derogare al Paragrafo 2 sub b) a discapito dell'agente commerciale.

Articolo 2:302: Diritto alla provvigione dopo il contratto

(1) L'agente commerciale ha il diritto di ricevere un provvigione sui contratti conclusi con i clienti dopo che il contratto di agenzia è stato terminato o risolto, se
  (a) il contratto con il cliente è soprattutto il risultato degli sforzi dell'agente commerciale durante il contratto di agenzia, e il contratto con il cliente è stato concluso entro un ragionevole periodo dopo la fine del contratto di agenzia; oppure
  (b) le condizioni dell'Articolo 2:301 Paragrafo 1 sarebbero state soddisfatte, se non che il contratto con il cliente non è stato concluso durante il contratto di agenzia, e l'offerta del cliente è pervenuta al preponente o all'agente commerciale prima che il contratto di agenzia fosse terminato o risolto.
(2) Il diritto sussiste solo se
  (a) il preponente ha o avrebbe dovuto adempiere agli obblighi del preponente ai sensi del contratto con il cliente; oppure

(b) il cliente ha adempiuto agli obblighi del cliente ai sensi del contratto, oppure nega l'adempimento in maniera giustificabile (Articolo 9:201 PECL).

(2) Le parti non possono derogare al Paragrafo 2 sub b) a discapito dell'agente commerciale.

Articolo 2:303: Prevalenza del diritto alla provvigione

L'agente commerciale non ha diritto alla provvigione indicata nell'Articolo 2:301, se il precedente agente commerciale ha il diritto a tale provvigione ai sensi dell'Articolo 2:302, a meno che non risulti ragionevole che la provvigione venga ripartita tra i due agenti commerciali.

Articolo 2:304: Momento in cui la provvigione deve essere pagata

(1) Il preponente non deve pagare la provvigione dell'agente commerciale più tardi dell'ultimo giorno del mese seguente al trimestre nel quale è insorto il diritto dell'agente commerciale a tale provvigione.

(2) Le parti non possono derogare a questa disposizione a discapito dell'agente commerciale.

Articolo 2:305: Annullamento del diritto alla provvigione

(1) Il diritto dell'agente commerciale alla provvigione conformemente agli Articoli 2:301 e 2:302 può essere annullato solo se e nella misura in cui viene stabilito che il contratto con il cliente non verrà realizzato, e tale fatto è dovuto ad una ragione per la quale il preponente non è responsabile.

(2) In seguito all'annullamento del diritto dell'agente commerciale alla provvigione, l'agente commerciale deve rimborsare qualsiasi provvigione che egli ha già ricevuto.

(3) Le parti non possono derogare al Paragrafo 1 a discapito dell'agente commerciale.

Articolo 2:306: Remunerazione

Si presume che qualsiasi remunerazione che dipende (parzialmente) dal numero o dal valore dei contratti è da considerarsi provvigione ai sensi di questo Capitolo.

Articolo 2:307: Informazioni in corso di esecuzione

L'obbligo di informare (Articolo 1:203) richiede in particolare al preponente di fornire all'agente commerciale informazioni riguardanti:

(a) le caratteristiche di merci e servizi,

(b) i prezzi e le condizioni di vendita e acquisto.

Articolo 2:308: Informazioni su accettazione, rifiuto e inadempimento

(1) Il preponente deve informare l'agente commerciale, entro un ragionevole tempo, riguardo

(a) l'accettazione o il rifiuto da parte del preponente di un contratto che l'agente commerciale ha negoziato per conto del preponente; e

(b) qualsiasi inadempienza di un contratto che l'agente commerciale ha negoziato o concluso per conto del preponente.

(2) Le parti non possono derogare a questa disposizione a discapito dell'agente commerciale.

Articolo 2:309: Avviso di diminuzione del volume di contratti

(1) Il preponente deve avvertire l'agente commerciale entro un tempo ragionevole quando egli prevede o dovrebbe prevedere che il volume di contratti che il preponente sarà in grado di concludere o adempiere sarà notevolmente inferiore di quanto l'agente commerciale ha motivo di aspettarsi.
(2) Le parti non possono derogare a questa disposizione a discapito dell'agente commerciale.

Articolo 2:310: Informazioni sulla provvigione per mezzo di rendiconto ed estratto dai libri contabili

(1) Il preponente deve fornire in tempo ragionevole all'agente commerciale un rendiconto della provvigione a cui ha diritto l'agente commerciale. Il rendiconto deve riportare la modalità in base alla quale è stato calcolato l'importo della provvigione.
(2) Allo scopo di calcolare la provvigione, il preponente deve fornire all'agente commerciale, su richiesta, un estratto dei libri contabili del preponente.
(3) Le parti non possono derogare a questa disposizione a discapito dell'agente commerciale.

Articolo 2:311: Contabilità

(1) Il preponente deve tenere adeguate registrazioni contabili relative ai contratti negoziati o conclusi dall'agente commerciale.
(2) Se il preponente ha più di un agente commerciale, il preponente deve, in particolare, tenere registrazioni contabili distinte per ciascun agente commerciale.
(3) Il preponente deve consentire che un contabile indipendente possa avere ragionevole accesso ai libri contabili del preponente su richiesta dell'agente commerciale, se
   (a) Il preponente non adempie agli obblighi del preponente ai sensi dell'Articolo 2:310 Paragrafi 1 e 2, oppure
   (b) l'agente commerciale ha particolari ragioni di dubitare che il preponente tenga adeguate registrazioni contabili.

L'agente commerciale deve pagare il commercialista indipendente.

Articolo 2:312: Importo indennizzo

(1) L'agente commerciale ha diritto ad un indennizzo per la clientela sulla base dell'Articolo 1:305 il cui importo deve essere pari a:
   (a) la provvigione media sui contratti con nuovi clienti e sull'incremento del volume di affari con clienti esistenti, calcolata per gli ultimi 12 mesi, moltiplicata per:
   (b) il numero di anni nei quali si presume che il preponente continuerà a derivare vantaggi da questi contratti in futuro.
(2) L'indennizzo risultante deve essere corretto sulla base di:
   (a) il tasso netto migratorio medio nel territorio dell'agente commerciale; e
   (b) i tassi medi di interesse.
(3) In ogni caso, l'indennizzo non deve superare la remunerazione di un anno, calcolata sulla base della remunerazione annua media dell'agente commerciale nei cinque anni precedenti oppure, se il contratto è stato in essere per meno di cinque anni, dalla media nel corso del periodo in questione.
(4) Le parti non possono derogare a questa disposizione a discapito dell'agente commerciale.

Articolo 2:313: Clausola dello star del credere

(1) Un accordo in base al quale l'agente commerciale garantisce che un cliente pagherà il prezzo dei prodotti che rappresentano l'oggetto del/dei contratto/i che l'agente commerciale ha negoziato o concluso (clausola dello star del credere), è valido solo e nella misura in cui:
(a) la clausola è stipulata per iscritto e
(b) la clausola copre particolari contratti che erano stati negoziati o conclusi dall'agente commerciale, o ancora contratti con particolari clienti come specificato nell'accordo, e
(c) la clausola risulta ragionevole in considerazione degli interessi delle parti.

(2) L'agente commerciale ha il diritto di vedersi corrispondere una provvigione di importo ragionevole sui contratti ai quali viene applicata la garanzia dello star del credere (provvigione per lo star del credere).

Capitolo 3:
Affiliazione commerciale

Sezione 1:
Informazioni generali

Articolo 3:101: Campo di applicazione

Questo Capitolo si applica ai contratti in base ai quali una parte (l'affiliante) concede alla controparte (l'affiliato), in cambio di una remunerazione, il diritto di svolgere un'attività (attività in franchising) all'interno della rete dell'affiliante con lo scopo di vendere determinati prodotti per conto dell'affiliato e a nome dell'affiliato, e in base al quale l'affiliato ha il diritto e l'obbligo di utilizzare la denominazione commerciale o il marchio di fabbrica nonché altri diritti di proprietà intellettuale, il know-how e la metodologia commerciale dell'affiliante.

Articolo 3:102: Informazioni precontrattuali

(1) L'obbligo di rivelare informazioni precontrattuali (Articolo 1:201) richiede in particolare all'affiliante di fornire all'affiliato informazioni adeguate e tempestive riguardanti:
(a) la società e l'esperienza dell'affiliante,
(b) i diritti di proprietà intellettuale rilevanti,
(c) le caratteristiche del know-how pertinente,
(d) il settore commerciale e le condizioni del mercato,
(e) il particolare metodo di affiliazione commerciale e il suo funzionamento,
(f) la struttura e l'estensione della rete di affiliazione commerciale,
(g) le commissioni, royalties o qualsiasi altro pagamento periodico,
(h) i termini del contratto.

(2) Se l'inosservanza da parte dell'affiliante del paragrafo 1 non dà origine ad un errore fondamentale ai sensi dell'Articolo 4:103 PECL, l'affiliato può recuperare i danni conformemente all'Articolo 4:117(2) e (3) PECL, a meno che l'affiliante non abbia ragione di credere che le informazioni erano adeguate o erano state fornite in un tempo ragionevole.

(3) Le parti non possono derogare a questa disposizione.

Sezione 2:
Obblighi per l'affiliante

Articolo 3:201: Diritti di proprietà intellettuale
(1) L'affilante deve concedere all'affiliato il diritto di utilizzare i diritti di proprietà intellettuale nella misura necessaria allo svolgimento dell'attività di affiliazione commerciale.
(2) L'affiliante deve fare sforzi ragionevoli per garantire l'utilizzo indisturbato e continuativo dei diritti di proprietà intellettuale.
(3) Le parti non possono derogare a questa disposizione.

Articolo 3:202: Know-How
(1) Per tutta la durata del contratto, l'affiliante deve fornire all'affiliato il know-how necessario per svolgere l'attività di affiliazione commerciale.
(2) Le parti non possono derogare a questa disposizione.

Articolo 3:203: Assistenza
(1) L'affiliante deve fornire all'affiliato assistenza sotto forma di corsi di addestramento, orientamento e consulenza, nella misura necessaria allo svolgimento dell'attività di affiliazione commerciale, senza addebito supplementare per l'affiliato.
(2) L'affiliante deve fornire ulteriore assistenza, nella misura ragionevolmente richiesta dall'affiliato, a costi ragionevoli.

Articolo 3:204: Forniture
(1) Allorquando l'affiliato è obbligato ad acquistare i prodotti esclusivamente dall'affiliante, o da un fornitore designato dall'affiliante, l'affiliante deve garantire che i prodotti ordinati dall'affiliato vengano consegnati entro un tempo ragionevole, per quanto attuabile e purché l'ordine risulti ragionevole.
(2) Il Paragrafo 1 vale anche per quei casi in cui l'affiliato, malgrado non sia obbligato ad acquistare dall'affiliante o da un fornitore designato dall'affiliante, è in pratica tenuto a farlo.
(3) Le parti non possono derogare a questa disposizione.

Articolo 3:205: Informazioni in corso di esecuzione
L'obbligo di informare (Articolo 1:203) richiede in particolare all'affiliante di fornire all'affiliato le informazioni riguardanti:
(a) le condizioni di mercato rilevanti,
(b) i risultati commerciali della rete di affiliazione commerciale,
(c) le caratteristiche dei prodotti,
(d) i prezzi e i termini per la vendita dei prodotti,
(e) qualsiasi prezzo e termine consigliato per la rivendita dei prodotti,
(f) qualsiasi comunicazione pertinente tra l'affiliante e i clienti nel territorio,
(g) qualsiasi campagna pubblicitaria pertinente all'attività di affiliazione commerciale.

Articolo 3:206: Avviso di diminuzione delle capacità di fornitura
(1) Allorquando l'affiliato è obbligato ad acquistare i prodotti esclusivamente dall'affiliante, o da un fornitore designato dall'affiliante, l'affiliante deve avvertire l'affiliato entro un tempo ragionevole quando l'affiliante prevede o dovrebbe prevedere che le capacità di fornitura

dell'affiliante o le capacità di fornitura del fornitore designato saranno notevolmente inferiori di quanto l'affiliato ha ragione di aspettarsi.
(2) Il Paragrafo 1 vale anche per quei casi in cui l'affiliato, malgrado non sia obbligato ad acquistare dall'affiliante o da un fornitore designato dall'affiliante, è in pratica tenuto a farlo.
(3) Le parti non possono derogare a questa disposizione a discapito dell'affiliato.

Articolo 3:207: Reputazione della rete e pubblicità
(1) L'affiliante deve fare ragionevoli sforzi per promuovere e mantenere la reputazione della rete di affiliazione commerciale.
(2) In particolare, l'affiliante deve progettare e coordinare idonee campagne pubblicitarie con lo scopo di promuovere la rete di affiliazione commerciale.
(3) Le attività di promozione e mantenimento della reputazione della rete di franchising devono essere svolte senza addebito supplementare per l'affiliato.

Sezione 3:
Obblighi dell'affiliato

Articolo 3:301: Commissioni, royalties e altri pagamenti periodici
(1) L'affiliato deve pagare all'affiliante commissioni, royalties o altri pagamenti periodici concordati nel contratto.
(2) Se le commissioni, royalties o qualsiasi altro pagamento periodico devono essere stabiliti unilateralmente dall'affiliante, viene applicato l'Articolo 6:105 PECL.

Articolo 3:302: Informazioni in corso di esecuzione
L'obbligo di informare (Articolo 1:203) richiede in particolare all'affiliato di fornire all'affiliante le informazioni riguardanti:
a) qualsiasi rivendicazione o minaccia di terzi in relazione ai diritti di proprietà intellettuale dell'affiliante.
b) qualsiasi violazione di terzi dei diritti di proprietà intellettuale dell'affiliante.

Articolo 3:303: Metodologia commerciale e istruzioni
(1) L'affiliato deve fare ragionevoli sforzi per svolgere l'attività di affiliazione commerciale conformemente alla metodologia commerciale dell'affiliante.
(2) L'affiliato deve seguire le istruzioni ragionevoli dell'affiliante in relazione alla metodologia commerciale e al mantenimento della reputazione della rete di affiliazione commerciale.
(3) L'affiliante deve fare adeguata attenzione a non danneggiare la rete di affiliazione commerciale.
(4) Le parti non possono derogare a questa disposizione

Articolo 3:304: Ispezione
(1) L'affiliato deve consentire all'affiliante ragionevole accesso alla sede dell'affiliato per consentire all'affiliante di verificare che l'affiliato rispetti la metodologia commerciale e le istruzioni dell'affiliante.
(2) L'affiliato deve consentire all'affiliante accesso ragionevole ai libri contabili dell'affiliato.

Capitolo 4:
Distribuzione

Sezione 1:
Informazioni generali

I Articolo 4:101: Campo di applicazione e definizioni
(1) Questo Capitolo vale per contratti di distribuzione esclusiva, distribuzione selettiva e di acquisto esclusivo.
(2) Un contratto di distribuzione è un contratto in base al quale una parte (il fornitore) acconsente a fornire alla controparte (il distributore) prodotti su base continuativa, e il distributore acconsente ad acquistarli e a venderli a nome del distributore e per conto del distributore (contratto di distribuzione).
(3) Un contratto di distribuzione esclusiva è un contratto di distribuzione in base al quale il fornitore acconsente a fornire prodotti solo ad un distributore all'interno di un determinato territorio o a un determinato gruppo di clienti.
(4) Un contratto di distribuzione selectiva è un contratto di distribuzione in base al quale il fornitore acconsente a fornire prodotti, direttamente o indirettamente, solo a distributori selezionati o sulla base di specifici criteri.
(5) Un contratto di acquisto esclusivo è un contratto di distribuzione in base al quale il distributore acconsente ad acquistare prodotti solo dal fornitore o da una parte designata dal fornitore.

Sezione 2:
Obblighi del fornitore

Articolo 4:201: Fornitura
Il fornitore deve fornire i prodotti ordinati dal distributore, per quanto attuabile e purché l'ordine risulti ragionevole.

Articolo 4:202: Informazioni in corso di esecuzione
L'obbligo di informare (Articolo 1:203) richiede in particolare al fornitore di fornire al distributore le informazioni riguardanti:
(a) le caratteristiche dei prodotti,
(b) i prezzi e i termini per la vendita dei prodotti,
(c) qualsiasi prezzo e termine consigliato per la rivendita dei prodotti,
(d) qualsiasi comunicazione pertinente tra il fornitore e i clienti,
(e) qualsiasi campagna pubblicitaria pertinente allo svolgimento dell'attività.

Articolo 4:203: Avviso di diminuzione delle capacità di fornitura
(1) Il fornitore deve avvertire il distributore entro un tempo ragionevole quando prevede o dovrebbe prevedere che le capacità di fornitura del fornitore saranno notevolmente inferiori di quanto il distributore ha ragione di aspettarsi.
(2) Nei contratti di acquisto esclusivo, le parti non possono derogare a questa disposizione a discapito del distributore.

Articolo 4:204: Materiale pubblicitario
Il fornitore deve fornire al distributore ad un prezzo ragionevole tutto il materiale pubblicitario di cui il fornitore dispone e che è necessario per un'adeguata distribuzione e promozione dei prodotti.

Articolo 4:205: Reputazione dei prodotti
Il fornitore deve fare ragionevoli sforzi per non danneggiare la reputazione dei prodotti.

Sezione 3:
Obblighi del distributore

Articolo 4:301: Distribuzione
Nei contratti di distribuzione esclusiva e selettiva, per quanto attuabile, il distributore deve fare ragionevoli sforzi per promuovere le vendite dei prodotti.

Articolo 4:302: Informazioni in corso di esecuzione
Nei contratti di distribuzione esclusiva e selettiva, l'obbligo di informare (Articolo 1:203) richiede in particolare al distributore di fornire al fornitore le informazioni riguardanti:
(a) qualsiasi rivendicazione o minaccia di terzi in relazione ai diritti di proprietà intellettuale del fornitore,
(b) qualsiasi violazione di terzi dei diritti di proprietà intellettuale del fornitore.

Articolo 4:303: Avviso di diminuzione del fabbisogno
Nei contratti di distribuzione esclusiva e selettiva, il distributore deve avvertire il fornitore entro un tempo ragionevole quando il distributore prevede o dovrebbe prevedere che il fabbisogno del distributore sarà notevolmente inferiore di quanto il fornitore ha motivo di aspettarsi.

Articolo 4:304: Istruzioni
Nei contratti di distribuzione esclusiva e selettiva, il distributore deve seguire le istruzioni ragionevoli del fornitore che sono volte a garantire la corretta distribuzione dei prodotti o a mantenere la reputazione o il carattere distintivo dei prodotti.

Articolo 4:305: Ispezione
Nei contratti di distribuzione esclusiva e selettiva, il distributore deve consentire al fornitore ragionevole accesso alla sede del distributore per consentire al fornitore di verificare che il distributore rispetti gli standards concordati nel contratto e le istruzioni ragionevoli date.

Articolo 4:306: Reputazione dei prodotti
Nei contratti di distribuzione esclusiva e selettiva, il distributore deve fare sforzi ragionevoli per non danneggiare la reputazione dei prodotti.

Polish[5]

Umowa agencyjna, umowa franszyzowa oraz umowa dystrybucyjna

Rozdział I.
Przepisy ogólne

Dział 1.
Zakres rozdziału pierwszego

Art. 1:101. Zakres
Rozdział niniejszy ma zastosowanie do umowy agencyjnej, umowy franszyzowej oraz umowy dystrybucyjnej, a także odpowiednio do innych umów, na mocy których jedna strona, samodzielnie prowadząca przedsiębiorstwo, zobowiązuje się wykorzystywać swe umiejętności i starania w celu umieszczenia produktów drugiej strony na rynku.

Dział 2.
Obowiązki

Art. 1:201. Udostępnianie informacji przed zawarciem umowy
(1) Każda ze stron obowiązana jest udostępnić drugiej stronie odpowiednie informacje w rozsądnym czasie przed zawarciem umowy. W przeciwnym razie stosuje się przepis ustępu trzeciego.
(2) Informacje poczytuje się za odpowiednie, jeżeli na ich podstawie druga strona może postanowić o zawarciu umowy będąc w rozsądnym zakresie poinformowaną o rodzaju umowy oraz jej postanowieniach.
(3) Jeżeli naruszenie przez stronę przepisu ustępu pierwszego powoduje, iż druga strona zawiera umowę w sytuacji, w której pierwsza strona wiedziała lub na podstawie rozsądnych przypuszczeń powinna była wiedzieć, że druga strona, gdyby dostarczono jej na czas odpowiednich informacji, nie zawarłaby umowy, albo zawarłaby umowę o zasadniczo odmiennych postanowieniach – stosuje się przepisy rozdziału 4 zasad europejskiego prawa umów o błędzie.
(4) Strony nie mogą umówić się w sposób odbiegający od postanowień niniejszego przepisu.

Art. 1:202. Współdziałanie
(1) W wypadku umowy agencyjnej, umowy franszyzowej, umowy dystrybucyjnej oraz innych umów o charakterze ciągłym obowiązek współdziałania (art. 1:102 zasad europejskiego prawa umów) jest zasadniczy i szczególnie wzmożony. Wynika z niego w szczególności,

[5] Przekład zaproponowany przez *Rafała Mańko*.

by strony w sposób czynny i lojalny współdziałały ze sobą oraz koordynowały swe starania w celu osiągnięcia celów umowy.
(2) Strony nie mogą umówić się w sposób odbiegający od postanowień niniejszego przepisu.

Art. 1:203. Udostępnianie informacji podczas wykonywania umowy
(1) Podczas wykonywania umowy każda ze stron obowiązana jest w odpowiednim czasie udostępniać drugiej stronie wszelkie posiadane przez siebie informacje, które drugiej stronie potrzebne są w celu osiągnięcia celów umowy.
(2) Strony nie mogą umówić się w sposób odbiegający od postanowień niniejszego przepisu.

Art. 1:204. Poufność
(1) Strona, która otrzymuje poufne informacje od drugiej strony, obowiązana jest zachować takie informacje w tajemnicy i nie ujawnić ich osobom trzecim ani podczas trwania umowy, ani po jej wygaśnięciu.
(2) Strona, która otrzymuje poufne informacje od drugiej strony obowiązana jest wykorzystywać je wyłącznie w celu wykonania umowy.
(3) Nie poczytuje się za poufne informacji, które strona już posiada albo które zostały ujawnione do wiadomości publicznej, ani też tych informacji, których udostępnienie klientom jest niezbędne w związku z działalnością przedsiębiorstwa.

Dział 3.
Wypowiedzenie i odstąpienie od umowy

Art. 1:301. Umowa zawarta na czas oznaczony
(1) Umowa zawarta na czas oznaczony wygasa z chwilą upływu terminu wskazanego w umowie. O ile strony nie postanowiły inaczej, umowa taka nie może zostać wypowiedziana wcześniej.
(2) Strona może nie przedłużyć umowy zawartej na czas oznaczony. Jednak jeżeli druga strona zawiadomiła w odpowiednim czasie, że pragnie przedłużyć czas trwania umowy, strona, która sprzeciwia się temu, obowiązana jest zawiadomić drugą stronę o swoim sprzeciwie w rozsądnym czasie przed wygaśnięciem umowy.
(3) Jeżeli po wygaśnięciu umowy zawartej na czas oznaczony strony w dalszym ciągu ją wykonują, poczytuje się ją za zawartą na czas nieoznaczony.

Art. 1:302. Wypowiedzenie umowy zawartej na czas nieoznaczony
(1) Każda ze stron umowy zawartej na czas nieoznaczony może wypowiedzieć ją z zachowaniem rozsądnego terminu (art. 6:109 zasad europejskiego prawa umów).
(2) Dokonując oceny, czy wypowiedzenie nastąpiło z zachowaniem rozsądnego terminu, bierze się pod uwagę między innymi:
    (a) czas trwania umowy;
    (b) rozsądne inwestycje poczynione przez strony;
    (c) czas niezbędny na znalezienie rozsądnej alternatywy;
    (d) ustalone zwyczaje.
(3) Domniemywa się, że rozsądnym terminem wypowiedzenia jest termin obliczony w ten sposób, iż na każdy rok trwania umowy przypada jeden miesiąc, jednak nie więcej niż łącznie 36 miesięcy.

(4) W przypadku dającego zlecenie, franszyzodawcy lub dostawcy termin wypowiedzenia nie powinien być krótszy niż jeden miesiąc w pierwszym roku trwania umowy, dwa miesiące w drugim roku trwania umowy, trzy miesiące w trzecim roku trwania umowy, pięć miesięcy w piątym roku trwania umowy oraz sześć miesięcy w szóstym i następnych latach trwania umowy. Terminy te nie mogą być skracane.
(5) Strony mogą ustalić dłuższe terminy wypowiedzenia niż przewidziane w ustępie drugim i trzecim, z zastrzeżeniem, że termin wypowiedzenia ustalony dla dającego zlecenie, franszyzodawcy lub dostawcy nie będzie krótszy niż termin wypowiedzenia ustalony dla agenta, franszyzobiorcy lub dystrybutora.
(6) Po wypowiedzeniu umowy druga strona nie może żądać dalszego wykonywania obowiązków umownych przez stronę, która ją wypowiedziała. Sąd może jednak nakazać wykonywanie tych obowiązków umownych i poumownych, które nie wymagają współdziałania stron.

Art. 1:303. Odszkodowanie za niedochowanie terminu wypowiedzenia

(1) W wypadku gdy wypowiadający umowę nie dochował terminów wypowiedzenia określonych w art. 1:301 ust. 2 oraz 1:302 ust. 1, druga strona może żądać naprawienia szkody.
(2) Przy ustalaniu wysokości szkody bierze się pod uwagę zysk, jaki strona poszkodowana uzyskałaby w okresie odpowiadającym niedochowanemu terminowi wypowiedzenia.
(3) Domniemywa się, że roczny zysk równy jest średniemu zyskowi uzyskanemu na podstawie umowy przez stronę poszkodowaną w okresie ostatnich trzech lat, a jeśli umowa obowiązywała przez krótszy czas – średniemu zyskowi uzyskanemu na podstawie umowy przez stronę poszkodowaną w tym okresie.
(4) Ogólne przepisy o naprawieniu szkody w razie niewykonania zobowiązania (art. 9:501 i następne zasad europejskiego prawa umów) stosuje się odpowiednio.

Art. 1:304. Odstąpienie od umowy

(1) Strona może odstąpić od umowy z powodu zasadniczego niewykonania zobowiązania przez drugą stronę w rozumieniu art. 8:103 litera b oraz 8:103 litera c zasad europejskiego prawa umów (art. 9:301 zasad europejskiego prawa umów).
(2) Strony nie mogą umówić się w sposób odbiegający od postanowień niniejszego przepisu.

Art. 1:305. Świadczenie wyrównawcze

(1) Po wygaśnięciu umowy z jakiejkolwiek przyczyny (w tym na skutek odstąpienia od umowy przez którąkolwiek ze stron z powodu niewykonania zobowiązania przez drugą stronę), każda ze stron może żądać od drugiej strony świadczenia wyrównawczego jeżeli:
  (a) w sposób istotny zwiększyła obroty przedsiębiorstwa drugiej strony, a przedsiębiorstwo to w dalszym ciągu przysparza istotnych korzyści drugiej stronie; oraz
  (b) wypłata świadczenia wyrównawczego jest rozsądna biorąc pod uwagę wszelkie okoliczności.
(2) Przyznanie świadczenia wyrównawczego nie wyklucza dochodzenia naprawienia szkody na podstawie art. 1:103.

Art. 1:306. Zapasy, części zamienne oraz materiały

Po wypowiedzeniu, odstąpieniu od umowy albo uchyleniu się od jej skutków przez drugą stronę, dający zlecenie, franszyzodawca lub dostawca zobowiązany jest odkupić od agenta, franszyzobiorcy lub dystrybutora pozostałe zapasy, części zamienne oraz materiały po rozsądnej cenie, chyba że agent, franszyzobiorca lub dystrybutor może w sposób rozsądny je odsprzedać.

Dział 4.
Inne przepisy ogólne

Art. 1:401. Prawo zatrzymania

Dla zabezpieczenia roszczenia o wynagrodzenie, naprawienie szkody lub świadczenie wyrównawcze agentowi, franszyzobiorcy lub dystrybutorowi przysługuje prawo zatrzymania na ruchomościach dającego zlecenie, franszyzodawcy lub dostawcy, które są w jego posiadaniu na podstawie umowy, aż do chwili gdy dający zlecenie, franszyzodawca lub dostawca zaspokoi to roszczenie.

Art. 1:402. Podpisany dokument

Każda ze stron może żądać od drugiej podpisanego dokumentu, stwierdzającego postanowienia umowy.

Rozdział II.
Umowa agencyjna

Dział 1.
Przepis ogólny

Art. 2:101. Zakres

Rozdział niniejszy stosuje się do umów, na podstawie których jedna ze stron (agent) zobowiązuje się do stałego negocjowania lub zawierania umów jako samodzielny pośrednik działający w imieniu i na rzecz drugiej strony (dającego zlecenie) a druga strona zobowiązuje się do zapłaty agentowi wynagrodzenia za jego działania.

Dział 2.
Obowiązki agenta

Art. 2:201. Negocjowanie i zawieranie umów

Agent obowiązany jest podejmować rozsądne starania w celu negocjowania i zawierania umów w imieniu dającego zlecenie i przez niego wskazanych.

Art. 2:202. Wskazówki
Agent obowiązany jest postępować według rozsądnych wskazówek dającego zlecenie, pod warunkiem że nie ograniczają one w sposób istotny jego samodzielności.

Art. 2:203. Udostępnianie informacji w czasie wykonywania umowy
Z obowiązku udostępniania informacji (art. 1:203) wynika, że agent obowiązany jest udostępniać dającemu zlecenie informacje dotyczące w szczególności:
(a) umów zawartych lub będących przedmiotem negocjacji;
(b) warunków rynkowych;
(c) wypłacalności i innych cech klientów.

Art. 2:204. Księgowość
(1) Agent obowiązany jest prowadzić w prawidłowy sposób księgowość w zakresie umów negocjowanych lub zawieranych w imieniu i na rzecz dającego zlecenie.
(2) Jeżeli agent działa w imieniu i na rzecz więcej niż jednego dającego zlecenie, obowiązany jest on w szczególności do prowadzenia odrębnych ksiąg dla każdego z dających zlecenie.
(3) Jeżeli dający zlecenie ma uzasadnione wątpliwości, czy agent prowadzi księgowość w prawidłowy sposób, może on żądać, by agent w rozsądnym zakresie udostępnił księgi biegłemu rewidentowi. Dający zlecenie obowiązany jest pokryć koszty biegłego rewidenta.

Dział 3.
Obowiązki dającego zlecenie

Art. 2:301. Prawo do prowizji w czasie trwania umowy
(1) Agent może żądać prowizji od umów zawartych z klientami podczas trwania umowy, jeżeli:
  (a) umowa z klientem została zawarta w wyniku starań agenta, lub
  (b) umowa została zawarta z klientem, którego agent uprzednio pozyskał do umów tego samego rodzaju, lub
  (c) agentowi powierzono określony obszar geograficzny lub grupę klientów, a umowa została zawarta z klientem należącym do tego obszaru lub zbioru.
(2) Prawo do prowizji powstaje jedynie, jeżeli
  (a) dający zlecenie wykonał albo zobowiązany był wykonać swoje obowiązki wynikające z umowy z klientem, lub
  (b) klient wykonał swoje obowiązki wynikające z umowy albo w sposób usprawiedliwiony powstrzymuje się ze spełnieniem świadczenia (art. 9:201 zasad europejskiego prawa umów).
(3) Strony nie mogą umówić się w sposób odbiegający na niekorzyść agenta od postanowienia ust. 2 lit. b).

Art. 2:302. Prawo do prowizji po wygaśnięciu umowy
(1) Agent może żądać prowizji od umów zawartych z klientami po wygaśnięciu umowy, jeżeli:
  (a) umowa z klientem stanowi w przeważającej mierze wynik starań agenta w trakcie obowiązywania umowy agencyjnej, a umowa z klientem została zawarta w rozsądnym czasie po wygaśnięciu umowy agencyjnej; lub

(b) zostałyby spełnione warunki określone w art. 2:301 ust. 1, poza tym, że umowa z klientem nie została zawarta w okresie obowiązywania umowy agencyjnej, a oferta klienta dotarła do dającego zlecenie lub agenta przed wygaśnięciem umowy agencyjnej.

(2) Agent ma prawo do prowizji jedynie jeśli:
   (a) dający zlecenie wykonał lub zobowiązany był wykonać swoje obowiązki wynikające z umowy z klientem; lub
   (b) klient wykonał swoje obowiązki wynikające z umowy albo w sposób usprawiedliwiony wstrzymuje świadczenie (art. 9:201 zasad europejskiego prawa umów).

(3) Strony nie mogą umówić się w sposób odbiegający na niekorzyść agenta od postanowienia ust. 2 lit. b).

Art. 2:303. Kolizja praw do prowizji

Agent nie może żądać prowizji, o której mowa w art. 2:301, jeżeli poprzedni agent może żądać tej prowizji na podstawie art. 2:302, chyba że byłoby rozsądne, by agenci podzielili się tą prowizją.

Art. 2:304. Wymagalność roszczenia o zapłatę prowizji

(1) Dający zlecenie obowiązany jest zapłacić agentowi prowizję nie później niż ostatniego dnia miesiąca następującego po kwartale, w którym powstało uprawnienie agenta do tej prowizji.

(2) Strony nie mogą umówić się w sposób odbiegający na niekorzyść agenta od postanowień niniejszego przepisu.

Art. 2:305. Wyłączenie prawa do prowizji

(1) Agent nie może żądać prowizji na podstawie art. 2:301 i 2:302 jedynie w wypadku, gdy zostanie ustalone, iż umowa z klientem nie zostanie wykonana z powodu, za który dający zlecenie nie odpowiada.

(2) W takim wypadku agent obowiązany jest zwrócić wszystko, co zostało mu świadczone na poczet prowizji.

(3) Strony nie mogą umówić się w sposób odbiegający na niekorzyść agenta od postanowienia ust. 1.

Art. 2:306. Wynagrodzenie

Domniemywa się, że wszelkie wynagrodzenie, które choć w części zależy od liczby lub wartości zawartych umów, jest prowizją w rozumieniu niniejszego rozdziału.

Art. 2:307. Informacje w czasie wykonywania umowy

Obowiązek informowania (art. 1:203) wymaga w szczególności, by dający zlecenie udzielał agentowi informacji dotyczących:

(a) charakterystyki towarów lub usług;

(b) cen i warunków sprzedaży lub kupna.

Art. 2:308. Informacje dotyczące przyjęcia lub odrzucenia oferty oraz niewykonania zobowiązania

(1) Dający zlecenie obowiązany jest w rozsądnym czasie zawiadomić agenta o:
   (a) przyjęciu lub odrzuceniu oferty zawarcia umowy, przy której zawarciu agent pośredniczył;

(b) wszelkich przypadkach niewykonania umowy, przy której zawarciu pośredniczył lub którą zawarł w imieniu dającego zlecenie.

(2) Strony nie mogą umówić się w sposób odbiegający na niekorzyść agenta od postanowień niniejszego przepisu.

Art. 2:309. Zawiadomienie o zmniejszonej ilości i wartości umów

(1) Jeżeli dający zlecenie przewiduje albo powinien przewidzieć, że ilość lub wartość umów, jakie będzie on mógł zawierać lub wykonywać będzie znacząco mniejsza niż agent mógłby się normalnie spodziewać, obowiązany jest w rozsądnym czasie zawiadomić o tym agenta.

(2) Strony nie mogą umówić się w sposób odbiegający na niekorzyść agenta od postanowień niniejszego przepisu.

Art. 2:310. Informacje o prowizji

(1) Dający zlecenie obowiązany jest w rozsądnym czasie przekazać agentowi dokument stwierdzający prowizje, do jakich agent nabył prawo. W dokumencie będzie wskazany sposób obliczenia wysokości prowizji.

(2) W celu obliczenia należnej prowizji dający zlecenie na żądanie agenta udostępni mu wyciąg ze swoich ksiąg rachunkowych.

(3) Strony nie mogą umówić się w sposób odbiegający na niekorzyść agenta od postanowień niniejszego przepisu.

Art. 2:311. Księgowość

(1) Dający zlecenie obowiązany jest prowadzić w prawidłowy sposób księgowość w zakresie umów, przy których zawarciu agent pośredniczył lub które zawarł w imieniu dającego zlecenie.

(2) Jeżeli dający zlecenie ma więcej niż jednego agenta, obowiązany jest on, w szczególności, prowadzić odrębną księgowość dla każdego z agentów.

(3) Agent może żądać udostępnienia biegłemu rewidentowi w rozsądnym zakresie ksiąg dającego zlecenie, jeżeli:

(a) dający zlecenie nie wykonuje swoich obowiązków określonych w art. 2:310 ust. 1 lub 2; lub

(b) agent ma uzasadnione wątpliwości, czy dający zlecenie prowadzi prawidłową księgowość.

Agent zobowiązany jest pokryć koszty biegłego rewidenta.

Art. 2:312. Wysokość świadczenia wyrównawczego

(1) Agent może żądać świadczenia wyrównawczego na podstawie art. 1:305, które uwzględnia:

(a) średnią prowizję od umów z nowymi klientami oraz średnią prowizję od zwiększonych obrotów z dotychczasowymi klientami, obliczone za ostatnie 12 miesięcy, pomnożoną przez:

(b) liczbę lat, przez jakie dający zlecenie będzie prawdopodobnie osiągał korzyści z tych umów w przyszłości.

(2) Tak obliczone świadczenie wyrównawcze poprawia się z uwzględnieniem:

(a) średniego wskaźnika migracji na terytorium agenta; oraz

(b) średniej stopy odsetek.

(3) Świadczenie wyrównawcze nie może jednak przekroczyć jednorocznego wynagrodzenia, obliczonego według średniego rocznego wynagrodzenia agenta w okresie ostatnich pięciu lat albo, jeżeli umowa obowiązywała przez czas krótszy niż pięć lat, obliczonego według średniego rocznego wynagrodzenia w tym czasie.
(4) Strony nie mogą umówić się w sposób odbiegający na niekorzyść agenta od postanowień niniejszego przepisu.

Art. 2:313. Zastrzeżenie prowizji del credere

(1) Zastrzeżenie, na mocy którego agent odpowiada za to, że klient zapłaci cenę produktów stanowiących przedmiot umowy lub umów, przy których zawarciu agent pośredniczył, lub które zawarł w imieniu dającego zlecenie (zastrzeżenie prowizji del credere), jest ważne jedynie wówczas, gdy:
   (a) zastrzeżenie to zostało wyrażone na piśmie, i
   (b) w zastrzeżeniu wskazano określone umowy, przy których zawarciu agent pośredniczył lub które zawarł lub takie umowy z poszczególnymi klientami, którzy zostali wymieni eni w postanowieniu, i
   (c) zastrzeżenie to jest rozsądne z punktu widzenia interesów stron.
(2) Agent ma prawo do prowizji w rozsądnej wysokości z tytułu umów objętych zobowiązaniem del credere (prowizja del credere).

Rozdział III.
Franszyza

Dział 1.
Przepisy ogólne

Art. 3:101. Zakres

Rozdział niniejszy stosuje się do umów, na mocy których jedna ze stron (franszyzodawca) zobowiązuje się za wynagrodzeniem zezwolić drugiej stronie (franszyzobiorcy) na prowadzenie przedsiębiorstwa (przedsiębiorstwo franszyzowe) w ramach sieci franszyzodawcy w celu sprzedaży określonych produktów w imieniu i na rzecz franszyzodawcy, a franszyzobiorca otrzymuje prawo i zobowiązuje się wykorzystywać firmę lub znak towarowy franszyzodawcy, należącą do niego własność intelektualną, w tym wiedzę handlową oraz sposób prowadzenia przedsiębiorstwa.

Art. 3:102. Informacje przedumowne

(1) Z obowiązku udzielenia informacji przedumownych (art. 1:201) wynika w szczególności, że franszyzodawca obowiązany jest udostępnić franszyzobiorcy w stosownym czasie odpowiednie informacje dotyczące:
   (a) przedsiębiorstwa i doświadczenia franszyzodawcy;
   (b) odnośnych praw do własności intelektualnej;
   (c) cech charakterystycznych odnośnej wiedzy handlowej;
   (d) dziedziny handlowej oraz warunków rynkowych;
   (e) sposobu prowadzenia przedsiębiorstwa franszyzowego i jego działania;
   (f) struktury i rozległości sieci franszyzowej;

(g) opłat, tantiem i innych okresowych świadczeń pieniężnych;
(h) postanowień umowy.

(2) Jeżeli naruszenie przez franszyzodawcę obowiązków określonych w ustępie poprzedzającym nie prowadzi do zasadniczego błędu w rozumieniu art. 4:103 zasad europejskiego prawa umów, franszyzobiorca może żądać naprawienia szkody na podstawie art. 4:117 ust. 2 oraz 3 zasad europejskiego prawa umów, chyba że franszyzodawca mógł sądzić, że informacje te były odpowiednie i zostały udzielone w stosownym czasie.

(3) Strony nie mogą umówić się w sposób odbiegający od postanowień niniejszego przepisu.

Dział 2.
Obowiązki franszyzodawcy

Art. 3:101. Prawa do własności intelektualnej

(1) Franszyzodawca obowiązany jest udzielić franszyzobiorcy prawa do korzystania z jego praw do własności intelektualnej w zakresie niezbędnym do prowadzenia przedsiębiorstwa franszyzowego.

(2) Franszyzodawca obowiązuje się podejmować rozsądne starania w celu zapewnienia niezakłóconego i ciągłego korzystania z praw do własności intelektualnej.

(3) Strony nie mogą umówić się w sposób odbiegający od postanowień niniejszego przepisu.

Art. 3:202: Wiedza handlowa

(1) W czasie obowiązywania umowy franszyzodawca obowiązany jest udostępniać franszyzobiorcy wiedzę handlową niezbędną do prowadzenia przedsiębiorstwa franszyzowego.

(2) Strony nie mogą umówić się w sposób odbiegający od postanowień niniejszego przepisu.

Art. 3:203. Pomoc

(1) Franszyzodawca obowiązany jest nieodpłatnie udzielić franszyzobiorcy pomocy w postaci szkoleń, wskazówek i porad w zakresie niezbędnym do prowadzenia przedsiębiorstwa franszyzowego.

(2) Franszyzodawca obowiązany jest udzielić franszyzobiorcy za stosowną opłatą szerszej pomocy na rozsądne żądanie franszyzobiorcy.

Art. 3:204. Dostawa

(1) Jeżeli franszyzobiorca obowiązany jest nabywać produkty wyłącznie od franszyzodawcy albo od dostawcy przezeń wskazanego, franszyzodawca zapewni, by produkty zamawiane przez franszyzobiorcę były dostarczane w rozsądnym terminie, w zakresie, w jakim jest to użyteczne i pod warunkiem, że zamówienie jest rozsądne.

(2) Przepis ustępu poprzedzającego stosuje się także w wypadku, gdy franszyzobiorca, nie będąc zobowiązanym do nabywania produktów od franszyzodawcy lub wskazanego przezeń dostawcy, jest do tego zmuszony przez okoliczności.

(3) Strony nie mogą umówić się w sposób odbiegający od postanowień niniejszego przepisu.

Art. 3:205. Informowanie w czasie wykonywania umowy

Z obowiązku udzielenia informacji przedumownych (art. 1:201) wynika w szczególności, że franszyzodawca obowiązany jest udostępnić franszyzobiorcy w stosownym czasie odpowiednie informacje dotyczące:

(a) odnośnych warunków rynkowych;
(b) wyników handlowych sieci franszyzowej;
(c) cech charakterystycznych produktów;
(d) cen i warunków sprzedaży produktów;
(e) wszelkich zalecanych cen i zasad odsprzedaży produktów;
(f) wszelkich odnośnych komunikacji pomiędzy franszyzobiorcą a klientami na danym obszarze;
(g) wszelkich kampanii reklamowych mających znaczenie dla działalności sieci franszyzowej.

Art. 3:206. Zawiadomienie o spadku możliwości dostawczych

(1) Jeżeli na franszyzobiorcy ciąży obowiązek nabywania produktów wyłącznie od franszyzodawcy albo od wskazanego przezeń dostawcy, franszyzodawca obowiązany jest w rozsądnym czasie zawiadomić franszyzobiorcę, gdy przewiduje albo powinien przewidzieć, że jego zdolność do dokonywania dostaw przez niego lub wskazanych przez niego dostawców będzie znacząco mniejsza, niż franszyzobiorca mógłby się normalnie spodziewać.
(2) Przepis ustępu poprzedzającego stosuje się także w wypadkach, gdy co prawda na franszyzodawcy nie spoczywa prawny obowiązek nabywania produktów od franszyzodawcy lub wskazanego przez niego dostawcy, jednak jest do tego zmuszony przez okoliczności.
(3) Strony nie mogą umówić się w sposób odbiegający na niekorzyść franszyzobiorcy od postanowień niniejszego przepisu.

Art. 3:207. Dobre imię sieci oraz reklama

(1) Franszyzodawca obowiązany jest podejmować rozsądne starania w celu promocji i utrzymania dobrego imienia sieci franszyzowej.
(2) Franszyzodawca obowiązany jest w szczególności opracować i nadzorować stosowne kampanie reklamowe mające na celu promocję sieci franszyzowej.
(3) Franszyzobiorca nie jest obowiązany do ponoszenia dodatkowych kosztów w związku z działaniami promocyjnymi oraz utrzymywaniem dobrego imienia sieci franszyzowej.

Dział 3.
Obowiązki franszyzobiorcy

Art. 3:301. Opłaty, tantiemy i opłaty okresowe

(1) Franszybiorca obowiązany jest płacić na rzecz franszyzodawcy opłaty, tantiemy lub inne opłaty okresowe przewidziane umową.
(2) Jeżeli opłaty, tantiemy lub inne opłaty okresowe mają być jednostronnie określane przez franszyzodawcę, stosuje się art. 6:105 zasad europejskiego prawa umów.

Art. 3:302. Udostępnianie informacji w czasie wykonywania umowy

Z obowiązku udzielenia informacji (art. 1:203) wynika, że franszyzodawca obowiązany jest udostępnić franszyzobiorcy informacje dotyczące:
(a) wszelkich roszczeń zgłoszonych lub co do których istnieje obawa, iż zostaną zgłoszone przez osoby trzecie w związku z prawami do własności intelektualnej franszyzodawcy;
(b) wszelkich naruszeń praw franszyzodawcy do własności intelektualnej dokonanych przez osoby trzecie.

Art. 3:303. Sposób prowadzenia przedsiębiorstwa oraz wskazówki

(1) Franszyzobiorca obowiązany jest podejmować rozsądne starania w celu prowadzenia przedsiębiorstwa franszyzowego zgodnie ze sposobem franszyzodawcy.
(2) Franszyzobiorca obowiązany jest stosować się do rozsądnych wskazówek franszyzodawcy w zakresie sposobu prowadzenia przedsiębiorstwa oraz utrzymywania dobrego imienia sieci.
(3) Franszyzobiorca obowiązany jest podejmować rozsądne starania, aby nie wyrządzić szkody sieci franszyzowej.
(4) Strony nie mogą umówić się w sposób odbiegający od postanowień niniejszego przepisu.

Art. 3:304. Inspekcja

(1) Franszyzobiorca obowiązany jest w rozsądnym zakresie umożliwić franszyzodawcy dostęp do swoich lokali, aby mógł on zbadać, czy franszyzobiorca stosuje się do jego sposobu prowadzenia przedsiębiorstwa oraz jego wskazówek w zakresie, w jakim jest to niezbędne do osiągnięcia celów umowy.
(2) Franszyzobiorca obowiązany jest w rozsądnym zakresie umożliwić franszyzodawcy dostęp do swoich ksiąg handlowych.

Rozdział IV.
Dystrybucja

Dział 1.
Przepisy ogólne

Art. 4:101. Zakres i definicje

(1) Rozdział niniejszy stosuje się do umów dystrybucji wyłącznej, dystrybucji wybiórczej oraz umów o wyłączność nabywania.
(2) Umowa dystrybucyjna jest to umowa, na mocy której jedna ze stron (dostawca) zobowiązuje się stale dostarczać drugiej stronie (dystrybutorowi) produktów, a dystrybutor zobowiązuje się nabywać i zbywać je w swoim imieniu i na swoją rzecz.
(3) Umowa dystrybucji wyłącznej jest to umowa dystrybucyjna, na mocy której dostawca zobowiązuje się dostarczać produkty tylko jednemu dystrybutorowi na danym obszarze albo pewnej grupie klientów.
(4) Umowa dystrybucji wybiórczej jest to umowa dystrybucyjna, na podstawie której dostawca zobowiązuje się dostarczać produkty, bezpośrednio albo pośrednio, jedynie dystrybutorom wybranym na podstawie określonych kryteriów.
(5) Umowa o wyłączność nabywania jest to umowa dystrybucyjna, na mocy której dystrybutor zobowiązuje się nabywać produkty jedynie od dostawcy lub od osoby wskazanej przez dostawcę.

Dział 2.
Obowiązki dostawcy

Art. 4:201. Dostawa
Dostawca zobowiązany jest dostarczać dystrybutorowi produkty przez niego zamówione, na tyle, na ile jest to użyteczne oraz z zastrzeżeniem, że zamówienie jest rozsądne.

Art. 4:202. Udostępnianie informacji w czasie wykonywania umowy
Z obowiązku udzielania informacji (art. 1:203) wynika, że dostawca obowiązany jest udostępniać dystrybutorowi informacje dotyczące:
(a) cech charakterystycznych produktów;
(b) cen i warunków zbywania produktów;
(c) wszelkich wskazówek co do cen i zasad zbywania produktów;
(d) wszelkich istotnych kontaktów pomiędzy dostawcą a klientami;
(e) wszelkich kampanii reklamowych mających znaczenie dla wykonywania umowy.

Art. 4:203. Zawiadomienie o zmniejszeniu zdolności do dostarczania produktów
(1) Jeżeli dostawca przewiduje albo powinien przewidzieć, że jego zdolności do dostarczania produktów będą znacząco mniejsze, niż dystrybutor mógłby się normalnie spodziewać, obowiązany jest w rozsądnym czasie zawiadomić o tym dystrybutora.
(2) Strony umowy o wyłączość nabywania nie mogą umówić się w sposób odbiegający na niekorzyść dystrybutora od postanowień niniejszego przepisu

Art. 4.204. Materiały reklamowe
Dostawca obowiązany jest udostępniać dystrybutorowi po rozsądnej cenie wszelkie materiały reklamowe, które są niezbędne do prawidłowej dystrybucji i promocji produktów.

Art. 4.205. Renoma produktów
Dostawca obowiązany jest dołożyć rozsądnych starań, by nie naruszyć renomy produktów.

Dział 3.
Obowiązki dystrybutora

Art. 4:301. Dystrybucja
W umowach dystrybucji wyłącznej i wybiórczej w zakresie, w jakim jest to użyteczne, dystrybutor obowiązany jest podejmować rozsądne starania w celu promowania sprzedaży produktów.

Art. 4:302. Udostępnianie informacji podczas wykonywania umowy
W umowach dystrybucji wyłącznej i wybiórczej z obowiązku udostępniania informacji (art. 1:203) wynika, by dystrybutor udostępniał dostawcy informacje dotyczące:
(a) wszelkich roszczeń zgłoszonych lub co do których istnieje obawa, iż zostaną zgłoszone przez osoby trzecie w związku z prawami do własności intelektualnej dostawcy;
(b) wszelkich naruszeń praw dostawcy do własności intelektualnej dokonanych przez osoby trzecie.

Art. 4:303. Zawiadomienie o zmniejszeniu zapotrzebowań

W umowach dystrybucji wyłącznej i wybiórczej, jeżeli dystrybutor przewiduje albo powinien przewidzieć, że jego zapotrzebowania będą znacząco mniejsze, niż dostawca mógłby się normalnie spodziewać, obowiązany jest w rozsądnym czasie zawiadomić o tym dostawcę.

Art. 4:304. Wskazówki

W umowach dystrybucji wyłącznej i wybiórczej dystrybutor obowiązany jest stosować się do rozsądnych wskazówek dostawcy, które mają na celu zapewnienie prawidłowej dystrybucji produktów lub zachowania renomy lub szczególnego charakteru produktów.

Art. 4:305. Inspekcja

W umowach dystrybucji wyłącznej i wybiórczej dystrybutor obowiązany jest w rozsądnym zakresie umożliwić dostawcy dostęp do swoich lokali, aby mógł on sprawdzić, czy dystrybutor stosuje się do standardów ustalonych w umowie oraz rozsądnych wskazówek, których dostawca mu udzielił.

Art. 4:306. Renoma produktów

W umowach dystrybucji wyłącznej i wybiórczej dystrybutor obowiązany jest podejmować rozsądne starania, by nie naruszyć renomy produktów.

Spanish[6]

Contratos Mercantiles de Agencia, Franquicia y Distribución

Capítulo 1:
Disposiciones Generales

Sección 1:
Ámbito de aplicación del Capítulo 1

Artículo 1:101: Ámbito de aplicación
Este Capítulo es de aplicación a los contratos mercantiles de agencia, franquicia y distribución, y con las oportunas modificaciones, a aquellos contratos en los que una de las partes, dedicada a la actividad empresarial de forma independiente, utiliza sus aptitudes y pone todo su empeño para introducir en el mercado los productos de la otra.

Sección 2:
Obligaciones

Artículo 1:201: Información pre-contractual
(1) Cada una de las partes debe proporcionar a la otra información adecuada, con una antelación razonable a la conclusión del contrato. En caso contrario, se aplicará el párrafo (3).
(2) Información adecuada significa información suficiente para que la otra parte pueda decidir, lo suficientemente informada, si celebrar o no un contrato del tipo y en las condiciones en cuestión.
(3) Si el incumplimiento del párrafo 1 por una de las partes lleva a la otra parte a celebrar un contrato, sabiendo o debiendo haber sabido la parte incumplidora que la otra parte, de haber recibido información adecuada y en tiempo, no hubiera concluido el contrato o lo hubiera concluido en condiciones esencialmente diferentes, se aplican las acciones por vicios del consentimiento del Capítulo 4 de los PECL.
(4) Las partes no pueden obviar esta disposición.

Artículo 1:202: Cooperación
(1) En los contratos mercantiles de agencia, franquicia y distribución y en otros contratos mercantiles de larga duración, la obligación de colaborar (art. 1:202 PECL) resulta esencial y particularmente intensa. A las partes se les exige concretamente que colaboren de forma activa y leal y que coordinen sus esfuerzos para lograr los objetivos del contrato.
(2) Las partes no pueden obviar esta disposición.

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6 Traducción propuesta por *Odavia Bueno Díaz*.

Artículo 1:203: Información durante el cumplimiento del contrato

(1) Mientras el contrato esté en vigor, cada una de las partes debe proporcionar puntualmente a la otra toda la información que tenga y que la otra necesite para conseguir los objetivos del contrato.
(2) Las partes no pueden obviar esta disposición.

Artículo 1:204: Confidencialidad

(1) Si una de las partes recibe información confidencial de la otra, deberá mantener la confidencialidad de la misma y no revelar dicha información a terceros, ni durante el período de vigencia del contrato ni tras la extinción del mismo.
(2) Si una de las partes recibe información confidencial de la otra, no la podrá utilizar para fines distintos a la consecución de los objetivos del contrato.
(3) La información que las partes tuvieran ya en su posesión o que haya sido hecha pública, así como la información que deba ser necesariamente revelada a los clientes como consecuencia del funcionamiento de la actividad, no se considerará información confidencial a estos efectos.

Sección 3:
Finalización y Resolución

Artículo 1:301: Contrato de duración definida

(1) Los contratos que tienen una duración definida finalizan cuando expira el período determinado en los mismos. Salvo que las partes acuerden lo contrario, esos contratos no pueden finalizarse unilateralmente de antemano.
(2) Las partes son libres de no renovar un contrato de duración definida. No obstante, si una de las partes ha notificado con la debida antelación a la otra su deseo de renovar el contrato, la parte que no desea renovarlo debe notificar a la otra su decisión en un plazo razonable antes de que expire el contrato.
(3) Los contratos de duración definida que continúan vigentes tras la expiración del período convenido se convierten en contratos indefinidos.

Artículo 1:302: Finalización unilateral de un contrato de duración indefinida

(1) Cualquiera de las partes firmantes de un contrato celebrado por un período indefinido puede finalizar el mismo mediante notificación realizada con un preaviso razonable (art. 6:109 PECL).
(2) El que una notificación se realize o no con una antelación razonable depende, entre otros factores, de los siguientes:
    (a) el tiempo que ha durado el contrato,
    (b) las inversiones razonables que se han realizado,
    (c) el tiempo que se necesitará para hallar otra alternativa, y
    (d) la costumbre.
(3) Se considerará razonable una notificación realizada con un preaviso de un mes por cada año que haya durado el contrato, con un máximo de 36 meses.
(4) La antelación con que debe realizar su notificación el principal, el franquiciador o el proveedor será de al menos un mes para el primer año, dos meses para el segundo, tres

meses para el tercero, cuatro meses para el cuarto, cinco meses para el quinto y seis meses para el sexto y los siguientes en que el contrato ha permanecido en vigor. Las partes no pueden obviar esta disposición.

(5) Son válidos los acuerdos por los que se pacte un mayor plazo de preaviso que los establecidos en los Párrafos 2 y 3, siempre que el plazo acordado que deba cumplir el principal, el franquiciador o el proveedor no sea más corto que el que deba cumplir el agente, el franquiciado o el distribuidor.

(6) La parte perjudicada no tiene derecho a exigir el cumplimiento específico del contrato durante el plazo de preaviso. No obstante, el juez podrá ordenar el cumplimiento específico de obligaciones contractuales y post-contractuales que no dependan de la cooperación de ambas partes.

Artículo 1:303: Daños y perjuicios por incumplimiento del plazo de notificación

(1) En caso de incumplimiento de los plazos de notificación que se mencionan en los Artículos 1:301 (2) y 1:302 (1), la parte perjudicada podrá reclamar una indemnización por daños y perjuicios.

(2) La forma habitual de calcular los daños y perjuicios consiste en equiparar la suma de la indemnización a los beneficios que la parte perjudicada habría obtenido durante el plazo de preaviso que la otra parte incumplió.

(3) Se considera que los beneficios anuales equivalen a los beneficios medios que la parte perjudicada ha obtenido del contrato durante los últimos 3 años o, si el contrato ha durado menos tiempo, durante ese período de vigencia.

(4) Las normas generales sobre indemnización por daños y perjuicios derivados del incumplimiento (art. 9:501 ff PECL) se aplicarán consecuentemente.

Artículo 1:304: Resolución por incumplimiento

(1) Cualquiera de las partes puede resolver el contrato por incumplimiento, pero sólo si el incumplimiento de la otra parte resulta esencial, de acuerdo con lo que establece el Artículo 8:103 (b) y el Artículo 8:103 (c) PECL (art. 9:301 PECL).

(2) Las partes no pueden obviar esta disposición.

Artículo 1:305: Indemnización por clientela

(1) Cuando el contrato llega a su fin por cualquier razón (incluida la resolución por una de las partes como consecuencia del incumplimiento de la otra), cualquiera de las partes tiene derecho a percibir de la otra parte una indemnización por clientela, siempre que se den las siguientes condiciones:
   (a) que la primera parte haya aumentado de forma considerable el volumen de negocios de la otra, y que esta parte siga obteniendo beneficios sustanciales de dicha actividad, y
   (b) que el pago de la indemnización resulte razonable teniendo en cuenta todas las circunstancias.

(2) La obtención de una indemnización no impide la reclamación de daños y perjuicios de acuerdo con el Artículo 1:303.

Artículo 1:306: Existencias, Piezas de recambio y Materiales
Si el contrato finaliza o es resuelto por alguna de las partes, el principal, el franquiciador o el proveedor deben recomprar al agente, el franquiciado, o el distribuidor, por un precio razonable, las existencias, las piezas de recambio y los materiales que les queden sin vender, salvo que el agente, el franquiciado o el distribuidor puedan revenderlos de una manera razonable.

Sección 4:
Otras Disposiciones Generales

Artículo 1:401: Derecho de Retención
Con el fin de garantizar su derecho a percibir una remuneración, compensación, indemnización por daños y perjuicios u otra indemnización, el agente, el franquiciado o el distribuidor tienen un derecho de retención sobre los bienes muebles del principal, el franquiciador o el proveedor que estén en posesión del agente, el franquiciado o el distribuidor a consecuencia de la relación contractual, hasta que el (anterior) principal, franquiciador o proveedor haya cumplido con sus obligaciones.

Artículo 1:402: Documento por escrito firmado
Cada una de las partes tiene derecho a recibir de la otra, bajo petición, un documento por escrito y firmado en el que se establezcan los términos del contrato.

Capítulo 2:
Agencia

Sección 1:
Disposiciones Generales

Artículo 2:101: Ámbito de aplicación
Este Capitulo es de aplicación a los contratos en virtud de los cuales una de las partes (el agente) acuerda actuar de forma continuada como intermediario por cuenta propia, para negociar o firmar contratos en nombre de otra parte (el principal), y esta parte acuerda pagar al agente una remuneración por las actividades realizadas en calidad de agente.

Sección 2:
Obligaciones del Agente

Artículo 2:201: Negociar y firmar contratos
El agente debe poner el empeño suficiente para negociar contratos en nombre del principal y para firmar los contratos que se le han encomendado firmar.

Artículo 2:202: Instrucciones
El agente debe seguir las instrucciones del principal, siempre que no afecten de forma sustancial a la independencia del agente.

Artículo 2:203: Información durante el cumplimiento del contrato

La obligación de informar (Artículo 1:203) obliga al agente, en particular, a proporcionar al principal toda la información sobre las siguientes cuestiones:

(a) los contratos negociados o firmados,
(b) las condiciones relevantes del mercado,
(c) la solvencia de los clientes y otras características relacionadas.

Artículo 2:204: Contabilidad

(1) El agente debe conservar la contabilidad correspondiente a los contratos negociados o celebrados en nombre del principal.
(2) Si el agente representa a más de un principal, deberá conservar cuentas independientes para cada uno de ellos.
(3) Si el principal tiene razones de peso para dudar que el agente mantenga las cuentas adecuadas, el agente debe permitir que un contable independiente acceda a sus libros previa petición del principal. El principal debe pagar los servicios del contable independiente.

Sección 3:
Obligaciones del Principal

Artículo 2:301: Derecho a percibir una comisión durante el contrato

(1) El agente tiene derecho a percibir comisiones por los contratos firmados con clientes durante el período de vigencia del contrato de agencia, si:
   (a) el contrato celebrado con el cliente se ha firmado como consecuencia de los esfuerzos realizados por el agente; o
   (b) el contrato se ha firmado con un tercero que ha sido previamente captado como cliente por el agente para contratos del mismo tipo; o
   (c) se le encomienda al agente una determinada zona geográfica o un determinado grupo de clientes, y el contrato se firma con un cliente perteneciente a dicho grupo o a dicha zona, y
(2) El derecho a percibir una comisión se devenga solamente si:
   (a) el principal ha cumplido o debería haber cumplido con sus obligaciones contractuales frente al cliente; o
   (b) el cliente ha cumplido con sus obligaciones contractuales o se niega a cumplirlas de forma justificada (Artículo 9:201 PECL).
(3) Las partes no pueden derogar el Párrafo 2 (b) en perjuicio del agente.

Artículo 2:302: Derecho a percibir una comisión después del contrato

(1) El agente tiene derecho a percibir comisiones por los contratos firmados con clientes tras la finalización o resolución del contrato de agencia, si:
   (a) el contrato celebrado con el cliente es la consecuencia de los esfuerzos realizados por el agente durante el período de vigencia del contrato de agencia y se ha firmado en un plazo razonable desde la finalización del mismo; o
   (b) las condiciones del Artículo 2:301 Párrafo 1 se habrían cumplido salvo que el contrato con el cliente no se firmó durante el período de vigencia del contrato de agencia, y la

oferta del cliente llegó al principal o al agente con anterioridad a la finalización o resolución del mismo.

(2) El derecho a percibir una comisión nace solamente si:
   (a) el principal ha cumplido o debería haber cumplido con sus obligaciones contractuales frente al cliente; o
   (b) el cliente ha cumplido con sus obligaciones contractuales o se niega a cumplirlas de forma justificada (Artículo 9:201 PECL).

(3) Las partes no pueden derogar el Párrafo 2 (b) en perjuicio del agente.

Artículo 2:303: Derecho preferente a comisión

El agente no tendrá derecho a percibir la comisión a la que se refiere el Artículo 2:301 si el anterior agente tiene derecho a percibir dicha comisión, de acuerdo con el Artículo 2:302, salvo que resulte razonable compartir entre los dos agentes la comisión.

Artículo 2:304: Momento en que debe pagarse la comisión

(1) El principal debe pagar la comisión al agente antes del último día del mes siguiente al trimestre en el que éste se hizo acreedor de la misma.

(2) Las partes no pueden derogar el Párrafo 2 sub b) en perjuicio del agente.

Artículo 2:305: Extinción del derecho a percibir la comisión

(1) El derecho del agente a percibir la comisión de acuerdo con los Artículos 2:301 y 2:302 puede extinguirse en la medida en que el contrato celebrado con el cliente no se cumpla por motivos ajenos al principal.

(2) En caso de extinción del derecho del agente a percibir la comisión, éste deberá devolver todas las comisiones que haya recibido.

(3) Las partes no pueden derogar el Párrafo 2 sub b) en perjuicio del agente.

Artículo 2:306: Remuneración

Las remuneraciones que (parcialmente) dependan del número o del valor de los contratos serán consideradas comisiones conforme a lo establecido en este Capítulo.

Artículo 2:307: Información durante el cumplimiento del contrato

La obligación de informar (Artículo 1:203) obliga al principal, en particular, a proporcionar al agente toda la información sobre las siguientes cuestiones:

(a) las características de los bienes y servicios,

(b) los precios y las condiciones de la compra o la venta.

Artículo 2:308: Información sobre la Aceptación, el Rechazo y el Incumplimiento

(1) En un plazo razonable, el principal deberá informar al agente de las siguientes cuestiones:
   (a) la aceptación o el rechazo por su parte de un contrato negociado por el agente en nombre del principal; y
   (b) cualquier incumplimiento de un contrato negociado o firmado por el agente en nombre del principal.

(2) Las partes no pueden derogar esta disposición en perjuicio del agente.

Artículo 2:309: Advertencia del descenso del volumen de contratos

(1) El principal debe advertir al agente dentro de un plazo razonable cuando prevea o debiera haber previsto que el volumen de contratos que puede firmar o cumplir va a ser considerablemente más bajo que el que el agente puede fundadamente esperar.
(2) Las partes no pueden derogar esta disposición en perjuicio del agente.

Artículo 2:310: Información sobre la comisión a través de un Informe y un Resumen de los Libros

(1) El principal debe proporcionar al agente, en el plazo razonable, un informe de la comisión que tiene derecho a percibir. Este informe tiene que indicar la forma en que se ha calculado el importe de la comisión.
(2) A efectos de calcular la comisión, el principal debe proporcionar al agente, previa petición, un resumen de sus libros.
(3) Las partes no pueden derogar esta disposición en perjuicio del agente.

Artículo 2:311: Contabilidad

(1) El principal debe conservar la contabilidad correspondiente a los contratos negociados o celebrados por el agente.
(2) Si el principal tiene más de un agente, deberá conservar cuentas independientes para cada uno de ellos.
(3) El principal debe permitir que un contable independiente acceda a sus libros previa petición del agente, si
    (a) el principal no cumple con sus obligaciones contractuales de acuerdo con el Artículo 2:310 (1) y (2), o
    (b) el agente tiene rezones de peso para dudar que el principal mantenga las cuentas adecuadas.
(4) El agente debe pagar los servicios del contable independiente.

Artículo 2:312: Importe de la Indemnización

(1) El agente tiene derecho a recibir una indemnización por clientela de acuerdo con el Artículo 1:305, por un importe que asciende a:
    (a) la comisión media sobre los contratos celebrados con clientes nuevos y sobre el aumento del volumen de negocios con los clientes existentes, calculada durante los últimos doce años, multiplicada por:
    (b) el número de años que probablemente continuará obteniendo beneficios el principal en el futuro como consecuencia de esos contratos.
(2) El importe de la indemnización que resulta de esa operación debe corregirse de conformidad con lo siguiente:
    (a) la tasa media de migración en el territorio geográfico del agente; y
    (b) el tipo de interés medio.
(3) En cualquier caso, la indemnización no podrá exceder la remuneración de un año, calculada a partir de la remuneración anual media del agente en los últimos cinco años o, si el contrato ha durado menos de cinco años, de la remuneración media durante el período de duración del contrato en cuestión.
(4) Las partes no pueden derogar esta disposición en perjuicio del agente.

Artículo 2:313: Cláusula de Riesgo de Impago

(1) Los acuerdos por los que el agente garantiza que el cliente pagará los productos objeto del contrato(s) que el agente ha negociado o firmado (cláusula de riesgo de impago) sólo serán válidos en la medida en que:
   (a) la cláusula esté firmada por escrito, y
   (b) la cláusula abarque los contratos particulares que negoció o firmó el agente o los contratos con clientes particulares que se especifican en el acuerdo, y
   (c) la cláusula sea razonable con relación a los intereses de las partes.

(2) El agente tiene derecho a percibir una comisión por un importe razonable sobre los contratos a los que se aplique la garantía de riesgo de impago (comisión de garantía).

Capítulo 3:
Franquicia

Sección 1:
Disposiciones Generales

Artículo 3:101: Ámbito de aplicación

Este Capítulo es de aplicación a los contratos en los que una de las partes (el franquiciador) otorga a la otra (el franquiciado), a cambio de una remuneración, el derecho a desarrollar una actividad comercial (actividad de franquicia) en el ámbito de la red de franquicia del franquiciador, para la venta de determinados productos en el nombre y por cuenta del franquiciado, y en los que el franquiciado tiene el derecho y la obligación de utilizar el nombre comercial y la marca del franquiciador, así como otros derechos de propiedad intelectual, el know-how y el método empresarial.

Artículo 3:102: Información previa al contrato

(1) La obligación de información pre-contractual (Artículo 1:201) obliga al franquiciador, en particular, a proporcionar puntualmente al franquiciado información adecuada sobre las siguientes cuestiones:
   (a) la experiencia y la empresa del franquiciador,
   (b) los derechos de propiedad intelectual correspondientes,
   (c) las características del know-how correspondiente,
   (d) el sector comercial y las condiciones del mercado,
   (e) el método concreto de franquicia y su funcionamiento,
   (f) la estructura y el límite de la red de la franquicia,
   (g) las comisiones, royalties u otros pagos periódicos,
   (h) los términos del contrato.

(2) En caso de que el incumplimiento del párrafo 1 por parte del franquiciador no provoque un error esencial de acuerdo con el Artículo 4:103 PECL, el franquiciado puede percibir una indemnización por daños y perjuicios en virtud del Artículo 4:117(2) y (3) PECL, salvo que el franquiciador tuviera razones para pensar que la información era adecuada o que se dio en un plazo de tiempo razonable.

(3) Las partes no pueden obviar esta disposición.

Sección 2:
Obligaciones del Franquiciador

Artículo 3:201: Derechos de propiedad Intelectual
(1) El franquiciador debe otorgar al franquiciado el derecho a utilizar los derechos de propiedad intelectual en la medida en que sea necesario para desarrollar la actividad de franquicia.
(2) El franquiciador debe poner todo su empeño para garantizar el uso pacífico y continuado de los derechos de propiedad intelectual.
(3) Las partes no pueden obviar esta disposición.

Artículo 3:202: Know-How
(1) Por el periodo de duración del contrato, el franquiciador debe proporcionar al franquiciado el know-how necesario para desarrollar la actividad de franquicia.
(2) Las partes no pueden obviar esta disposición.

Artículo 3:203: Asistencia
(1) El franquiciador debe proporcionar al franquiciado asistencia en forma de cursos de formación, orientación y asesoramiento que sean necesarios para el desarrollo de la actividad de franquicia, sin coste adicional para el franquiciado.
(2) El franquiciador debe proporcionar asistencia adicional a un coste razonable, siempre que la solicitud del franquiciado sea razonable.

Artículo 3:204: Suministro
(1) Si el franquiciado está obligado a comprar los productos exclusivamente al franquiciador, o al proveedor que éste designe, el franquiciador debe garantizar que los productos que encargue el franquiciado se suministren en un plazo razonable, en la medida de lo posible y siempre que el pedido sea razonable.
(2) El Párrafo 1 también se aplica a los casos en que el franquiciado, sin estar obligado por contrato a comprar los productos al franquiciador o al proveedor que éste designe, tenga esta obligación de hecho.
(3) Las partes no pueden obviar esta disposición.

Artículo 3:205: Información durante el cumplimiento
La obligación de informar (Artículo 1:203) obliga al franquiciador, en particular, a proporcionar al franquiciado información sobre las siguientes cuestiones:
(a) las condiciones del mercado correspondientes,
(b) los resultados comerciales de la red de franquicia,
(c) las características de los productos,
(d) los precios y las condiciones para la venta de los productos,
(e) los precios y las condiciones recomendadas para la reventa de los productos,
(f) cualquier comunicación que sea importante entre el franquiciador y los clientes en el territorio,
(g) las campañas publicitarias correspondientes al funcionamiento de la franquicia.

Artículo 3:206: Advertencia sobre el descenso de la capacidad de suministro
(1) Si el franquiciado está obligado a comprar los productos exclusivamente al franquiciador o al proveedor que éste designe, el franquiciador debe advertir al franquiciado con la ante-

lación suficiente cuando prevea o debiera haber previsto que su capacidad de suministro o la del proveedor elegido por él será bastante menor que la que el franquiciado puede fundadamente esperar.
(2) El Párrafo 1 también se aplica a los casos en que el franquiciado, sin estar obligado por contrato a comprar los productos al franquiciador o al proveedor que éste designe, tenga esta obligación de hecho.
(3) Las partes no pueden derogar esta disposición en perjuicio del franquiciado.

Artículo 3:207: Reputación de la Red y Publicidad

(1) El franquiciador debe poner el empeño suficiente para promocionar y mantener la reputación de la red de franquicia.
(2) Concretamente, el franquiciador debe diseñar y coordinar las campañas publicitarias apropiadas para promocionar la red de franquicia.
(3) Las actividades de promoción y salvaguarda de la reputación de la red de franquicia deben desarrollarse sin coste adicional para el franquiciado.

Sección 3:
Obligaciones del Franquiciado

Artículo 3:301: Comisiones, Royalties y Otros pagos Periódicos

(1) El franquiciado debe pagar al franquiciador los cánones, los royalties y otros pagos periódicos acordados en el contrato.
(2) En caso de que los cánones, los royalties u otros pagos periódicos sean determinados unilateralmente por el franquiciador, se aplicará el Artículo 6:105 PECL.

Artículo 3:302: Información durante el cumplimiento del contrato

La obligación de informar (Artículo 1:203) obliga al franquiciado, en particular, a proporcionar al franquiciador información sobre las siguientes cuestiones:
(a) reclamaciones efectuadas o amenazas de reclamaciones por parte de terceros en relación con los derechos de propiedad intelectual del franquiciador.
(b) violaciones de los derechos de propiedad intelectual del franquiciador por parte de terceros.

Artículo 3:303: Método empresarial e Instrucciones

(1) El franquiciado debe poner el empeño suficiente para desarrollar la actividad de franquicia de acuerdo con el método empresarial del franquiciador.
(2) El franquiciado debe seguir las instrucciones del franquiciador en relación con el método empresarial y la salvaguarda de la reputación de la red.
(3) El franquiciado debe tener suficiente cuidado para no causar daño alguno a la red de franquicia.
(4) Las partes no pueden obviar esta disposición.

Artículo 3:304: Inspección

(1) El franquiciado debe permitir al franquiciador acceder a sus locales para que éste pueda comprobar que el franquiciado está cumpliendo sus instrucciones y el método empresarial, en la medida en que sea necesario para alcanzar los objetivos del contrato.
(2) El franquiciado debe permitir al franquiciador acceder a sus libros de contabilidad.

Capítulo 4:
Distribución

Sección 1:
Disposiciones generales

Artículo 4:101: Ámbito de aplicación y definiciones
(1) Este Capítulo es de aplicación a los contratos de distribución exclusiva, distribución selectiva y compra exclusiva.
(2) Un contrato de distribución es un contrato por el cual una de las partes (el proveedor) acuerda suministrar a la otra (el distribuidor) ciertos productos de forma continuada, y el distribuidor acuerda comprarlos y venderlos en su propio nombre y por su propia cuenta (contrato de distribución).
(3) Un contrato de distribución exclusiva es un contrato de distribución por el cual el proveedor acuerda suministrar los productos a un único distribuidor en un determinado territorio o a un determinado grupo de clientes.
(4) Un contrato de distribución selectiva es un contrato de distribución por el cual el proveedor acuerda suministrar los productos, directa o indirectamente, solamente a los distribuidores elegidos según unos criterios específicos.
(5) Un contrato de compra exclusiva es un contrato de distribución por el cual el distribuidor acuerda adquirir los productos solamente al proveedor o a la parte que el proveedor designe.

Sección 2:
Obligaciones del Proveedor

Artículo 4:201: Suministro
El proveedor debe suministrar los productos encargados por el distribuidor, siempre que sea posible y que el pedido sea razonable.

Artículo 4:202: Información durante el cumplimiento del contrato
La obligación de informar (Artículo 1:203) obliga al proveedor, en particular, a proporcionar al distribuidor información sobre las siguientes cuestiones:
(a) las características de los productos,
(b) los precios y las condiciones para la venta de los productos,
(c) los precios y las condiciones recomendadas para la reventa de los productos,
(d) cualquier comunicación que sea importante entre el proveedor y los clientes,
(e) las campañas publicitarias correspondientes al desarrollo de la actividad.

Artículo 4:203: Advertencia del descenso de la capacidad de suministro
(1) El proveedor debe advertir al distribuidor con la antelación suficiente cuando prevea o debería prever que su capacidad de suministro será bastante menor que la que el distribuidor puede fundadamente esperar.
(2) En los contratos de compra exclusiva, las partes no pueden derogar esta disposición en perjuicio del distribuidor.

Artículo 4:204: Material publicitario
El proveedor debe proporcionar al distribuidor, a un precio razonable, todo el material publicitario que el proveedor tenga y sea necesario para la correcta distribución y promoción de los productos.

Artículo 4:205: Reputación de los productos
El proveedor debe poner el empeño suficiente para no dañar la reputación de los productos.

Sección 3:
Obligaciones del Distribuidor

Artículo 4:301: Distribución
En los contratos de distribución exclusiva y selectiva, el distribuidor pondrá el empeño suficiente para promocionar las ventas de los productos en la medida de lo posible.

Artículo 4:302: Información durante el cumplimiento del contrato
En los contratos de distribución exclusiva y selectiva, la obligación de informar (Artículo 1:203) obliga al distribuidor, en particular, a proporcionar al proveedor información sobre las siguientes cuestiones:
(a) reclamaciones efectuadas o amenazas de reclamaciones por parte de terceros en relación con los derechos de propiedad intelectual del proveedor,
(b) violaciones de los derechos de propiedad intelectual del proveedor por parte de terceros.

Artículo 4:303: Advertencia sobre el descenso de pedidos
En los contratos de distribución exclusiva y selectiva, el distribuidor debe advertir al proveedor con la antelación suficiente cuando prevea o debiera haber previsto que sus pedidos serán bastante menores de lo que el proveedor puede fundadamente esperar.

Artículo 4:304: Instrucciones
En los contratos de distribución exclusiva y selectiva, el distribuidor debe seguir las instrucciones del proveedor para garantizar la correcta distribución de los productos o para salvaguardar la reputación o las características inconfundibles de los productos.

Artículo 4:305: Inspección
En los contratos de distribución exclusiva y selectiva, el distribuidor debe permitir al proveedor acceder a sus locales para poder comprobar que está cumpliendo con los standares acordados en el contrato y con las instrucciones que sean razonables.

Artículo 4:306: Reputación de los Productos
En los contratos de distribución exclusiva y selectiva, el distribuidor debe poner el empeño suficiente para no dañar la reputación de los productos.

Principles of European Law on
Commercial Agency, Franchise and Distribution Contracts

Introduction

I. General

These principles deal with commercial agency, franchise and distribution contracts, and with other contracts where one party uses the other party's skill and efforts to bring its products to the market. Although these Principles are not directly applicable to other long-term (commercial) contracts some of the Articles (e. g. the ones on co-operation and on ending a contract) may be applied to such contracts by way of analogy where appropriate.

II. Economic Function: Marketing (Vertical Agreements)

The economic function of all three contracts regulated in these Principles is that they are instrumental in bringing products to the market. One could therefore speak of marketing contracts, if that term was not usually used in a specific connection with advertisements.

All three contacts are so-called vertical agreements. They are agreements between economic actors on different levels in the production and distribution chain (as opposed to horizontal agreements which are agreements between business entities on the same level). This chain may consist of only one link (e. g. a distribution contract between the producer and a reseller). However, between the producer and the final reseller there may also be numerous links (European importer, wholesaler et cetera).

Obviously, the economic importance of these contracts is enormous since they form the connection between producers and retailers who sell the products to consumers and other final users. There are only very few economic sectors where producers regularly sell their products directly to final consumer users (although the Internet has recently facilitated such direct sales).

An alternative to a network of independent agents, distributors or franchisees who are linked to the principal, supplier or franchisor by a contract would be a network of subsidiaries or daughter companies which are connected to the mother company in a proprietary (shareholders') link. The advantage for the mother company would be absolute control and a more extensive knowledge of the market. The drawback, however, would be that it would fully bear the economic risk, whereas in commercial agency, franchise and distribution contracts the risk is shifted, in part or entirely, to another independent business. The Coase theorem explains that the choice between contract or company is ultimately determined by the amount of transaction costs involved in the contractual solution.

III. Relation to General Contract Law (PECL)

The Principles of European Contract Law provide general rules of contract law. Those rules are meant to be applied, in principle, to all possible types of contracts, independent of their object (e. g. sales, insurance, medical treatment, construction and joint-venture) or the status of the parties (consumer, citizen, small business, multinational). As a result, these rules are necessarily rather general and abstract. Although abstract rules certainly have an important function – they warrant normative integrity –, practice also needs some more specific rules. Therefore, in addition to the general contract law contained in the PECL the Study Group on a European Civil Code has also developed sets of specific rules relating to the most recurrent specific contracts.

As to commercial agency, franchise and distribution contracts, goodwill compensation after the ending of a distribution contract, the moment at which the agent's commission is due, the franchisor's obligation to maintain the good reputation of the network are but a few examples of issues where specific rules are needed in order to give legal practice some guidance and to provide practitioners with a reasonable degree of legal certainty.

The European Community has long recognised the need for specific rules in this area. Indeed, the first Directive it enacted in the field of contract law was the Council Directive of 18 December 1986 on the Coordination of the Laws of the Member States relating to Self-employed Commercial Agents (86/653/EEC) (hereafter: the Directive). However, it would be arbitrary to regulate only commercial agency contracts since franchise and distribution contracts are very similar as regards their economic function (see above, II), the main problems that may arise during the course of the contractual relationship and many other respects (of course, there are also important differences; see below, VI).

IV. Relation To Competition Law

The EC Directive on Self-employed Commercial Agents of 1986 is not the only legislative action which the European Community has taken with regard to the type of contracts which are under discussion here (commercial agency, distribution, franchise). Article 81 (1) (ex Article 85 (1)) EC declares invalid, in short, all agreements and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market. The European Commission and the European Court of Justice have long held that not only horizontal agreements but also vertical ones may fall within the scope of application of art. 81 EC. As a result, they may be invalid for restraint of trade. However, on the basis of Section 3 the European Commission may provide exemptions, both individual ones and for whole categories of contracts (block exemptions). The European Commission has indeed enacted a whole series of regulations. Recently, it has thoroughly revised its policy. It has now adopted a more general approach in Commission Regulation (EC) 2790/1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices. In addition to this general approach the European Commission has adopted specific rules for certain specific

sectors, e. g. Commission Regulation (EC) 1400/2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle industry (*OJ* 2002 L 203/30).

Therefore, as a result of EC competition law (and national competition law) a commercial agency, distribution or franchise contract may be invalid. The general consequences of invalidity (e. g. the doctrine of partial invalidity, the question of 'unclean hands') are left to national laws by the EC Treaty. Within the European Civil Code project they are dealt with in Chapter 4 of the PECL (Validity).

Neither the PECL nor the present Principles contain any additional rules on the invalidity of clauses in commercial agency, franchise and distribution contracts which are in restraint of trade. In other words, competition law is left entirely to the EC Treaty and to the national competition laws of the Member States. Where relevant, the existing European competition rules will be referred to, and will sometimes summarily be described, in the Comments to the Articles of the present Principles.

V. Mainly Default Rules; Some Mandatory Protection

Commercial agency, franchise and distribution contracts are commercial contracts in the sense that both parties are merchants: being a principal, supplier, franchisor, agent, distributor or franchisee is their profession. If they do not have the qualities and skills which are needed in this particular business, then they should be in another business. Therefore, in principle, they do not need any specific protection in addition to the general protection which general contract law provides to any party to any contract (e. g. Article 4:109 PECL (Excessive Benefit or Unfair Advantage) and Article 4:110 PECL (Unfair Terms not Individually Negotiated)). Therefore, in principle the rules contained in the present Principles are not of a protective nature. As a result, most rules are default rules; the parties are free to deviate therefrom.

However, the successful performance of contracts of this type frequently requires significant initial and subsequent investments. Some of those investments will be of a generic kind (e. g. the acquisition of retail premises). Other investments, however, will be of a more specific kind, and will therefore largely be lost if the contract turns out to be less profitable than anticipated or if the other party inadvertently brings the contractual relationship to an end. These two risks can usually not be avoided, even by a professional and particularly skilled party.

The first risk (the disappointing profitability of the contract for the commercial agent, distributor and franchisee) cannot usually be avoided because most of the information which is necessary in order to assess the profitability and the economic risks which are involved in the performance of the contract (characteristics of the product, envisaged advertising and marketing strategies, know-how) lie exclusively in the hands of the principal, supplier, and franchisor, who regards them as its trade secrets. Therefore, under the present Principles prospective commercial agents, distributors and franchisees are in need of specific legal protection in the form of a pre-contractual obligation for the

principal, supplier, and franchisor spontaneously to provide the prospective commercial agents, distributors and franchisees with this crucial information.

A similar obligation has long been recognised by specific legislation in a number of jurisdictions around the world, especially with regard to franchisees, and especially in those countries where the franchise system has celebrated its first economic successes, in particular the United States. Recently, UNIDROIT has developed a Model Franchise Disclosure Law (2002). In Europe, the French *Loi Doubin* has a slightly broader scope (Law No. 89-1008 of December 31, 1989). Since such protection would be futile if the parties were free to exclude this obligation by their agreement, these protective rules are of a mandatory character.

The second risk is intrinsic in a long-term relationship. In order for such a relationship to be successful each party will have to invest in their mutual co-operation. To the extent that those investments are relationship-specific, a party becomes dependant on the continuity of the relationship. Therefore, in order to allow parties to make rational investments in such a relationship the law should to some extent protect such investments. Therefore, the first Chapter of the present Principles contains some general rules on the ending of long-term commercial contracts which oblige a party which wishes to end the relationship to give the other party notice of reasonable length. This allows the latter to adapt to the new situation and it avoids the situation where this party will make useless further investments. Like the precontractual-information-rules these rules are, in part, of a mandatory character.

These rules are in line with both the wording and the object of the EC Directive on Self-employed Commercial Agents. The protective scope of that directive has been underlined on several occasions by the European Court of Justice (see eg: case C-215/97 B. Bellone v. Yokohama SpA [1998] *ECR* I-2191, case C-456/98 Centrosteel SrL v. Adipol GmbH [2000] ECR I-6007, case C-485/01 Francesca Caprini v. Conservatore Camera di Commercio, Industria, Artigianato e Agricoltura (CCIAA) [2003] *ECR* I-2371, opinion Advocate General Geelhoed in Case C-3/04 Poseidon Chartering BV v. Marianne Zeeschip VOF and Albert Mooij and Sjoerdtje Sijswerda and Gerrit Schram (28 April 2005)).

Finally, there is often a strong discrepancy in bargaining power between the parties. Frequently, the principal, franchisor or supplier is at the top of an extensive network of agents, franchisees or distributors, whereas, on the other hand, the agent, franchisee or distributors is merely a medium-sized or even a small business entity. As said, however, this difference in bargaining power does not in itself introduce a need for protective mandatory rules.

Finally, these Principles contain many rules, especially when there is a reasonable assumption that the stronger party will take care of its own interests. Therefore, the present Principles do not contain many rules which particularly protect the interests of the party who presumably has the strongest bargaining power. On the other hand, they do contain a number of obligations in the interest of the commercial agent, the franchisee and the distributor. The parties are free to deviate therefrom in their contract.

However, if they fail to do so the default rules, which favour the commercial agent, the franchisee or the distributor will apply, (Chapters 2 (Commercial Agency), 3 (Franchise) and 4 (Distribution)), which are presumed to be needed in commercial agency, franchise or distribution contracts. These rules are ordinary default rules which, by providing for possible solutions which parties would presumably agree to, are merely meant to save the parties transaction costs.

VI. The Structure: General And Specific Rules

Commercial agency, franchise and distribution contracts have many characteristics in common. First, they share the same economic function of bringing goods and services to the market. Secondly, they all usually share a relational character: typically, they are meant to last for many years and their success usually strongly depends on loyal and intense co-operation. These points of similarity justify a similar or even uniform regulation.

However, there are also major differences. Although a commercial agent is an independent entrepreneur, generally it does act in the name of its principal, contrary to a franchisee and a distributor who act in their own names. In other words, whereas the commercial agent sells the principal's products to the public, the franchisee and the distributor sell their own products (which they have bought from the franchisor or supplier, or from a third party indicated by it). This implies different – and usually more extensive – risks. Another difference is that in franchise contracts the granting of intellectual property rights is a central issue whereas most commercial agency contract and many distribution contracts do not involve any intellectual property rights at all. These are merely a few examples; there are many more differences.

These characteristics justify the structure of the present Principles. It contains a first Chapter with General Provisions which apply to all Commercial agency, franchise and distribution contracts, and three further Chapters (Chapter 2 Commercial Agency, Chapter 3 Franchise, Chapter 4 Distribution), with specific rules which are only appropriate to one of these specific contracts.

There is a special interest in adopting, where possible, general rules for similar contracts. They help to avoid litigation on the qualification of the contract. This is especially true for mandatory rules from which the parties cannot derogate. For example, in many European jurisdictions today there are high stakes at issue as to whether a certain contract can be qualified as a commercial agency contract, since if it does a whole range of statutory rules apply which are both protective of the agent and mandatory, whereas in many jurisdictions similar statutory rules do not exist for franchise and distribution contracts. (The explanation lies in the fact that the 1986 EC Directive exclusively deals with commercial agency contracts). In order to avoid such litigation on qualification the present Principles provide, where possible, common rules (the rules on ending the contract are the best example) or specific rules which are based on the same policy (see, for example, the three rules on pre-contractual information), especially where mandatory rules are concerned.

Of the three types of contracts which are specifically regulated in the present Principles, the most hybrid one is distribution. There are many types of distribution contracts and there are only a few rules which are suitable for all of them. Therefore, Chapter 4 further distinguishes between exclusive distribution, selective distribution and exclusive purchasing contracts, and other distribution contracts (a generally recognised classification both in competition law and in distribution practice), and provides that some rules only apply to one or more of these categories.

VII. External Relationship Not Dealt With

The present Principles exclusively deal with the internal relationship between principal and commercial agent, between supplier and distributor, and between franchisor and franchisee. Therefore, external relationships with third parties are not dealt with here. As a consequence, the answer to the question of when the principal is bound to a client as a result of the intervention of an agent is not to be found here, but in Chapter 3 PECL (Authority of Agents). Similarly, the question whether a consumer may have recourse against the franchisor or the supplier in the case of a defective product, is not dealt with in the present Principles either. For dangerous products the answer is to be found in the forthcoming European principles of tort law where Directive 85/374/EEC on liability for defective products will be codified. For merely inadequate products which have not caused any injury or other personal damage the question of whether (in some cases) a customer (consumer) may have direct recourse against the supplier or franchisor is still open within the European Civil Code Project, except where the supplier or the franchisor is also the producer. In the latter case the rules on consumer guarantees will apply, which are to be found in the forthcoming European Principles of Sales Law. However, they only apply to goods; not to services. Finally, for the same reason the present Principles do not contain any specific rules on whether agents, franchisees and distributors who are part of the same network are under certain obligations vis-à-vis each other (e. g. whether a franchisee who ruins the reputation of the brand may be liable towards the other franchisees).

Chapter 1:
General Provisions
Section 1:
Scope of Chapter 1

Article 1:101: Scope

This Chapter applies to commercial agency, franchise and distribution contracts and with appropriate modifications to other contracts where one party, engaged in business independently uses its skills and efforts to bring another party's products on to the market.

Comments

A. General Idea

The rules in this Chapter apply to commercial agency, franchise and distribution contracts. These contracts have many characteristics in common, especially their economic function (marketing). The rules relating to these common characteristics are to be found in this Chapter (Chapter 1). However, there are also some differences. Therefore, these Principles also contain separate Chapters on commercial agency (Chapter 2), franchise (Chapter 3) and distribution (Chapter 4).

The Articles contained in this Chapter not only apply to these contracts, but also to contracts which do not fall exactly within one of these three categories (see the scope rules contained in Articles 2:101, 3:101 and 4:101) but which nevertheless have the same economic function (vertical agreements; compare Article 2(1) EC Regulation 2790/1999 and Guidelines on Vertical Restraint, no.24), i.e. to all other contracts where an independent business person uses its skills and efforts to bring another party's products on to the market.

B. Interests at Stake and Policy Considerations

Commercial agency, franchise and distribution contracts are sufficiently similar to justify a unitary regulation of some of their aspects. This holds true especially for some general obligations (pre-contractual and contractual obligations to inform, obligation to co-operate and obligation of confidentiality) and for general rules on ending and termination. For those common aspects of these contractual relationships, in principle classification as a commercial agency, franchise or distribution contract should make no difference.

However, in some other respects these three contracts differ. These differences call for a differentiated regulation. Therefore, in addition to the general rules contained in this Chapter (General Provisions), these Principles also contain some separate rules for each of the three types of contracts, in Chapters 2 (Commercial Agency), 3 (Franchise) and 4 (Distribution) respectively.

C. Relation to PECL

The PECL contain a rule on contracts for an indefinite period (6:109). Moreover, Article 6:111 (Change of Circumstances) is likely to apply most frequently in cases concerning long-term contracts, whereas Articles 6:104 (Determination of Price) and 6:105 (Unilateral Determination of Price) may also be of special relevance to long-term contracts.

D. Three Contracts: Commercial Agency, Franchise, Distribution

The rules contained in this Chapter apply to commercial agency, franchise and distribution contracts. These contracts are defined in Articles 2:101, 3:101, and 4:101 respectively. In addition to the general provisions contained in this Chapter which apply to all three contracts, Chapters 2 (Commercial Agency), 3 (Franchise), and 4 (Distribution) contain specific rules for each of these contracts.

E. Other Vertical Agreements; not Advertisement

This Chapter does not only apply to commercial agency, franchise and distribution contracts but also to all other contracts where an independent business person uses its skills and efforts to bring another party's products on to the market (so-called vertical agreements). Therefore, it is of no use for parties to try to avoid the applicability of the rules contained in this Chapter (especially the mandatory ones) by labelling, classifying or drafting their contract in a slightly different manner.

However, the formula 'other contracts where an independent business person uses its skills and efforts to bring another party's products on to the market' is not meant to refer to advertisement contracts which are contracts of a different nature than the ones under discussion here: an advertisement company will never itself sell the other party's products (goods or services) to the public (or to another link in the distribution chain), neither in its own name (as distributors and franchisees do) nor in the name of the principal (as an agent may do). In other words, they are not a link in the chain between producers and final users. Rather, they provide a service to one of the links which is meant to assist it to be more effective in bringing its products on to the market.

F. Independent Business Persons; not Employees

The concept of independent business person includes both natural persons and legal persons. Indeed, in practice commercial agents, franchisees and distributors (especially the larger ones) are frequently companies which have legal personality according to the applicable national law.

However, it does not include – and therefore the rules contained in Chapter 1 do not apply to – persons who bring another party's products on to the market in case these persons do not act as independent business persons. The typical example of a person who is *not* independent is an employee. In other words, neither Chapter 1 nor indeed the other Chapters (Chapters 2 (Commercial Agency), 3 (Franchise), and 4 (Distribution)) are meant to cover labour contracts.

G. Other Long-Term Contracts

These rules are directly applicable to commercial agency, franchise and distribution contracts as well as to other vertical agreements (marketing contracts), but not to other long-term contracts. However, it may be appropriate to apply the rules contained in this Chapter, or at least some of them (e. g. the rules on co-operation and on unilateral ending), by way of analogy, to some other long-term contracts. This may be the case, for example, for licensing contracts and, at least in part, for some joint-venture contracts. However, there are also some long-term contracts, like labour contracts and rental contracts of houses where the application of these rules will probably be inappropriate because of the specific need for and, in most European countries, the existence of rules which protect workers and tenants (compare also Article 30 Charter of Fundamental Rights of the European Union (Article II-31 of the Constitution)).

H. Products

This Article refers to 'products' ('bringing products on to the market'). The concept of 'products' includes here and throughout these Principles both goods and services. (In the same sense Article 1 (a) EC Regulation 2790/1999; see also Guidelines on Vertical Restraints (2000/C 291/01, no. 2)).

I. Character of the Rule

This is a scope rule: the parties cannot by their agreement classify the contract as a contract to which the rules contained in this Chapter would not apply if their agreement contains the essential elements included in the present provision, i. e. if it either falls within the scope of a commercial agency, franchise or distribution contract (see Articles 2:101, 3:101 and 4:101 respectively) or is a vertical agreement (i. e. another contract 'where one party uses its skills and efforts to bring the other party's products on to the market'). Conversely, if the parties label their contract as a type of contract to

which the rules contained in this Chapter would apply (i. e. commercial agency, franchise, distribution or another vertical agreement) although it does not contain the essential elements set out in this Article, the rules contained in this Chapter will, in principle, not be directly applicable (but may be applied by way of analogy – see above, Comment G).

J. Remedies

No remedies follow from this provision since, as a scope rule, it does not itself establish obligations for the parties. The obligations of the parties are formulated by means of specific Articles (both in this Chapter and in Chapters 2, 3 and 4) in which remedies are provided.

Notes

1. *In General*
   None of the European legal systems include a set of specific rules which apply to commercial agency, franchising and distribution contracts. However, under all European systems of law there are specific rules that apply to commercial agency. In addition, under BELGIAN law there is a specific Act that applies to distribution contracts and ITALIAN law includes a specific statute on franchise contracts. In some legal systems the rules concerning commercial agency are applied by way of analogy to franchise and distribution contracts as well. Where this is not the case, general contract law applies or the rules concerning other nominate contracts.

2. *Specific Rules concerning Commercial Agency*
   All European legal systems contain specific rules on commercial agency as a result of the transposition of the Council Directive of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (hereafter: the Directive). These rules are laid down in the AUSTRIAN *Handelsvertretergesetz 1993 (HvertrG)*, the BELGIAN *Wet van 13 april 1995 betreffende Handelsagentuurovereenkomsten, B. S. 2 juni 1995/Loi du 13 avril 1995 rélative au contrat d'agence commerciale (M. B. 2 juin 1995)*, the ENGLISH Commercial Agents (Council Directive) Regulations 1993 (S. I. 1993/3053), as amended by the Commercial Agents (Council Directive) (Amendment) Regulations 1993 (S. I. 1993 No. 3173) and 1998 (S. I. 1998 No. 2868), the FINNISH Act on Commercial Agents and Salesmen (1. 1. 1976) which was replaced by a new Act on 8 May 1992, in arts. L. 134-1–L. 134-17 of the FRENCH C. com., §§ 84-92 c of the GERMAN HGB, the GREEK Presidential Decree 219/1991, in arts. 1742-1753 of the ITALIAN cc, arts. 7:428-7:445 of the DUTCH BW, art. 758-764IX of the POLISH KC, the PORTUGUESE DL no. 178/86, the SPANISH *Ley 12/1992, del Contrato de Agencia* (LCA) and the SWEDISH *Lag om handelsagentur* (HaL). See also the notes to Article 2:101.

3. *Specific Rules concerning Franchise Contracts*
Under ITALIAN law there is a specific act that concerns franchise contracts: L n. 129/2004 *Norme per la disciplina dell' affiliazione commerciale*.

4. *Application of Commercial Agency Rules by Way of Analogy to Franchise Contracts*
In some legal systems the rules concerning commercial agency are applied by way of analogy to franchise contracts in so far as this is appropriate. (AUSTRIA, BELGIUM: *Verbraeken* & *De Schoutheete* no. 131; GERMANY; FINLAND: *Halila-Hemmo* (1996) *272; Bygglin* (1978); PORTUGAL.) See also the notes to the specific provisions in Chapter 3.

5. *Specific Rules concerning Distribution Contracts*
Under BELGIAN law there is a specific Act that concerns distribution contracts: (*Loi du 27 juillet 1961 relative à la résiliation unilatérale des concessions de vente exclusive à durée indéterminée (M. B., 29 déc. 1961; Alleenverkoopwet)*). Under FRENCH law there are specific rules concerning the precontractual obligation to inform included in art. L. 330 C. Com. These rules apply to certain types of distribution contracts (see the notes to Articles 1:201 and 4:101).

6. *Application of Commercial Agency Rules by way of analogy to Distribution*
In some legal systems the rules concerning commercial agency are applied by way of analogy to distribution insofar as appropriate. (AUSTRIA; GERMANY; FINLAND: KKO 1987:42, *Aalto* (2002) 2-3, 10, *Telaranta* (1993) 25, 149-163; PORTUGAL).
See also the notes to the provisions in Chapter 4.
Under SWEDISH law, the rules concerning commercial agency may be applied by way of analogy only to cases of sole distribution. The scope of such application by way of analogy is however uncertain, (*Söderlund*, 160 ff).

7. *Other rules*
Under GREEK law, in so far as is possible the rules concerning other long-term nominate contracts may apply by way of analogy to commercial agency, franchising and distribution contracts. They are the rules concerning lease contracts (Μίσθωση πράγματος) 574-618 AK, employment contracts (Σύμβαση εργασίας) 648-680 AK, mandate (Εντολή) 713-729 AK, Partnership/Community (Εταιρία) 741-748 AK, loan (Δάνειο) 806-809 AK and deposit contracts (Παρακαταθήκη) 822-833 AK).
As to franchising contracts, according to BELGIAN, GREEK, DUTCH law the rules of general contract law apply (BELGIUM: *Verbraeken* & *de Schoutheete*, no. 131). According to FINNISH law apart from the rules on agency also the rules concerning employment law may be applied by way of analogy in so far as appropriate, *Halila-Hemmo 1996, 272; Bygglin 1978.*
Under FINNISH, GREEK and DUTCH law the rules of general contract law apply to distribution contracts (THE NETHERLANDS: *Barendrecht* & *van Peursem*, no. 21).
According to *Chitty-Reynolds* it is more likely that under the law of ENGLAND franchise and distribution contracts will be classified as contracts for purchase for resale and the rules concerning those contracts apply accordingly (*Chitty-Reynolds* no. 31-003.)

Under ITALIAN law the situation is again different. With respect to certain distribution contracts, arts. 1559 et seq. cc concerning *somministratione* may apply by way of analogy (*Baldi* 84 et seq.). (Also see the notes to Article 4:101.) Some of these rules which have developed with respect to distribution contracts apply by way of analogy to franchising contracts. In addition, rules can also be inferred from the general rules concerning good faith (*Baldi* 132).

Section 2:
Obligations

Article 1:201: Pre-Contractual Information

(1) Each party must provide the other party with adequate information a reasonable time before the contract is concluded. If it does not, Paragraph (3) applies.
(2) Adequate information means information which is sufficient to enable the other party to decide on a reasonably informed basis whether or not to enter into a contract of the type and on the terms under consideration.
(3) If a party's failure to comply with Paragraph 1 leads the other party to conclude a contract when the first party knew or could reasonably be expected to have know that the other party, had it been provided with adequate and timely information, would not have entered the contract, or would have entered the contract only on fundamentally different terms, the remedies for mistake under PECL Chapter 4 apply.
(4) Parties may not derogate from this provision.

Comments

A. General Idea

This Article imposes upon each party a pre-contractual obligation to provide the other with all the information which it needs to make a rational decision as to whether or not to enter into a contract of the type and on the terms under consideration (Paragraphs 1 and 2). The provision includes a time requirement (Paragraph 1): the information must be given within a reasonable time before the contract is concluded. Pursuant to Paragraph (3) the remedy for non-compliance with this pre-contractual obligation to inform is that the contract will be avoidable for mistake. This is a mandatory rule (Paragraph (4)).

B. Interests at Stake and Policy Considerations

This obligation to provide pre-contractual information is aimed to guarantee that each party will have all the relevant and necessary information in order to commit itself with full knowledge of the relevant facts. This is important because commercial agency, franchise and distribution contracts are often concluded for a long period and the conclusion ('entrance fee') and performance thereof frequently imply important investments whereas a party which is interested in concluding such a contract often has no other possibility to obtain this qualified information.

C. Relation to PECL

The PECL contain pre-contractual duties to inform (Articles 4:103 (a) (ii) and 4:107). These duties are formulated in general terms and do not specifically focus on the commercial agency, franchise or distribution situations. A violation of a pre-contractual obligation to inform may render the contract avoidable for mistake (Article 4:103) or fraud (Article 4:107). Instead of avoidance for mistake the contract may be adapted (Article 4:105 PECL).

The present Article provides a specific rule for the pre-contractual obligation to inform in commercial agency, franchise and distribution. This rule may best be considered as a special instance for these contracts of the general pre-contractual duty to inform. Article 4:107 (3) PECL states: 'In determining whether good faith and fair dealing required that a party disclose particular information, regard should be had to all the circumstances, including: (a) whether the party has special expertise; (b) the cost to it of acquiring the relevant information; (c) whether the other party could reasonably acquire the information for itself; and (d) the apparent importance of the information to the other party.' The present pre-contractual obligation to inform is based on policy considerations which are closely related to these four factors (see above, under B. Interests at Stake and Policy Considerations).

Also the remedies are best regarded as a specific instance of those available under the PECL. Indeed, the present Article explicitly refers to Chapter 4 of the PECL.

D. Within a Reasonable Time

The time requirement included in the present provision aims to guarantee that the other party has sufficient time at its disposal in order to ponder on the basis of the information whether or not to enter the contract under consideration. In assessing whether the pre-contractual information is given within a reasonable time the criteria established under Article 1:302 PECL (Reasonableness) such as the circumstances of the case or the applicable usage shall be taken into consideration.

E. Adequate Information

Adequate information means information which is sufficient to enable the other party to decide on a reasonably informed basis whether or not to enter into a contract of the type and on the terms under consideration. This means among other things that the information must be correct, complete and transparent. Depending on the circumstances of the case, especially the type of contract and the branch of trade, the types of information which must be given may include information regarding one's own company and experience, intellectual property rights which are involved, particular features of the commercial sector, market conditions, the structure and extent of the network, remuneration and fees, the terms of the contract.

For franchise contracts Article 3:102 (2) provides a detailed list of information which the franchisor must give to the franchisee before the conclusion of the contract. That list is mandatory (see Article 3:102 (3)).

F. Character of the Rule

This rule is mandatory; any deviation by the parties to the detriment of the party which is supposed to benefit from it, in a pre-contract or otherwise, remains without effect.

G. Remedies

The sanction for non-compliance with the obligation to adequately inform the other party is that the contract will be avoidable for mistake (Article 4:103 PECL). All the ordinary rules on mistake apply, including liability for damages due to incorrect information (Article 4:106 PECL) and the remedy of adaptation (Article 4:105 PECL). Finally, it should be reiterated that remedies for non-performance may be pursued instead of or concurrently with remedies for a defect of consent (Article 4:119 PECL).

Notes

1. *Specific Statutory Rules concerning Pre-Contractual Information*
   FRENCH, ITALIAN and SPANISH law contain specific statutory rules concerning pre-contractual information in the case of franchising contracts. They are laid down in the FRENCH *Loi Doubin* (art. L-330-3 C. com.), art. 8 of the ITALIAN L 129/2004 and in art. 62 para 3 of the SPANISH Statute on Retail Trade (*Ley de Ordenación del Comercio Minorista*) respectively. The FRENCH *Loi Doubin* may also apply to certain types of distribution contracts, in so far as they meet the requirements of art. L-330-3 C. Com (*Malaurie* & *Aynès*, no. 839). Under art. 8 of the ITALIAN Act, a contract can be avoided if the other party provided incorrect information. The FRENCH and SPANISH rules do not include any specific private law remedies. See further the notes to Article 3:102.

2. *General Statutory Rules concerning Pre-Contractual Information*
   In GREECE and in PORTUGAL the general statutory provisions concerning pre-contractual liability apply (GREECE: arts. 197, 198 AK; PORTUGAL: art. 227 CC). For GREEK law it means that the parties must disclose any information that may reasonably be expected to influence the decision of the other party. A failure to do so amounts to a serious ground for termination, except when the contract has been performed without any problems. However, as to franchising the rules concerning the doctrine of abuse of rights (art. 281 AK, see *Voulgaris* and *Georgiadis*) may also come into play. Pre-contractual liability is limited to the reliance interest. In some cases a lack of disclosure may give rise to a claim for the annulment of the franchise contract and for damages on the basis of articles 140 et seq. Greek civil code for mistake or on the basis of art. 147 AK for fraud. In other cases a lack of disclosure may give rise to the

annulment of the contract on the basis of arts. 178 and 179 AK with regard to acts contrary to *bonos mores*, but the case law has been restrictive, see CA Patras 150/2000 DEE 8-9/2000, 890. For PORTUGUESE law it implies that the parties must inform each other concerning facts relating to the contract and potential events during the performance (*Sinde Monteiro* (1989) 355 ff., *Menezes Cordeiro* (1984) 505).

3. *Other sources of an Obligation concerning Pre-Contractual Information*
In other legal systems a pre-contractual obligation to inform follows from good faith. (BELGIUM: *Verbraeken* & *de Schoutheete*, no. 147; FRANCE: *Fabre-Magnan*, 214; GERMANY: § 242 BGB, the closer the relationship, the more intense the pre-contractual obligation to inform *Martinek/Semler* § 14 nos. 61, 62; ITALY, THE NETHERLANDS: art. 6:228 BW, *Asser-Hartkamp* 4-II, no. 158, *Hesselink*, 259; SPAIN, SWEDEN)
Under FINNISH law a pre-contractual obligation to inform follows from the doctrine of loyalty. Case law has introduced the pre-contractual obligation to inform in the case of commercial agency contracts (KKO 1993:130, *Tolonen* (2000) 88, *Nysten-Haarala* (1998), 126). As to distribution contracts the rules developed with respect to commercial agency may apply by way of analogy (*Telaranta* (1994) 154). The obligation to give all required information can be derived from the general principle of loyalty (good faith and fair dealing) as well by applying the Commercial Agents Act by way of analogy (KKO 1993:130). Case KKO 1996:27 also dealt with pre-contractual information; however, the issue at stake was whether including an arbitration clause in a franchise contract may be unfair towards the franchisee. According to scholarly opinions the court would have adjusted the contract had there been a grave imbalance between the contracting parties in access to information or had the franchisor given misleading information (*Saarnilehto 1997*).
According to AUSTRIAN case law there is a pre-contractual obligation to inform in the case of franchising contracts (OGH 19. 1. 1989, 7 Ob 695/88).
In contrast, under ENGLISH law there is no general duty of disclosure (*Keates* v. *Cadogan* (1851) 10 CB 591, but only an obligation not to make misrepresentations, *Williams* v. *Natural Life Health Foods* [1998] 2 All ER 577, *Boyle* v. *Prontaprint*, unreported, 26 February 2000, CA; *ANC* v. *Clark Golding*, The Times 31 May 2000, CA.

Article 1:202: Co-Operation

(1) In commercial agency, franchise and distribution contracts and in other long-term commercial contracts the obligation to co-operate (art. 1:202 PECL) is fundamental and particularly intense. It requires the parties in particular to collaborate actively and loyally and to co-ordinate their respective efforts in order to achieve the objectives of the contract.
(2) Parties may not derogate from this provision.

Comments

A. General Idea

Co-operation is essential to commercial agency, franchise and distribution contracts and indeed to most other long-term commercial contracts. Each party heavily depends on the other party's co-operation for attaining its objectives. The obligation spelled out here explicitly recognises that the parties to such contracts are under an intense obligation to co-operate actively and loyally in order to achieve the objectives for which the contract was concluded.

Indeed, many (if not most) of the specific obligations spelled out in these Principles (both in this Chapter 1 (General Provisions) and in Chapter 2 (Commercial Agency), Chapter 3 (Franchise) and Chapter 4 (Distribution)), may be regarded as special instances of this general intense obligation to co-operate actively and loyally (e. g. specific obligations relating to information, assistance, instructions, supervision, confidentiality et cetera). In addition to these specific rules, this Article makes sure that both parties are, more generally, under this intense duty to co-operate which may be the source of other specific duties to be established and further elaborated by the courts and arbitrators.

Although the intensity of the required co-operation may vary among them (it is usually strongest in franchise contracts), the obligation to co-operate in commercial agency, franchise and distribution contracts is distinctly more intense than in most other contracts. The general duty to co-operate in order to give full effect to the contract, which each party to any contract owes to the other according to Article 1:202 PECL, is mainly limited in some contracts (e. g. most sales contracts) to 'a duty to allow the other to perform its obligations and thereby earn the fruits of performance stipulated in the contract' (see Article 1:202 PECL, Comment A (p. 119)), which is similar to the doctrine of *mora creditoris* in many civil law countries.

B. Interests at Stake and Policy Considerations

Although each party may have a short-term interest in exclusively pursuing its own interests, even at the expense of the other party, in the long term both parties benefit from a steady co-operation where each of them not only takes the other party's interests into account but actively helps the other party to realise its goals. Both parties have an interest in actively demonstrating their commitment in the long term in order to pursue the reciprocal advantages deriving from their cooperation. This Article aims to encourage participation in exchange and to promote reciprocity between the parties. In addition, the Article means to take into account the fact that during the course of commercial agency, franchise, distribution contracts and similar long-term commercial contracts contingencies may occur which the parties had not foreseen when they concluded the contract, contingencies which do not necessarily make the performance excessively onerous in the sense of Article 6:111 PECL. It follows from the present Article that the parties should collaborate in overcoming such contingencies and in

adapting to the new situation in such a way that the objectives of the contract can be achieved.

C. Relation to PECL

For long-term commercial contracts the duty to co-operate which is contained in Article 1:202 PECL is particularly intense. It is not sufficient for a party to a commercial agency, franchise or distribution contract to passively 'allow the other party to perform its obligations and thereby earn the fruits of performance stipulated in the contract' (see Article 1:202 PECL, Comment A (p. 119)). Rather, the parties should collaborate actively and loyally in order to achieve the objectives for which the contract was concluded. In order to avoid any doubt, this Article says so explicitly.

D. Co-Operate Actively and Loyally

In a commercial agency, franchise and distribution contract, a party must do more than merely to refrain from obstructing the other party's performance. In such contracts each party must collaborate actively and make a serious effort to achieve the objectives for which the contract was concluded. These objectives include, first of all, those that are common but may also include individual objectives.

However, a party is not under an obligation to act contrary to its own interests. In other words, the obligation to co-operate actively and loyally is meant to achieve win-win situations. Moreover, the obligation to co-operate loyally does not turn the contractual relationship into a fiduciary relationship in the sense of the law of trusts.

E. Non-discrimination

The obligation to co-operate implies an obligation for principals, franchisors and suppliers to treat their commercial agents, franchisees and distributors equally. Thus, the principal, the franchisor and the supplier must not discriminate against – i. e. make any unjustified distinction between – their commercial agents, franchisees and distributors, neither during the pre-contractual stage nor during the performance of the contract. Similarly, a commercial agent, a franchisee (e. g. in shop corner franchising) or a distributor, who has contracts with more than one principal, franchisor or supplier, must not make any unjustified distinction between them.

F. Specific Obligations to Co-Operate

Many specific obligations in this Chapter and in Chapters 2, 3 and 4 may be regarded as specific instances of the intense general obligation to co-operate in commercial agency, franchise, distribution and other similar long-term commercial contracts. Some examples include: in this Chapter 1, Article 1:203 (Information), Article 1:204 (Confiden-

tiality), in Chapter 2 on commercial agency Article 2:202 (Instructions), Article 2:203 (Information during Performance), Article 2:307 (Information during Performance), Article 2:308 (Information on Acceptance, Rejection and Non-Performance), Article 2:309 (Warning of Decreased Volume of Contracts), in Chapter 3 on franchise Article 3:201 (Intellectual Property Rights), Article 3:202 (Know-How), Article 3:203 (Assistance), Article 3:204 (Supply), Article 3:205 (Information during Performance), Article 3:206 (Warning), Article 3:207 (Reputation Network and Advertising), Article 3:302 (Information during Performance), Article 3:303 (Business Method and Instructions), 3:304 (Inspection), in Chapter 4 on distribution, Article 4:202 (Information during Performance), Article 4:203 (Warning of Decreased Supply Capacity), Article 4:204 (Advertising Materials), Article 4:205 (Reputation Goods and Services), Article 4:302 (Information during Performance), Article 4:303 (Warning), Article 4:304 (Instructions), Article 4:305 (Inspection), Article 4:306 (Reputation Goods and Services).

G. Character of the Rule

This is a mandatory rule; any deviation by the parties to the detriment of the party who would benefit from it remains without effect. This means that in their contract the parties cannot exclude the obligation to co-operate as such. However, what the obligation to co-operate specifically requires will to some extent depend on what was agreed upon by the parties in their contract (compare Article 1:201 PECL on good faith and fair dealing (Comment H, p. 116) where the same is provided for).

H. Remedies

The obligation to co-operate is an obligation in the sense of Article 8:101 PECL. Therefore, in case of non-performance the aggrieved party may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Obligation to Co-Operate*
   According to the case law, legal doctrine, standard contracts and codes of conduct in the Member States, the obligation to cooperate is the main obligation of both parties.
   Under GERMAN, GREEK, ITALIAN, DUTCH and SPANISH law there are no specific rules for long-term commercial contracts in this respect. However, an obligation to co-operate follows from the general principle of good faith under these legal systems. In most legal systems the obligation to cooperate has not been defined clearly. However, it has been accepted that in the case of long-term commercial contracts, such an obligation is more intense than in other contractual relationships. (GERMANY: *Handkommentar-BGB*, § 242 BGB no. 14; GREECE: art. 288 AK; ITALY: arts. 1175, 1375 cc, Cass. civ., sez. lav., 8-2- 1999, n. 1078, *Contratti*, 1999, 1019; Cass. civ., sez. I, 20-4-1994, n. 3775, *Gius., civ.*, 1994, I, 2159; NETHERLANDS: *Asser-Hartkamp* 4-II,

no. 307 ff; POLAND: art. 760 KC in the case of commercial agency; SPAIN: art. 57 C. Co, *Móxica* (2000) 23, in particular concerning commercial agency: art. 9, para 1 (agent) and art. 10, para 1 (principal) LCA, for franchise contracts, *Memento*, 490, for distribution contracts *Memento*, 483).

Under FINNISH law the obligation to co-operate was introduced to contract law by legal scholars who were experienced in commercial arbitration. The obligation to co-operate is connected with the general discussion concerning the doctrine of loyalty (*Muukkonen* (1975), *Taxell* (1972) *1977*, *Ämmälä* (1994), *Häyhä* (1991); *Mähönen* (2000)). The FINNISH doctrine of loyalty corresponds with the principle of good faith and fair dealing. Both district and appellate courts refer to the loyalty principle in their case reports. However, there is only one case in which the Supreme Court has accepted the principle of loyalty according to scholarly opinions (KKO 1993:130).

In SWEDISH law there is no general statutory obligation to cooperate with respect to agency, distribution and franchising contracts. However, according to §§ 5(1) and 7(1) HaL both the commercial agent and the principal must act dutifully and in good faith. This probably includes an obligation to cooperate.

In ENGLISH general law an obligation to co-operate is imposed where this is necessary in order to give business efficacy to the agreement (*The Moorcock* (1889) 14 PD 64, Court of Appeal). Beyond this, it is difficult to identify the precise extent of the obligation. However, it has been strongly recognised in employment contracts (*Secretary of State for Employment* v. *ASLEF (No. 2)* [1972] 2 QB 455, CA) which bear some analogy with long-term commercial contracts. Various commentators have argued that co-operative behaviour in long-term contracts maximises returns and should be underpinned by default law, see e. g. *Baird* (1990) 583. However, as to franchising contracts, express terms providing for ongoing co-operation would appear to be common, see e. g. *Adams/Prichard Jones* Precedent I, which includes obligations on the part of the franchisor to offer to the franchisee both consulting services (Clause 6.12) and general support (Clause 6.19), and on the part of the franchisee, "to work diligently to protect and promote the interests of the Franchisor", (Clause 7.12), and, "in all matters to act loyally and faithfully toward the Franchisor", (Clause 7.20).

Article 1:203: Information during Performance

(1) During the contract each party must provide the other in due time with all the information which the first party has and the second party needs in order to achieve the objectives of the contract.

(2) Parties may not derogate from this provision.

Comments

A. General Idea

Each party must disclose all information which is in their possession to the other party if this is what the other party needs in order to achieve the objectives of the contract. This obligation includes that a party must also provide the other party with all relevant documentation where this is appropriate.

This general obligation is specified in Article 2:203 with respect to the commercial agent, in Article 3:205 with respect to the franchisor and in Article 3:301 concerning the franchisee, in Article 2:307 concerning the principal, in Article 4:202 with respect to the supplier, and in Article 4:302 with respect to the distributor.

B. Interests at Stake and Policy Considerations

Both parties have an interest in being informed concerning facts and developments which are relevant to their performance. It may render their performance easier and more successful. On the other hand, an extensive obligation to inform the other party may be very burdensome and, in any event, very costly. Therefore, the present obligation is limited in two significant respects. First, a party only has to pass on to the other party such information which the first party already has. In other words, parties are not under a duty to investigate in order to be able to inform each other. Second, the obligation is limited to the information which the other party needs in order to achieve the objectives of the contract.

C. Relation to PECL

The PECL contain a general obligation of good faith and fair dealing (Article 1:201 PECL) which has particular significance in this situation. Compare Comment B to Article 1:201 PECL: 'In relationships which last over a period of time (*Dauerschuldverhältnisse*) such as … agency and distributorship agreements … the concept of good faith has particular significance as a guideline for the parties' behaviour.' From this obligation, obligations to inform may follow. The present Article elaborates which specific obligations to inform exist in commercial agency, franchise and distribution contracts.

D. Actual Knowledge; No Duty to Investigate

This obligation relates to actual knowledge. A party is only under the obligation to disclose the information which it actually has. In other words, a party is not under an obligation to make (possibly expensive) investigations in order to obtain the relevant information. In other words, if a party to a commercial agency, franchise or distribution contract – which is under a particularly intense obligation to co-operate (Article 1:202 PECL) – comes across information which the other needs in order to achieve the

objectives of the contract, it is under an obligation to pass that information on to the other party; it is not free to keep that information for itself.

E. In Due Time

The information must be given in due time in order to allow the other party to perform its obligations under the contract and, more generally, to achieve the objectives of the contract. When and how often information should be given depends, among other things, on the contract, the type of information and the other circumstances of the case. In the case of new developments, a party must, in principle, update the information which has been provided within a reasonable period of time in order to allow the other party to adapt to the new situation.

F. No Form Requirement

There is no general form requirement as to the way in which this information is to be provided. The aim of the Article is merely to oblige parties to communicate.

G. Character of the Rule

This is a mandatory rule; any deviation by the parties to the detriment of the party who would benefit from it remains without effect.

This means that in their contract the parties cannot exclude the obligation to inform during performance as such. However, what the obligation to inform specifically requires will to some extent depend on what was agreed upon by the parties in their contract (compare Article 1:201 PECL on good faith and fair dealing (Comment H, p. 116) where the same is provided for). Thus the parties may explicitly agree that certain specific types of information will not be provided.

H. Remedies

The obligation to provide information during the contractual stage is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the aggrieved party may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Information to be Provided*
   For commercial agency mandatory obligations to inform are laid down in arts 3 1 (b) (commercial agent), 4 2 (a), (b) (principal) and 5 of the Directive, which have been transposed into the national legal systems. See below, the notes to Articles 2:203, 2:308.

As to franchising and distribution contracts, in most legal systems such an obligation can be inferred from the general obligation of good faith or loyalty. (AUSTRIA, FINLAND: KKO 1993:130; GERMANY: § 242 BGB *Küstner/Thume*, no. 1300, 1302, *Martinek/Semler*, § 14 nos. 63, 64, § 19 nos. 60-67; ITALY: arts. 1175, 1375 cc, concerning distribution contracts see: Cass. 24 March 1999, n. 2788; NETHERLANDS: *Asser-Hartkamp* 4-II no. 307, *Barendrecht & Van Peursem*, no. 107; PORTUGAL: *Sinde Monteiro* (1989) 355 ff., *Menezes Cordeiro* (1984) 505; SPAIN: concerning distribution contracts: *Dominguez García* (1997) 1354 ff).
In addition, under FINNISH and GERMAN law the rules on commercial agency are applied by way of analogy to distribution contracts as well (FINLAND: *Telaranta* (1994) 154, GERMANY: *Giesler/Nauschütt*, § 5 no. 123, 165, § 8 no. 18, *Küstner/Thume*, no. 1300; *Martinek/Semler*, § 14 nos. 63, 64, § 19 nos. 60-67).
Concerning franchising contracts, see also the notes to Articles 3:205 and 3:302. Concerning distribution contracts see also the notes to Articles 4:202 and 4:302.

Article 1:204: Confidentiality

(1) A party who receives confidential information from the other, must keep such information confidential and must not disclose the information to third parties either during or after the end of the contract period.
(2) A party who receives confidential information from the other must not use such information for other purposes than the objectives of the contract.
(3) Any information which a party already had in its possession or which has been disclosed to the general public, and any information which must necessarily be disclosed to customers as a result of the operation of the business is not be regarded as confidential information for this purpose.

Comments

A. General Idea

Both parties to a commercial agency, distribution, franchise contract or other vertical agreement should treat any sensitive information they receive from the other party as confidential. This is especially true where key elements in the exploitation of the business (know-how, financial data et cetera) are disclosed, which often happens especially in franchise contracts. These are business values essential to the franchisor's (or supplier's) business concept and which must be kept within the network and saved from competitors.

However, not all information has to be considered as confidential: the information which a party already had or which was already publicly known when this party received it, and any information which is necessarily disclosed to customers when running the business is not to be treated as confidential.

B. Interests at Stake and Policy Considerations

This rule protects the reasonable interest of a party (usually the franchisor, the principal or the supplier) and of the other members of the network in preventing its business method and other secrets from ending up in the hands of competitors.

C. Relation to PECL

The PECL contain in Article 2:302 an obligation of confidentiality with regard to pre-contractual information received from the other party in the course of negotiations but no rule on contractual confidentiality. Such an obligation may be based on the general obligation of good faith (1:201 PECL) and on the general obligation to co-operate in commercial agency, franchise and distribution contracts (1:202 PECL), but is here explicitly spelled out for these three (and similar) contracts.

D. Protection of Know-how

In franchise contracts, throughout the duration of the contract, the franchisor must provide the franchisee with the know-how which is necessary to operate the franchise business (Article 3:202). Moreover, in some other long-term commercial contracts, e. g. in certain specific types of distribution, a similar obligation may follow from the contract. Where one party is under such an obligation to share its know-how with the other, the obligation of confidentiality is of specific importance since it is the only way to guarantee that the know-how, as a value essential and intrinsic to the development of the franchisor's method of business, remains in the hands of the franchisor and does not benefit competitors.

E. Confidential Information

What kind of information is confidential largely depends on the circumstances of the case. Such types of information may include product information, technology, market research, purchase price lists, customers' details et cetera. It is not a necessary requirement that the information should be sophisticated or complex. Information known by the public can never be confidential.

Illustration 1
Franchisor A runs a franchise chain of travel agencies and provides its franchisees with know-how concerning the marketing of holidays to students. This knowledge is not generally known. Therefore, it is to be regarded as confidential information.

Illustration 2
Franchisor A runs a franchise network of travel agencies and provides its franchisees with know-how concerning a specific booking system. Within the travel

business this booking system is used generally. Since this knowledge is generally known in this business, it is not to be regarded as confidential information.

F. Contractual and Post-Contractual

Confidential information is usually a business value which allows the successful exploitation of a business formula or commercialisation of the principal's, the franchisor's, or the distributor's products and which differentiates it from its competitors. If the information falls into the competitor's hands, it loses its value. Therefore, a party is required not to disclose the confidential information neither during nor after the contract.

G. Information Already Public

All the information which a party already had in its possession, or which was already known to the public when the party received it, and any information which is necessarily disclosed to customers when properly running the business is not to be treated as confidential (Paragraph 3).

H. Character of the Rule

This is a default rule; the parties may agree otherwise.

I. Remedies

The obligation of confidentiality is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the aggrieved party may, in principle, resort to any of the remedies set out in Chapter 9 PECL. In addition, similar to Article 2:302 PECL, which relates to confidential information given in the course of negotiations, the remedy for any violation of the contractual and post-contractual obligation of confidentiality may include restitution of the benefit received by the other party.

Notes

1. *Confidentiality during the Period of the Contract*
   In most legal systems there is a confidentiality obligation for the parties in commercial agency, franchising and distribution contracts during the period of the contract. However, the sources of this obligation differ from country to country.
   In SPANISH law such an obligation for the franchisee is laid down in a statutory provision (art. 4 RD 2485/1998). The majority of legal authors defend the position that a similar obligation of confidentiality is imposed on the franchisor even though art. 4 RD does not explicitly require this (see for example: *Hernando*, 2000).

According to other legal systems such an obligation is deduced from the doctrine of good faith. With respect to commercial agency contracts, it follows from good faith under BELGIAN, SPANISH and SWEDISH law (BELGIUM: *Verbraeken & Schoutheete*, no. 87; SPAIN arts. 9, 10 LCA; SWEDEN §§ 5 (1) and 7(1) of the HaL, § 7 KommL).

As to franchise contracts, under GREEK law such an obligation follows from good faith (art. 288 AK). In addition, arts. 17 and 18 of the GREEK Act 146/1914 on unfair competition apply. They protect the franchisor against disclosure or unfair use (misuse) of the information that a franchisor will customarily disclose to a franchisee. According to SWEDISH law the contract will always contain provisions concerning confidentiality. Such clauses apply, for instance, to the content of the contract and manuals, but not, for instance, to general sales tactics etc. (*Sohlberg*, 57 ff).

With respect to franchise and distribution contracts, it follows from good faith according to DUTCH law (*Barendrecht & Van Peursem*, no. 173) and SPANISH law.

In GERMANY, § 86 I HGB (*Interessenwahrnehmungspflicht*) prohibits the disclosure of business secrets to third parties (*Koller/Roth/Morck*, § 86 HGB nos. 5, 10; *Münchener Kommentar zum Handelsgesetzbuch*, § 86 HGB no. 57). This rule is applied by way of analogy to franchise and distribution contracts. (*Münchener Kommentar zum Handelsgesetzbuch*, Vor § 84 HGB nos. 16, 21, § 90 HGB no. 6).

Under ENGLISH law an obligation of confidentiality follows from general contract law. According to a general equitable principle a recipient of information which it knows or ought to know is confidential should not take unfair advantage thereof, *Seager v. Copydex Ltd.* [1967] 1 WLR 923, CA.

2. *Post-Contractual Obligation*

Under GERMAN law this obligation results from § 90 HGB. However, this obligation is less strict that the one during the contractual period, since 'all circumstances of the professional standards of a prudent businessman' must be considered (see § 90 HGB; *Koller/Roth/Morck*, § 90 HGB no. 2). Both § 86 I and § 90 HGB are applied by way of analogy to franchisees and distributors (*Münchener Kommentar zum Handelsgesetzbuch*, Vor § 84 HGB nos. 16, 21; § 90 HGB no. 6).

The obligation of the principal not to disclose secrets of the commercial agent in the contractual and in the post-contractual period rests on the general idea of § 86 a HGB (*Treuepflicht*) and good faith (§ 242 BGB, *Münchener Kommentar zum Handelsgesetzbuch*, § 86 a HGB nos. 45, 46). The same is true for the franchisor and the supplier (*Koller/Roth/Morck*, Vor § 84 HGB nos. 10, 11; *Martinek/Semler*, § 19 nos. 60-63).

3. *Information already Disclosed to the Public*

According to ENGLISH and GERMAN law any information that is already available to the public is not confidential (ENGLAND: *Att.-Gen. v. Guardian Newspapers* (No. 2) [1990] 1 AC 109, 285, House of Lords; GERMANY: *Münchener Kommentar zum Handelsgesetzbuch*, § 90 HGB nos. 9-10). Also DUTCH authors have defended this (*Barendrecht & Van Peursem*, no. 172).

Section 3:
Ending and Termination

Article 1:301: Contract for a Definite Period

(1) A contract for a definite period ends upon the expiry of the period determined by the contract. Unless the parties agreed otherwise, such a contract cannot be ended unilaterally beforehand.
(2) A party is free not to renew a contract for a definite period. However, if the other party has given notice in due time that it wishes to renew the contract, the party who wishes not to renew the contract must give the other party notice of its decision not to renew within a reasonable time before the expiry of the contract period.
(3) A contract for a definite period which continues to be performed by both parties after the contract period has expired becomes a contract for an indefinite period.

Comments

A. General Idea

This Article provides certainty to parties who have concluded a contract for a definite period, even if this definite period is very long. Such a contract ends upon the expiry of the period determined by the contract and cannot unilaterally be ended beforehand. Moreover, this Article provides specific rules for two specific situations, non-renewal and continued performance.

Parties are free not to renew a contract for a definite period of time after the expiry of its term. However, if one party gives notice to the other in due time that it wishes to renew the contract, the latter party, if it wishes not to renew the contract, has to respond promptly. If it fails to give reasonable notice of its decision not to renew, the aggrieved party is entitled to damages (see Article 1:303).

A contract concluded for a definite period of time would normally end upon the expiry of the pertinent term. However, when the parties actually continue performing the contract after the agreed term has expired, an agreement that was concluded for a fixed term does not come to an end upon the expiry of the fixed term. Instead, the contract becomes a contract for an indefinite duration, subject to the same conditions.

B. Interests at Stake and Policy Considerations

In principle, both parties have an interest in the binding force of their contract. More in particular, it is in their interest to be certain that it will last for the period which they

have agreed upon. It allows them to determine proper and rational business planning and to evaluate what investments they should make. However, during the course of the performance their interests may change. One party may wish to abandon the contract, e. g. because another contract is more favourable. If the other party agrees there is no problem (consensual ending of the contract) but the other party will usually object. In this rule the interest in legal certainty is upheld by guaranteeing the binding force of a contract for the term which the parties have agreed upon. If a party wishes to retain the right to end the contract at any time it should conclude a contract for an indefinite period (see Article 1:302 – the party who ends may, however, be liable if it omits to provide reasonable notice). The only exception to the binding force of a contract for a definite period is the case of a change of circumstances which renders performance excessively onerous (see 6:111 PECL: the court may end the contract).

The requirement to provide notice of non-renewal within a reasonable time – when the other party has given notice that it wishes to renew the contract – even though a fixed duration for the contract was agreed upon, is based on the notion that, sometimes, the definite period may be very long and that even in a short period of time a party may build up hope that the contract will be renewed and will act accordingly. Therefore, a similar need for protection that arises for contracts of an indefinite nature occurs. However, since the party has explicitly agreed upon a definite period, the type of protection is somewhat different, it is necessarily weaker. The party which intends not to renew does not have to give notice of non-renewal. The only thing it has to do is to respond if the other party informs it, in due time, of its intention not to renew the contract. Such a limited obligation to respond to a notice by the other party is not very burdensome and may be expected from a party which is under an intense general obligation to co-operate (Article 1:202).

The idea underlying the rule contained in Paragraph 3 is that parties have an 'easy way out' at their disposal, which is the express term. It is presumed that if they do not decide to end the contract upon the expiry of such a term (they continue performing once the term expires or they expressly agree to prolong the relationship), it is because they are satisfied with the ongoing contractual relationship. Thus, there is a presumption which favours the continuation of the existing business relationship. A clear rule on continued performance is important in practice in order to avoid the situation where continuation may create legal uncertainty.

C. Relation to PECL

Paragraph 1 is based on the same policy considerations as the PECL: the binding force of a contract (with an exception for a change of circumstances). Therefore, the same results would follow from (the system determined by) the PECL. The rule is spelled out in order to provide certainty to parties who have concluded a contract for a long definite period.

The PECL do not contain a rule like the one in Paragraph 2. However, under the PECL a similar rule could follow from good faith (1:201).

The rule in Paragraph 3 is based on the same idea as Article 2:111 (Contracts not Concluded through Offer and Acceptance). See especially Comment A (p. 187): 'many contracts are made by conduct alone'. In most cases an implied contract can probably be construed. However, this Article avoids uncertainty and clarifies that in the case of continued performance there is a new contract, for an indefinite period.

D. Definite Period

Parties may have various reasons for concluding a contract for a definite period. One such reason is that the contract cannot be ended unilaterally during the period which the parties have agreed upon, as Paragraph 1 explicitly states. Another reason may be the applicability of other rules. For example, 'non-compete obligations' benefit from the block-exemption, and are therefore presumed to be valid from an EC competition law perspective, if they do not exceed a period of five years (EC Regulation 2790/1999, Article 5(a)). As a result, many distribution and franchise contracts are concluded for a period of five years.

E. Notice of Renewal and Response to Non-Renewal

A proposal for renewal and a notice by the other party of its decision not to renew may be given by any means appropriate in the circumstances (Article 1:303 (1) PECL). A notice becomes effective when it reaches the addressee (Article 1:303 (e) PECL).

A notice by a party that wishes to renew the contract must be given in due time; the responding notice by the other party of its decision not to renew must be given within a reasonable time before the expiry of the contract. What constitutes due time and a reasonable time respectively depends on the circumstances of the case. Obviously, the second period depends, in part, on the first.

F. Continued Performance: A New Contract subject to the Old Conditions

In the case of continued performance the contract becomes a contract for an indefinite period. But on what conditions? In most cases the same basic obligations on the part of the parties will continue, unless the way in which the parties continue to perform the contract shows otherwise. Other (ancillary) obligations, the prolongation of which is no longer appropriate, may be dispensed with at the time of the expiry of the term. Ultimately, this is a matter of interpretation (see Chapter 5 PECL), to be determined by the court.

G. Right to End a Contract for an Indefinite Period

Obviously, as a result of continued performance the parties are not bound to each other forever. As in any contract for an indefinite period, either party has the right to unilaterally end the contract by giving notice of reasonable length (1:302).

H. Character of the Rule

The parties are free to agree that one (or both) of them has/have the right to end the contract beforehand. However, in that case the mandatory rules on unilateral ending will apply (reasonable notice et cetera; see Article 1:302, especially Paragraph 4).

However, the rule contained in Paragraph 2 is a default rule; the parties are free to agree otherwise.

The rule contained in Paragraph 3 is also a default rule; the parties are free to agree otherwise.

> *Illustration 1*
> In the contract between supplier A and distributor B it is stipulated that each time parties continue to perform after the end of the period, the contract will be prolonged for a definite period of four months. Such a stipulation is valid, and therefore effective, since the rule laid down in Article 1:301 (3) is a default rule.

I. Remedies

The premature 'unilateral ending' of a contract for a definite period constitutes a non-performance of that contract. Therefore, the aggrieved party may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

The remedy in the case of non-observance of the period of notice relating to non-renewal – where such an obligation exists – is liability in damages (see Article 1:303).

The refusal to perform after continued performance has transformed the contract into a contract for an indefinite period constitutes non-performance. Therefore, the aggrieved party may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *No Right to End a Contract for a Definite Period Unilaterally*
   According to a large majority of the legal systems a contract for a definite period of time cannot be ended prior to the expiry of the period, unless parties have agreed otherwise. In some countries there is an exception: i. e. the possibility to end a contract

for a definite period immediately in the case of an urgent and important reason. (POLAND: art. 764 II KC)

Under the following legal systems it is not possible to end a contract for a definite period unilaterally, unless the parties have agreed otherwise: ENGLISH law (*Bowstead & Reynolds* §10-042), FINNISH law (*Hemmo* (1997) II 370), FRENCH law: *Fabre-Magnan*, 512; GERMAN law § 620 I BGB (*Münchener Kommentar zum Handelsgesetzbuch*, § 89 HGB no. 9), GREEK law, DUTCH law as to commercial agency arts. 7:437, 7:438 BW, concerning distribution see *HR* 21-10-1988, *NJ* 1990, 439; *HR* 10-8-1994, *NJ* 1994, 688. In the PORTUGUESE law as to commercial agency this rule is included in art. 26 DL 178/86 and art. 1051 CC (cf. *Pinto Monteiro* (1998) 94), which will be applied by way of analogy to franchise and distribution contracts (*Pinto Monteiro* (2002) 133; *Pestana de Vasconcelos* (2000) 75; *Ribeiro* (2001) 249), in the SPANISH law as to commercial agency this rule is included in art. 24 para 1 LCA .

However, under SWEDISH law contracts concluded for a definite period may be ended unilaterally prematurely. Nevertheless, in such a case the party ending the contract will be liable for damages (KommL § 51 para 2). Concerning distribution, the EÅ 93 establishes a contractual period of two years, which is prolonged by one year unless notice is given six months before the expiry of the contract. In franchise contracts, the contract is normally concluded for a determined period of time, in most cases three or five years, (*Sohlberg*, 67). The most common solution, however, is that the contract is concluded for a definite period of time, but with an additional possibility to end the contract, provided a notice has been given within a certain notice period, (SOU 1986:17, 213). The most common length for such a notice period is six or twelve months, (SOU 1986:17, 72).

2. *Notices of Non-Renewal and of Renewal*

According to ITALIAN law a party must notify the other party that it does not want to renew the contract provided it concerns a commercial agency contract that falls within the scope of the collective economic agreements (*Accordi Economici Collettivi, AEC*) of 2002 concerning agency. When the period of contract lasts for more than six months, the principal has to communicate to the agent 'at least 60 days before the expiry of the term, his possible readiness to renew or prorogue the mandate'. However, non-observance of this provision does not affect the renewal of the contract. It may only be a source of liability for damages (*Baldi* (2001) 226). The SWEDISH model contract concerning distribution EA 93 includes a similar obligation. The EA 93 concerns a contract for a definite period of two years, which is prolonged by one year at a time unless notice is given six months before the expiry of the contract.

Under the other legal systems there are no specific obligations to inform the other party of a possible renewal of a contract for a determinate period. However, depending on the circumstances, such obligations may follow, in some systems, from the general obligation of good faith.

3. *Continued Performance*

If parties continue to perform a contract for a definite period after the expiry of the contract, in the majority of the legal systems the contract will be converted into a contract for an indefinite period.

For commercial agency, this rule is laid down in specific statutory provisions (art. 14 Directive, § 20 of the AUSTRIAN *HvertrG*, art. 4 of the BELGIAN *Handelsagentuurovereenkomstenwet*, reg. 14 of the ENGLISH Regulations, art. L. 134-11 of the FRENCH C. Com., art. 8 para 2 of the GREEK Law on Commercial Agency 219/1991, art. 1750 para 1 of the ITALIAN cc, art. 7:436 of the DUTCH BW, art. 764 of the POLISH KC, art. 27/2 of the PORTUGUESE DL 178/86, art. 24 para 2 of the SPANISH LCA, § 25 (2) of the SWEDISH HaL).

This statutory rule is applied by way of analogy to franchise contracts under PORTUGUESE law and probably under SWEDISH law. Under SPANISH law the rule is not clear. Some authors defend the application of the commercial agency rule by way of analogy to franchising as well (*García Herrera* (1995), *Echebarría Sáenz* (1995)), whereas others argue that the contract will be renewed as a definite contract for the period initially agreed upon (*Hernando Giménez, Gallego Sánchez* (1991)). Also under GREEK law it is not clear whether the agency rule may apply by way of analogy to franchise contracts.

This statutory rule is applied by way of analogy to distribution contracts (PORTUGAL, SPAIN and, most likely, SWEDEN). In the NETHERLANDS authors differ as to whether the commercial agency rule is applied to distribution contracts by way of analogy (*Barendrecht & Van Peursem*, 145-146, *Van de Paverd*, 78). Also under GREEK law it is not clear whether this rule may apply by way of analogy to distribution contracts.

Article 1:302: Unilateral Ending of a Contract for an Indefinite Period

(1) Either party to a contract for an indefinite period may end the contract by giving notice of reasonable length (art. 6:109 PECL).
(2) Whether a notice is of reasonable length depends, among other factors, on
  (a) the time the contract has lasted,
  (b) reasonable investments made,
  (c) the time it will take to find a reasonable alternative, and
  (d) usages.
(3) A notice period of one month for each year during which the contract has lasted, with a maximum of 36 months, is presumed to be reasonable.
(4) The notice period for the principal, the franchisor or the supplier is to be no shorter than one month for the first year, two months for the second, three months for the third, four months for the fourth, five months for the fifth and six months for the sixth and subsequent years during which the contract has lasted. Parties may not derogate from this provision.
(5) Agreements on longer notice periods than those laid down in Paragraphs 2 and 3 are valid provided that the agreed period to be observed by the principal, franchisor or supplier is no shorter than that to be observed by the commercial agent, the franchisee or the distributor.
(6) The aggrieved party is not entitled to specific performance of the contract during the notice period. However, the court may order specific performance of contractual and post-contractual obligations which do not depend on co-operation.

Comments

A. General Idea

A contract is for an indefinite period either when it does not contain any specific duration or when it explicitly states that it is for an indefinite period. The present rule provides that in either case the contract can be ended unilaterally by giving due notice. In other words, each party has 'a right to end' such a contract.

However, the notice must be of reasonable length. Paragraph 2 gives guidance to the parties and the courts in establishing what would be a reasonable period of notice in the circumstances of a particular case. Although the list indicates the factors which are most likely to be of relevance, it is not meant to be exhaustive: depending on the circumstances of the case other factors may be relevant for establishing what period of notice will be reasonable. This Article is based on the assumption that it is impossible to indicate only one or two factors which will be decisive in all cases. The possible uncertainty with regard to the relative weight of each of the factors is mitigated by the presumption indicated in Paragraph 3.

For a principal, a franchisor or a supplier who wants to end the contract there is a minimum period of notice: one month for the first year, two months for the second, three months for the third, four months for the fourth, five months for the fifth and six months for the sixth and subsequent years. This is a mandatory rule; parties may not derogate from this provision (Paragraph 4).

Of course, the parties are free to agree on longer periods of notice than the ones provided for in Paragraphs 3 and 4. However, if they do so the agreed period to be observed by the principal, franchisor or supplier may not be shorter than the one to be observed by the commercial agent, the franchisee or the distributor (Paragraph 5).

Ending upon a shorter notice than is reasonable does, in principle, end the contract: the aggrieved party is not entitled to specific performance of the contract during (the remainder of) the period of notice. There is an exception for contractual and post-contractual obligations which do not depend on mutual co-operation (Paragraph 6). However, the party which gives an unreasonably short period of notice will be liable to pay damages (see Article 1:303).

B. Interests at Stake and Policy Considerations

On the one hand, there is the interest of the party who wishes to end the contract which was concluded for an indefinite period. It may wish to do so for various reasons. For example, it may wish to end its activity in this particular geographical area, or it may have found another agent, franchisee or distributor whom it expects to be more effective. In all these cases, without this provision the party who no longer wishes to continue the contractual relationship would nevertheless be linked to the contract until the end of time, unless the other party agrees to the ending (binding force of contract).

On the other hand, the other party usually has no interest in the ending of the contract. On the contrary, especially when the performance of this contract is its main activity, the contract may be the very basis of its economic existence. Moreover, this party may have made important investments which will only see a return after a period of many years. Also, it may be very difficult for this party to find an equally satisfactory alternative. Therefore, this party may be economically very dependant on the continuation of the contractual relationship.

In this rule these interests are balanced in the following way. A party which wishes to end a contractual relationship for an indefinite period will succeed: the notice of ending will be effective. However, the other party's interest in continuing the contractual relationship for a reasonable period is protected, albeit (in principle) in a monetary way. The party who wishes to end must give reasonable notice (Paragraph 2) in the absence of which it will be liable to compensate the expectation interest (see Article 1:303).

This rule does not only balance the interests of the parties; it is also in the general interest. First, by establishing that a party has a right to end unilaterally it provides legal certainty which diminishes litigation. Secondly, it is economically efficient (compare the theory of efficient breach): if a party (e. g. a franchisor) can derive a greater benefit from a contract with another party (e. g. a new franchisee) than it costs to perform the new contract *and* to properly compensate the aggrieved party (the first franchisee), then ending creates a surplus, since at least one party is better off without anyone being worse off.

The period of notice (and the damages in lieu of this) is meant to safeguard the interests of the party which is confronted with unilateral ending by its counterpart. Therefore, the factors mentioned in Paragraph 2 mainly focus on its position. However, this does not mean that in establishing what notice period would be reasonable in the circumstances, only the interests of the aggrieved party should be taken into account. Not only can the facts of the case relating to each of the factors point to a shorter period of notice (e. g. the absence of investments by the aggrieved party, of a post-contractual competition clause, of difficulties in finding an alternative etc.), but also in the case of facts which point towards a longer period, these factors must be weighed against the interest of the party which wishes to end the contract.

C. Relation to PECL

Paragraph 1 of this Article repeats the rule contained in Article 6:109 PECL (Contract for an Indefinite Period). However, the elaboration in the following Paragraphs and Articles is slightly different, especially as far as the remedy of specific performance is concerned.

D. Receipt Principle Governs Notice

Notice may be given by any means appropriate in the circumstances (Article 1:303 (1) PECL). A notice becomes effective when it reaches the addressee (Article 1:303 (2) PECL).

E. No 'Good Reason' Required for Ending the Contract

This rule does not subject a party's right to end the contract to an evaluation of the appropriateness of its reasons. Even where the party who gives notice has 'no good reason' or 'abuses' its right to end, the notice is nevertheless effective.

F. Reasonableness of the Period of Notice

In assessing what is reasonable, the nature and purpose of the contract, the circumstances of the case and the usage and practices of the trade or profession involved should be taken into account. See further Article 1:302 PECL.

The list in Paragraph 2 of specific factors which may play a role in assessing whether a reasonable period of notice was provided, is not meant to be exhaustive. This means that other factors may also determine what period of notice is reasonable in the circumstances. Conversely, not all these factors play a role in each case. Moreover, not all factors have the same weight in each case. All this remains a matter for the court to consider.

(a) The Time the Contract has Lasted

In most cases the period during which the contract has lasted will be an important factor. Normally, the longer the contractual relationship has lasted the more a party becomes dependant on it and the more difficult it will be to adapt to a new situation and, as a consequence, the greater its damage in the case of unilateral ending by the other party.

The importance of this factor is reflected in the fact that the minimum notice period for the principal, the franchisor or the supplier in Paragraph 4 increases with each year during which the contract has lasted.

However, although in most cases the assumption is that the longer the contract has lasted the longer the notice period must be, this factor may, in certain circumstances, also point in the opposite direction. If the contract has lasted for a long time, in some cases this may have been sufficient for the parties to fully recover their investments. Therefore, this factor may also point to a shorter period of notice.

(b) Reasonable Investments Made

Frequently, unilateral ending will occur at a moment when a party has not yet seen a return on all the investments which it has made in view of the performance of the contract. Unless it is protected by a rather long period of notice which allows it to amortise its investments (or compensated by damages in lieu thereof) it may be confronted with extensive losses. Conversely, if the aggrieved party has not made any important investments this may be a reason to accept a rather short notice period. Therefore, the investments made by the aggrieved party will usually play an important role in assessing the length of a reasonable notice period.

However, not all investments made by the aggrieved party should be taken into account, but only those investments which were reasonable in the circumstances; excessive investments are at a party's own risk. Moreover, in principle only specific investments should be taken into account. General investments, for example investments in a generic showroom which can be sold or (sub)let, should in principle not be taken into account.

On the other hand, however, recovery is not limited to investments induced or even requested by the other party. In principle, all reasonable investments may be taken into account.

In principle, in the present system there is no room for complementary damages (i. e. in addition to damages in lieu of the notice period) for the recovery of damages due to useless investments not fully amortised by the notice period, as some European systems are familiar with. Under the present system, such investments are always covered by the notice period (and the damages in lieu thereof). This may in some cases lead to a very long period of notice of more than one year. However, since this notice period is in principle not specifically enforceable (the remedy being monetary compensation; see Paragraph 6 and Article 1:303) this will not lead to any problems.

Within this system, however, there is a possibility that the aggrieved party will be additionally entitled to a goodwill indemnity in accordance with Article 1:306.

(c) The Time it Will Take to Find a Reasonable Alternative

An important function of the period of notice is to allow the aggrieved party to adapt to the new situation, especially to find an alternative, either a new principal, franchisor or supplier, or to commence a different economic activity. The easier it is for this party to find an acceptable alternative, the shorter the period of notice can be. What counts is a reasonable alternative: it does not necessarily have to provide the same benefits or be exactly in the same trading sector or in the same place.

Here post-contractual non-competition clauses may be of relevance. If the contract contains a valid clause which restrains post-contractual competition, it may be more difficult for the aggrieved party to find an alternative. Consequently, in such a case the reasonable period of notice should in principle be longer. However, to the extent that

the aggrieved party's difficulty in finding an alternative economic activity has already been compensated by the compensation which is due under the contract or under the law relating to post-contractual non-competition clauses, that difficulty should again be taken into account here. Consequently, the reasonable notice period may be shorter (and the damages in lieu thereof lower).

(d) Usages

Obviously, the reasonableness of the notice period may vary according to the type of contract (commercial agency, franchise, distribution) and the sector of the trade (e. g. within distribution: beer, cars, petrol). Especially the presence of usages in a particular trade may be of relevance in establishing the reasonableness of a notice. Such usages may sometimes be inferred from codes of conduct, although much depends on the persons and organisations who/which were involved in drafting these codes (e. g. only franchisors).

However, on the other hand, there is no presumption that periods of notice will be generally longer for one type of contract than for another, as is the case in some European jurisdictions. On the contrary, the minimum notice periods for the principal, the supplier and the franchisor provided for in Paragraph 4 are the same for all contracts concerned.

More generally, although usages may play a role in determining what is reasonable, they will not supersede the reasonableness test. In other words: any unreasonable usage (which may be the result of a monopoly or oligopoly leading to structurally unequal bargaining power) should be disregarded, unless the parties have explicitly agreed otherwise.

G. Presumption of Reasonableness

Paragraph 3 contains a presumption that a notice period of one month for each year during which the contract has lasted, with a maximum of 36 months, is reasonable.

This presumption is rebuttable. The aggrieved party may prove that the presumably reasonable period (including the maximum of three years) is unreasonably short in the circumstances. Conversely, the party which has ended the contract may prove that the presumed period is unreasonably long.

H. Minimum Period

For the principal, the franchisor or the supplier who wishes to end the contract there is a minimum period of notice (see Paragraph 4): the period shall be no less than one month for the first year, two months for the second, three months for the third, four months for the fourth, five months for the fifth and six months for the sixth and

subsequent years during which the contract has lasted. Parties may not derogate from this provision.

I. Agreed Longer Periods

If the parties agree on longer notice periods than those laid down in Paragraphs 2 and 3 then the agreed period to be observed by the principal, franchisor or supplier must be no shorter than that to be observed by the commercial agent, the franchisee or the distributor. In other words, the parties are free to agree on longer notice periods than the ones which are considered to be reasonable. However, they may not do so exclusively for the benefit of the principal, franchisor or supplier. To the extent that they nevertheless do so, such an agreement is invalid.

J. Damages the Only Remedy; Specific Performance in Exceptional Cases

If a party ends the contract without giving notice of reasonable length, in principle monetary compensation is the only remedy: the aggrieved party is not entitled to the specific performance of the contract during the notice period which should have been respected (Paragraph 6). As to the amount of damages see Article 1:303.

The reason why the specific performance of the notice obligation purporting to continue the contractual relationship for a reasonable time is not available is that specific performance would normally be an inappropriate remedy for these contracts which are based on *intuitus personae*, confidentiality, co-operation and mutual trust (see Article 1:202). It does not make sense to compel parties to co-operate and to trust each other.

However, if exceptionally these factors do not play a role whereas, on the other hand, the aggrieved party has a specific and important interest in the actual continuation of the contractual relationship for a reasonable time, a court may order the specific performance of some or even all the obligations under the contract. The court must then determine the conditions under which performance shall take place. Moreover, the court may also order the specific performance of post-contractual obligations which do not depend on co-operation (see Article 1:202).

K. Character of the Rule

This is a default rule; the parties are free to agree otherwise. However, the minimum period of notice contained in Paragraph 4 is mandatory; any agreement on a shorter period by the parties remains without effect. Moreover, Paragraph 5 is also mandatory: the parties may not derogate from this provision.

Notes

1. *Right to End (General)*

Under all legal systems either party may end a commercial agency, franchise or distribution contract, provided that a notice has been given.

For commercial agency a rule to this effect is laid down in statutory provisions based on art. 15 (1) of the Directive. (Art. 15 (1) of the Directive: 'Where an agency contract is concluded for an indefinite period either party may terminate it by notice.' It must be noted that the meaning of termination as included in the Directive differs from the one provided in Article 1:304). See: AUSTRIA: § 21 (2) of the *HvertrG;* BELGIUM: art. 18 § 1 *Handelsagentuurwet*; FINLAND: art. 23 of the Act on Commercial Agents; FRANCE: art. L. 134-11 C.Com; GERMANY: § 89 I HGB; GREECE: art. 8 Law on Commercial agency 219/1991; ITALY: art. 1750 cc; NETHERLANDS: art. 7: 437 BW; POLAND: art. 764 I KC; PORTUGAL: art. 178/86; SPAIN: art. 24 (1) LCA; SWEDEN: § 24 (2) HaL.

As to franchise and distribution contracts under GERMAN law, the rule concerning commercial agency applies by way of analogy (*Münchener Kommentar zum Handelsgesetzbuch*, § 89 HGB no. 6). However, under GREEK and PORTUGUESE law the rules concerning commercial agency apply by way of analogy only to distribution contracts (*Pinto Monteiro* (2002) 129; *Menezes Cordeiro* (2001) 513; *Ribeiro* (2001) 241; *Pestana de Vasconcelos* (2000) 80; STJ 18/10/1994, BMJ 451 (1995) at 445; STJ 23/09/1997, www.dgsi.pt; STJ 16/05/1996, BMJ 468 (1997) at 428; STJ 4/05/1992, BMJ 427 (1993) at 524).

In BELGIAN law a rule to the effect of Article 1:302 is laid down in art. 2 of the *Alleenverkoopwet*, which applies to distribution contracts.

As to franchise and distribution contracts under FRENCH and SPANISH law with respect to a distribution contract either party may end the contract unilaterally, provided a notice period is observed and there is no abuse of the right (FRANCE: Art. L. 442-6 I 5 C. com., Leloup, no. 2065 et seq.).

However, as to franchise and distribution contracts under DUTCH law the point of departure is that such contracts cannot be ended. However, based on good faith there may be a right to end such a contract (art. 6:248 BW, *Asser-Hartkamp* 4-II, no. 310 ff.). Whether a notice period must be observed and, if so, its length depends on the requirements of good faith.

2. *Fixed Notice Period*

As to commercial agency contracts art. 15 (2) of the Directive includes a fixed minimum mandatory notice period. (Art. 15 (2) of the Directive: 'The period of notice shall be one month for the first year of the contract, two months for the second year commenced, and three months for the third year commenced and subsequent years. The parties may not agree on shorter periods of notice.') However, the Directive leaves it to the Member States to include a minimum mandatory fixed notice period for the fourth, fifth, sixth and subsequent years of the contract as well. (Art. 15 (3): 'Member States may fix the period of notice at four months for the fourth year of the contract, five months for the fifth year and six months for the sixth and subsequent years. They may decide that the parties may not agree to shorter periods.')

The following countries include a fixed mandatory minimum notice period in their legal systems for the first 6 years of the commercial agency contract: AUSTRIA: § 21 of the *HvertrG;* BELGIUM: art. 18 *Handelsagentuurwet*; FINLAND: art. 23 of the Act on Commercial Agents; GREECE: art. 8 Law on Commercial agency 219/1991; ITALY: art. 1750 III cc; SPAIN: art. 25 (2) LCA; SWEDEN: § 24 (2) HaL.

GERMAN law differs in the sense that the notice period is one month for the first year, two months for the second year, three months for contracts that lasted for three to five years and six months for contracts that lasted more than five years (§ 89 I HGB).

ENGLISH, FRENCH, DUTCH, POLISH, PORTUGUESE law have opted for art. 15 (2) Directive. The minimum notice period for both parties is three months for contracts that lasted for three years and longer (ENGLAND: Reg. 15 (2); FRANCE: art. L. 134-11 C.Com; NETHERLANDS art. 7:437 II BW; POLAND: art. 764 I KC; PORTUGAL: art. 28 (1) DL 178/86)

These minimum rules concerning commercial agency are applied by way of analogy to franchise and distribution contracts under GERMAN law (*Münchener Kommentar zum Handelsgesetzbuch*, § 89 HGB no. 6). They apply to distribution contracts by way of analogy under GREEK and PORTUGUESE law (*Pinto Monteiro* (2002) 129; *Menezes Cordeiro* (2001) 513; *Ribeiro* (2001) 241; *Pestana de Vasconcelos* (2000) 80; STJ 18/10/1994, BMJ 451 (1995) at 445; STJ 23/09/1997, www.dgsi.pt; STJ 16/05/1996, BMJ 468 (1997) at 428; STJ 4/05/1992, BMJ 427 (1993) at 524).

3. *Reasonable Notice Period*

In a number of countries, franchise or distribution contracts can be ended unilaterally by giving reasonable notice. (art. 2 of the BELGIAN *Alleenverkoopwet*; FINNISH law Cf. KKO 1982 II 1; under SPANISH law the decisions rendered with respect to distribution contracts can be applied by way of analogy to franchising (*STS* 11-2-84, 3-12-92, 23-07-93, *STS* 24-02-93, RJ 1298; *STS* 25-01-96, RJ 319).

Under FRENCH law with respect to franchise and distribution contracts the notice period to be observed depends on the length of the contract concerned and commercial usages (art. L. 442-6 I 5 C. com.). In addition, if the contract involves the distribution of goods under a trademark the notice period should be doubled (art. L. 442-6 I 5 C. com.).

Under DUTCH law a reasonable notice period must be observed with respect to franchising and distribution contracts, which follows from case law (*HR* 23-12-1994, *NJ* 1995, 263; *HR* 21-4-1995, *NJ* 1995, 437.)

4. *Minimum Notice Period for the Principal, Franchisor or Supplier*

According to Art. 15 (4) of the Directive the notice period which the principal must observe, is not allowed to be shorter than the one observed by the commercial agent if parties agree upon longer notice periods than the minimum notice periods provided for in the Directive. (Art. 15 (4) of the Directive: 'If the parties agree on longer periods than those laid down in Paras 2 and 3, the period of notice to be observed by the principal must not be shorter than that to be observed by the commercial agent.'). Concerning commercial agency a similar rule is included in the following legal systems: (AUSTRIA: § 21 (3) HvertrG; BELGIUM: art. 18 § 1 Handelsagentuurovereenkomstenwet; ENGLAND: Reg. 15 (3); FRANCE: art. L. 134-11 C.Com; GERMANY: § 89 II HGB; GREECE: art. 8 Law on Commercial agency 219/1991; ITALY: art. 1750

cc; NETHERLANDS: art. 7:437 (2) BW; POLAND: art. 764 I § 2 KC; PORTUGAL: art. 28 (1) DL 178/86); SPAIN art. 25 (3) LCA.)
As to distribution contracts under FINNISH law the notice period must be of such length that it allows the distributor to amortise his investments. If a notice period does not allow the distributor to do so, the notice period is considered to be unreasonable and can be assimilated into a reasonable one according to art. 36 of the Contracts Act. The same is valid with respect to franchise contracts.
With respect to franchise and distribution contracts no such rule has been found in the legal systems.

5. *Consequences of Disregarding the Notice Period*
See the notes to Article 1:303.

Article 1:303: Damages for Non-Observance of Notice Period

(1) In the case of the non-observance of the notice periods mentioned in art. 1:301 (2) and 1:302 (1), the aggrieved party is entitled to damages.
(2) The general measure of damages is such sum which corresponds to the benefit which the aggrieved party would have obtained during the non-observed period of notice.
(3) The yearly benefit is presumed to be equal to the average benefit which the aggrieved party has obtained from the contract during the previous 3 years or, if the contract has lasted for a shorter period, during that period.
(4) The general rules on damages for non-performance (art. 9:501 ff PECL) apply accordingly.

Comments

A. General Idea

The remedy for the non-observance of the period of notice is damages. A party which ends a contract without giving a reasonable period of notice, is liable to compensate the (concrete) damage thereby caused to the other party.

The aggrieved party's compensatable damage amounts to the expectation interest (Paragraph 2): it should be placed, as far as possible, in the position in which it would have been if a notice of reasonable length had been provided. If reasonable notice had been given the aggrieved party would have had all the usual benefits from the contract during the remainder of its duration (i. e. the reasonable notice period). Therefore, the aggrieved party is, in principle, entitled to compensation for the loss of that benefit. Compare Article 9:502 PECL (General Measure of Damages): 'The general measure of damages is such sum as will put the aggrieved party as nearly as possible into the position in which it would have been if the contract had been duly performed. Such damages cover the loss which the aggrieved party has suffered and the gain of which it has been deprived.'

Paragraph 3 contains a presumption that the yearly benefit is equal to the average benefit which the aggrieved party has received from the contract during the last three years. The idea is to refer to a period of time which is indicative of the business of the aggrieved party. Exceptional circumstances should not be taken as a general measure.

Finally, although, strictly speaking, these are not damages for non-performance (the notice ends the contract, even if the period of notice was too short) but rather for not giving notice in due time, the application of the PECL's regime on damages for non-performance (Chapter 9, Section 5) is appropriate here. Therefore, Paragraph 3 declares that these rules (i. e. Articles 9:501 ff) apply accordingly.

B. Interests at Stake and Policy Considerations

The rule that damages are the only remedy is based on considerations of economic efficiency: as long as a party is ready to pay (damages), it should be capable of ending the contract without observing a period of notice. Compelling it to 'wait' until a reasonable period of time has expired, could result in the loss of other opportunities. Therefore, the system adopted here provides the most efficient solution: a party can effectively end a contract, but will have to pay a 'price' (compensation). If the 'price' is lower than the benefit it expects from ending the contract, at least one party is better off without anyone else being actually worse off.

The 'price' to be paid amounts to full compensation of the interest the aggrieved party had in the observance of the notice period, i. e. all the benefits it would have derived from the contract during the (remainder of) the period of notice. In other words, the expectation interest.

C. Relation to PECL

Paragraph 2 is based on the same idea as the rule on damages for non-performance in the PECL. See Article 9:502 PECL (General Measure of Damages): 'The general measure of damages is such sum as will put the aggrieved party as nearly as possible into the position in which it would have been if the contract had been duly performed. Such damages cover the loss which the aggrieved party has suffered and the gain of which it has been deprived.' Moreover, Paragraph 4 declares Chapter 9, Section 5 (i. e. Articles 9:501 ff) to be accordingly applicable.

D. Damages the Only Remedy

Unlike in the ordinary case of non-performance (see Article 8:101 PECL), here the aggrieved party (in principle) has only one remedy at its disposal: damages. The reason for this is that the remedy of specific performance (of the reasonable period of notice) would be inappropriate here: if one party has made it clear that it does not want to continue the contractual relationship, the courts cannot successfully force this party to

do so when, as in this case, the success of the contractual enterprise strongly depends on *intuitus personae*, confidentiality, co-operation and mutual trust (see further Comment L to Article 1:302).

The present system provides the parties with the certainty that the notice will effectively end their contractual relationship (see Article 1:302 (6)).

E. Calculation of Damages

The general test for the amount of damages is the benefit which the aggrieved party would have obtained during the non-observed period of notice (the expectation interest).

What is meant here is the 'net' benefit: if the aggrieved party during that period has to (continue to) incur expenses which cannot be (immediately) avoided (e. g., depending on national labour law, laying off personnel which the aggrieved party cannot reasonably employ in another function or elsewhere), then these will also have to be compensated.

The estimation of benefit is based on the benefit which the aggrieved party has obtained from the contract during the previous 3 years. However, other factors may be taken into account, either in order to raise or to mitigate the amount. One such factor may be the aggrieved party's right to transfer its contractual position to a third party. If it can 'sell its business' to a successor, the benefit from this transfer will be taken into account.

F. Concrete Damages

Damages are not calculated in an abstract fashion: what must be compensated is the damage which has been (or will be) effectively suffered by the aggrieved party.

Therefore, although damages shall amount to the benefit which the aggrieved party would have obtained during the non-observed period of notice, and although the estimation of the benefit is based, in principle, on the average benefit which the aggrieved party has obtained from the contract during the previous 3 years, liability ultimately depends on the damage which the aggrieved party actually suffers.

> *Illustration 1*
> A distributor runs a petrol station. The petrol supplier ends the contract after four years by observing a notice period of one month. According to Article 1:303 the supplier ought to have observed the mimimum notice period of at least four months, which is considered reasonable in this case. To run the petrol station the distributor employs four persons. To make them redundant the distributor must itself observe a notice period of five months. In other words, the distributor must pay their salaries for another five months. The damages which the supplier

must pay are 3/12 of the average benefit of the last three years and the sum resulting from the salary costs of the four persons for the forthcoming five months.

G. General Rules on Damages Applicable

Chapter 9, Section 5 PECL contains general rules on damages and interest for non-performance. These Articles (Articles 9:501–9:510) apply here as well. They include e. g. rules on foreseeability (9:503), loss attributable to the aggrieved party (9:504), reduction of loss (9:505) and substitute transactions (9:506).

H. Character of the Rule

This is a default rule; the parties are free to agree otherwise.

Notes

1. *Entitlement to Damages in the case of Non-Observance of the Notice Period*
The national legal systems differ as to the consequences of the non-observance of a notice period.
In some systems the aggrieved party is entitled to damages in lieu of a notice period. This can be found in the following legal systems: BELGIAN law (art. 2 *Alleenverkoopwet*, art. 18 *Handelsagentuurwet*), FINNISH law (the general right to damages when the notice period has not been observed was awarded in KKO 1982 II 1); GREEK law; POLISH law (art. 764 II § 2 KC; SWEDISH law (KommL § 51 (2), HaL § 34 (1)).
In BELGIAN and DUTCH law, in the case of commercial agency the aggrieved party is entitled to damages in lieu of a notice period, unless the contract was ended because of important and urgent reasons, which is notified to the other party (art. 18 § 3, art. 19 *Handelsagentuurwet*; art. 7:439 (1) BW). Important and urgent reasons are such circumstances that cannot require the other party reasonably to continue the contract.
In contrast, under FRENCH and SPANISH law there is no entitlement to damages unless the non-observance of the notice period also results in an *abus de droit*. (art. L 442-6 I 4 C. com.)
However, in other systems there is no entitlement to damages, although the notice period will be substituted by one which is proper. (GERMAN law: *Martinek/Semler*, § 10 no. 9; *Münchener Kommentar zum Handelsgesetzbuch*, § 89 HGB no. 62. However, the aggrieved party may end the contract (without a notice period), since the non-observance of the notice period can be considered an important reason for termination (§ 89 a I HGB, BGH, *BB* 1966, p. 1410; *Münchener Kommentar zum Handelsgesetzbuch*, § 89 a HGB no. 56). In that case the aggrieved party is entitled to damages in accordance with § 89 a II HGB. This provision also applies by way of analogy to franchise and distribution contracts. Also according to FINNISH law both unfairly long or short periods of notice can be adjusted according to art. 36 of the Contracts Act. There is, however, no case law on such adjustments.

2. *Calculation of the Damages*

The calculation of damages differs from country to country and from contract to contract. Under some legal systems there are specific rules concerning the calculation of the damages, whereas according to others general contract law or the general law of obligations determines the amount of damages. Moreover, in several systems the calculation of damages is a question of fact, not of law.

Under the following legal systems there is a specific rule concerning the calculation of damages.

Under BELGIAN law the ending party must pay a sum that equals the remuneration that the other party would have obtained, had a proper notice period been observed (art. 18 § 3 *Handelsagentuurwet)*. Also under DUTCH law the ending party must pay a sum that equals the award that a commercial agent would have obtained if the contract had been properly ended. To calculate the amount, the commission earned prior to the ending must be taken into account as well as all other circumstances (art. 7:441 (1) BW). The aggrieved party may also claim the actual damages instead, provided that it proves the actual damages.

Under ITALIAN law there are authors who argue that the calculation of damages for non-observance of the notice period may be inferred from collective economic agreements (*AEC*) (*Baldi* (2001) 240). Pursuant to such collective agreements the amount of damages corresponds to as many twelfths of the commissions earned in the previous year (1 January-31 December) as the number of months of due notice period, or to a sum which is proportional to this amount, in the case the notice period only had to be partially observed. If the relationship has lasted for less than one year, the calculation has to be done on the basis of the monthly average of the commissions earned during that relationship.

As to distribution contracts, concrete damages must be paid under BELGIAN law (art. 3 *Alleenverkoopwet*). Under ITALIAN law, when it is the supplier who ends the contract, it will have to provide the distributor with the lost net profit that it would have obtained, had the notice period been respected (*Baldi* (2001) 92). Under DUTCH law the elements taken into account to assess the amount of damages are the length of the relationship and the legitimate expectations of the aggrieved party as a result of statements made by the supplier. Moreover, the timing of the ending and its consequences are to be taken into account as well. Sometimes the reasons for ending the contract and the customs in the distributor's branch are also taken into account (*HR* 21 June 1991, *NJ* 1991, 742).

Under other legal systems the amount of damages follows from general contract law. Under ENGLISH law the measure of damages is as per Para 2 of the present Article (*Robinson* v. *Harman* (1848) 1 Ex. 850, 855).

Also under FINNISH law general contract law applies to determine the amount of damages. The objective of awarding damages is that the aggrieved party will be in the same position had the contract been performed properly. Under GREEK law positive and negative damage are compensated (art. 298 AK), whereas non-material damage is compensated only where this is explicitly provided by a legal provision (art. 299 AK). According to the case law the provisions of the civil code on mandate and, in particular art. 722 AK, apply by way of analogy to calculate damages. The damages cover at least the expenses incurred in the proper performance of the contract, including expenses incurred in the purchase and storage of stock and advertising (CA Piraeus

1251/1991 Epitheorisi Emporikou Dikaiou 1991, 625; CA Athens 1107719/91; First Instance Court of Athens 1007/1993, Epitheorisi Emporikou Dikaiou 1995, 226). The CA Piraeus considered the application of art. 723 AK, which provides that the principal must compensate the mandatory for any damage suffered in the execution of the mandate which was not due to his fault (CA of Piraeus 1251/91, Epitheorisi Emporikou Dikaiou 1991, 625; see also First Instance Court of Athens 305/1997 Epitheorisi Emporikou Dikaiou 1998, 531).

Article 1:304: Termination for Non-Performance

(1) A party may terminate the contract for non-performance only if the other party's non-performance is fundamental within the meaning of Article 8:103 (b) and Article 8:103 (c) PECL (art. 9:301 PECL).
(2) Parties may not derogate from this provision.

Comments

A. General Idea

In the case of non-performance a commercial agency, franchise or distribution contract may only be terminated when (i) the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract, or (ii) the non-performance is intentional and gives the aggrieved party reason to believe that it cannot rely on the other party's future performance.

This rule is exactly the same as Article 8:103 in conjunction with Article 9:301 PECL, except for one important difference. One type of fundamental non-performance mentioned in Article 8:103 PECL (the one under a), which allows for immediate termination, is absent here: the case where strict compliance with the obligation is itself of the essence of the contract. Such a rule would be inappropriate for long-term commercial contracts. Article 8:103 (a) PECL is mainly meant for international sales and similar contracts where legal certainty and a quick response are essential. See the Comment to Article 8:103 (a) (p. 364):

'Under Article 8:103(a) the relevant factor is not the actual gravity of the breach but the agreement between the parties that strict adherence to the contract is essential and that any deviation from the obligation goes to the root of the contract so as to entitle the other party to be discharged from its obligations under the contract. This agreement may derive either from express or from implied terms of the contract. Thus, the contract may provide in terms that in the event of any breach by a party the other party may terminate the contract. The effect of such a provision is that every failure in performance is to regarded as fundamental. Even without such an express provision the law may imply that the

> obligation is to be strictly performed. For example, it is a rule in many systems of law that in a commercial sale the time of delivery of goods or of the presentation of documents is of the essence of the contact.'

This rule which is especially essential to commodity markets, where certainty is of the essence, is not appropriate to contracts where parties sometimes make considerable investments in long-term relationships, and where they are frequently dependant on the continuity of such a relationship. Such a relationship may not be terminated by one party on account of the other party's mere non-performance of an obligation the performance of which, as a result of a contractual stipulation, was deemed to be of the essence of the contract, without this aggrieved party being substantially deprived by the non-performance of what it was entitled to expect under the contract, or when the non-performance is intentional and gives the aggrieved party reason to believe that it cannot rely on the other party's future performance.

Therefore, in long-term commercial relationships the contract may only be terminated if indeed (i) the non-performance is intentional and gives the aggrieved party reason to believe that it cannot rely on the other party's future performance, or (ii) the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract.

> *Illustration 1*
> An international chain of hamburger restaurants provides its franchisees with a book containing hundreds of pages and thousands of very detailed instructions relating to all aspects of hamburger selling. The franchise contract says that strict compliance with each of these instructions is of the essence of the contract. During a monthly inspection the franchisor discovers that hamburgers in one particular restaurant are on average 2% too hot. The franchisor may not terminate the contract.

B. Interests at Stake and Policy Considerations

Although the aggrieved party may have a considerable interest in strict compliance with the contract, e. g. because it needs to maintain the good reputation of the product or the trademark (in the case of a principal, a franchisor or a supplier) or because it risks running out of stock (in the case of the commercial agent, the franchisee or the distributor), the other party usually has an equally (or even more) important interest in the continuity of the contractual relationship.

Therefore, the aggrieved party is only allowed to terminate the contract where the non-performance is intentional and therefore undermines the relationship (Article 8:103 (c) PECL) or it deprives the aggrieved party of most of the benefit under the contract (Article 8:103 (b) PECL).

However, either party may always end the contract by giving notice of reasonable length under Article 1:302. Thus, this provision should be read in connection with

the provisions on ending: whereas termination is more difficult than under the PECL, ending is possible if the conditions imposed are respected. That is, unless it gives reasonable notice the party who wishes to end the contract will have to pay damages to the other party (Article 1:303).

C. Relation to PECL

This rule provides an exception for certain long-term contracts to the general rule in Article 8:103 (a) PECL.

For the remainder the PECL apply normally. This means that all the other rules on termination contained in Chapters 8 (Non-Performance and Remedies in General) and 9 (Particular Remedies for Non-Performance), Section 3 (Termination of the Contract) of the PECL are normally applicable to termination for non-performance of commercial agency, franchise and distribution contracts.

D. Remedies

In the cases provided for in this Article the aggrieved party may terminate the contract. The rules on termination contained in Chapters 8 (Non-Performance and Remedies in General) and 9 (Particular Remedies for Non-Performance), Section 3 (Termination of the Contract) of the PECL apply.

E. Character of the Rule

This rule is mandatory: the parties cannot agree in their contract that the contract may be terminated except for the two cases mentioned in this Article (a and b). In other words, any deviation from this Article by the parties to the detriment of the party who would benefit from it remains without effect (see Paragraph 2).

Notes

1. *In General*
   Under the majority of the legal systems any party may terminate a commercial agency, franchise or distribution contract for non-performance in the instances mentioned in Article 1:304. However, it differs from country to country whether these rules are included in general or specific contract law. For commercial agency contracts, the Directive (art. 16 (a)) leaves this issue to the legal systems of the Member States (Art. 16 of the Directive: 'Nothing in this Directive shall affect the application of the law of the Member States where the latter provides for the immediate termination of the agency contract: (a) because of the failure of one party to carry out all or part of his obligations; (b) where exceptional circumstances arise.').

2. *Termination for Substantial or Intentional Non-Performance*

a) *Specific Rules*

In BELGIAN, POLISH, PORTUGUESE, SPANISH and SWEDISH law a specific rule concerning the termination of a commercial agency contract is included in the statutory provisions concerning commercial agency contracts. (BELGIUM: art. 20 *Handelsagentuurwet*; POLAND: art. 764 II § 1 KC; PORTUGAL: art. 30 DL 178/86; SPAIN: art. 26 LCA; SWEDEN § 26 HaL.)

b) *Non-specific Rules*

In BELGIAN law it must concern a fundamental non-performance to terminate a commercial agency contract (*un manquement grave de l'autre partie à ses obligations*). Apart from this possibility to terminate the contract, there are also the possibilities which general contract law provides. Under SPANISH law, art. 26 LCA does not deviate from general contract law (art. 1124 cc) in the case of non-performance (*SAP* León 21-11-96, AC 2169, *Domínguez Gracía*, 1317, *Móxica* 176, *Memento*, 471). If a distribution contract can be regarded as a commercial agency contract ("identity of reason", art. 4 CC) art. 26 LCA applies by way of analogy. In all other instances general contract law applies.

In PORTUGUESE law in the case of commercial agency either party can terminate the contract (i) in the case of a serious or reiterated non-performance that renders the continuation of the contractual relationship impossible or (ii) in the case of unexpected circumstances that render the regular performance of the contract impossible. However, an adequate term of notice of termination is still required (art. 30 DL 178/86, *Pinto Monteiro* (1998) 106; *Pinto Monterio* (2002) 143). Art. 30 DL 178/86 is applied by way of analogy to franchise and distribution contracts (*Pinto Monteiro* (2002) 142; *Pestana de Vasconcelos* (2002) 85).

According to § 26 of the SWEDISH HaL, each party may terminate the contract immediately if the other party has failed to fulfil his contractual or statutory obligations and the non-performance is fundamental for the terminating party and the other party realised or should have realised this. Concerning commission agencies, there is no liability for damages for premature termination if the other party has committed a fundamental breach of his contractual duties, KommL § 51 (2). Concerning distribution, the rules on commission agencies can probably be used by way of analogy.

As to distribution contracts, art. 2 of the BELGIAN *Alleenverkoopwet* determines that in the case of fundamental non-performance the contract can be terminated.

Under some legal systems, ending for important and urgent reasons also includes termination for non-performance, see the notes for ending for important and urgent reasons.

3. *Ending for Important and Urgent Reasons*

Under a number of legal systems a commercial agency, franchise or distribution contract may be ended also for important and urgent reasons.

In some legal systems ending for important and urgent reasons also includes termination for non-performance.

As to commercial agency contracts, such a rule is included in the legal systems of the following countries: AUSTRIA: § 22 *HvertrG* (*vorzeitige Auflösung aus wichtigem Grund*);

GERMANY: § 89 I (1), § 89 a I (2) HGB (*Kündigung aus wichtigem Grund*); FINLAND: art. 25 of the Act on Commercial Agents; ITALY: Cass. applies art. 2119 *cc* by way of analogy to commercial agency contracts: Cass. sez. lav. 2-5-2000, n. 5467, *Disc. comm.*, 2000, 1078, with note by F. di Ciommo, *Diritto alle provvigioni e recesso dell'agente per giusta causa*, Cass. 5-11-1997, n. 10852, *Rep. Foro. It.*, 1997, voce *Agenzia*, n. 25, Cass. 15-11-1997, n. 11376, *Rep. Foro It.*, 1997, voce *Agenzia*, n. 24, Cass. 14-1-1999, n. 368, *Rep. Foro It.*, 1999, voce *Agenzia*, n. 8, Cass. 1-2-1999, n. 845, *Rep. Foro It.*, 1999, voce *Agenzia*, n. 12, Cass. 20-4-1999, n. 3898, *Rep. Foro It.*, 1999, voce *Agenzia*, n.15 (*guista causa*); NETHERLANDS: arts. 7:339, 7:440 BW; SWEDEN § 26 HaL.

Under AUSTRIAN law. the possibility of ending for urgent and important reasons has generally been accepted for long-term contracts (OGH 1999/11/16 10Ob247/99t). As to franchise contracts see OGH 1987/05/05 4 Ob 321/87, OGH 1987/10/21 1 Ob 641/87, OGH 1989/05/09 4Ob52/89, OGH 1991/04/10 9 Ob A 8, 9/91. As to distribution contracts see: OGH 1996/05/23 6Ob661/95. With respect to distribution contracts the rules concerning commercial agency contracts may apply by way of analogy (OGH 2000/05/25 8Ob295/99m).

Under GERMAN law the rule concerning commercial agency contracts is applied to franchising and distribution contracts by way of analogy (*Küstner/Thume*, no. 1789; *Münchener Kommentar zum Handelsgesetzbuch*, § 89 a HGB no. 9). An 'important reason' is determined by taking into account all the circumstances of the case and the interests of the parties (*Koller/Roth/Morck*, § 89 a HGB no. 4). All the instances to which Article 1:304 refers, are recognized as *wichtiger Grund* under GERMAN law. (*Koller/Roth/Morck*, § 89 a HGB no. 4; *Münchener Kommentar zum Handelsgesetzbuch*, § 89 a HGB nos. 18, 29, 43).

Also under the SWEDISH law concerning all long-term contracts there is a right to end the contract immediately for important reasons, mostly applicable in severe cases of breach of contract by the other party.

According to the BELGIAN statutory rules on commercial agency, either party may terminate the contract because of circumstances which render further future cooperation impossible. (*des circonstances exceptionelles rendent définitivement impossible toute collaboration professionelle entre le commettant et l'agent* art. 19 *Handelsagentuurwet*).

4. *No Termination if Proper Performance was 'of the Essence'*

Under GERMAN law the rule concerning ending for important and urgent reasons, which includes termination for non-performance within the meaning of Article 1:304, is mandatory (§ 89a II HGB). That is to say parties cannot deviate therefrom by contract.

However, under other legal systems parties may stipulate in their contracts which circumstances justify the termination of the contract. This is the case under FINNISH law. However, if such a stipulation is unfair, the court can adjust the contract (Article 36 of the Contracts Act). Also under DUTCH law, parties may stipulate circumstances that justify termination. However, such an agreement is subject to good faith. This is also the situation under BELGIAN law with respect to parties to commercial agency and distribution contracts. However, such stipulations are policed by the courts.

Under FRENCH commercial agency law, parties are not allowed to stipulate that certain obligations are of the essence and justify the termination of the contract (Cass. 28 May 2002).

Article 1:305: Indemnity for Goodwill

(1) When the contract comes to an end for any reason (including termination by either party for non-performance), a party is entitled to an indemnity from the other party for goodwill if and to the extent that
  (a) the first party has significantly increased the other party's volume of business and the other party continues to derive substantial benefits from that business, and
  (b) the payment of the indemnity is reasonable having regard to all the circumstances.
(2) The grant of an indemnity does not prevent a party from seeking damages under Article 1:303.

Comments

A. General Idea

Irrespective of whether the contract was for an indefinite or a definite period and irrespective of the way in which the contract ended (unilateral ending, termination for non-performance), the mere fact that the contractual relationship comes to an end may lead to a transfer of goodwill. To the extent that such a transfer has actually taken place (a) and that indemnification would be reasonable in the circumstances (b), there is a ground for the payment of an indemnity. This Article provides the other party with a remedy.

Goodwill has its own value which must me differentiated from the expectation interest under the contract. Therefore, it should always be refunded irrespective of the way the contract is ended. Indemnity for the clientele does not depend on any sort of fault. It will cumulate with damages in the case of the premature ending of the contract (see Article 1:303).

B. Interests at Stake and Policy Considerations

The entitlement to an indemnity for transfer of goodwill is based on considerations of the law of unjustified enrichment: a party should not be unjustifiably enriched as the result of the ending or termination of a long-term commercial contract.

C. Relation to PECL

The PECL contain no such rule. The general doctrine of unjustified enrichment that this rule is based on will be dealt with in the Principles on European Unjustified Enrichment Law.

D. Generated Goodwill

A party which claims an indemnity for the transfer of goodwill has to prove that it has significantly increased the other party's volume of business. In other words, it must prove that the goodwill it had was transferred to the other party as a result of the termination or ending of the contract. It is crucial that the agent, franchisee or distributor has played an active role in increasing the volume of business of the other party. This means that where the volume has increased as a consequence of (a new client from) a party's exclusive territory, this party is not automatically entitled to an indemnity.

The most typical example of transfer of goodwill is where the principal, franchisor or supplier has access to lists of clients and other similar data either because the commercial agent, franchisee or distributor has handed such lists over after the termination or ending of the contract or because the principal, franchisor or supplier otherwise has access to such data (e. g. because the commercial agent, franchisee or distributor has regularly passed such information on to the principal, franchisor or supplier during the course of the contract).

E. Commercial Agency, Franchise and Distribution Distinguished

In the case of commercial agency contracts the ending of the contract will normally lead to a transfer of goodwill. Therefore, frequently there will be a right to compensation. See Article 2:312 on the calculation of the amount. On the other hand, in the case of franchise the goodwill is rarely the goodwill of the franchisee since, typically, clients are attracted by the image of the brand and the network. In the case of distribution contracts, sometimes the goodwill (clientele) will be attracted by the supplier's products or its brand (especially in the case of exclusive distribution agreements). However, it may also be the distributor who, like an agent, has created the market for the products. In the latter case, the distributor may be entitled to goodwill compensation after the ending of the contract.

F. Continuous Substantial Benefits

The party claiming an indemnity must prove that the generated goodwill stays with the other party and that it is substantial. Normally, the benefits which the other party continues to derive decrease gradually over time. This must be taken into account. Moreover, the general turnover of this specific principal, franchisor or supplier may decrease in time, e. g. because the general market for its products deteriorates. Such a development should also be taken into account. However, the principal, franchisor or supplier is presumed to continue to derive substantial benefits from the generated goodwill even if it sells its business or client list to a third party if it can be shown that the purchaser will use the clients base.

G. Reasonable Indemnity

A party who claims an indemnity for the transfer of goodwill also has to prove that the indemnity it claims is reasonable in the circumstances. The concept of 'reasonableness' which is contained in this Article refers to Article 1:302 PECL, where it is defined. Obviously, the 'reasonableness' test leaves some room for interpretation. It may be helpful for this party to prove that the other party is unjustifiably enriched as a result of this transfer of goodwill (see the Principles of European Unjustified Enrichment Law).

For commercial agency, Chapter 2 provides a specific rule on how to calculate goodwill compensation. (Article 2:312).

H. Relation to Damages for Irregular Ending

The grant of an indemnity for goodwill shall not prevent a party from seeking damages. In other words, damages for non-observance of a reasonable notice period (see Articles 1:302 and 1:303) and an indemnity for goodwill can, in principle, cumulate.

However, when establishing whether an indemnity for goodwill is reasonable in the circumstances the entitlement of the aggrieved party to damages for irregular ending should be taken into account. In other words, the same loss shall not be compensated twice, once as loss of benefit (damages amounting to the expectation interest) and once as 'loss' of goodwill (indemnity for the transfer of goodwill).

I. Relation to Compensation for Post-Contractual Non-Competition

If a party, as a result of a valid post-contractual non-competition clause, is not allowed to compete with its former principal, franchisor or supplier, and if, as a result, clients which would have moved to it had it started a competing activity, now move to its former principal or franchisor or supplier, the combined effect of ending (or termination) and the post-contractual non-competition clause may be a transfer of goodwill in the sense of this Article, which gives rise to a right to be indemnified. However, if the impossibility to compete is already compensated by an entitlement for the commercial agent, franchisee or distributor to compensation (compensation for post-contractual non-competition) (as will usually be the case), then the commercial agent, franchisee or distributor is thus not impoverished, and is therefore, on the same grounds as under H, not entitled to an indemnity for goodwill.

J. Relation to Commission Agent After Contract

Under certain circumstances the agent is entitled to commission for contracts concluded by the principal after the contract with the agent has ended. If a claim for a goodwill indemnity under the present Article is considered, the entitlement to such

commission must be taken into account in two ways. First, if such entitlement exists no indemnity is due for the transfer of the same clientele. Secondly, the fact that no entitlement is due under Article 2:302 is a (strong) indication that no transfer of goodwill has taken place, and that therefore the agent is not entitled to goodwill compensation. In sum, it is very unlikely that a claim by an agent for goodwill compensation under this Article will succeed.

K. Remedies

The obligation to pay an indemnity is an obligation in the sense of Article 8:101 PECL. Therefore, in case of non-performance the aggrieved party may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

L. Character of the Rule

This is a default rule; the parties are free to agree otherwise. Similarly, the specific rule on the calculation of the indemnity in agency contracts (2:312) is a default rule.

Notes

1. *Indemnity for Goodwill*
   In the case of commercial agency, after the ending or termination of the commercial agency contract the commercial agent is entitled to either indemnity for goodwill (art. 17 (2) Directive) or compensation for damages (art. 17 (3) Directive). In transposing the Directive into their legal systems the Member States had to choose one of these options. Article 1:304 includes the option of art. 17 (2) Directive, which is also transposed in the majority of the legal systems. (Art. 17 (2) of the Directive states: '(a) The commercial agent shall be entitled to an indemnity if and to the extent that: – he has brought the principal new customers or has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits from the business with customers, and – the payment of this indemnity is equitable having regard to all the circumstances and, in particular, the commission lost by the commercial agent on the business transacted with such customers. Member States may provide for such circumstances also to include the application or otherwise of a restraint of trade clause, within the meaning of Article 20; (b) The amount of the indemnity may not exceed a figure equivalent to an indemnity for one year calculated from the commercial agent's average annual remuneration over the preceding five years and if the contract goes back less than five years the indemnity shall be calculated on the average for the period in question; (c) The grant of such an indemnity shall not prevent the commercial agent from seeking damages.')
   However, Article 1:304 differs from the Directive to the extent that according to art. 18 of the Directive no indemnity is awarded in the case of fundamental non-performance by the commercial agent (art. 18 (a) Directive) or when the commercial agent has ended the commercial agent contract without any non-performance on the side of

the principal (art. 18 (b) Directive). Under Article 1:304 it is also possible to claim indemnity in the case of non-performance by either party. (Art. 18 of the Directive: 'The indemnity or compensation referred to in Article 17 shall not be payable: (a) where the principal has terminated the agency contract because of default attributable to the commercial agent which would justify immediate termination of the agency contract under national law; (b) where the commercial agent has terminated the agency contract, unless such termination is justified by circumstances attributable to the principal or on grounds of age, infirmity or illness of the commercial agent in consequence of which he cannot reasonably be required to continue his activities; (c) where, with the agreement of the principal, the commercial agent assigns his rights and duties under the agency contract to another person.'

Art. 17 (2) of the Directive is based on GERMAN law (Commission Report, 1). Under GERMAN case law and literature specific criteria have been developed to establish whether the conditions laid down in Art. 17 (2) are fulfilled. Similar criteria are included in Article 2:312 (see also the notes on Article 2:312). Moreover, art. 17 (2) b includes a maximum amount of indemnity.

Art. 17 (2) of the Directive is transposed into the following national provisions: § 24 of the AUSTRIAN HVertG (*Ausgleichsanspruch*); art. 20 of the BELGIAN *Handelsagentuurwet*; art. 28 of the FINNISH Act on Commercial Agents; § 89 b I nos. 1 and 3 of the GERMAN HGB. (However, in addition, § 89 I b no. 2 HGB requires that the commercial agent loses its commission due to the ending of the contract with the customers which the commercial agent acquired.); art. 9 of the GREEK Law on Commercial Agency 219/1991; art. 1751 of the ITALIAN *cc*; art. 7:442 of the DUTCH BW; art. 764 III of the POLISH KC; arts. 33, 34 and 35 of the PORTUGUESE DL 178/86; art. 28 (1), (2) SPANISH LCA; § 28 (1) of the SWEDISH HaL.

Under ENGLISH law parties have the possibility of stipulating that the commercial agent is entitled to indemnity for goodwill after the end of the commercial agency contract. However, if the parties fail to do so the commercial agent will be entitled to compensation for damages (Reg. 17).

2. *Compensation for Damages*

Art. 17 (3) of the Directive includes the possibility of compensation for damages, which is based on French law and it states: 'The commercial agent shall be entitled to compensation for the damage he suffers as a result of the termination of his relations with the principal. Such damage shall be deemed to occur particularly when the termination takes place in circumstances: – depriving the commercial agent of the commission which proper performance of the agency contract would have procured him whilst providing the principal with substantial benefits linked to the commercial agent's activities, – and/or which have not enabled the commercial agent to amortize the costs and expenses that he had incurred for the performance of the agency contract on the principal's advice. This provision of the Directive is based on FRENCH law (Commission Report, 5) and is included in art. L. 134-12 of the FRENCH C. com.

Under FRENCH law the level of compensation is established according to the global sum of the last two years' commission or the sum of 2 years' commission calculated over the average of the last three years. However, a principal may prove that the commercial agent's loss is less. Moreover, there is no maximum level of compensation.

(Commission Report, 5 ff). The amount of compensation based on art. L 134-12 Code Com and actual damages do not cumulate (Cass. 25-6-2002).
Under ENGLISH law the commercial agent is entitled to compensation for damage if the parties fail to stipulate in their contract that the commercial agent is entitled to indemnity (Reg. 17 (2)). Generally, the French method of establishing compensation is taken as a starting point. However, in some cases less compensation has been provided than the global sum of the last two years' commission or the average sum of 2 years' commission calculated over the average of the last three years (Ingmar GB Limited v. Eaton Leonard Inc. [2002] ECC 5, [2001] EurLR 756). However, in a later case, it was explicitly held that the French method is not to be followed. The amount of compensation must be assessed taking into account inter alia the period of the agency, the terms and conditions, the (non-)exclusivity of the agreement, and non-competition clauses. Moreover, it was stated that the amount of compensation should equal the actual damages (Tigana Limited v. Decoro Limited [2003] *ECC* 23, see also Smith v. Reliance Water Controls Limited [2004] *EWHC* 1016). Further, the right to damages exists under common law (*Chitty* 31-149, see also Smith v. Reliance Water Controls Limited [2004] *EWHC* 1016); however, in one decision it was held that the award of compensation under Reg. 17 does include damages (Tigana Limited v. Decoro Limited [2003] *ECC* 23). From this case it is not clear whether it is still possible to claim damages under common law (Tigana Limited v. Decoro Limited [2003] *ECC* 23).

3. *Indemnity for goodwill in the case of distribution contracts*
Under BELGIAN law, art. 3 of the *Alleenverkoopwet* entitles the distributor to an indemnity payment after the ending or termination of a distribution contract. However, there is no entitlement to indemnity of goodwill if the distribution contract is terminated because of the non-performance of the distributor. In order to asses the amount of indemnity the following factors must be taken into account. First, the value of the customers which the distributor acquired and from which the supplier will benefit after the ending or termination of the contract. In addition, the costs which the distributor incurred and from which the supplier benefits after the ending or termination of the contract. The costs involved in employing employees.

4. *Application of the Commercial Agency Rule concerning Indemnity for Goodwill by way of analogy to Franchise or Distribution Contracts*
Under AUSTRIAN and FINNISH law, the national rules resulting from the transposition of art. 17 (2) Directive are applied by way of analogy to franchise and distribution contracts. (See the decisions of the AUSTRIAN OGH: OGH 2000/10/23 8Ob74/00s, OGH 1999/12/15 6Ob247/99p, OGH 1999/03/30 10Ob61/99i, OGH 1998/11/24 1Ob251/98p, OGH 1997/12/17 9Ob2065/96h; FINNISH law: *Halila-Hemmo* (1996) 281.)
Under GREEK and PORTUGUESE law the commercial agency rule is applied by way of analogy to distribution contracts (see for GREEK law *Georgakopoulos* (1999) 434; *Georgakopoulos* (1998) 113, Marinos, annotation in First Instance Court of Athens 1097/1999, *Epitheorisi Emporikou Dikaiou* (1999) 49; see for PORTUGUESE law: STS 4-5-1993, (1993-II) *Colectânea de Jurisprudência* 78; STS 22-11-1995, (1995-III) *Colectânea de Jurisprudência* 115, STS 22-11-1995, (1995-III) *Colectânea de Jurisprudência* 115).

Under GERMAN law it is unclear whether § 89 b HGB applies by way of analogy to franchise and distribution contracts. A majority of the decisions and legal authors favour application by way of analogy to franchise and distribution contracts (pro: BGH, *BB* 1959, 7; BGH, *NJW* 1983, 1789; BGH, *WM* 1993, 1466; *Koller/Roth/Morck*, Vor § 84 HGB nos. 10, 11; *Küstner/Thume*, no. 1466 – 1477; *Küstner/Thume*, nos. 1816 – 1823; *Münchener Kommentar zum Handelsgesetzbuch*, § 89 b HGB nos. 18–24; contra: *Oberlandesgericht Köln*, Entscheidungen zum Wirtschaftsrecht 1986, 1217; *Bechtold*, NJW 1983, 1393; *Kroitzsch*, BB 1977, 1631).
Also in other member states authors differ as to whether the rule on commercial agency can be applied way of analogy to franchising. See for ITALY: *Pardolesi*, *Frignani* (1999) 191; SPAIN: Bogaert/Lohmann, 2000. In GREECE some authors argue that the rules concerning commercial agency can be applied by way of analogy to franchise contracts (*Voulgaris*, *Georgiadis*). Also in PORTUGAL authors do not agree as to whether an indemnity is payable in the case of franchise contracts (pro: *Alexandre* (1991) 368, *Olavo* (1988) 170, *Ribeiro* (1992) 58, *Pestana de Vasconcelos* (2000) 94; contra: (*Cordeiro* (1988) 83).

5. *No Indemnification for Goodwill in the case of Franchise and Distribution Contracts*
Under ITALIAN law no goodwill is payable in the case of distribution contracts and the same applies according to DUTCH law (*Smit* (1996) 18; *Barendrecht* & *Van Peursem* 164; *Van de Paverd* (1999) chapters 4 and 5) and SPANISH law.
According to FRENCH, ENGLISH and SWEDISH law no indemnification for goodwill is payable in the case of franchise or distribution contracts. (For FRANCE see: Leloup, no. 2101).

6. *Entitlement to Damages because of Non-Observance of Notice Period*
As stated in note 1, Art. 17 (2) c of the Directive establishes that the entitlement to indemnity does not prevent the commercial agent from seeking damages. From the Commission Report it follows that it concerns both damages for non-performance and damages in lieu of a notice period (Commission Report, 5). If the facts of a case justify a claim based on damages based on non-performance, tort or unjustified enrichment, Article 1:305 does not prevent the aggrieved party from resorting to such a claim. Art. 17 (2 c) of the Directive has been transposed into the following legal systems: (ITALY: art. 1751 cc; POLAND: art. 764 III § 3 KC).
AUSTRIAN law does not include such a rule in the HvertrG nor does DUTCH law. However, in Dutch literature it has been accepted that indemnity may cumulate with the damages both in lieu of a notice period and for non-performance (*Asser-Kortmann*, no. 236).
Under BELGIAN law (art. 21 *Handelsagentuurwet*) if the amount of indemnity does not include the total amount of damages incurred by the commercial agent, the commercial agent may claim the difference between the amount of indemnity and the damages in fact incurred, if the commercial agent is able to prove this.

Article 1:306: Stock, Spare Parts and Materials

If the contract is ended, terminated or avoided by either party, the principal, franchisor or supplier must repurchase the commercial agent's, franchisee's or distributor's remaining stock, spare parts and materials at a reasonable price, unless the commercial agent, franchisee or distributor can reasonably resell them.

Comments

A. General Idea

If the agent, franchisee or distributor is left with excess stock, spare parts and advertising and other materials after the contract has ended (either as a result of unilateral ending or termination or avoidance), the principal, franchisor or supplier must repurchase those objects, and it must do so at a reasonable price. However, if the agent, franchisee or distributor can itself reasonably resell them, the principal, franchisor or supplier is under no obligation to repurchase them and to incur useless transaction and transportation costs.

This rule is normally more relevant to distribution and franchise relationships than to commercial agency, since in the latter no property normally passes. However, where the agent has actually bought advertisement materials or spare parts or other objects from the principal this rule will also protect the agent.

B. Interests at Stake and Policy Considerations

After the premature ending of the contract, the commercial agent, franchisee or distributor will frequently be left with excess stock, spare parts and materials which will usually no longer be of any value to it. With the ending of the contract the agent, franchisee or distributor may even have lost the right to use or resell them (especially in the case of a valid post-contractual non-competition clause). On the other hand, the excess stock, spare parts and materials will normally still be useful to the principal, franchisor or supplier which can either use them itself or sell them to the new or other agents, franchisees or distributors. Therefore, the principal, franchisor or supplier must repurchase them.

As a result of the ending of the contract the agent, distributor, or franchisee finds itself in a weak bargaining position. Therefore, this Article provides that the principal, franchisor or supplier must pay a reasonable price.

However, an obligation to repurchase stock, spare parts and materials would be inefficient where the agent, franchisee or distributor can itself reasonably resell them. Therefore, in those cases no such obligation exists.

C. Relation to PECL

The PECL do not contain such a rule. Under the PECL (Article 6:109) the period of notice is specifically enforceable. Thus, in some cases the commercial agent, franchisee or distributor will be able to use up its stock, spare parts and materials during this period. However, this will not always be the case, especially when it is under a contractual obligation to have all products and materials available until the last day.

D. Reasonable Price; No Speculation

The concept of 'reasonableness' which is contained in this Article refers to Article 1:302 PECL, where it is defined. In many cases a reasonable price will be the price for which the principal, supplier or franchisor can resell the objects in question to the new or other agents, franchisees or distributors. For very old stock this may mean that the price is very low. Another circumstance which may be relevant to establish whether it is a reasonable price, is whether minimum obligations to buy were imposed unilaterally by the principal, franchisor or supplier on the commercial agent, franchisee or distributor.

In principle, it should be practically impossible for the commercial agent, franchisee or distributor to speculate with regard to the price to be paid by the principal, supplier or franchisor by buying unusually large amounts, since normally the commercial agent, franchisee or distributor will only hear of the principal's, supplier's or franchisor's intention to end the contract when the notice is given. However, should it be established that the agent, franchisee or distributor has nevertheless bought unusually large amounts on a falling market, successful speculation should be avoided by taking this fact into account when establishing what amounts to a reasonable price in the circumstances.

Illustration 1
The distribution contract between supplier A and distributor B has been ended. It concerned a distribution contract for pret-a-porter designer clothes. The distributor still has some clothes in stock from the collections of the present and the previous year. The price which the supplier must pay the distributor, differs from collection to collection. A reasonable price for the collection of the present year probably corresponds to the price which the distributor paid. However, the price which the supplier must pay for the collection of the previous year is probably considerably lower.

E. No Obligation to Repurchase

There is no obligation for the principal, supplier or franchisor to repurchase stock, spare parts and materials when the agent, franchisee or distributor can itself reasonably resell them. The burden of proof is on the principal, supplier or franchisor. 'Reasonably' means without great effort, for a reasonable price and within a reasonable time.

F. Relation to the Period of Notice

To the extent that the principal, franchisor or supplier has given its commercial agent, franchisee or distributor, the opportunity (and, where necessary, the right) to use up its exceeding stock, spare parts and materials or to resell them to the public or to the new or other agents, franchisees or distributors, the former is not under an obligation to repurchase them.

G. Remedies

The obligation to repurchase excess stock, spare parts and materials is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance (i. e. when the principal, supplier or franchisor refuses to repurchase) the aggrieved party may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

H. Character of the Rule

This is a default rule; the parties are free to agree otherwise.

Notes

1. *Obligation to Repurchase Stock, Spare Parts and Materials*
   Many legal systems include a similar rule. However, they differ with regard to their scope of application and the price to be paid.
   Under GERMAN law such an obligation follows from the *nachvertragliche Treuepflicht* for long-term commercial contracts, which is based on good faith (§ 242 BGB, *Martinek/Semler* § 21 nos. 56-60, BGH, *BB* 1970, 1458). However, there is no such obligation in case the agent, distributor or franchisee ends the contract, since this would be a case of *venire contra factum proprium* (BHG, *BB* 1970, 1460; *Martinek/Semler*, § 21 no. 59 et seq.).
   With respect to franchising under ITALIAN law a lower court decided in a way which is similar to Article 1:306 (Pretore di Roma, 11 June 1984, *Sangemini s. p. a.* e *Soc. Acqua minerale Ferrarelle* c. *Schweppes Int. Ltd.* e *Soc. Acqua minerale S. Benedetto*, *Foro it.*, 1984, I, 2909 (with note by Pardolesi) and *Giur. it.* ,1985, I, 2, 711 (with note by Frignani).
   With regard to distribution, GREEK courts seem to apply the rules concerning mandate, which include a similar rule to Article 1:306, by way of analogy (art. 722 AK, CA Piraeus 1251/1991 Epitheorisi Emporikou Dikaiou 1991, 625; CA Athens 11077/1991; First Instance Court of Athens 1007/1993, Epitheorisi Emporikou Dikaiou 1995, 226). Moreover, if the principal refuses to repurchase the stock, the distributor may continue to sell the stock. The price the supplier must pay is the price the distributor paid to obtain the stock, spare parts and other materials. These rules may be applied by way of analogy to agency and franchising. Also under SPANISH law in the case of distribution there is such an obligation, which follows from good faith (*Memento* (2002) 487;

Sánchez Calero (2000) 178, *Dominguez García* (1997) 1372). However, the price to be paid is the price for which the goods were sold to the distributor minus the possible depreciation of the goods. (*Dominguez García* (1997) 1372, *Sánchez Calero* (2000)). There is no such obligation if the distributor may continue to sell the goods.

Further, it must be noted that in some countries franchise contracts usually include a similar obligation (SWEDEN: *Sohlberg*, 75). However, in GERMANY such a term is not common in practice (*Martinek/Semler*, § 21 no. 56).

Under the minority of the legal systems there is no such rule. (AUSTRIA, ENGLAND, FINLAND, THE NETHERLANDS, SWEDEN (*Söderlund*, 143; *Håstad*, 295). Also the Directive does not include such a rule.

Under FRENCH law the supplier only has to repurchase the stock in the case of an abusive ending of the contract (Cass. Com. 13. 05. 1975, *JCP* 1975.IV, 211; Cass. Com. 26. 10. 1982, *Bull. civ.* IV, 275).

Section 4:
Other General Provisions

Article 1:401: Right of Retention

In order to secure its rights to remuneration, compensation, damages and indemnity the commercial agent, franchisee or distributor has a right of retention over the movables of the principal, franchisor or supplier which are in its possession as a result of the contract, until the (former) principal, franchisor or supplier has fulfilled its obligations.

Comments

A. General Idea

As a result of this Article the commercial agent, franchisee or distributor is entitled to refuse to give movables which are owned by the principal, franchisor or supplier back to the principal, franchisor or supplier (or, as the case may be, to the new owner) as long as the principal, franchisor or supplier has not fully paid the remuneration, compensation, damages, and indemnity to which the commercial agent, franchisee or distributor is entitled. This right is of special significance as a means to exercise pressure on the former principal, franchisor or supplier after the contract has expired or has been terminated or ended.

The right of retention is effective not only towards the (former) principal, franchisor or supplier but also towards third parties (e. g. the new owner of the goods).

This rule is normally more relevant to commercial agency relationships, in which normally no property passes, than to franchise and distribution relationships. Nevertheless, where appropriate, this rule may also protect the claims of franchisees and distributors.

B. Interests at Stake and Policy Considerations

This rule intends to protect the interests of the commercial agent, franchisee or distributor when its money claims towards its (former) principal, franchisor or supplier remain unpaid. This Article provides it with some security.

C. Relation to PECL

The right of retention will be dealt with in the European Principles on Securities in Moveables. The right of retention will usually be also a right to withhold performance in the sense of Article 9:201 PECL. That is the case whenever the commercial agent, franchisee or distributor is under a contractual obligation to restitute the goods it retains. However, contrary to the right to withhold performance, the right of retention is also effective towards third parties.

D. Right of Retention

All the ordinary rules relating to the right of retention apply. This means, among other things, that such a right is also effective vis-à-vis third parties. See further the forthcoming European Principles on Securities in Moveables.

E. Remedies

The right of retention in itself constitutes a remedy.

F. Character of the Rule

This is a default rule; the parties are free to agree otherwise.

Notes

1. *Right of Retention*
   In most legal systems there is a right of retention in such cases. However, the rules differ from country to country.
   Under PORTUGUESE and SWEDISH law there is a similar specific statutory rule with respect to commercial agency (Art. 35 of the PORTUGUESE DL 178/86, 754 CC, *Pinto Monteiro* (1998) 119; SWEDISH HaL § 15). Under PORTUGUESE law this rule is applied by way of analogy to franchise and distribution.
   Also in GERMANY there is a specific statutory rule that applies to commercial agency contracts and is applied by way of analogy to franchise and distribution contracts. However, under GERMAN law such a right only exists after the ending of the contract. Moreover, the retention right is restricted to documents provided by the principal. In addition, this right of retention may only concern entitlements to commission and the compensation of expenditures. This rule is applied to franchise and distribution contracts by way of analogy (*Münchener Kommentar zum Handelsgesetzbuch*, § 88 a HGB no. 8). Also § 19 of the AUSTRIAN *HvertrG* includes a right of retention. However, this right is restricted to merely samples.
   In other countries a right of retention is inferred from general private or commercial law. Under ENGLISH law the general rules concerning the possessory lien accordingly

apply to commercial agency, franchise and distribution (*Bowstead* & *Reynolds* 7-073, *Goode* 619-621). Under GERMAN law, apart from § HGB, also the general rules concerning a right of retention apply (§§ 273, 274 BGB, *Zurückbehaltungsrecht* or § 369 HGB *kaufmännisches Zurückbehaltungsrecht*). Depending on the applicable statutory rule, different requirements must be met. Different from § 369 HGB, §§ 273, 274 BGB require a connection between the right of the commercial agent, franchisee or distributor and the right of the principal, franchisor or supplier. Furthermore, § 369 HGB also gives the retaining party, under particular circumstances, the right to satisfy his claim from the goods which he has kept. Under DUTCH law either party has a right of retention provided there is a sufficient connection between the obligation of the commercial agent, franchisee or distributor on the one hand and the obligations of the principal, franchisor and supplier on the other (arts. 6:52, 3:290 BW).

Article 1:402: Signed Written Document

Each party is entitled to receive from the other, on request, a signed written document setting out the terms of the contract.

Comments

A. General Idea

The function of this Article is twofold: (i) providing the requesting party with information and (ii) facilitating evidence. It does not imply, however, that a written document is a requirement for the validity of the contract.

B. Interests at Stake and Policy Considerations

Especially in the case of a dispute, the parties will usually need a written document on which to rely for evidence. In most cases the obligation will not be very burdensome: some written record of what was agreed upon usually exists. However, it should be kept in mind that this written document can be requested either at the conclusion or during the performance of the contract and even within a reasonable time after it has ended. Therefore, a party must keep a record even some time after the end of the contract.

C. Relation to PECL

The PECL do not contain such a rule.

D. No Form Requirement

This Article does not contain any form requirement. The function of this Article is merely to provide a party with information and to facilitate the giving of evidence. It does not therefore imply that a written document is a requirement for the validity of the contract.

E. Terms of the Contract

The signed written document that a party may request must set out the terms of the contract. This means that if a document is requested after changes have been made to the initial contract, the party requesting the document is entitled to the most recent version of the terms of the contract and not only to the initial one.

F. Written Document

Similar to other instances in the (forthcoming) Principles relating to other subjects, the term 'written document' must be interpreted in a wide sense. Compare Article 1:303 (1) PECL, which stipulates that notice may be given by any means, whether in writing or otherwise (telex, fax, electronic mail), provided that the form used is appropriate to the circumstances (see especially Comment B).

G. Remedies

The obligation to provide, upon request, a signed written document is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance, the principal may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

H. Character of the Rule

This rule is mandatory; any deviation therefrom by the parties to the detriment of the party who would benefit from it remains without effect.

Notes

1. *Written Document*
   This rule corresponds to Art. 13 (1) of the Directive which was transposed into the legal systems of the Member States with respect to commercial agency. (Art. 13 (1) of the Directive: '(1) Each party shall be entitled to receive from the other on request a signed written document setting out the terms of the agency contract including any terms subsequently agreed.' § 4 of the AUSTRIAN *Hvert*G; art. 5 of the BELGIAN *Handelsagentuurwet*; ENGLAND: reg. 13; art. 3 of the FINNISH Act on Commercial

Agents; art. L.134-2 of the FRENCH C. Com; § 85 of the GERMAN HGB; GREECE art. 8 Para 1b; art. 1742 of the ITALIAN cc; art. 7:428 para 3 of DUTCH BW; PORTUGAL: art. 1 (2) Decreto-lei 178/86; SPAIN: art. 22 LCA.)
Under GERMAN law this rule also applies by way of analogy to franchise and distribution contracts (see *Münchener Kommentar zum Handelsgesetzbuch*, § 85 HGB no. 1).

2. *Formal Requirements*
However, according to art. 13 II of the Directive the legal systems of the Member States may provide that a contract in writing is a validity requirement for the contract. (Art. 13 (2) of the Directive: 'Notwithstanding paragraph 1 a Member State may provide that an agency contract shall not be valid unless evidenced in writing.'). According to the case law of the ECJ this is the only formal requirement that national legal systems may provide in the case of commercial agency. (Case C-215/97 B. Bellone v. Yokohama SpA [1998] ECR I-2191; Case C-456/98 Centrosteel SrL v. Adipol GmbH [2000] ECR I-6007, Case C-485/01 Francesca Caprini v. Conservatore Camera di Commercio, Industria, Artigianato e Agricoltura (CCIAA) [2003] ECR I-23716).
According to BELGIAN, FINNISH, GERMAN, DUTCH, SWEDISH law there are no formal requirements as to the conclusion of these contracts.
However, under FRENCH, ITALIAN and SPANISH law there are form requirements in the case of franchising contracts (see the notes on Article 3:102).
In addition, it must be noted that in some legal systems *del credere* stipulations in commercial agency contracts must be in writing. See the notes on Article 2:313.
Moreover, it must also be noted that art. 20 (2) of the Directive requires that a restraint of trade clause included in a commercial agency contract is only valid if it is concluded in writing.

Chapter 2:
Commercial Agency
Section 1:
General

Article 2:101: Scope

This Chapter applies to contracts under which one party (the commercial agent) agrees to act on a continuing basis as a self-employed intermediary to negotiate or to conclude contracts on behalf of another party (the principal) and the principal agrees to remunerate the commercial agent for the commercial agent's activities.

Comments

A. General Idea

The commercial agent's main task consists of prospecting the market, attracting customers, promoting the sale or purchase of products and negotiating the terms of contracts which will be concluded between the principal and the customer or seller. The agent may also be entrusted with concluding contracts for the principal. The commercial agent always acts independently of and on behalf of the principal. A commercial agency agreement may be concluded for a definite or indefinite period of time.

The principal must remunerate the commercial agent (Articles 2:301-306). If the parties have stipulated that the agent will not be remunerated, this Chapter applies by way of analogy where appropriate.

B. Interests at Stake and Policy Considerations

A principal that wants to be active in a certain area may conclude a contract with a commercial agent in order to find out whether specific products will be successful in a certain territory or with a certain group of customers. The agent will do all the preparatory work, which enables the principal to conclude contracts more easily, namely without making high investments and running high risks.

The agent may, as a self-employed intermediary, organise its activities as it thinks fit. Although the agent must comply with reasonable instructions given by the principal (Article 2:202), the latter cannot affect the agent's independence.

The relevance of this Article is that it determines whether a certain contractual relationship may be qualified as a commercial agency contract and, thus, whether the Articles in this Chapter are applicable. Of special interest are the mandatory rules in Articles 2:301 (1) sub b) sub ii) and 2:302 (1) sub b) sub ii) (Entitlement to Commission); 2:305 (1) (Moment when Commission is to be Paid); 2:306 (1) (Entitlement to Commission Extinguished); 2:308 (Information on Acceptance, Rejection and Non-performance); 2:309 (Warning of Decreased Volume); 2:310 (1) and (2) (Information on Commission by means of Statement and Extract from Books) and 2:312 (Amount of Indemnity).

C. Relation to PECL

The PECL do not contain a definition of commercial agency contracts. All rules included in the PECL apply to commercial agency contracts, unless a provision in this Chapter or Chapter 1 of these Principles deviates therefrom.

It may not be appropriate to apply these rules to contracts under which the agent agrees to act as a self-employed intermediary with regard to financial and insurance contracts. In the case of a commission agent, the external effects are covered by Chapter 3 PECL.

The contracts of sale or services which are concluded between the principal and the customer or seller are governed by the rules concerning contracts of sales and those concerning services. Comparable scope rules are laid down in Articles 3:101 and 4:101 for franchise and distribution contracts respectively.

D. Self-employed Intermediary

The concept of a 'self-employed intermediary' is taken from the Directive. 'Self-employed' refers to the fact that the agent in any case acts independently from the principal, that it to say that the commercial agent is not its employee. A commercial agent may either be a legal entity or a natural person. These rules may in principle apply to commission agents. The concept of 'intermediary' is introduced in order to clarify that the activity of the agent must lead to the conclusion of contracts between two other parties, i. e. the principal and the customer or seller.

Illustration 1
A produces and sells perfume. A enters into a contract with B, according to which B will negotiate contracts of sale with respect to the perfume on A's behalf and on A's account. In the contract it is stipulated that A determines B's working hours. In such a situation B is not a self-employed intermediary.

E. Contracts with Customers

The purpose of the agency agreement is that the agent negotiates (and concludes) contracts on behalf of (and in the name of) the principal. Although it is most common that commercial agents are appointed for the sale or purchase of goods, in exceptional cases they may be concerned with the promotion of services. This Chapter applies in both situations. In this Chapter the resulting contract, i. e. the one to be concluded by the principal or in the principal's name, will also be referred to as the 'contract with the customer'. Hereinafter, the concept of 'customer' refers to the party (the reseller or service provider) that enters into a contract with the principal.

F. Competition Law

Competition law may exceptionally affect the validity of some agency agreements. The European Commission has declared Article 81 (1) EC to be applicable to agency relationships whereby the agent bears important financial and commercial risks in relation to the activities for which the commercial agent has been appointed by the principal, the 'non-genuine agency agreements' (Guidelines on Vertical Restraints (OJ 2000, C291/01)). The Guidelines state that the question of risk must be assessed on a case-by-case basis with regard to the economic reality of the situation rather than the legal form (nos. 12-17). Nevertheless, the Commission considers that Article 81(1) will generally not be applicable to the agent's obligations.

The provisions included in this Chapter only apply to commercial agency contracts to the extent that they are valid in the light of competition law.

G. Character of the Rule

This is a scope rule: parties cannot in their agreement classify a contract as a contract which is different from a commercial agency contract if the agreement contains the essential elements included in the present provision. Conversely, if the parties classify a contract as a commercial agency contract although it does not contain the essential elements set out in this Article, the rules contained in this Chapter will, in principle, apply as far as they are consistent with the agreement of the parties, *and* as far as they do not contrast with the applicable mandatory rules relating to another type of contract (e. g. a labour contract).

H. Remedies

No remedies stem from this provision since, as a scope rule, it does not itself establish obligations for the parties. The obligations of the parties are formulated by means of specific Articles in this Chapter and in Chapter 1 where also remedies are provided.

Notes

1. *Transposition of the Directive into National Legal Systems*
The Directive has been transposed into all the legal systems of the Member States. However, the definition of a commercial agent and the scope of application differ from country to country. See also the notes to Article 1:101.

2. *Self-Employed Intermediary*
In the Directive (art. 1(2)) and in all the legal systems of the Member States the commercial agent is an independent businessman, that can either be a natural person or a legal entity (AUSTRIA: § 1(1) HvertrG; BELGIUM: art. 1 *Handelsagentuurwet*; ENGLAND: Reg. 2 (1); FINLAND; FRANCE: art. L.134-1 C. Com.; GERMANY: § 84 I (1) HGB; GREECE: art. 1 para 2 Law on Commercial Agency; THE NETHERLANDS: art. 7:428 I BW; POLAND: art. 758 § 1 KC; PORTUGAL: art.1 DL 178/86; SPAIN: art. 1 LCA; SWEDEN: § 1 HaL). Under ITALIAN law this is not spelled out by the statutory provisions. However, according to legal authors it is a requirement which has to be met.

3. *Contracts with Clients may include both Service and Sales Contracts*
Under AUSTRIAN, BELGIAN, FRENCH, GERMAN, GREEK, ITALIAN, DUTCH, PORTUGUESE and SPANISH law, the scope of application includes not only the sale of goods but also service contracts (AUSTRIA: § 1 (1) HvertG.; BELGIUM: art. 1 *Verbraeken & de Schoutheete* Nr. 74, GERMANY § 84 I HGB; FRANCE: art. L.134-1 C. Com.; THE NETHERLANDS, art. 7:428 BW). Under ITALIAN law there is no explicit reference in the statutory rules; however, its applicability to service agents is defended by legal authors. Under AUSTRIAN law there is an exception: contracts relating to immovables do not fall within the definition (§ 1 (1) HvertG.).
However, in the Directive, ENGLISH, FINNISH and SWEDISH law, the scope of the commercial agency rules is restricted to contracts for the sale of goods. (Art. 1(2) of the Directive; ENGLAND: Reg. 2(1); FINLAND: art. 2 Act on Commercial Agents; SWEDEN § 1 HaL).

4. *Remuneration*
The commercial agency rules in the Directive, the legal systems of BELGIUM, ENGLAND, FINLAND, GREECE, ITALY, THE NETHERLANDS, POLAND, PORTUGAL, SPAIN and SWEDEN only apply to commercial agency contracts which provide for remuneration by the principal (art. 2 (1) Directive; AUSTRIA: § 1(1) HvertrG; BELGIUM: art. 1 *Handelsagentuurwet*, ENGLAND: Reg. 2 (2); FINLAND: art. 2 Act on Commercial Agents and Salesmen; GREECE: art. 1 para 2 Law on Commercial Agency; ITALY: art. 1742 cc; NETHERLANDS: art. 7:428 I BW; POLAND: art. 758 § 1 KC; PORTUGAL: art. 1 DL no. 178/86; SPAIN: art. 1 LCA; SWEDEN: § 1 HaL).

Section 2:
Obligations of the Commercial Agent

Article 2:201: Negotiate and Conclude Contracts

The commercial agent must make reasonable efforts to negotiate contracts on behalf of the principal and to conclude the contracts which the commercial agent was instructed to conclude.

Comments

A. General Idea

The commercial agent must actively negotiate contracts for the principal. The agent may be engaged in negotiations either in its own name or in the principal's name. The agent may also be charged with the conclusion of contracts on the principal's behalf. The agent who is authorised to do so, must undertake proper efforts in the performance of this obligation.

B. Interests at Stake and Policy Considerations

Where parties have a commercial agency relationship, the agent is under an obligation to act as an intermediary for the principal by negotiating contracts. The commercial agent must only conclude contracts on the principal's behalf if the parties have agreed thereon. In both situations the agent is obliged to use its best endeavours.

This provision is protective of the principal. It is meant to avoid negative effects on the principal's business because of the agent's non-compliance with its obligations. The agent should not affect the relationship between the principal and the customers by acting without due care. The principal may lose its good reputation and the customers may refrain from contracting with it and its turnover may decrease. This rule is of special importance where the agent is charged with concluding contracts, because then the transactions entered into by the agent create legal consequences for the principal.

On the other hand, the agent, too, has an important reason to comply with this obligation: its income is directly or indirectly related to the amount of contracts which are concluded between the principal and the customer (Articles 2:301 and 2:302). Moreover, this obligation is not unreasonably burdensome for the agent: it does not mean that it must always succeed in negotiating and concluding (a certain amount of) contracts. The agent does not fail to comply with this obligation by the mere fact that a contract is not concluded.

C. Relation to PECL

The general obligation of good faith in Article 1:201 PECL also applies to agency contracts, as well as the fundamental obligation to co-operate in Article 1:202. The present obligations may be regarded as a special instance of those two more general obligations.

D. Reasonable Efforts

The commercial agent must do its best to negotiate and, if the parties so agree, to conclude contracts. Reasonableness in the context of the Article is to be judged by the criteria included in Article 1:302 PECL. For instance, the circumstances of the case or the applicable usages must be taken into account as well as what persons acting as commercial agent and principal in the same situation would consider reasonable. The agent cannot sit back, wait and incidentally pass on orders to the principal, but must actively search for potential customers and convince them to conclude contracts with the principal. The agent cannot guarantee, however, that its negotiations will always be successful. The agent must use its best endeavours.

This 'objective standard of care' may require adaptations for two reasons. In the first place, a higher or lower standard of care may be required according to the principal's expectation of the agent's reputation or experience, which is justified given the circumstances of the case. In the second place, it is possible that the contract contains specific requirements regarding the standard of care to be exercised by the agent. Whether or not the agent uses its best efforts may affect its right to commission (cf. Article 2:301, comment E).

E. Negotiate Contracts

The task of the commercial agent, who negotiates contracts on behalf of the principal, is to prepare transactions by searching for customers and convincing them to enter into a contractual relationship with the principal. The fact that the agent negotiates contracts on behalf of the principal neither creates obligations for the agent towards the (potential) customers nor vice versa. The agent may however be liable vis-à-vis the principal if it does not negotiate properly. The agent may, for instance, have neglected the reasonable instructions given by the principal (Article 2:202). Moreover, mere negotiations are not binding upon the principal and the (potential) customer. Only if and to the extent that the principal and the customer have actually concluded a contract, will they be bound.

F. Conclude Contracts

The principal may charge the commercial agent with the conclusion of contracts on its behalf either on a permanent or incidental basis. In such cases the agent is only

empowered to conclude such transactions in the principal's name, not in its own name. Moreover, the commercial agent is under an obligation to undertake reasonable efforts. This means, for instance, that the agent who has successfully negotiated a contract, should approach the customer within a reasonable time in order to conclude the contract.

Where the agent has the right and the obligation to conclude contracts, the commercial agent must also deal with complaints by customers regarding the products involved. The parties may agree that the agent must also accept payments on the principal's behalf and, if so, under which conditions. Article 3:206 PECL allows the agent, under certain conditions, to appoint a sub-agent to carry out the agent's tasks (cf. Article 8:107 PECL).

G. Character of the Rule

This is a default rule; the parties may agree otherwise.

H. Remedies

The obligation to make reasonable efforts is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance, the principal may resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Reasonable Efforts to Negotiate*
   This element is taken from art. 3(2)a of the Directive, where it is stated that the commercial agent must make proper efforts. A similar rule has been transposed into the following national legal systems: AUSTRIA: § 1 para 1 HvertrG; ENGLAND: Reg. 3 (2) a; FINLAND: art. 5 Act on Commercial Agents; FRANCE: Art. L.134-4 C. com.; GERMANY: § 86 I HGB; GREECE: art. 4 Law on commercial agency 219/1999; SPAIN: art. 6 LCA; SWEDEN: HaL § 5 (2) a.
   Under AUSTRIAN law the commercial agent must exercise '*der Sorgfalt eines ordentlichen Kaufmanns*' (§ 5 HvertrG). Also under ITALIAN and SPANISH law, the commercial agent must exercise the due diligence of a good businessman. (SPAIN: art. 9 para 2 LCA, art. 57 Cco, *Moxica*, 98). Under DUTCH law the principal must observe the diligence of a good principal (*zorg van een goed opdrachtnemer*, art. 7:401 BW).

2. *To Conclude Contracts*
   This element has been taken from art. 3(2)a of the Directive which has been transposed in the following statutory provisions. AUSTRIA: § 1 para 2 HvertrG; BELGIUM: art. 1, art. 6 sub 1 *Handelsagentuurwet*; FINLAND: art. 5 Act on Commercial Agents; FRANCE: art. L. 134-1 C. com; GERMANY: § 86 I HGB; GREECE: art. 4 Law on Commercial Agency; ITALY: art. 1752 cc; THE NETHERLANDS: art. 7:428 I BW; POLAND: art. 758 (1) KC; SPAIN: art. 6 LCA.

Article 2:202: Instructions

The commercial agent must follow the principal's reasonable instructions, provided they do not substantially affect the commercial agent's independence.

Comments

A. General Idea

The agent must comply with the instructions given by the principal. The agent only has to follow instructions that are reasonable in view of the content and the nature of the agreement. In order to be reasonable, instructions must be given in a timely fashion.

However, the principal may never substantially affect the agent's independence. The agent may arrange its activities and use its time as it thinks fit.

B. Interests at Stake and Policy Considerations

The commercial agent may, as an intermediary, bind the principal if it concludes contracts in the principal's name. Therefore, it is important for the principal that the commercial agent closely follows the principal's instructions. Without this obligation, the agent could negotiate (and conclude) contracts on the principal's behalf without following instructions. This would be contrary to the principal's purpose of appointing an intermediary to represent its interests.

While this Article protects the interests of the principal, it also takes into account the fact that the agent has an interest to remain autonomous. Moreover, the agent does not have to follow any instructions by the principal, only those instructions that are reasonable.

C. Relation to PECL

A right to give instructions may follow, in certain circumstances, from the obligation to cooperate and the obligation of good faith and fair dealing in Articles 1:201 and 1:202 PECL respectively. However, this Article makes it clear that the principal has a general right to instruct the commercial agent. Comparable obligations are laid down in Articles 3:303 (2) and 4:304.

D. Reasonable Instructions

The commercial agent is only required to follow those instructions which are reasonable. Reasonableness in the context of this Article is to be judged by the criteria included in Article 1:302 PECL. The circumstances of the case and the applicable usages must be taken into account as well as what persons acting as a commercial agent and principal in the same situation would consider reasonable.

The principal usually has its own business policies relating to the conditions of sale such as the prices of the products, the production and delivery terms, the terms of payment and the procedure for dealing with customers' claims. Generally, instructions relating to these policies will be considered reasonable.

Illustration 1
A principal instructs its commercial agent to see its customers once every week. Such an instruction is unreasonable, since it substantially affects the commercial agent's independence.

E. Character of the Rule

This is a default rule; the parties are free to agree otherwise.

F. Remedies

The obligation to follow instructions is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the principal may resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Reasonable Instructions*
According to art. 3 (1) c of the Directive a commercial agent must comply with reasonable instructions given by his principal.
In BELGIAN, ENGLISH, FINNISH, GREEK, ITALIAN, POLISH, PORTUGUESE, SPANISH and SWEDISH law an obligation for the commercial agent to follow instructions is included in the specific rules on commercial agency. (BELGIUM: art. 6 *Handelsagentuurwet*; ENGLAND: Reg. 3 (2) c; FINLAND art. 5 of the Act on Commercial Agents; GREECE: art. 4 of the Law on Commercial Agency 219/1991; ITALY: art. 1746 cc; POLAND: art. 760 I § 1 KC; PORTUGAL: art 7 a. DL 178/86, *Pinto Monteiro* (1998) 62, *Pinto Monteiro* (2002) 93, STJ 25/01/2000, AD, 467, 1519; SPAIN: art. 9 para 2 LCA, *Moxica*, 24; SWEDEN: § 5 II a HaL, *Söderlund* 39).
Under AUSTRIAN, GERMAN, FRENCH and DUTCH law such an obligation is not included explicitly in the statutory rules concerning commercial agency. Under AUSTRIAN and GERMAN law this obligation follows from the commercial agent's ob-

ligation to behave as a good businessman (AUSTRIA: § 5 HvertG.; GERMANY: § 84 I(2) HGB, § 86 I HGB, § 665 BGB, *Koller/Roth/Morck*, § 86 HGB no. 9; *Martinek/Semler*, § 8 no. 58, BGH, *NJW* 1966, 883). Under FRENCH and DUTCH law such an obligation follows from the general rules concerning mandate (FRANCE: *Leloup* no. 1322-1330; Com. 24.11.1998, *Bull. civ.* IV, n° 277; *Défr.* 1999, 371 obs. D. Mazeaud; *RTDciv.* 1999, 98 obs. *J. Mestre*; *ibid.*, 646 obs. *P.-Y. Gautier*; *Cont. Conc. consomm.* 1999, no. 56 note *Malaurie-Vignal*; *JCP* 1999.I.143, no. 6 obs. *Jamin*; NETHERLANDS: art. 7:402 (1) BW).

According to all these legal systems the instructions from the principal may not affect the commercial agent's independence. (BELGIUM: art. 6 *Handelsagentuurwet*; ENGLAND: Reg. 3 (2) c; FINLAND art. 5 of the Act on Commercial Agents; GERMANY: § 84 I (2) HGB (BGH, *NJW* 1966, 883; *Koller/Roth/Morck*, § 86 HGB no. 9); GREECE: art. 4 of the Law on Commercial Agency 219/1991; ITALY: art. 1746 cc; PORTUGAL: art 7 a DL 178/86, *Pinto Monteiro* (1998) 62, *Pinto Monteiro* (2002) 93, STJ 25/01/2000, AD, 467, 1519; SPAIN: art. 9 para 2 LCA, *Moxica*, 24; SWEDEN: § 5 II a HaL, *Söderlund* 39).

Article 2:203: Information during Performance

The obligation to inform (Article 1:203) requires the commercial agent in particular to provide the principal with information concerning:
(a) the contracts negotiated or concluded,
(b) the relevant market conditions,
(c) the solvency of and other characteristics relating to customers.

Comments

A. General Idea

The agent must disclose all the information in its possession which the principal needs for the proper performance of its part of the contract (Article 1:203). The agent must inform the principal of its specific individual situation, concerning issues such as the transactions which were prepared or concluded and with whom. In addition, the agent also must inform the principal concerning more general issues, such as the market in which the agent operates. The list of required information in this Article is not exhaustive.

B. Interests at Stake and Policy Considerations

While the principal is the party that will be bound by a sales or service contract negotiated by the agent, the principal is not in a position to verify, for instance, the customer's solvency or reputation. It is thus important for the good functioning of the

principal's business that the principal is provided with such information. The principal needs to know how many and which contracts have been negotiated regarding its products in order to decide whether it will conclude a certain contract. Information about the market in which the agent operates enables the principal to judge whether the agency contract will remain worthwhile.

This obligation is not unreasonably burdensome for the agent: the agent only has to communicate the information which is available to him, in so far as this is needed by the principal for the performance of its obligations in relation to the agent and the customers.

C. Relation to PECL

This Article may be regarded as a further specification of the obligation to co-operate (Article 1:202) and the obligation of good faith and fair dealing in Articles 1:201 and 1:202 PECL. Comparable obligations are included in Articles 3:302 and 4:302 for the franchisee and the distributor respectively.

D. Information to be Provided

The agent must inform the principal of its past, present and future activities, the customers found and the market situation in which it operates.

The information is characterised by the need for the principal to perform the contract with both the agent and the customer(s) properly. In other words, this obligation concerns information regarding issues which could affect the principal's rights and duties under the contract.

Under this obligation the agent must make reasonable efforts to ensure that the information is correct. In this respect information concerning the market must be distinguished from information concerning the agent's own activities. With respect to the former it will be more difficult for the agent to obtain accurate information, since it concerns more variable (unforeseeable) factors. However, concerning the latter, the standard of care may be a higher one in the case of information concerning its own activities.

(a) Contracts Negotiated or Concluded

Apart from informing the principal of the contracts concluded or negotiated, this obligation includes, amongst other things, the obligation to transmit third parties' complaints and/or claims which the agent has received or has become aware of and special demands by customers concerning the products involved.

(b) Market Conditions

These conditions include, among other things, (modifications in) demands by customers, price developments and the state of competition. The obligation is limited to information relating to the agent's territory.

(c) The Solvency of and Other Characteristics relating to Customers

This obligation is limited to the customers' relevant characteristics, the main one being solvency. However, the principal does not need to know all the characteristics relating to customers if the agent may conclude the contract on the principal's behalf. In that case the characteristics of the customers represent a value for the agent, which it is not obliged to share with the principal.

E. No Formalities

There is no general form requirement as to the way in which this information is to be provided. The aim of the Article is merely to oblige parties to communicate.

F. Character of the Rule

This is a default rule; the parties may agree otherwise.

G. Remedies

The obligation to inform is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the principal may resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Information to Be Provided*
   According to the Directive the ' … commercial agent … must communicate to his principal all the necessary information available to him' (art. 3 (2) b of the Directive).
   This obligation is laid down in a specific statutory rule in the following countries. BELGIUM: art. 6 sub 2 *Handelsagentuurwet;* ENGLAND: Reg. 3 (2) b; FRANCE: art. 1 Décret n 58-1345 du 23-12-1958; GERMANY: § 86 II HGB; GREECE: art. 4 of the Law on Commercial Agency 219/1991; ITALY: art. 1746 cc; POLAND: art. 760 I § 1 KC; SPAIN: art. 9 para 2 sub b LCA. Under DUTCH law it follows from the rules concerning mandate (art. 7:401, 7:403 BW, *Asser-Kortmann*, no. 201 ff).

2. *Contracts Negotiated or Concluded*
Under AUSTRIAN, FINNISH and SWEDISH law it is laid down in statutory law that the commercial agent must inform the principal about the contracts negotiated or concluded (AUSTRIA: § 5 HvertG; FINLAND: art. 5 Act on the Commercial Agent; SWEDEN: § 5 para 2 HaL). According to authors in the NETHERLANDS this obligation follows from the rules concerning mandate (arts. 7:401, 7:403 BW (*Asser-Kortmann*, no. 201 ff). Also according to GERMAN case law and legal literature the agent must inform the principal with respect to contracts negotiated or concluded (BGH, *NJW* 1966, 882; BGH, *BB* 1969, 1196; OLG Köln, *BB* 1971, 543; *Koller/Roth/Morck*, § 86 HGB no. 7; *Martinek/Semler*, § 8 no. 61; *Münchener Kommentar zum Handelsgesetzbuch*, § 86 HGB no. 50).

3. *Market Conditions*
This issue of market conditions is listed explicitly in SPANISH legislation (art. 9 2 b LCA). BELGIAN and FINNISH literature, GERMAN case law and literature, ITALIAN case law and SWEDISH literature mention market conditions as one of the subjects concerning which the agent has to inform the principal (BELGIUM: Dambre, 1401; FINLAND: *Telaranta* (1993), *Aalto* (2001); GERMANY: BGH, *NJW* 1966, 882; BGH, *BB* 1969, 1196; OLG Köln, *BB* 1971, 543; *Koller/Roth/Morck*, § 86 HGB no. 7; *Martinek/Semler*, § 8 no. 61; *Münchener Kommentar zum Handelsgesetzbuch*, § 86 HGB no. 50; ITALY: Cass. 19-8-1996, n. 7644, *Danno e resp.*, 1997, 256; SWEDEN: *Söderlund*, 38). However, in GERMANY these market conditions are restricted to actual market conditions.

4. *Characteristics of Clients*
The solvency of the client is one of the client's main characteristics. The agent's obligation to inform its principal with regard to the client's solvency is mentioned explicitly in the SPANISH statute concerning commercial agency. Also BELGIAN, FINNISH literature, GERMAN case law and literature, DUTCH case law and literature and SWEDISH authors include the client's solvency as one of the subjects about which the commercial agent must inform its principal (BELGIUM: Dambre, 1401; FINLAND: *Telaranta 1993; Aalto 2001*; GERMANY: BGH, *NJW* 1966, 882, BGH, *BB* 1969, 1196; OLG Köln, *BB* 1971, 543, *Koller/Roth/Morck*, § 86 HGB no. 7; *Martinek/Semler*, § 8 no. 61; *Münchener Kommentar zum Handelsgesetzbuch*, § 86 HGB no. 50; NETHERLANDS: Rb. Amsterdam 27-3-1962, *NJ* 1962, 443, *Asser-Kortmann* no. 202 ff; HR 2-12-1960, *NJ* 1962, 21; SPAIN: art. 9, para 2, b LCA; SWEDEN: *Söderlund*, 38).

Article 2:204: Accounting

(1) The commercial agent must maintain proper accounts relating to the contracts negotiated or concluded on behalf of the principal.
(2) If the commercial agent represents more than one principal, the commercial agent must, in particular, maintain independent accounts for each principal the commercial agent represents.

(3) If the principal has important reasons to doubt that the commercial agent maintains proper accounts, the commercial agent must allow an independent accountant to have reasonable access to the commercial agent's books upon the principal's request. The principal must pay for the services of the independent accountant.

Comments

A. General Idea

Articles 1:203 and 2:203 oblige the agent to provide the principal with all the information the principal needs for the proper performance of its obligations under the contract. In order to fulfil this obligation properly the commercial agent has to keep proper accounts, in particular relating to the contracts it has negotiated or concluded (Paragraph 1). The agent has to keep documentation concerning the customers involved in the contracts. Where appropriate, the agent must maintain accounts of payments receivable on the principal's behalf and of the products of the principal. Where the agent represents more than one principal, this obligation to keep accounts also obliges the agent to keep separate accounts for each principal it represents (Paragraph 2). This provision entitles the principal to verify whether the agent actually complies with the obligation to keep proper accounts in Paragraph. 1, when the principal has reasons to doubt that the commercial agent keeps proper accounts. This may be the case, for instance, when the information provided by the agent is not correct, or the information is not provided in due time or in the case of a sudden decrease in the number of contracts negotiated (Paragraph 3).

B. Interests at Stake and Policy Considerations

For the performance of its obligations under the contract, the principal needs specific information from the agent. Accordingly, it may be reasonably expected from the agent that it should keep proper accounts. Proper accounts also include keeping separate accounts for different principals.

This provision entitles the principal to verify whether the agent actually keeps proper accounts. However, the principal may only inspect the agent's books if the principal has important reasons to believe that the agent does not keep proper accounts. The agent is not obliged to disclose information in the books which it keeps in its relationship with other principals, if the agent complies with its obligation to keep separate accounts (Paragraph 2).

Although this provision seems mainly favourable for the principal, it is not unreasonably burdensome for the agent, who as a professional will usually keep proper accounts. Where the agent complies with this obligation to keep accounts, it will be easier for it to comply with the obligation to inform (Articles 1:203 and 2:203). The agent also needs proper accounts for its own purposes, for instance because it has to know which commission it is entitled to in relation to which contracts and from which principal.

After the contract, the commercial agent may require proper accounts in order to prove that the principal cannot terminate the contract for non-performance.

C. Relation to PECL

This obligation may be regarded as a further specification of the obligation to cooperate and the obligation of good faith and fair dealing in Articles 1:201 and 1:202 PECL respectively.

D. Proper Accounts

The agent is always obliged to keep books relating to the contracts it successfully negotiates (and concludes) with customers on the principal's behalf and/or in the principal's name. If the agent has the principal's products at its disposal, the accounts will include an overview of how the agent disposes of them. If the parties have agreed that the agent must accept customers' payments in the principal's name, an overview of all sums received and to be received are also to be included in the agent's books. If the commercial agent represents more than one principal, it must maintain independent accounts for each principal represented.

E. Character of the Rule

This is a default rule; the parties are free to agree otherwise.

F. Remedies

The obligation to keep accounts is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the principal may resort to any of the remedies set out in Chapter 9 PECL. The principal may in particular withhold the payment of commission, terminate without paying additional costs (Article 1:305) and claim payment of the additional costs incurred, for instance, by appointing an accountant.

Notes

1. *Obligation to Keep Separate Accounts*
   Under SPANISH law, the agent must keep separate books of the accounts with regard to the different principals it represents (art. 9 (2) e LCA). Also according to GERMAN law the commercial agent must keep accounts. This follows from the general rules relating to mandate (§ 666 BGB). The accounts must contain a proper written overview of the income and the expenditures under § 259 I BGB (*Münchener Kommentar zum Handelsgesetzbuch*, § 86 HGB no. 53). Furthermore, § 259 I BGB also requires that

the vouchers have to be submitted. If the parties have not agreed upon another arrangement, the commercial agent has to fulfil the obligation regarding monthly accounts by way of analogy to § 87 c I (1) HGB (*Münchener Kommentar zum Handelsgesetzbuch*, § 86 HGB no. 53). An obligation to maintain independent accounts for each principal represented is not required, but is common practice. Also under PORTUGUESE law there is a statutory obligation: art. 7 DL 176/86, *Pinto Monteiro* (1998) 63.

Under FINNISH law there are no explicit rules in this respect. However, these rules are implied in the obligation to inform. Also according to DUTCH law authors seem to derive this obligation from the obligation to inform (art. 7:403 BW, *Asser-Kortmann*, no. 201). Under ITALIAN law there is no explicit obligation. However, the commercial agent must specify and prove the facts from which its entitlement to remuneration follow, and therefore, in particular the conclusion of the contracts which the commercial agent promoted (Cass. n. 5467/00).

According to AUSTRIAN, GREEK law there is no explicit obligation with regard to the obligation of the commercial agent to keep proper and separate accounts.

Section 3:
Obligations of the Principal

Article 2:301: Entitlement to Commission During the Contract

(1) The commercial agent is entitled to commission on contracts concluded with customers during the period of the agency contract, if
  (a) the contract with the customer has been concluded as a result of the commercial agent's efforts; or
  (b) the contract has been concluded with a third party whom the commercial agent has previously acquired as a customer for contracts of the same kind; or
  (c) the commercial agent is entrusted with a certain geographical area or group of customers, and the contract has been concluded with a customer belonging to that area or group.
(2) The entitlement arises only if
  (a) the principal has or should have performed the principal's obligations under the contract with the customer; or
  (b) the customer has performed the customer's obligations under the contract or justifiably withholds performance (Article 9:201 PECL).
(3) The parties may not derogate from Paragraph 2 (b) to the detriment of the commercial agent.

Comments

A. General Idea

One of the characteristics of a commercial agency contract is that the main part of the agent's remuneration typically consists of commission. During the contract period the commercial agent is entitled to commission on contracts concluded during this period if these contracts were entered into as a result of the agent's activity or if these contracts were concluded with customers which the agent has previously acquired as a customer for contracts of the same kind (Paragraph 1 (a) and (b)).

However, the agent can also be entitled to commission on contracts which have not been negotiated or concluded by the agent: when the customer belongs to the agent's (exclusive) area or group of customers (Paragraph 1 (c)).

The agent is entitled to commission as soon as the contract has or should have been (partially) performed (Paragraph 2). The parties may agree that the entitlement to commission arises before performance by either the principal or the customer, for instance when the contract is concluded. However, they may not agree that the entitlement to commission arises at a moment which is later than the customer's performance (Paragraph 2).

B. Interests at Stake and Policy Considerations

In the case of commission-based remuneration the interests of the agent and those of the principal run parallel: both parties aim at a maximum number of (successfully performed) contracts. If the agent does not find many customers that are willing to conclude contracts, not only the gains of the principal are directly affected, but also the agent's income is reduced. This is no different when the agent has made important investments. Thus, commission-based remuneration gives the agent an incentive to use its best efforts to negotiate or conclude as many contracts as possible (cf. Article 2:201).

This Article gives the agent, in principle, a right to commission on contracts which are the result of its activities. The agent's interest in earning commission is well protected in case the agent is entrusted with a specific area or group of customers. Then it is, in principle, entitled to commission whether or not its activities have contributed to the contract and whether or not it has an exclusive right to such an area or group of customers: the mere fact that the customer belongs to that area or group is sufficient for its entitlement.

Paragraph 2 provides incentives for the agent to negotiate contacts with reliable customers, since the mere conclusion of the contract does not entitle the agent to commission (Paragraph 2). Only when the contract is performed by one of the parties is the agent entitled to commission. However, this duty does not burden the agent unreasonably. Paragraph 2 also provides that commission is earned in certain specific situations, even though the contract has not (yet) been performed. This is the case when the principal should have performed or the customer justifiably withholds its performance. Paragraph 3 determines that, whatever the parties have agreed upon in their contract, the agent's entitlement to commission arises with the customer's performance or the customer's justified exercise of its right to withhold its performance.

C. Relation to PECL

The question whether a contract was concluded between the principal and the customer is to be answered according to Section 2 Chapter 2 PECL, in particular Articles 2:203 (rejection), 2:204 (acceptance) and 2:205 (time of conclusion) PECL.

It should be noted that when commission is earned according to the second Paragraph of this Article ('the entitlement arises'), the commission is not 'due' in the sense of Article 9:508 PECL until the commission is 'payable' under Article 2:305 (the end of the quarter or whatever period before the end of the quarter that the parties have agreed upon).

D. Result of the Agent's Efforts

In order to be entitled to commission, the agent must actively negotiate with customers on the principal's behalf, by locating potential (groups of) customers and convincing

them to conclude a contract with the agent or the principal. The negotiating agent must communicate offers to the principal. The mere fact that the agent has mentioned a customer is insufficient to amount to a right to commission. The agent must have contributed to the conclusion of the contract between the customer and the principal in an identifiable, considerable and useful manner (see Article 2:201). However, it is not required that the agent has made efforts to acquire the customer with the purpose of concluding a particular contract; the agent is also entitled to commission when it has acquired the customer at an earlier stage for contracts of the same type.

Illustration 1
A has a mobile telephone network. B, as a commercial agent for A, procures customers who will obtain a mobile telephone subscription to that network. During the term of the agency contract between A and B, A directly approaches the customers that B had procured, to subscribe to that mobile phone network. B is also entitled to commission on the contracts with the customers that A approached directly, but which B had procured previously.

E. Customers from a Specific Geographical Area or Group

This Article entitles the agent to commission regardless of whether its efforts have led to the conclusion of a contract between the principal and the customer. The fact that the agent is working in a certain territory or with a certain group of customers and that the principal concludes a contract with a customer belonging to this territory or group during the term of the agency contract, creates for the agent a direct entitlement to commission. In this case the agent does not have to prove that the conclusion of the contract was the result of its actions.

F. Performance of the Contract with the Customer

The agent's entitlement to commission only exists when its activities have proved to be effective, i. e. when the contract has (or should have) been properly performed. The principal then owes the agent the commission on that particular transaction. This obligation to pay commission does not mean that the agent may immediately claim the agent's commission as the commission is to be paid periodically (see Article 2:305). The agent may only demand payment from the expiry of the agreed period (at the latest three months). If the agent claims payment before that period, the principal may justifiably withhold performance until that moment.

G. Amount of Commission

This Article leaves it to the parties to agree upon the rate of the commission and the method of calculating it. The parties usually explicitly stipulate in a detailed manner the rate of the agent's remuneration. The parties may agree that the rate of commission will be higher for contracts concluded as a result of the agent's efforts (Paragraph 1 (a)

and (b)) than for contracts concluded with customers belonging to the agent's area or group of customers (Paragraph 1 (c)).

In the absence of any agreement on this matter between the parties the contract is not invalid; a reasonable commission is substituted in accordance with Articles 1:302 and 6:104 PECL. Factors which play a role in determining whether the amount of commission is reasonable include: the type and place of transactions, the type of goods or services, their price, the efforts made by the agent et cetera. Also, for instance, the length of the period during which the agent has to wait until it may claim the payment of the commission which it has earned (Article 2:305) can be taken into account.

H. Character of the Rule

Paragraph 1 (a) and Paragraph 2 (a) are default rules; the parties are free to agree otherwise. However, the parties may not derogate from Paragraph 2 (b) to the detriment of the commercial agent.

I. Remedies

The agent's right to commission corresponds to an obligation for the principal to pay commission. However, the principal only has to pay from the moment provided for in Article 2:304. Therefore, the agent may not resort to any of the remedies set out in Chapter 9 PECL before that moment.

Notes

1. *In General*
   Article 2:301 combines arts. 7 and 10 of the Directive. Art. 7 of the Directive determines under which circumstances there is an 'entitlement' to commission, whereas art. 10 establishes when the commission is 'due'. (Art. 7 of the Directive: (1) A commercial agent shall be entitled to commission on commercial transactions concluded during the period covered by the agency contract: (a) where the transaction has been concluded as a result of his action; or (b) where the transaction is concluded with a third party whom he has previously acquired as a customer for transactions of the same kind. (2) A commercial agent shall also be entitled to commission on transactions concluded during the period covered by the agency contract: – either where he is entrusted with a specific geographical area or group of customers, or where he has an exclusive right to a specific geographical area or group of customers, and where the transaction has been entered into with a customer belonging to that area or group. Member States shall include in their legislation one of the possibilities referred to in the above two indents.)

2. *Entitlement to Commission during the Contract*

Art. 7 of the Directive has been transposed into the following national legal systems: AUSTRIA § 8 (2) HvertrG.; ENGLAND: Reg. 7 (3); FINLAND: art. 10 of the Act on Commercial Agents; FRANCE: art. L 134-6 C. com.; GERMANY: § 87 I, II HGB; GREECE: art. 6 (1) Law on Commercial Agency 219/1991; ITALY: art. 1748 cc; *Baldi* and *Venezia*, note to Cass. sez. lav., 2-5-2000, n. 5467, cit., 802; THE NETHERLANDS: art. 7:431 BW; POLAND: art. 761 § 1 KC; PORTUGAL: art 16/3 DL 178/86, *Pinto Monteiro* (1998) 77; SPAIN: art. 12 LCA; SWEDEN: § 9 (1) HaL.

The Directive gave the Member States a choice as to whether or not to limit the right to commission to the case where the commercial agent's right to a specific geographical area or group of customers is an exclusive right. The present Article does not include such a limitation. Under the following legal systems the same option has been adopted: AUSTRIA § 8 (2) HvertrG.; FINLAND: art. 10 of the Act on Commercial Agents; FRANCE: art. L 134-6 C. com.; GERMANY: § 87 I, II HGB; GREECE: art. 6 (1) Law on Commercial Agency 219/1991; ITALY: art. 1748 cc; *Baldi* and *Venezia*, note to Cass. sez. lav., 2-5-2000, n. 5467, cit., 802; THE NETHERLANDS: art. 7:431 BW; SPAIN: art. 12 LCA; SWEDEN: § 9 (1) HaL.

ENGLISH, POLISH and SPANISH law have adopted the other option with respect to exclusivity (ENGLAND: Reg. 7 (3); POLAND: art. 761 § 2 KC; SPAIN: art. 12 LCA, STS 22-3-1988, RJ 1988\2224 and 14-5-2001, RJ 2001\6207).

3. *The Moment when Commission is 'Due'*

In art. 10 the Directive contains a further rule with regard to the moment when the agent becomes entitled to commission. However, in that article the directive uses the concept of commission 'due'. This is confusing, because in most legal systems (and in the PECL) the moment when an obligation is due indicates the moment from which the creditor can claim performance. Therefore, Para 2, which contains the requirements of art. 10 (1) and (2) of the Directive, does not refer to the concept of commission 'due'.

The same requirements are included in the legal systems of the following countries: AUSTRIA: § 9 HvertG.; ENGLAND: Reg. 10 (2) and (3); FINLAND: art. 12 Act on Commercial Agents; FRANCE: art. L.134-9 C. com.; GERMANY § 87a I, III HGB; GREECE: art. 6 (1) Law on Commercial Agency 219/1991; ITALY: art. 1748 cc; NETHERLANDS: art. 7:343 BW; PORTUGAL: art. 18 DL 178/86; SPAIN: art. 14 LCA; SWEDEN: § 11 (2) HaL.

Article 2:302: Entitlement to Commission After the Contract

(1) The commercial agent is entitled to commission on contracts concluded with customers after the agency contract has been ended or terminated, if

(a) the contract with the customer is mainly the result of the commercial agent's efforts during the period of the agency contract, and the contract with the customer was concluded within a reasonable period after the agency contract ended; or

(b) the conditions of Article 2:301 Paragraph 1 would have been satisfied except that the contract with the customer was not concluded during the period of the agency contract, and the customer's offer reached the principal or the commercial agent before the agency contract had been ended or terminated.

(2) The entitlement arises only if

(a) the principal has or should have performed its obligations under the contract with the customer; or

(b) the customer has performed its obligations under the contract or justifiably withholds performance (Article 9:201 PECL).

(3) The parties may not derogate from Paragraph 2 sub b to the detriment of the commercial agent.

Comments

A. General Idea

Even if the agency contract has ended, the agent still is entitled to commission in two situations. First, when the contract is concluded within a reasonable time after the term of the agency contract (Paragraph 1 (a)). Secondly, when the offer from the customer has reached either the principal or the agent before the end of the agency contract (Paragraph 1 (b)). This rule merely deals with a transition period: although the parties will not continue the contractual relationship in the future, they still have a relationship in the sense that one party has undertaken activities during the term of the contract for which it would have been remunerated had the contract not ended.

This Article applies for instance in the case where the agent has negotiated sales contracts for the supply of goods to be ordered and delivered periodically after the termination of the agency contract or where the principal has concluded contracts which will only be performed after the termination of the contract. For the general idea underlying the conditions mentioned under Paragraph 1 (b) and Paragraph 2, see the last Paragraph of comment A under the previous Article.

B. Interests at Stake and Policy Considerations

In the two situations mentioned above, it is considered reasonable to entitle the agent to commission on the contract(s) in question. It is assumed that the principal will benefit from the transaction which will be concluded shortly after the ending of the agency relationship. The rule protects the commercial agent's interest in receiving payment for its efforts made before the ending of the agency contract.

However, the agent cannot expect to receive commission on transactions concluded a long time after the ending of the agency contract. This right to commission is limited to a limited number of specific situations. This rule therefore also takes into account the principal's interests in not paying commission after the term of the agency contract.

For the interests involved in Paragraph 1 sub b and Paragraph 2, see the last Paragraph of comment B under the previous Article.

C. Relation to PECL

The concept of reasonableness in this Article (under a) refers to Article 1:302 PECL. The rules on offer and acceptance (Chapter 2 section 2 PECL) apply accordingly to the situation referred to in this article, in particular Article 2:201 (offer) PECL. Article 1:303 (notice) PECL determines when an offer is effective.

See for the relation between this rule and Article 9:508 PECL comment D, last Paragraph, under the previous Article.

D. Reasonable Period

The parties are free to agree upon a period other than a reasonable one as defined in Paragraph 1 (a). Reasonableness in the context of this Article is to be judged by the criteria included in Article 1:302 PECL. For instance, the nature and purpose of the contract, the circumstances of the case, and the usages and practices of the trade or profession involved must be taken into account as well as what persons acting as commercial agent and principal in the same situation would consider reasonable. Factors which play a role in order to determine a reasonable period include, for instance, the volume of the transactions and the time it normally takes the principal to conclude a contract negotiated by the agent. A reasonable term is normally no longer than 6 months.

E. Mainly the Result of the Agent's Efforts

The condition relating to the agent's entitlement after the term of the contract is stricter than the one in Article 2:301 (commission during the contract). The agent has to prove not only that it played an active role in locating customers, negotiating with them and concluding the contract, but also that the conclusion was mainly due to its efforts. However, if the agent proves that the conclusion is primarily due to its actions, the agent may be entitled to commission in two situations. First, when the contract is concluded within a reasonable period after the ending of the agency contract. Secondly, when the customer's offer reached the agent or the principal before the ending of the agency contract.

F. Performance of the Contract with the Customer

Another condition for the existence of the agent's entitlement to commission is that the agent's activities have proven to be effective, i. e. when the contract has (or should have) been properly performed. The principal then owes the agent the commission on that particular transaction. This obligation to pay commission does not mean that the agent may immediately claim commission; the commission is to be paid periodically (see Article 2:305). The agent may only demand payment from the expiry of the agreed period (at the latest three months). If the agent claims payment before that period, the principal may justifiably withhold performance until that moment.

G. After the Contract

This Article applies to situations where a contract for a definite period has expired, where a contract has been ended unilaterally, and where a contract has been terminated for non-performance.

H. Relation to an Indemnity for Goodwill and to Damages for Non-observance of the Period of Notice

The entitlement to commission after the contract may not cumulate with an entitlement to an indemnity for goodwill (Article 1:306) when the agency contract is either ended or terminated. Both rules are based on the same idea of restitution.

However, the entitlement to commission may cumulate with an entitlement to damages (Article 1:303) for the non-observance of the period of notice which is required in the case of the unilateral ending of a contract for an indefinite period (Article 1:302).

> *Illustration 1*
> After 15 years, A, the principal, ends the agency contract with B, the commercial agent, by giving two months' notice. B claims the payment of commission according to Article 2:302, indemnity for goodwill and damages for non-observance of the notice period. A court will grant either (i) the payment of commission according to Article 3:302 and damages for non-observance of the notice period or (ii) indemnity for goodwill and damages for non-observance of the notice period.

I. Character of the Rule

Paragraph 1 sub a) and sub b) sub i. are default rules: the parties are free to agree otherwise. However, the parties may not derogate from Paragraph 2 sub b) to the detriment of the commercial agent.

J. Remedies

The agent's right to commission corresponds to an obligation for the principal to pay commission. However, the principal only has to pay from the moment provided for in Article 2:304. Therefore, the agent may not resort to any of the remedies set out in Chapter 9 PECL before that moment.

Notes

1. *In General*
   Article 2:302 is a combination of arts. 8 and 10 of the Directive. Art. 8 of the Directive determines under which circumstances there is an entitlement to commission, whereas art. 10 establishes when the commission is 'due'. (Art. 8 of the Directive: 'A commercial agent shall be entitled to commission on commercial transactions concluded after the agency contract has terminated: (a) if the transaction is mainly attributable to the commercial agent's efforts during the period covered by the agency contract and if the transaction was entered into within a reasonable period after that contract terminated; or (b) if, in accordance with the conditions mentioned in Article 7, the order of the third party reached the principal or the commercial agent before the agency contract terminated.')

2. *Entitlement to Commission*
   Art. 8 of the Directive has been transposed into the following statutory provisions: AUSTRIA: § 11 (1) HvertrG.; ENGLAND: Reg. 8; FINLAND: art. 11 Act on Commercial Agents; FRANCE art. 134-7 C. Com.; GERMANY § 87 III HGB; GREECE: art. 6 para 2 Law on Commercial Agency; ITALY: art. 1748 cc; NETHERLANDS: art. 7:431 (2) BW; POLAND: art. 761 I KC.
   Under SPANISH law there is a rule similar to art. 8 of the Directive (art. 13 LCA). However, under the SPANISH rule, the contract with the client must have been concluded within three months after the contract ended, rather than within a reasonable period.

3. *The Moment when Commission is 'Due'*
   In art. 10 the Directive contains a further rule with regard to the moment when the agent becomes entitled to commission. However, in that article the directive uses the concept of commission 'due'. This is confusing because in most legal systems (and in the PECL) the moment when an obligation is due indicates the moment from which the creditor can claim performance. Therefore, Para 2, which contains the requirements of art. 10 (1) and (2) of the Directive, does not refer to the concept of commission 'due'. The same requirements are included in the following legal systems: AUSTRIA: § 9 HvertG.; ENGLAND: Reg. 10 (2) and (3); FINLAND: arts. 12, 14 the Act on Commercial Agents; FRANCE: art. L.134-9 C. com.; GERMANY: § 87a I, III HGB; ITALY: art. 1748 para 3 cc; PORTUGAL: art. 18 DL 178/86; SPAIN: art. 14 LCA; SWEDEN: § 11 (2) HaL.

Article 2:303: Prevailing Entitlement to Commission

The commercial agent is not entitled to the commission referred to in Article 2:301, if the previous commercial agent is entitled to that commission pursuant to Article 2:302, unless it is reasonable that the commission is shared between the two commercial agents.

Comments

A. General Idea

This provision concerns cases in which Articles 2:301 and 2:302 may conflict, i. e. where an agent has been replaced by another agent and both claim 'their' commission on transactions which have been concluded. According to the present rule, usually the first agent is entitled to the commission. However, certain circumstances may lead to the conclusion that the first and second agent must share the commission on a transaction, in particular when both of them have contributed to it.

B. Interests at Stake and Policy Considerations

Conflicts may arise between the first and the second agent relating to the question of who should receive the commission on a particular transaction. This rule protects the first agent's interest. If the first agent shows that the transaction was mainly due to its efforts and either the contract was concluded shortly after the ending of the agency contract or the customer's offer reached the first agent or the principal before the ending of the contract, then it is assumed that the transaction is due to the first agent's efforts more than to those of its successor.

However, the entitlements for the first agent can only arise during a short period after the ending of the contract and if all the conditions of Article 2:302 have been met. This rule is therefore not unreasonably burdensome for the second agent. Moreover, it leaves open the possibility that both agents should share the commission.

Finally, this rule takes care of the principal's interest in the sense that the principal will never have to pay commission twice on a certain transaction.

C. Relation to PECL

The PECL do not contain such a rule. However, the concept of 'reasonableness' in this Article refers to Article 1:302 PECL.

D. Reasonableness of Shared Entitlement

Whether it is reasonable that the two agents share their entitlement to commission on a particular transaction depends to a large extent upon their respective contributions to the conclusion of the contract. In particular if the second agent's contribution to the conclusion of the contract was substantial, then the first agent's right will not necessarily prevail. If both agents are entitled to commission on the same transaction, each party's share must be reasonable. Whether this is the case must be assessed according to the criteria included in Article 1:302 PECL (cf. Article 6:104 PECL).

E. Character of the Rule

This is a default rule; the parties may agree otherwise.

F. Remedies

The rule entitles either the previous commercial agent or both commercial agents to commission and obliges the principal to pay commission. However, unless the parties have agreed otherwise, neither the first nor the second commercial agent may resort to any of the remedies set out in Chapter 9 PECL before the moment provided for in Article 2:304.

Notes

1. *Prevailing Right to Commission*
   This rule has been taken from art. 9 of the Directive which has been transposed into the national legal systems as follows: AUSTRIA: § 11 (2) HvertrG; BELGIUM: art. 12 *Handelsagentuurwet*; FINLAND: Article 11. 2 of the Act on Commercial Agents; FRANCE: L. 134-8 C. Com.; GERMANY § 87 I (2), § 87 II (2), § 87 III (2) HGB; ENGLAND: Reg. ITALY: art. 1748 para *cc;* NETHERLANDS: art. 7:431 (3) BW, *Asser-Kortmann*, nos. 208, 213; POLAND: art. 761 II KC; PORTUGAL: art. 17 DL 176/86; SPAIN Art. 13 (2) LCA.

2. *Character of the Rule*
   Under ITALIAN, DUTCH law this rule is mandatory (NETHERLANDS art.7:445(1)BW, *Asser-Kortmann*, nos. 208, 213). Under the other systems it is a default rule, just as in the Directive.

Article 2:304: Moment when Commission is to be Paid

(1) The principal must pay the commercial agent's commission before the last day of the month following the quarter in which the commercial agent became entitled to it.
(2) The parties may not derogate from this provision to the detriment of the commercial agent.

Comments

A. General Idea

The parties may agree upon periodical payments of commission by the principal. The present rule provides a minimum standard: while the parties may agree that the principal must pay at an earlier date, they may not agree that the principal must pay at a later date. If the parties have not agreed on a period for payment, the commission is to be paid every three months. The moment of payment is usually also the moment when the statement of the commission to which the agent is entitled has to be supplied (see Article 2:310).

According to this rule, the agent may have to wait in claiming commission for up to three months after it has earned it. The fact that the principal has free use of the money for an extra period can be taken into account when the rate of commission is fixed (see Article 2:301 comment H).

B. Interests at Stake and Policy Considerations

This Article, on the one hand, protects the agent in the sense that the parties may not agree that the principal can pay at a later moment than once every three months, while they remain free to agree on, for instance, monthly payments.

On the other hand, it allows the commission to be paid periodically which is mainly in the interest of the principal. It means that the commission earned on separate contracts is calculated over a certain period (three months) and paid at the end of that period.

C. Relation to the PECL

Article 7:102 PECL (Time of Performance) provides that, in the absence of a time or period fixed by or determinable from the contract, a party has to effect its performance within a reasonable time after the conclusion of the contract. That rule does not fit very well with contracts in which one party has to make regular payments. Nevertheless, the present rule may be regarded as a specification of the idea that an obligation must be performed 'a reasonable time' after it arises.

However, the present rule deviates from Article 7:102 PECL in the sense that it limits the parties' freedom to determine the time of performance in their contract: the parties may not agree that the principal must pay on a later moment than provided for in this Article.

D. Character of the Rule

This rule is mandatory: the parties may not agree that the principal must pay later than once every three months.

E. Remedies

The principal's obligation to pay commission is an obligation in the sense of Article 8:101 PECL. Therefore, the commercial agent may resort to any of the remedies set out in Chapter 9 PECL. The agent is in particular entitled to claim interest from the moment when the principal has failed to pay the commission which became due, *i. e.* at the end of the period fixed for payment (at the latest three months) from the moment when the agent became entitled to it. Article 9:101 PECL entitles the agent to enforce the monetary obligation of the principal.

Notes

1. *Moment when Commission is to be paid*
   As stated in the notes to Articles 2:301 and 2:302 the Directive employs the concept of commission 'due' in art. 10. This is confusing because in most legal systems (and in the PECL) the moment when an obligation is due indicates the moment from which the creditor can claim performance. Therefore these Principles do not use the concept of commission 'due'.
   Art. 10 (3), (4) of the Directive includes: '(3) The commission shall be paid not later than on the last day of the month following the quarter in which it became due. (4) Agreements to derogate from paragraphs 2 and 3 to the detriment of the commercial agent shall not be permitted.' A similar rule to that of art. 10 (3), (4) of the Directive has been transposed into the following legal systems. AUSTRIA: § 9 HvertrG; ENGLAND: Reg. 10(3), (4); FRANCE: art. L. 134-9 C. Com; GREECE art. 6 para 3 Law on Commercial Agency 219/1991; ITALY: art. 1748 CC; POLAND: art. 761 III § 3 KC; PORTUGAL: art. 18 DL 178/86, Pinto Monteiro 1998, 80; RP 28/03/2001, JTRP7, www.dgsi.pt.; SPAIN: art. 14 LCA; SWEDEN: § 11 (1) HaL.
   However, under GERMAN law the commission must be paid before the last day of the month in which it became due (§§ 87 a IV, 87 c I HGB). But the minimum requirement – the last day of the month following the quarter in which it became due – is the mandatory rule (FINLAND: art. 14.2 Act on Commercial agents; NETHERLANDS: arts. 7:433, 7:434 BW). Under FINNISH and DUTCH law the default rule is that the commission is due on a monthly basis (FINLAND art. 14.1 Act on Commercial agents; NETHERLANDS: arts. 7:433. 434 BW).

Article 2:305: Entitlement to Commission Extinguished

(1) The commercial agent's entitlement to commission in accordance with Articles 2:301 and 2:302 can be extinguished only if and to the extent that it is established that the contract with the customer will not be performed and that fact is due to a reason for which the principal is not accountable.
(2) Upon the extinguishing of the commercial agent's entitlement to commission, the commercial agent must refund any commission which the commercial agent has already received.
(3) The parties may not derogate from Paragraph 1 to the detriment of the commercial agent.

Comments

A. General Idea

In principle, each contract concluded by the principal as a result of either the agent's efforts or with a customer from the agent's area entitles the agent to commission once either the principal or the customer has performed the obligations under the contract (see Articles 2:301 and 2:302). The parties may agree that such an entitlement extinguishes, if the contract with the customer is not (completely) performed. This extinction can retroactively remove the agent's right to commission. However, the agent cannot lose its right to commission when the principal is accountable for the non-performance (Paragraphs 1 and 3).

The principal may recover any commission previously paid to the agent (Paragraph 2) in accordance with the rules on undue payments and unjustified enrichment.

B. Interests at Stake and Policy Considerations

The principal has an interest in not paying commission on transactions which have not been successfully brought to a successful end. Moreover, the present provision is advantageous to the principal because it entitles the principal to recover the commission which it has already paid for such transactions.

The commercial agent is also protected in the sense that it cannot lose its right to commission where the principal is itself responsible for the non-performance.

C. Relation to PECL

The PECL do not contain a rule dealing with the extinction of rights in this particular situation.

Recovery of the commission which the principal has already paid to the commercial agent must be effectuated in accordance with the (forthcoming) European Principles of Unjustified Enrichment.

D. Non-performance of the Contract with the Customer

Extinguishing the agent's right to commission can only occur if it is established that the contract with the customer will not be performed and that the non-performance is not due to the principal. This rule may therefore be applicable when it is clear that the customer can or will not perform the customer's obligations under the contract or when the principal can be excused non-performance under Article 8:108 PECL. If the principal is however accountable for the principal's for the non-performance, the agent is entitled to commission.

E. Character of the Rule

Paragraph 1 of this rule is mandatory in the sense that the parties may not deviate therefrom to the detriment of the commercial agent. The second Paragraph is a default rule: parties are free to agree otherwise.

F. Remedies

If the commercial agent's right to commission is extinguished, the principal is no longer under an obligation to pay. If the agent has already received (part of) the commission, the commercial agent is under an obligation to return that payment. This is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of the agent's non-performance the principal may resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Entitlement to Commission Extinguished*
   This rule has been taken from art. 11 of the Directive which has been transposed into the national legal systems of the Member States.
   Art. 11 of the Directive: 'The right to commission can be extinguished only if and to the extent that: – it is established that the contract between the third party and the principal will not be executed, and – that fact is due to a reason for which the principal is not to blame. 2. Any commission which the commercial agent has already received shall be refunded if the right to it is extinguished. …' AUSTRIA: § 9 (3) HVertrG.; ENGLAND: Reg. 10(2); FINLAND: art. 13 Act on Commercial Agents and Salesmen; FRANCE: art. L. 134-10 C.Com.; GERMANY: § 87 a III (2) HGB; GREECE: art. 7 paras 4-4a-7 Law on Commercial Agency 219/1991; ITALY: art. 1748 (6) *cc*; NETHERLANDS art. 7:426(2), 7:432(2) BW; the duty to refund commission is covered by the more general rules of *onverschuldigde betaling* (undue payment), arts. 6:203-6:211 BW,

Asser-Kortmann, no. 215, *Nuytinck*, at 7:432, *Smit* (1996) 48-50); POLAND: art. 761 IV KC; PORTUGAL: art. 19 DL 178/86 *Pinto Monteiro* (1998) 80; SPAIN: art. 17 LCA; SWEDEN: § 12 HaL.
However, under FINNISH law there is an additional requirement: it must also be clear that the contract is not going to be performed in the future (Art. 13.2 Act on Commercial Agents).

2. *Character of the Rule*
Art. 11 (3) of the Directive provides: 'Agreements to derogate from paragraph 1 to the detriment of the commercial agent shall not be permitted.' See also: AUSTRIAN law, GERMANY: § 87a V HGB; ITALY: art. 1748 para 6 cc; NETHERLANDS: art. 7:445(1) BW; SWEDEN: § 12 HaL.

Article 2:306: Remuneration

Any remuneration which (partially) depends upon the number or value of contracts is presumed to be commission within the meaning of this Chapter.

Comments

A. General Idea

If the parties have agreed that the agent is entitled to a remuneration which is completely or partially dependent upon the amount or value of the resulting transactions without explicitly referring to it as 'commission', then the rules on commission will nevertheless apply.

B. Interests at Stake and Policy Considerations

The presumption that any remuneration which depends upon the number or value of contracts amounts to commission is in the commercial agent's interest, because in such cases the protective rules in this Chapter will apply. The parties cannot avoid the applicability of Paragraph 1 of Articles 2:301-2:302 and Articles 2:304, 2:305 Paragraph 1 and 2:310.

C. Relation to the PECL

The PECL do not contain such a rule. However, as far as the amount of the commission is concerned Articles 6:104 and 1:302 PECL are applicable: the parties are free to determine the remuneration or the method for determining it. However, if the parties have not regulated anything in this respect, they are considered to have agreed upon a

reasonable price. The reasonableness of the price is to be judged by persons acting in good faith and in the same situation as the parties.

D. Basis of Remuneration

Although the remuneration is normally calculated on the basis of contracts with customers which have been concluded and performed (Articles 2:301 and 2:302), the parties may agree upon a remuneration which does not depend on the amount or value of the contracts. Moreover, even though the agent will normally mainly or solely be paid by commission, the parties may agree that it will in addition be entitled to a fixed amount of money over a certain period or under certain conditions. Such remuneration may give the commercial agent the security of some income at the beginning of the relationship. At a later stage, the parties may agree on a fixed minimum sum in case the principal does not have any work for the agent, or not as much as usual, as a result of the principal's production capacity or company policies. Such a fixed amount then entitles the agent to a minimum income. It follows from the present Article that the rules on commission in this Chapter do not apply to such a fixed income.

E. Character of the Rule

This is a default rule; the parties are free to agree otherwise.

F. Remedies

This provision does not itself entitle the commercial agent to any remedy. However, remedies are attached to the obligations in Articles 2:301-2:305.

Notes

1. *Remuneration*
   In most European countries, this rule, which is laid down in Art. 6(2) of the Directive, has been transposed into the national legal system. (Art. 6 (2) of the Directive: 'Any part of the remuneration which varies with the number or value of business transactions shall be deemed to be commission within the meaning of this Directive.' See: BELGIUM: art. 17 *Handelsagentuurwet*; ENGLAND: Reg. 2; FINLAND: art. 15 Act on Commercial Agents; FRANCE art. L. 134-5 C. Com.; GREECE: art. 5 Law on Commercial Agency; POLAND: art. 758 I § 3 KC; PORTUGAL: art 15 DL 178/86, *Pinto Monteiro* (1998) 73; SPAIN: art. 11 LCA.
   § 87 b I of the GERMAN HGB includes art. 6 of the Directive. However, it is less detailed than Article 2:306 and art. 6 of the Directive. The German provision merely determines that, in the absence of any agreement regarding remuneration, the commercial agent is entitled to the remuneration which is customarily allowed. The place where the commercial agent carries out his business determines the remuneration

(*Koller/Roth/Morck*, § 87 b HGB no. 2). If the commercial agent is unable to prove the customarily allowed remuneration, he is allowed to determine the remuneration himself in accordance with '*billigem Ermessen*' (§§ 315, 316 BGB, *Koller/Roth/Morck*, § 87 b HGB no. 2; *Münchener Kommentar zum Handelsgesetzbuch*, § 87 b HGB no. 13) However, under AUSTRIAN, ITALIAN and DUTCH law, there is no such statutory rule.

Article 2:307: Information during Performance

The obligation to inform (Article 1:203) requires the principal in particular to provide the commercial agent with information concerning:
(a) the characteristics of the goods or services,
(b) the prices and conditions of sale or purchase.

Comments

A. General Idea

During the agency contract, the principal must disclose all the information in its possession which the agent needs for the proper performance of its part of the contract (Article 1:203). The principal must inform the agent, in particular, concerning the products to be sold or purchased and the conditions under which the principal will conclude contracts with customers. This includes that the principal also provides the agent with all relevant documentation where this is appropriate. The list of required information is not exhaustive.

B. Interests at Stake and Policy Considerations

If the agent does not know which products the principal wants to sell or purchase and for which price, it will not find many customers willing to conclude a contract. Therefore, the principal must disclose information relating to the products involved and the conditions under which the principal wants to contract. This duty to provide information is not unreasonably burdensome for the principal: it only has to provide the agent with the information and documentation available to it, in so far as this is required by the agent for the performance of its obligations under the agency contract.

C. Relation to PECL

This Article may be regarded as a further specification of the obligation to co-operate and the obligation of good faith and fair dealing in Articles 1:202 and 1:201 PECL and Articles 1:202 and 1:203 in these Principles.

The principal's obligation to inform in the present Article is further developed in other Articles in this Chapter: the principal must also inform the agent about the principal's acceptance, rejection and any non-performance of the negotiated contracts (Article 2:308), any decreased volume of business (Article 2:309) and the agent's income from commission (Article 2:310). Comparable obligations for the franchisor and the supplier are included in Articles 3:205 and 4:202 respectively.

D. Information to be Provided

There is no general form requirement as to the way in which this information is to be provided. Depending on the circumstances the principal may, for instance, communicate the information to the agent by means of documents relating to the products, such as leaflets and standard contract forms. Unless otherwise agreed, this documentation must be provided free of charge.

The obligation is not an obligation of result as to the quality of the information: the principal must make reasonable efforts to ensure that the information is correct.

(a) Characteristics of the Products

The principal must provide the agent with information concerning all the relevant characteristics of the products involved. If the principal decides that it will purchase or sell other products, it must inform the agent and provide it with all the relevant information regarding the new products. The principal may be obliged to provide relevant documentation, for instance samples and designs.

(b) Prices and Sales Conditions

Such information may include, for instance, information concerning the (minimum) prices, the terms of payment, the terms of delivery, the principal's commercial policy (for what type of customers the goods are meant) and any modification thereto. This obligation to inform may include the obligation on the part of the principal to provide documentation, such as price lists and printed advertising material.

E. Character of the Rule

This is a default rule; the parties may agree otherwise.

F. Remedies

The obligation to inform is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the aggrieved party may resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Information during Performance*
   Under the Directive the obligation to inform has not been elaborated. Art. 4 (2) a, b first sentence of the Directive merely states: 'A principal must in particular: (a) provide his commercial agent with the necessary documentation relating to the goods concerned; (b) obtain for his commercial agent the information necessary for the performance of the agency contract, …'
   The legal systems of the following countries contain a rule similar to the one included in the Directive: AUSTRIA § 6 (1) 1 HvertrG; BELGIUM: art. 8 sub 1, 2 Handelsagentuurwet; ENGLAND: Reg. 4 (2) a; FRANCE: Art. 2 Décret n 58-1345, 23-12-1958; GERMANY: § 86 II HGB; GREECE: art. 4 Law on Commercial Agency; ITALY: art. 1749 (1) cc; THE NETHERLANDS: art. 7:430 BW; POLAND: art. 760 § II KC.

2. *Characteristics of the Goods or Services, Prices and Conditions of Sale or Purchase*
   In some legal systems the contractual obligation to inform has been specified. Under GERMAN and SPANISH law the duty to provide the commercial agent with documentation is elaborated in the statutory provision itself. The principal must provide the agent with a collection of samples, catalogues, price lists and other documents necessary for its professional activity (GERMANY: § 86 a I HGB; SPAIN: art. 10 (2) a LCA).
   Under DUTCH and SWEDISH law such an elaboration of the obligation to provide information is not included in the statutory provisions themselves. However, reference is made to the items mentioned in Article 2:307 in the Parliamentary history of the general statutory provision under note 1. (NETHERLANDS: *MvT*, *Kamerstukken* II 1988/1989, 20842, nos. 3, 4; *Asser-Kortmann* no. 207; *Nuytinck*, comment on arts. 7:430 (sub 2) and 7:611 BW; SWEDEN: Prop. 1990/91:63, 63 f).
   Under GERMAN law the information regarding the characteristics of the products, prices, conditions of sale, and the commission due are not mentioned explicitly in the HGB. However, the courts and legal authors do agree that the principal also has to inform the agent about these issues because this information is essential for the work of the agent (BGH, *BGHZ* 49, 44; BGH, *DB* 1972, 525; *Koller/Roth/Morck*, § 86 a HGB no. 3; *Martinek/Semler*, § 8 no. 72; *Münchener Kommentar zum Handelsgesetzbuch*, § 86 a HGB no. 10-14).

Article 2:308: Information on Acceptance, Rejection and Non-Performance

(1) The principal must inform the commercial agent, within a reasonable period, of
   (a) the principal's acceptance or rejection of a contract which the commercial agent has negotiated on the principal's behalf; and
   (b) any non-performance of a contract which the commercial agent has negotiated or concluded on the principal's behalf.
(2) The parties may not derogate from this provision to the detriment of the commercial agent.

Comments

A. General Idea

The principal has to inform the agent, who negotiates contracts on its behalf (Article 2:101(1)), concerning any follow-up action relating to offers or orders procured by it. The agent is entitled to know whether a transaction has been accepted, accepted subject to condition(s) or rejected. This provision does not mean that the principal has to provide reasons for refusing a transaction: the mere statement that a particular transaction has been refused without specifying any detail will be sufficient. It does, however, include an obligation for the principal to inform the agent on a more general level whether, as a rule, the principal will refuse a certain type of customer or contract. Where the contract with the customer has been concluded, the agent must be informed regarding any non-performance of the contract. The agent is entitled to this information within a reasonable period.

B. Interests at Stake and Policy Considerations

This obligation is important for the 'negotiating agent' because it enables the agent (i) to calculate its commission, (ii) to verify whether refusals have been given systematically, arbitrarily or in bad faith, and (iii) to inform the customers regarding the principal's reaction. It is also relevant for the 'concluding' agent, because the fact that a contract has not been (fully) performed, may either completely remove the agent's right to commission (Article 2:306) or (temporarily) prevent the commercial agent from demanding commission (Paragraph 1 (b) of Articles 2:301 and 2:302). Where appropriate, the performance also determines the agent's *del credere* liability (Article 2:313). The agent itself cannot easily obtain information concerning the performance of the contract with the customer, because after the negotiations (and the conclusion) the agent is no longer involved in the transaction between the principal and the customer.

This rule also takes the interest of the principal into account. The principal serves its own reputation if the agent can speedily answer a (potential) customer. Moreover, if the principal informs the agent in due time that it does not want to conclude a certain contract, no right to commission comes into existence. The present rule is not unreasonably burdensome for the principal, who has this information available. The principal knows whether it will accept or reject an order. The rule leaves the principal with reasonable time to decide whether it wants to conclude the contract. The principal will know more about the performance of the contract than the agent, because after the negotiations on (and the conclusion of) the contract by the agent, it will directly contact the customer and vice versa.

C. Relation to PECL

This obligation may be regarded as a specific instance of the general obligations to cooperate and of good faith and fair dealing in Articles 1:201 and 1:202 PECL respectively. The reasonableness of the period for communication is governed by Article 1:302 PECL.

D. Character of the Rule

This rule is mandatory; the parties may not deviate therefrom to the detriment of the commercial agent (Paragraph 2).

E. Remedies

The obligation to inform is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the commercial agent may resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Information on Acceptance, Rejection and Non-Performance*
   This rule has been taken from art. 4(3) of the Directive which has been transposed into the legal systems of the Member States. Art. 4(3) of the Directive states: 'A principal must, in addition, inform the commercial agent within a reasonable period of his acceptance, refusal, and of any non-execution of a commercial transaction which the commercial agent has procured for the principal.' AUSTRIA: § 6 (3) HvertG.; BELGIUM: art. 8 *Handelsagentuurwet*; ENGLAND: Reg. 4 (3); FINLAND: art. 8 Act on Commercial Agents; FRANCE: Art. 2 Décret n 58-1345, 23-12-1958; GERMANY: § 86 a II (2) HGB. GREECE: Art. 4 Law on Commercial Agency 219/1991; ITALY: Article 1749 *cc*, NETHERLANDS: Art.430(4) BW; POLAND: art. 760 II § 2 KC; PORTUGAL: art. 13 b DL 178/86, *Pinto Monteiro* (1998), 71; SPAIN: art. 10, para 3 LCA).

2. *Reasonable Period*
   Some legal systems contain a different rule as to the period within which the information must be provided. Under AUSTRIAN and GERMAN law the principal must inform the commercial agent immediately (*unverzüglich)* (AUSTRIA: § 6 (3) HvertG; GERMANY: § 121 BGB). Under PORTUGUESE law the principal must fulfil this obligation without delay (art. 13 b DL *sem demora*). According to SPANISH law the acceptance or rejection must be communicated within 15 days and in the case of non-performance within the shortest period considering the nature of the transaction (art. 10 (3) LCA). Pursuant to the ITALIAN collective economic agreements of 9 June 1988 for commerce and 16 November 1988 for industry, the period within which the information is to be communicated is 60 days from the moment when the principal

receives the order procured by the agent. After the expiry of this period, if the principal does not inform the commercial agent of his refusal, the transaction is deemed to be accepted.

3. *Character of the Rule*
Under the directive this rule is mandatory (art. 5 of the Directive). See for transposition into the legal systems of the Member States: AUSTRIA: § 27 (2) HvertG.; ENGLAND: Reg. 5; FRANCE: Art. 3-1 Décret n 58-1345, 23-12-1958; GERMANY: § 86 a III HGB; ITALY: art. 1749 cc; THE NETHERLANDS: art. 7:445(1) BW; POLAND: art. 760 II § 4 KC; SPAIN.

Article 2:309: Warning of Decreased Volume of Contracts

(1) The principal must warn the commercial agent within a reasonable time when the principal foresees or ought to foresee that the volume of contracts that the principal will be able to conclude or perform will be significantly lower than the commercial agent had reason to expect.
(2) The parties may not derogate from this provision to the detriment of the commercial agent.

Comments

A. General Idea

This mandatory rule imposes an obligation on the principal to warn the agent regarding changes in its business which are likely to affect the agent's entitlement to commission. This rule takes into account the fact that, within a commercial agency contract, circumstances may change. If the principal foresees that its business capacity will diminish to a greater extent than the agent could reasonably expect, this rule obliges it to warn the agent.

B. Interests at Stake and Policy Considerations

If the principal does not inform the agent regarding, for instance, a decrease in the principal's production, the principal may refuse more orders than the agent would reasonably expect. This warning may be essential for the agent, because the agent's income depends solely, or to a large extent, on the amount of contracts concluded. The warning enables the agent to search for other means of income in time. This provision also avoids that the agent incurs expenses in locating customers and negotiating contracts that the principal will eventually not conclude.

This obligation to warn is also in the principal's own interests. If the agent is warned a sufficient time in advance, it will not negotiate with customers in vain; the customers

will not be disappointed and the principal's reputation will not be affected. This obligation is not unreasonably burdensome for the principal, because the principal does not have to provide the agent with the reasons why the volume of transactions will change, nor does the principal have to warn that this may lead to the ending of the agency contract. The principal must only warn the agent if it foresees a considerable change in volume.

C. Relation to PECL

This obligation may be regarded as a further specification of the obligation to cooperate and the obligation of good faith and fair dealing contained in Articles 1:201 and 1:202 PECL respectively. The concept of 'reasonableness' in this Article refers to Article 1:302 PECL. According to Article 1:303 PECL, the principal's warning becomes effective when it reaches the agent. A similar obligation is included in Articles 3:206 and 4: 203.

D. Volume of Contracts

The volume of contracts is the total amount of contracts during a certain period of time. The principal has to inform the agent both in situations where a decrease in volume is due to factors within the principal's control and where the decrease is due to a change in the market.

E. Reasonable Time

The reasonableness of the time within which the warning is given must be assessed in accordance with the criteria included in Article 1:302 PECL. Factors to be taken into account include the nature and purposes of the contract, the circumstances of the case, and the usages and practices of the trade or profession involved.

F. Expectations of the Commercial Agent

A good test to determine the agent's reasonable expectation will in most cases be the average volume of contracts with customers over the previous 5 years, or if the contract has been in existence for less than 5 years, over the whole period. The reasonableness of the agent's expectations is ultimately established by Article 1:302 PECL.

G. Character of the Rule

This rule is mandatory; the parties may not deviate therefrom to the detriment of the commercial agent (Paragraph. 2).

H. Remedies

The obligation to warn is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the aggrieved party may resort to any of the remedies set out in Chapter 9 PECL. In particular, the agent is entitled to compensation for the costs which the agent has incurred if these costs could have been avoided had the agent been properly informed.

Notes

1. *Warning of Decreased Volume*
   This rule is included in the Directive (art. 4(2) b of the Directive). (art. 4 (2) B of the Directive: 'A principal must in particular: … (b) obtain for his commercial agent the information necessary for the performance of the agency contract, and in particular notify the commercial agent within a reasonable period once he anticipates that the volume of commercial transactions will be significantly lower than that which the commercial agent could normally have expected.' All Member States have transposed it into their national systems: AUSTRIA: § 6 (2) HvertrG; FINLAND: art. 8 Act on Commercial Agents; FRANCE: Art. 2 Décret no. 58-1345, 23-12-1958; ENGLAND: Reg. 4 (2) b; GERMANY: § 86 a II (3) HGB; GREECE: art. 4 Law on Commercial Agency 219/1991; ITALY: art. 1749 (1) cc; NETHERLANDS: art. 7:403(3); POLAND: art. 760 II § 4 KC; PORTUGAL: art. 14 DL 178/86, *Pinto Monteiro* 1998, 73 ff; SPAIN: art. 10 (2) b LCA; SWEDEN § 7 (3) HaL.

2. *Reasonable Period*
   The following legal systems contain a different rule concerning the period within which the warning must be given. Under PORTUGUESE law the principal must warn the commercial agent immediately (art. 13 c DL 178/86). Under SPANISH law, the principal must fulfil this obligation "as soon as he knows" of the decrease (art. 10 (2) b LCA) and under SWEDISH law the principal must fulfil this obligation without unreasonable delay (SWEDEN: § 7 (3) HaL).

3. *Character of the Rule*
   AUSTRIAN, FINNISH, FRENCH law include a similar default rule (AUSTRIA: art. § 27 (2) HvertrG.; FINLAND, art. 8 Act on Commercial Agents; FRANCE: art. 3-1 Décret no. 58-1345, 23-12-1958).
   However, under art. 5 of the Directive this rule is mandatory. In the same sense: ENGLAND: Reg. 5 (1); GERMANY: § 86 a III HGB; ITALY: art. 1749 cc; NETHERLANDS art. 7:445 BW; POLAND: art. 760 II § 4 KC.

Article 2:310: Commission Statement and Extract from the Books

(1) The principal must supply the commercial agent in reasonable time with a statement of the commission to which the commercial agent is entitled. This statement must set out how the amount of the commission has been calculated.
(2) For the purpose of calculating commission, the principal must provide the commercial agent upon request with an extract from the principal's books.
(3) The parties may not derogate from this provision to the detriment of the commercial agent.

Comments

A. General Idea

The agent has a right to obtain, within a reasonable period, a statement of the commission that the agent has earned. The agent may furthermore request the principal for an extract from the principal's books, in so far as the information which the agent requests concerns the agent's entitlement to commission.

B. Interests at Stake and Policy Considerations

The commercial agent has a right to know the amount of the commission which it has earned. However, the agent is not necessarily aware that a contract which it has negotiated, and possibly concluded in the name of the principal, has actually been performed. This information is typically information which the principal has in its books. The principal must therefore provide the agent with regular overviews of the commission which has become due and, in addition, enable the agent to verify this statement by providing the agent with an explanation of the calculation used. The statement, including the calculation method, should place the agent in a position to make its own calculation.

This obligation is not unreasonably burdensome for the principal. The principal has reasonable time to make and to provide the statement of the commission to which the agent became entitled. This obligation does not require much extra effort, because the principal has to make this calculation anyway in order to be able to comply with its own obligation under the agency contract, i. e. to pay commission to the agent.

C. Relation to PECL

The PECL do not contain such a rule. The concept of 'reasonableness' referred to in this Article is defined in general terms in Article 1:302 PECL. Moreover, the statement is a notice in the sense of Article 1:303(6) PECL. Therefore, the statement may be given by any means appropriate to the circumstances and becomes effective when it reaches the commercial agent.

D. Reasonable Period

The parties may agree upon the moment when the principal has to provide the statement of commission. However, the term must be reasonable within the meaning of Article 1:302 PECL. To assess what is reasonable, the nature and purposes of the contract, the circumstances of the case and the usages and practices of the trade or profession involved must be taken into account. However, normally it will be reasonable for the principal to provide the agent with the commission statement at or before the moment when the commission has to be paid (for this moment see Article. 2:304).

E. Character of the Rule

This rule is mandatory; the parties may not deviate therefrom to the detriment of the commercial agent.

F. Remedies

The obligation to provide a statement of the commission which is due and, upon request, an extract from the books, is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the agent may resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Commission Statement*
   The present rule differs from the Directive and from ENGLISH, GREEK, ITALIAN and SPANISH law to the extent that under these legal systems the principal is required to provide a commission statement no later than the last day of the month following the quarter in which the commercial agent has become entitled to the commission rather than within a reasonable period. (Art. 12(1) of the Directive: '(1) The principal shall supply his commercial agent with a statement of the commission due, not later than the last day of the month following the quarter in which the commission has become due. This statement shall set out the main components used in calculating the amount of commission.' AUSTRIA: § 16 (1) HvertrG; ENGLAND: Reg. 12 (1); GREECE art. 7 paras 5-6 Law on Commercial Agency 219/1991; ITALY: art. 1749 (2) cc; POLAND: art. 761 V § 1 KC; PORTUGAL art. 13 c DL 178/86, Pinto Monteiro (1998) 71; SPAIN: art. 15 (1) LCA).
   In contrast, under DUTCH law the principal must supply the commercial agent with a commission statement every month, unless they agree that the statement will be provided every two or three months. (art. 7:433(1) BW). Under AUSTRIAN law the commercial agent may request a statement of the commission to which he is entitled. As a consequence, the law allows for no delay in the delivery of the statement (§ 16 HvertrG).

2. *Extracts from the Principal's Books*
According to Article 12 (2) of the Directive a commercial agent may request its principal to provide it with extracts from the books, which is available to the principle and which he needs in order to check the amount of the commission due to the agent. Under AUSTRIAN, ENGLISH, FRENCH, GERMAN, GREEK, ITALIAN, SPANISH law there is a similar rule (AUSTRIA: § 16 (1) HvertrG; ENGLAND: Reg. 12 (2); FRANCE: art. 3 Décret n 58-1345, 23-12-1958; GERMANY: § 87c II HGB; GREECE art. 7 paras 5-6 Law on Commercial Agency 219/1991; ITALY, art. 1749 cc, Cass. 2-10-1998, n. 9802, in Mass. giur. ital., 1998, col. 9802; PORTUGAL: art. 13(2) DL 178/86, *Pinto Monteiro* (1998), 72; SPAIN: art. 15 (2) LCA).
Under DUTCH law a commercial agent may require an inspection of the books. However, it cannot demand an extract from the books (art. 7:433 (2) BW, HR 28-2-1964, NJ 1964, 456 GJS; HR 5-2-1971, NJ 1971, 222 GJS).

3. *Character of the Rule*
Under AUSTRIAN, FRENCH, GERMAN, GREEK law there is a similar rule. (AUSTRIA: § 27 (1) HvertrG.; FRANCE: art. 3-1 Décret n 58-1345, 23-12-1958; GERMANY: § 87c V HGB; GREECE art. 7 paras 5-6 Law on Commercial Agency 219/1991).
However, according to ENGLISH, DUTCH law this rule is mandatory. (ENGLAND: Reg. 12 (3); NETHERLANDS: art. 7:445 BW.)

Article 2:311: Accounting

(1) The principal must maintain proper accounts relating to the contracts negotiated or concluded by the commercial agent.
(2) If the principal has more than one commercial agent, the principal must, in particular, maintain independent accounts for each commercial agent.
(3) The principal must allow an independent accountant to have reasonable access to the principal's books upon the commercial agent's request, if
  (a) the principal does not comply with the principal's obligations under Article 2:310 Paragraphs 1 and 2, or
  (b) the commercial agent has important reasons to doubt that the principal maintains proper accounts.
(4) The commercial agent must pay the independent accountant.

Comments

A. General Idea

Article 1:203 obliges the principal to provide the agent with all the information the agent needs for the proper performance of the obligations under the contract. In order to properly fulfil this obligation and the obligations in Articles 2:307-2:310 the principal has to keep proper accounts, in particular relating to any follow-up action with regard to

contracts negotiated by the agent on the principal's behalf, the agent's right to commission and the principal's volume of business. The principal must also keep documentation concerning the products involved in the contracts.

If the statement and/or the extract supplied by the principal in accordance with Article 2:310 Paragraphs 1 and 2 is incorrect, the commercial agent may have an important reason to doubt that the principal keeps proper accounts. The agent may then request an inspection of the principal's books by an independent accountant.

B. Interests at Stake and Policy Considerations

For the performance of the commercial agent's obligations under the contract, the agent needs specific information from the principal. Accordingly, it may be reasonably expected from the principal that it keeps proper accounts. As a professional the principal will usually do so. Where the principal complies with this obligation to keep proper and separate accounts, it will be easier for the principal to comply with its obligation to inform under Articles 2:203 and 2:307-310. The principal thus also needs proper accounts for its own purposes.

This provision entitles the agent to verify, by means of an independent third party, whether the principal actually keeps proper accounts. The agent is also allowed to have such an inspection carried out, in the case where the principal does not comply with its obligation to provide a commission statement and/or an extract from the books under Article 2:310.

This provision takes into account the principal's interests in keeping its administration secret, because the agent is not granted direct access to the principal's books. Moreover, the agent has no general right to inspect the principal's administration. The agent can only do so in a limited number of situations, i. e. where the agent has important reasons to suspect that the principal has failed to properly perform its obligations. Finally, the inspection of the books by the accountant takes place at the agent's expense.

C. Relation to PECL and ECC

This obligation may be regarded as a further specification of the obligation to cooperate and the obligation of good faith and fair dealing in Articles 1:201 and 1:202 PECL respectively.

D. Proper Accounts

The principal is always obliged to keep accounts relating to the products involved, the commission due and the follow-up action relating to those contracts which are the result of the agent's activities.

E. Character of the Rule

This is a default rule; the parties are free to agree otherwise.

F. Remedies

The obligation to keep accounts is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the aggrieved party may resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Reasonable Access to the Principal's Books*
   Under FINNISH law if the principal does not give the necessary extracts from his accounting to the agent, a chartered accountant has a right to inspect the accounts to the extent that is required (Art. 20.2 Act on Commercial Agents). Under AUSTRIAN law there is a similar rule when the principal refuses to give the commercial agent access to his books. In such a case the court may then appoint a registered account to check the books (§ 16 (2) ff. HvertrG).
   Under GERMAN law there is a similar rule to Article 2:311 (3) b included in § 87c IV HGB. However, it must be necessary to establish the amount of commission due.

Article 2:312: Amount of Indemnity

(1) The commercial agent is entitled to an indemnity for goodwill on the basis of Article 1:305 which must amount to:
   (a) the average commission on contracts with new customers and on the increased volume of business with existing customers calculated for the last 12 months, multiplied by:
   (b) the number of years the principal is likely to continue to derive benefits from these contracts in the future.
(2) The resulting indemnity must be amended in accordance with:
   (a) the average rate of migration in the commercial agent's territory; and
   (b) the average interest rates.
(3) In any case, the indemnity must not exceed one year's remuneration, calculated from the commercial agent's average annual remuneration over the preceding five years or, if the contract has been in existence for less than five years, from the average during the period in question.
(4) The parties may not derogate from this provision to the detriment of the commercial agent.

Comments

A. General Idea

This rule aims to provide a method for calculating the amount of indemnity to which the agent may be entitled according to Article 1:305 (Indemnity for Goodwill). In order to do so, two steps must be taken. The first step concerns the identification of the new customers and the existing customers whose volume in the principal's business increased considerably.

Then, the agent's average commission that was paid on these customers is calculated for the last twelve months prior to the ending or termination of the contract. Subsequently, the duration of these benefits for the principal must be estimated. Next, the rate if migration must be considered. The rate of migration is calculated on a yearly basis and is reduced for each year with a certain percentage of the commission for the migration rate, and the average interest rate must be taken into account as well (Paragraph 2). The second step concerns the comparison between the amount of indemnity calculated on the basis of Paragraphs 1 and 2 and the annual average remuneration over the preceding five years. If the amount of indemnity exceeds the annual remuneration, the latter will be awarded. In other words, Paragraph 3 includes a maximum amount of indemnity that can be awarded.

B. Interests at Stake and Policy Considerations

The policy consideration underlying this rule is that the increased volume of business for the principal represents a benefit for the principal if the agency contract is ended or terminated for which the agent should be indemnified. The present rule is in the interest of both parties, because it provides legal certainty and avoids extensive transaction and litigation costs for establishing the exact value of the goodwill which has passed between the parties.

In the interest of the commercial agents the calculation method contributes to ensure that the agent is indemnified, as much as possible, for his loss of goodwill. On the other hand, the interests of the principal are taken into account by the fact that the principal's benefits usually decrease over time. Moreover, the provision also contains a maximum for the indemnity, which is also in the interest of the principal.

C. Relation to PECL

The PECL do not contain such a rule.

D. New or Old Customers

Each new customer acquired would usually entitle the agent to commission and must therefore be taken into account when calculating the amount of indemnity. The income which the agent would have earned from services (and other activities) provided to the customers should not be taken into account when calculating the indemnity.

Whether the agent is entitled to an indemnity for goodwill with regard to contracts concluded with previously acquired customers, depends on whether the commercial agent has substantially increased the volume of business with them. The increase in volume must be such that it equals the acquisition of a new customer in economic terms.

E. Likely Future Duration of Benefits

The principal will not eternally benefit from the agent's activities. In order to determine how long the principal will profit from the continuous advantages which were generated by the agent, an estimation must be made. This estimation depends to a large extent on the market situation and the sector concerned. Usually these benefits last for 2 or 3 years, but they may last for as long as 5 years.

F. Migration Rate

Over time, the principal always loses customers. A customer may conclude just one transaction with a principal without the intention to continue doing so on a regular basis. Also, customers switch to another principal, for instance because the other principal deals in another brand or different products, or they move to another area. The rate of migration is variable and must be evaluated from the particular experience of the agent in question. The rate of migration must be calculated as a percentage of the commission on an annual basis.

G. Average Interest Rate

This factor is meant to calculate the present value of the transactions taking into account that there is an accelerated receipt of income.

H. Maximum Amount of Indemnity

The third Paragraph provides a final amendment to the amount of indemnity. It is not in itself a method of calculation, but it includes a limit to the amount of indemnity. The limit is the average annual remuneration. To determine the maximum sum to be paid to the commercial agent, the amount of indemnity calculated on the basis of Paragraphs 1 and 2 must be compared to the commercial agent's average annual remuneration. To

establish the latter, all forms of payment (not only commission) and all customers (not merely new customers or the ones generating more benefits for the principal) are to be included. If the amount of the indemnity which results from the calculation on the basis of the first two Paragraphs is less than the average annual remuneration then the amount of indemnity calculated is awarded. If, however, the amount of indemnity exceeds the annual average remuneration, the latter is granted. In practice, it is quite unusual for this maximum to be reached.

I. Damages

The agent may decide to claim damages for the actual losses which it has suffered as a consequence of the termination or ending of the agency contract: they may include the loss of clientele, investments made and costs incurred in the performance of the obligations under the agency contract, and payments to third parties, for instance employees or sub-agents. In that case the agent must prove both the existence of damage and the fact that the damage has arisen from the termination or ending of the agency contract (see Article 1:303).

J. Character of the Rule

This rule is a mandatory rule; the parties may not derogate therefrom to the detriment of the commercial agent.

K. Remedies

This rule entitles the agent to an indemnity of a certain amount. This amount is to be calculated according to the formula in the present Article. The principal is therefore under the obligation to calculate the amount of indemnity in accordance with this formula and to pay that indemnity. These are obligations in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the aggrieved party may resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Calculating the Amount of Indemnity*
   The present article is based on the Report on the application of Article 17 of the Council Directive on the co-ordination of the laws of the member states relating to self-employed agents (86/653/EC) (Presented by the Commission) COM (96) 364 final (hereafter: Report of the Commission) which, in turn, was inspired by German case law.
   Under GERMAN law the amount of indemnity is calculated as follows. First, the average commission on contracts with new customers is established (§ 89 b I (1) no. 2 HGB) and also the significant increase in volume concerning business with

existing customers (see § 89 b I (2) HGB) for the last 12 month before the contractual relationship ended (BGH, *WM* 1991, 826; BGH, *NJW* 1983, 2879; *Münchener Kommentar zum Handelsgesetzbuch*, § 87 b HGB no. 131). The result of this calculation must be multiplied with the number of years the principal is most likely to benefit from these customers in the future (*Münchener Kommentar zum Handelsgesetzbuch*, § 87 b HGB no. 137). To determine which number of years should be considered, all circumstances have to be taken into account. Usually, these benefits last for two or three years, but for long-lasting goods they may last for up to five years (BGH, *NJW* 1985, 860; OLG Frankfurt, *BB* 1973, 212; *Münchener Kommentar zum Handelsgesetzbuch*, § 87 b HGB no. 82). Subsequently the resulting amount of indemnity must be corrected in accordance with: (a) The average rate of migration in the territory of the agent (*Abwanderungsquote*, BGH, *Zeitschrift für Wirtschaftsrecht* 1987, 1387; OLG Köln, *Versicherungsrecht* 1968, 966; *Münchener Kommentar zum Handelsgesetzbuch*, § 89 b HGB no. 133). This rate is not estimated, but is calculated on the basis of the migration rates of the last years before the contract ended (*Münchener Kommentar zum Handelsgesetzbuch*, § 89 b HGB no. 133); and (b) The average interest rate due to the accelerated receipt of income (the so-called *Abzinsung*, see BGH, *NJW-RR* 1991, 484; *Münchener Kommentar zum Handelsgesetzbuch*, § 89 b HGB no. 139). (c) The average percentage of customers that will most likely conclude only one contract with the principal and refrain from further contracts in the future (so-called "Mehrfachkundenquote", see BGH, *Zeitschrift für Wirtschaftsrecht* 1987, 1387; *Münchener Kommentar* no. 132). (d) The reasonableness of the indemnity considering all the circumstances under § 89 b I (1) no. 3 HGB (BGH, *NJW* 1990, 2991; *Münchener Kommentar zum Handelsgesetzbuch*, § 89 b HGB no. 138; see also Note under article 1:108). This correction normally entails a reduction in the agent's amount of indemnity (*Münchener Kommentar zum Handelsgesetzbuch*, § 89 b HGB no. 138). The criteria for establishing reasonableness are e. g. the duration of the contractual relationship and social or personal circumstances (*Münchener Kommentar zum Handelsgesetzbuch*, § 89 b HGB no. 103).

From the Report by the European Commission it follows that the Member States apply the rules which are the result of the transposition of art. 17 (2) of the Directive in different forms. The AUSTRIAN courts use the GERMAN method of calculating the amount of indemnity. However, the AUSTRIAN courts regularly reach the maximum amount of indemnity, whereas the GERMAN courts never do so (Commission Report, 8).

In BELGIUM and SPAIN this is held to be a question which must be established by the courts (*Verbraeken & de Schoutheete*, no. 113; *Móxica*, 32, STS 16-11-2000, RJ 2000\9339 and 14-5-2001, RJ 2001\6207).

In the NETHERLANDS, SWEDEN it is assessed whether the requirements of art. 17 (2) of the Directive are met and subsequently a reasonable amount of indemnity is established (*Asser-Kortmann*, no. 239; § 28 (3) HaL, *Söderlund*, 128). In PORTUGAL the courts tend to assess directly whether an amount is reasonable and, if so, to award it (Commission Report, 6).

In ITALY, a court continued to apply the rules which prevailed before the provisions based on the Directive came into force. Another ITALIAN court applied the rules laid down in a collective agreement. The amount of indemnity is measured on the basis of the level of commission, the duration of the agency contract and the percentages set out in the collective agreement (Commission Report, 8).

2. *Maximum Amount of Indemnity*
The Directive contains a rule concerning the maximum amount indemnity in art. 17 (2) sub b of the Directive, which states: 'The amount of indemnity may not exceed a figure equivalent to an indemnity for one year calculated from the commercial agent's average annual remuneration over the preceding five years and if the contract goes back less than five years the indemnity shall be calculated on the average for the period in question.' These rules have been transposed into the following statutory provisions: AUSTRIA: § 24 (4) HVertrG; ENGLAND: Reg. 17 (4); GERMANY: § 89 b II HGB; ITALY: art. 1751 cc; NETHERLANDS: art. 7:442 (2) BW; POLAND: art. 764 III § 2 KC; SPAIN: art. 28 (3) LCA, *Moxica* 32; SWEDEN: § 28 (3) HaL.

3. *Character of the Rule*
Under art. 19 of the Directive 'The parties may not derogate from Articles 17 and 18 to the detriment of the commercial agent before the agency contract expires.' This rule is laid down in AUSTRIAN (§ 27 HvertG), BELGIAN (art. 23 *handelsagentuurwet*), GERMAN, ITALIAN (art. 1751 cc), DUTCH law (art. 7:442, 7:445 (2) BW), POLISH (art. 764 V KC), PORTUGUESE, SPANISH and SWEDISH law.

Article 2:313: Del Credere Clause

(1) An agreement whereby the commercial agent guarantees that a customer will pay the price of the products forming the subject-matter of the contract(s) which the commercial agent has negotiated or concluded (del credere clause) is only valid if and to the extent that:
  (a) the clause is concluded in writing, and
  (b) the clause covers particular contracts which were negotiated or concluded by the commercial agent or such contracts with particular customers who are specified in the agreement, and
  (c) the clause is reasonable with regard to the interests of the parties.
(2) The commercial agent is entitled to be paid a commission of a reasonable amount on contracts to which the del credere guarantee applies (del credere commission).

Comments

A. General Idea

A *del credere* clause is a clause in which the commercial agent ensures that the customer will pay to the principal the price agreed upon in the contract between the customer and the principal. Such a clause may increase the agent's liability if the customer does not perform. If the parties wish to include a *del credere* clause in the agency contract, they can only do so in writing. The *del credere* clause may not extend to a general group of (or to all) customers (Paragraph 1 (b). The *del credere* clause may not unreasonably burden the commercial agent (Paragraph 1 (c)). Moreover, the agent is entitled to specific compensation for the fact that it guarantees the customer's payments. This

compensation is due from the moment of the conclusion of the contract between the principal and the client.

B. Interests at Stake and Policy Considerations

A *del credere* clause gives the principal the possibility to control his risk in the case of a customer's insolvency. This is important, especially if the agent has the authority to conclude contracts in the name of the principal. However, obviously such a clause may also imply great financial risks for the commercial agent.

In practice, the principal is frequently in a position to force the agent to accept a far-reaching liability for customers' performance. Since it is usually the principal who accepts or refuses a transaction, the agent may accept such liability for fear of losing the right to commission. Therefore, the agent needs protection. The present provision also protects the agent in the sense that the principal must pay separate commission on the contract for which the agent guarantees the payment by the customer.

C. Relation to PECL and ECC

Articles 4:109 (Excessive Benefit or Unfair Advantage) and 4:110 (Unfair Terms not Individually Negotiated) PECL may affect the validity of *del credere* clauses.

According to Article 2:101 PECL a contract is concluded if the parties intend to be legally bound, and they reach a sufficient agreement without any further requirement. In contrast, here the written form is required, in order to protect the agent.

D. Character of the Rule

This is a default rule; the parties are free to agree otherwise.

E. Remedies

Paragraph 1 deals with the validity of the *del credere* clause. Paragraph 2 entitles the commercial agent to a *del credere* commission. This is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the aggrieved party may resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Del Credere Clause*
   BELGIAN, DUTCH, FINNISH, GERMAN, POLISH, PORTUGUESE, SPANISH law include a specific provision concerning a *del credere* clause (BELGIUM: art. 25 *Han-*

delsagentuurwet; FINLAND: art. 17 of the Act on Commercial Agents; GERMANY: § 86 b HGB; NETHERLANDS art. 7:429 BW; POLAND: art. 761 (1,2) KC; PORTUGAL: art. 10 DL 178/86; SPAIN: art. 19 LCA). The requirements concerning those *del credere* clauses included in those provisions will be discussed in the notes hereafter.
GERMAN law contains a slightly broader definition of a *del credere* clause. § 86 b I (1) HGB states that the commercial agent can also guarantee the performance of an obligation resulting from a transaction. This can e. g. also contain a guarantee for the delivery of goods (*Koller/Roth/Morck*, § 86 b HGB no. 5).
In contrast, the Directive does not contain any provision in this respect, nor do AUSTRIAN, ENGLISH and FRENCH law.

2. *In Writing*
According to BELGIAN, DUTCH, FINNISH, GERMAN, POLISH, PORTUGUESE and SPANISH law the *del credere* clause is invalid if it is not in writing. BELGIUM: art. 25 *Handelsagentuurwet*; GERMANY: § 86 b II (2) HGB; FINLAND: art. 17 Act on Commercial Agents; NETHERLANDS art. 7:429 (2) BW; POLAND: art. 761 VII § 1 KC; PORTUGAL: art. 10 (1) DL 178/86, *Pinto Monteiro* (1998) 66. SPAIN: art. 19 LCA;) However, under SWEDISH law there is no such requirement (*Söderlund,* 166).

3. *Particular Contracts or Particular Clients*
Under FINNISH, GERMAN, POLISH and PORTUGUESE law a *del credere* clause may only be agreed upon in relation to either specific contracts or contracts with specific clients. (GERMANY: § 86 b II (1) HGB; FINLAND: art. 17 of the Act on Commercial Agents; POLAND: art. 761 VII § 1,2 KC; PORTUGAL art. 10 DL 178/86; *Pinto Monteiro* (1998), 66).
In contrast, under BELGIAN, DUTCH, SPANISH and SWEDISH law there does not seem to be such a requirement.

4. *A Reasonable Cause Taking into Account the Interests of the Parties*
THE NETHERLANDS: art. 7: 429 para 4 BW.
In the specific provision in GERMAN law the reasonability with regard to the interest of the parties is not mentioned explicitly. However, it is to be considered under general contract law.
FINNISH, SPANISH, SWEDISH law do not contain such a requirement.

5. *Del Credere Commission*
Under GERMAN, FINNISH, PORTUGUESE, SPANISH, SWEDISH law, the commercial agent is entitled to a specific commission in the case of a del credere clause. (This special commission accumulates with the normal one in PORTUGAL) (GERMANY: § 86 b I (1) HGB; *Koller/Roth/Morck*, § 86 b HGB no. 6; FINLAND, Art. 17 Act on Commercial Agents; PORTUGAL: art. 13 f. DL 178/86, *Pinto Monteiro* (1998) 72; Spain: art. 19 LCA; SWEDEN: *Söderlund*, 166.)
However, under GERMAN law there are two exceptions to this entitlement: (i), when the principal or the customer have their branch/residence abroad (§ 86 b III (1) HGB) or (ii) if the commercial agent's authorisation for concluding transactions is unlimited (see § 86 b III (2) HGB).

Chapter 3:
Franchise
Section 1:
General

Article 3:101: Scope

This Chapter applies to contracts under which one party (the franchisor) grants the other party (the franchisee), in exchange for remuneration, the right to conduct a business (franchise business) within the franchisor's network for the purposes of selling certain products on the franchisee's behalf and in the franchisee's name, and whereby the franchisee has the right and the obligation to use the franchisor's tradename or trademark and other intellectual property rights, the know-how and the business method.

Comments

A. General Idea

The essential elements which characterize a franchise relationship are: a) granting the right to operate the franchisor's method of business, which mainly includes licensing the use of intellectual property rights and know-how (the business package); b) selling certain types of products (distribution contract); c) the franchisee's independence: in the franchisee's name and on the franchisee's behalf; d) (direct or indirect) financial remuneration for the franchisor. Providing assistance is not included in the present definition. Hence, even when assistance is not provided, this Chapter applies. As a consequence, this definition of franchising is broader than the one employed in EC competition law.

Franchise contracts should be distinguished from (ordinary) distribution contracts. They differ because of the following: first, although many franchise contracts have as their object the distribution of products, this is not always the case; secondly, in a franchise contract there is always the right to operate the franchisor's business method (which notably includes transferring the use of intellectual property rights and know-how); more generally, franchise networks are characterised by a much stronger uniformity than ordinary distribution networks. In fact, in the eyes of consumers there is frequently no difference between a daughter company (or subsidiary) and a franchisee.

B. Interests at Stake and Policy Considerations

The relevance of this Article is that it determines whether a certain contractual relationship is to be classified as a franchise contract. If so, the Articles in this Chapter

apply. Of special interest are the mandatory rules contained in Articles 3:102 (Pre-Contractual Information), 3:201 (Intellectual Property Rights), 3:202 (Know-How), 3:204 (Supply), 3:206 (Warning of Decreased Supply Capacity), 3:303 (Business Method and Instructions).

Providing assistance is not considered an element of a franchising contract under the present Article. This approach differs from the one taken by European competition rules. According to European competition law, certain types of franchise agreements are exempted from falling under Article 81(1) of the EC Treaty, which prohibits agreements which are incompatible with the common market. In order to restrict the application of these exemption benefits, antitrust rules include assistance as an integral component of the business method being franchised. However, the aim of the present provision is that this Chapter applies to a broader range of franchise agreements. Hence, even when assistance is not provided, this Chapter applies.

C. Relation to PECL

The PECL do not contain a definition of franchise contracts. In principle, all rules contained in the PECL apply to franchise contracts unless a provision in Chapter 1 or this Chapter deviates therefrom. The contracts of sale or services which are concluded between the franchisee and a customer are governed by the rules concerning contracts of sale and those concerning services. Comparable scope rules are laid down in Articles 2:101 and 4:101.

D. Mixed Contracts

Franchising agreements may draw specific elements from several contracts: for instance, from a licence agreement relating to trademarks; a purchase or lease agreement concerning specific machinery and equipment; a distributorship agreement concerning the actual products to be marketed by the franchisee; a sales agreement to purchase the goods from the franchisor; a lease agreement concerning the premises where the business will be conducted, or an agreement on joint advertising along with the franchisor and other franchisees for the marketing of the products.

E. Types of Franchise Contracts

On the basis of the subject-matter of franchising three main types of franchising are usually distinguished: industrial, distribution and service franchising. In the case of an industrial franchise, the franchisee produces goods according to the instructions of the franchisor and sells them under the intellectual property rights of the franchisor, whereas in the case of a distribution franchise, the franchisee simply sells certain goods in a shop which bears the franchisor's businessname or symbol. Finally, a service franchise concerns situations where the franchisee offers a service under the businessname, symbol or intellectual property rights of the franchisor.

F. Franchise Network

A franchise network consists of a franchisor and the group of all franchisees that operate the same business method and the existing liaison among them.

G. Competition Law

Competition law may affect franchise contracts. It depends on the stipulations of the franchise agreement at stake and its economic context whether this is the case. In its Pronuptia decision (case 161/84 *Pronuptia de Paris GmbH* v *Pronuptia de Paris Imgard Schillgalis*, [1986] ECR 353) the ECJ held that the terms of a franchise contract concerning the confidentiality of assistance and know-how, the protection of the intellectual property rights, maintaining the identity and the reputation of the network, do not fall within the ambit of Article 81(1) EC. However, the terms of the contract that concern the partition of the market territorially do fall within the ambit of Article 81(1) EC. Having said that, a franchise agreement may be exempted if it falls within the block exemption laid down in the Commission Regulation EC No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices.

The provisions included in this Chapter only apply to franchise contracts to the extent that they are valid in the light of competition law.

H. Character of the Rule

This is a scope rule: the parties cannot, in their agreement, classify a contract as a contract which is different from a franchise contract if their agreement contains the essential elements included in the present provision. Conversely, if the parties classify a contract as a franchise contract although it does not contain the essential elements set out in this Article, the rules contained in this Chapter will apply only in so far as they are consistent with the agreement of the parties.

I. Remedies

No remedies stem from this provision since, as a scope rule, it does not itself establish obligations for the parties. The obligations are explicitly formulated by means of specific Articles in this Chapter and in Chapter 1 where also remedies are provided.

Notes

1. *Definition of a Franchise*
ITALIAN and SPANISH law include a statutory definition of franchise (ITALY: art. 1. L nr. 129/2004; SPAIN: art. 62 of *Ley de Ordenación del Comercio Minorista,* (Act 7/1996 of 15 January 1996, on Retail Trade).
However, European competition law includes several descriptions of franchises. See Case 161/84 *Pronuptia de Paris GmbH* v *Pronuptia de Paris Imgard Schillgalis*, [1986] ECR 353; Regulation 4087/88 on the application of Article 85 (3) of the Treaty to categories of franchise agreements (OJ L 359/46) and the Guidelines of Vertical restraints of 2000).
Under DUTCH, ITALIAN and SPANISH law the competition law definition as included in Regulation 4087/88 is also used in private law issues. (ITALY: *Pardolesi* (1990) 66, Pretore di Milano, 21 July 1992, *Grimaldi s. p. a.* c. *Magatelli ed Effeci s. a. s.*, *Contratti*, 1993, 173, (note De Nova, *Franchising e apparenza*); NETHERLANDS: HR 25 January 2002, NJ 2003, 31 note J. B. M. Vranken).
Under other legal systems definitions of a franchise can be found in case law, literature and model contracts. (FRANCE: *Dutilleul* & *Delebecque*, no. 951). See also the notes to Article 1:101.
The elements of all these definitions differ. Hereafter it will be considered to what extent the elements included in the present Article are also included in the various legal systems and model contracts.

2. *Use of Franchisor's Tradename, Trademark, Know-how and Business Method*
These elements correspond with those given by European law and a large majority of the legal systems and the model contracts.
Art. 3 a, b of Regulation 4087/88, Guidelines on Vertical Restraints 2000 nos. 32, 43, 199 and the Case 161/84 *Pronuptia de Paris GmbH* v *Pronuptia de Paris Imgard Schillgalis*, [1986] ECR 353; AUSTRIA: *OGH* 26. 4. 1994, 4 Ob 535/94; ENGLAND: *Adams/Prichard Jones* §1.02; FRANCE: CA *Colmar*, 9. 06. 1982, D. 1982, 553 note Burst. Com. 8. 07. 1997, *D.* Aff. 1997, 960; *RJDA* 1994, n° 795, CA Paris, 7. 06. 1990, D. 1990, IR. 176.; 31. 03. 1993, *RJDA* 1993, n° 613. Com. 19. 02. 1991, *D.* 1992 somm. 391, obs. *D. Ferrier*, *Dutilleul* & *Delebecque*, no. 952; GERMANY: *Küstner/Thume,* 1590-1594; *Rohe*, 412; ITALY: art. 1 *L. 124/2004*, *Frignani* (1999) 6; NETHERLANDS: HR 25 January 2002, NJ 2003, 31 note J. B. M. *Vranken, Wessels*, 1991, 12, *Barendrecht* & *van Peursem*, 11; PORTUGAL: *Pinto Monteiro* (2002) 120; *Coutinho de Abreu* (1996) 63; *Pestana de Vasconcelos* (2000) 21; *Ribeiro* (2001) 143, STJ 14 April 1999, Agravo n/176/99; SPAIN: art. 62 para 1 of the Statute on retail sales, *STS* of 27-90-96 and 4-3-97; SWEDEN: definition by the Swedish franchise federation, *Sohlberg*, 32, 41; art. 1 of the ECE, the preamble of the ICC MODEL CONTRACT and art. 2 of the Unidroit Disclosure Law.

3. *To Conduct a Business in its Own Name and on its Own Behalf*
These elements recur in the case law, legal literature or model contracts of all the legal systems.
AUSTRIA: *OGH* 26. 4. 1994, 4 Ob 535/94; BELGIUM: *Verbraeken* & *de Schoutheete* No.139; ENGLAND: *Adams/Prichard Jones* at §1.02; FRANCE: *Dutilleul* & *Delebecque*,

no. 952, 958, Huet, no. 11624; GERMANY: *Küstner/Thume,* 1590-1594; *Rohe*, 412; ITALY: art. 1 L. 129/2004, *Frignani* (1999) 6; NETHERLANDS: HR 25-1-2002, *NJ* 2003, 31 note J. B. M. *Vranken, Wessels*, 1991, 12, *Barendrecht* & *van Peursem*, no. 11, *Van der Heiden* (1999) 86; PORTUGAL: *Pinto Monteiro* (2002) 120; *Coutinho de Abreu* (1996) 63; *Pestana de Vasconcelos* (2000) 21; *Ribeiro* (2001) 143, STJ 14 April 1999, Agravo n/176/99; SPAIN STS 27-9-1996, RJ 1996\6646, STS 4-4-1998, RJ 1998\3456, Aguiló Pina (1986) 4810, *Hernando Giménez* 208; SWEDEN: definition by the Swedish franchise federation. Art. 1 of the ECE.

4. *In Exchange for Remuneration*
This element is included in nearly all definitions in the case law, in European competition law and in those formulated by legal scholars or in model contracts.
(European competition law: Art. 3 b of Regulation 4087/88; AUSTRIA: *OGH* 26. 4. 1994, 4 Ob 535/94; ENGLAND: *Adams/Prichard Jones* at §1.02; GERMANY: *Küstner/Thume,* 1590-1594; *Rohe*, 412; ITALY: art. 1 L. *affiliazione commerciale*, *Frignani* (1999) 6; NETHERLANDS: HR 25-1-2002, *NJ* 2003, 31 note J. B. M. *Vranken, Wessels* (1991) 12, *Barendrecht* & *van Peursem*, no. 11; PORTUGAL: *Pinto Monteiro* (2002) 120; *Coutinho de Abreu* (1996) 63; *Pestana de Vasconcelos* (2000) 21; *Ribeiro* (2001) 143, STJ 14 April 1999, Agravo no 176/99; SPAIN: art. 62 para 1 of the Statute on retail sales, *STS* of 27-90-96 and 4-3-97; SWEDEN: definition of the Swedish franchise federation. Art. 1 of the ECE, the preamble of the ICC Model Contract and art. 2 of the Unidroit Disclosure Law.)

5. *To Conduct a Business within the Franchisor's Network*
This element is laid down in the majority of the legal systems and in European competition law. (Guidelines on vertical restraints, no. 42, 43, 199; AUSTRIA: *OGH* 26. 4. 1994, 4 Ob 535/94; FRANCE: *Huet* no. 11621; ENGLAND: *Adams/Prichard Jones* at §1.02; GERMANY: *Küstner/Thume,* 1590-1594; *Rohe*, 412; ITALY: art. 1 L. 129/2004, *Frignani* (1999) 6; THE NETHERLANDS: HR 25-1-2002, *NJ* 2003, 31 note J. B. M. *Vranken, Wessels* (1991) 12, *Kneppers/Heynert, Barendrecht* & *van Peursem*, no. 11; PORTUGAL: *Pinto Monteiro* (2002) 120; *Coutinho de Abreu* (1996) 63; *Pestana de Vasconcelos* (2000) 21; *Ribeiro* (2001) 143, STJ 14 April 1999, Agravo no 176/99; SPAIN: *STS* of 27-90-96 and 4-3-97; SWEDEN: cf the definition by the Swedish franchise federation).

6. *Written Requirement*
See also the notes to Article 1:101. Under ITALIAN law a franchise contract must be in writing otherwise it is void (art. 3 (1) L. 129/2004).

Article 3:102: Pre-Contractual Information

(1) The obligation to disclose pre-contractual information (Article 1:201) requires the franchisor in particular to provide the franchisee with adequate and timely information concerning:
  (a) the franchisor's company and experience,
  (b) the relevant intellectual property rights,
  (c) the characteristics of the relevant know-how,
  (d) the commercial sector and the market conditions,
  (e) the particular franchise method and its operation,
  (f) the structure and extent of the franchise network,
  (g) the fees, royalties or any other periodical payments,
  (h) the terms of the contract.

(2) If the franchisor's non-compliance with Paragraph 1 does not give rise to a fundamental mistake under Article 4:103 PECL, the franchisee may recover damages in accordance with Article 4:117(2) and (3) PECL, unless the franchisor had reason to believe that the information was adequate or had been given in reasonable time.

(3) The parties may not derogate from this provision.

Comments

A. General Idea

In addition to the general obligation for the parties in franchising to provide the other party with pre-contractual information (Article 1:201), this Article imposes a further reaching obligation on the franchisor, since it specifies the types of information that have to be provided. Paragraph 1 contains a list of items which must be disclosed. The franchisee needs to have such information in order to be able to enter the contract with full knowledge of all the relevant facts.

In addition to the remedies granted by the general obligation to provide pre-contractual information, this specific provision establishes the specific remedy of liability in damages (Paragraph 2) in case the franchisor does not provide adequate and timely information on the items specified in the provision even if the lack of information does not give rise to a fundamental mistake.

B. Interests at Stake and Policy Considerations

This obligation protects the franchisee's interests. The franchisee has to make important investments without having any other possibility to obtain this qualified information. This specific obligation to provide pre-contractual information is aimed at guaranteeing that the franchisee will have all the relevant and necessary information in order to commit itself with full knowledge of the relevant facts.

The main reasons to oblige the franchisor to provide the franchisee with this information may be summarized as follows. The essential information in a franchise agreement is at the disposal of the franchisor, which owns or has legal rights concerning the intellectual property rights and the know-how regarding the franchise business formula. The franchisee has no other means to collect such information since it is part of the 'business secrets' of the franchisor and is therefore confidential. Some franchisors try to attract investors by proposing that they enter a non-existent network and by promising them the possibility to operate a formula which is either non-existent or not successful. Whilst the franchisor actively asks the prospective franchisee to disclose the necessary information by means of questionnaires, the prospective franchisee is usually not in a position to direct similar questionnaires to the franchisor. As a result, the franchisee completely depends on what the franchisor wants to disclose. The unilateral imposition of standard clauses which can only be accepted on a 'take it or leave it' basis by the franchisee justifies the latter receiving prior information regarding such terms.

This disclosure rule imposes a burdensome obligation on the franchisor. The franchisor may be confronted with situations where it is not certain whether all the necessary information has been provided. It may not be possible either for the franchisor to be aware of all the facts which must be disclosed or to check whether those facts are correct.

C. Relation to PECL

The present Article provides a specific rule for the franchisor's pre-contractual obligation to inform. This rule may best be considered as a special instance of the general pre-contractual duty to inform under Chapter 1 (see art. 1:201).

D. Adequate Information

The franchisor must provide the potential franchisee with the relevant information regarding the franchise business in order to enable the franchisee to conclude the contract with full knowledge of the relevant facts. The listing of the items in Paragraph 1 is a minimum requirement: i.e the franchisor may disclose more information but not less. In particular, relevant information normally includes:

(a) The Franchisor's Company and Experience

The information shall include the particulars which identify the franchisor, such as the name or corporate denomination, the registered address and, where applicable, details of inclusion in the register of franchisors, as well as, in the case of a company, the share capital shown in the latest balance sheet, and details on registration in the mercantile register.

In addition, the information shall also include essential information regarding the experience of the franchisor in the sector and, more specifically, regarding the fran-

chisor's experience with the particular business formula. In principle, this information shall include the date on which the franchise was launched, the main stages in the development of the business formula and the franchise network.

(b) The Relevant Intellectual Property Rights

In principle, this information shall include a certificate evidencing the granting and current validity of the title of ownership or licence for the use of the trademark and distinctive signs of the franchising company; and of possible legal proceedings against such a company, if any, with express mention in any event of the duration of the licence. The information must also indicate what will be the franchisee's rights over the intellectual property.

Here, and throughout these Principles, 'intellectual property rights' includes industrial property rights, copyright and neighbouring rights.

(c) Characteristics of the Know-how

The know-how is one of the elements contained in the business package transferred by the franchisor. It includes information concerning the franchisor's business method which is indispensable to the franchisee for the use, sale or resale of the contract products.

(d) Commercial Sector and Market Conditions

In principle, this information shall include a general description of the franchise's sector of activity, which shall include the most noteworthy features thereof. In particular, it shall include essential information regarding the state of competition, the state of demand and price development.

(e) Franchise Method

In principle, this information shall include a general explanation of the system of business to which the franchise refers, the characteristics of the 'know-how' and the assistance to be provided by the franchisor, as well as an estimate of the investments and expenses which are necessary for conducting a typical business. In the event that the franchisor should provide the potential individual franchisee with sales forecasts or trading results, these shall be based on experience or studies and shall be sufficiently justified.

(f) Structure and Extent of the Franchise Network

In principle, this information shall include the form of the organisation of the franchise network and the number of establishments, distinguishing those exploited directly by the franchisor from those operated by other franchisees, the place where they are located and the number of franchisees which have recently ceased to belong to the network, stating whether such a cessation occurred due to the expiry of the contractual term or due to other causes for termination.

(g) Fees, Royalties and Other Periodical Payments

In practice, parties generally agree that financial remuneration comprises two elements: the initial fee and ongoing periodical payments. Before entering into the agreement the franchisees must be aware of the conditions of payment, especially of those periodical fees which will be determined by the franchisor at a later stage. Information shall be given regarding the criteria by which to determine the periodical payments to be made during the whole duration of the contractual relationship.

(h) The Terms of the Contract

In principle, this information shall include the rights and obligations of the respective parties, the duration of the contract, the fee system, the conditions for termination and, if applicable, for the renewal thereof, economic considerations, exclusivity agreements, and restrictions on the free disposal of the business by the franchisee.

E. Character of the Rule

This rule is mandatory; the parties are not free to agree otherwise.

F. Remedies

In accordance with the obligation of pre-contractual disclosure in Chapter 1 (Article 1:201), when the franchisor does not provide the franchisee with adequate and timely information concerning the issues specified in the present Article and such a non-compliance leads to a fundamental mistake, all the remedies for mistake in the PECL apply.

In addition to the remedies for mistake, this Article provides the franchisee with the specific remedy of liability in damages (Paragraph 2), when the franchisor does not provide adequate and timely information on the items included in the specific list even if the information does not give rise to a fundamental mistake, unless the franchisor had reasons to believe that the information was adequate or given within a reasonable time (Article 4:106 PECL).

Notes

1. *Pre-Contractual Information*
   Under nearly all legal systems there is such an obligation.
   Under FRENCH, ITALIAN and SPANISH law such an obligation is laid down in a statutory rule. Under FRENCH law this is the *Loi Doubin* (art. L. 330-3 C. com. and the *Décret n 91-337 du 4 avril 1991*, which elaborates art. L 330-3 C. com.). Under ITALIAN law it concerns arts. 4, 6 L. 129/2004. Under SPANISH law it concerns art. 62, para. 3 of the Statute on Retail Trade (*Ley de Ordenación del Comercio Minorista* of 15

January 1996, Act 7/1996) and the *Real Decreto* 2485/1998 of 13 November 1998, which elaborates art. 62 of the Statute on Retail Trade.

Under the other legal systems there is no specific statutory duty. Nevertheless, case law and literature have accepted such a pre-contractual duty under the general doctrine of good faith in several countries. (AUSTRIA: OGH 19.1.1989, 7 Ob 695/88; BELGIUM *Verbraeken & de Schoutheete* No.147 (b); GERMANY: § 242 BGB (good faith) *Küstner/Thume*, no. 1637-1649; *Martinek/Semler*, § 19 nos. 1-4, Bundesarbeitsgericht, *DB* 1980, 2040; *OLG München*, *BB* 1988, 865; *OLG München*, *NJW* 1994, 667, see also number 3.2 of the Ethikkodex of the German Franchise Association; FINNISH law: KKO 1993:130; THE NETHERLANDS: *Asser-Hartkamp* II, nos. 71, 159, HR 15-11-1957 *Baris/Riezenkamp*, NJ 1958, 67).However, in a decision on 2002, the HR held that there is no general obligation on the basis of good faith for the franchisor to provide the franchisee with information concerning the expected profit.

Under GREEK and PORTUGUESE law the general statutory rule concerning pre-contractual liability applies (arts. 197 and 198 of the GREEK Civil Code and art. 227 of the PORTUGUESE Civil Code). In addition, according to PORTUGUESE law in extreme situations, the provisions of art. 253 (Misrepresentation) or art. 282 (Usury) may be applied (*Ribeiro* (1992); *Pestana de Vasconcelos* (2000); *Ribeiro* (2000), 75). Finally, the doctrine of abuse of a right could be applied under GREEK and PORTUGUESE law (GREECE: art. 281 CC, *Voulgaris* and *Georgiadis* and art. 334 of the PORTUGUESE civil code).

In addition, under FINNISH law the Commercial Agent Act is applied by way of analogy.

Also the ECE (art. 3 (3)) and the Unidroit Model Disclosure Law (art. 3 et seq.) include an explicit pre-contractual obligation to provide information to the franchisee.

In contrast, under ENGLISH contract law there is no general duty of disclosure, *Keates* v. *Cadogan* (1851) 10 CB 591, but only an obligation not to make misrepresentations, *Williams* v. *Natural Life Health Foods* [1998] 2 All ER 577, *Boyle* v. *Prontaprint*, unreported, 26 February 2000, CA; *ANC* v. *Clark Golding*, The Times 31 May 2000, CAas.

2. *Contents of the Information*

FRENCH, ITALIAN and SPANISH law include a list concerning the items of information to be provided, which broadly correspond with those in the present Article. (FRANCE: a Decree has been adopted (n° 91-337, 4 April 1991, in relation to art. L. 330-3 C. com.; ITALY: art. 3, 4 L. 129/2004; under SPANISH law a list of items is included in *Real Decreto* 2485/1998 of 13 November 1998). Art. 6 of the Unidroit Model Disclosure Law contains a more detailed list.

Under the other legal systems there are no specific statutory lists. However, the items mentioned in Article 3:102 recur in the case law, legal literature and model contracts in the following countries. GERMANY: *OLG München*, *BB* 2001, 1759; *OLG München*, *BB* 1988, 865; *Flohr*, 18; *Martinek/Semler*, § 19 no. 1-4, the *OLG München*, *BB* 1988, 865, *OLG München NJW* 1994, 667; GREECE: *Georgiadis*; PORTUGAL: *Ribeiro* (2000), 54.

In the NETHERLANDS the *Hoge Raad* has held that there is no general obligation for the franchisor to inform the franchisee concerning future turn-over and profit expectations (HR 25-1-2002, NJ 2003, 31, note J. B. M. *Vranken*). Further, concerning this

issue there is no consensus among legal authors. Some authors require a further reaching obligation than the general one (*Van der Heiden* (1999) 47-48; *Grosheide* (1994) 382).

Under AUSTRIAN law there is only a general duty to disclose all the information necessary to run the franchise business in a satisfactory manner.

3. *Remedies*

If the franchisor fails to provide the franchisee with pre-contractual information, the franchisee usually has recourse to a remedy. However, these remedies differ from legal system to legal system.

Under ITALIAN law, if the information provided is incorrect, the franchisee may avoid the contract (art. 8 L.129/2004).

Art. L. 330-3 of the FRENCH C. Com. does not provide a specific remedy. From the case law of the Cour de Cassation it follows that if the franchisor has failed to provide the pre-contractual information, the franchise contract will be invalid, provided it has been proven that there is a defective consent on the side of the franchisee (Cass. Com. 2-12-1997, *D.* 1998, somm., 334, obs. D. Ferrier, Cass. Com. 10-2-1998, *D.* 1998 somm. 334). Also under DUTCH law, it will result in invalidity of the contract on the basis of defective consent (arts. 3:44, 6:228 BW). In addition, art. 6:230 BW provides the franchisor the possibility to propose an adapation of the contract.

Under SPANISH law, the franchisee has private law remedies at its disposal as well (art. 64 para 1 in fine Statute on Retail Law). However, there is no consensus among authors concerning the type of remedy. Some argue that the rules on defective consent apply (art. 1265 cc ff, *Hernando*, 128 ff). Then, the contract may be avoided and the franchisee is entitled to claim restitution and damages.

Also, under GREEK and PORTUGUESE law the failure of the franchisor to provide pre-contractual information results in the invalidity of the contract. In addition, the franchisee may claim damages under the doctrine of *culpa in contrahendo* (GREECE: arts. 140, 147, 178, 179 AK, with respect to arts. 178, 179 AK, the case law has been restrictive CA Patras 150/2000 Dikaio Epixeiriseon kai Etairion 8-9/2000 890; PORTUGAL: art. 227 CC, cf. *Ribeiro* (2000) 75).

Under GERMAN law non-performance of the obligation to provide pre-contractual information may result in the obligation to pay damages (culpa in contrahendo), recovering the *negative Interesse* (including: payments made to the franchisor, investments minus the re-sale-value, interests).

4. *Form Requirements*

Under FRENCH, ITALIAN, SPANISH and the Unidroit Model Disclosure Law two form requirements must be fulfilled. The information must be provided in writing. (FRANCE: art. L.330-3 C. com.; ITALY: art. 3(1) L. 129/2004; art. 62 para. 3 of the SPANISH Statute on Retail Trade, art. 4 of the Unidroit Model Disclosure Law).

Moreover, the information must be provided within a certain period before the conclusion of the franchise contract. However, this precise period differs from country to country. Under ITALIAN law it concerns 30 days before the conclusion of the franchise contract (art. 4 (1) L. 129/2004), whereas under FRENCH and SPANISH law it concerns 20 days before signing the contract or the precontract (FRANCE: art. L-330-3 C. Com.; art. 62 (3) of the SPANISH Statute on Retail Trade) and according to art. 3

of the Unidroit Model Disclosure law it concerns 14 days before the precontract or the payment.
Under the other legal systems there are no form requirements, however in practise it is common that the information is disclosed in writing. (GERMAN law: *Martinek/Semler*, § 19 no. 15-17; number 3.3. of the German Ethikkodex). See also the notes to Article 1:402 (Signed Written Document).

Section 2:
Obligations of the Franchisor

Article 3:201: Intellectual Property Rights

(1) The franchisor must grant the franchisee a right to use the intellectual property rights to the extent necessary to operate the franchise business.
(2) The franchisor must make reasonable efforts to ensure the undisturbed and continuous use of the intellectual property rights.
(3) The parties may not derogate from this provision.

Comments

A. General Idea

Under Paragraph 1 of this provision, the franchisor is obliged to grant the franchisee the licence to use the intellectual property rights related to the franchise business. It necessarily implies that the franchisor owns or has legal rights to license the said rights and that hence there are no third parties with better rights over the intellectual property who may disturb the use of the proprietary rights by the franchisee.

Under Paragraph 2, the franchisor is compelled to undertake reasonable efforts to prevent and to rectify situations where third parties claim that they have a better right over the intellectual property and consequently attempt to disturb the use of the rights by the franchisee.

Whilst Paragraph 1 imposes on the franchisor the obligation to attain a certain result, which is to license the use of the property rights to the extent necessary to operate the franchise business, Paragraph 2 merely requires the franchisor to observe due diligence in providing an adequate response when there is an action, claim or proceeding brought or threatened by a third party concerning such intellectual property rights.

B. Interests at Stake and Policy Considerations

The licensing of intellectual and industrial property rights is the cornerstone in the proper functioning of the franchise business method. Consumer recognition of and confidence in the product identified by the trademark is the lifeline of a successful franchise system. In fact, this is the main reason for franchisees to be attracted by the franchisor's system of doing business.

Since it is the selling of products during the entire length of the agreement which forms the object of the exploitation of the intellectual and industrial property rights it is essential for the franchisee to be provided with the proper licences which are necessary in order to be able to operate the attraction of the trademark and it is equally crucial that the franchisor ensures the undisturbed and continued use of these rights.

The franchisor is interested in the expansion of its business and image. Therefore the franchisor has on the one side to ensure that the members of the network utilize the trademarks and other signs which identify the business and on the other side to prevent and resolve situations where third parties intend to disturb the use of such rights. The franchisor must be in the lead in any action, claim or proceeding brought or threatened by a third party with regard to the intellectual property rights involved in the franchise business.

C. Relation to the PECL

The PECL do not contain such a rule. However, the concept of 'reasonableness' in this Article refers to Article 1:302 PECL.

D. Granting Intellectual Property Rights

The exact meaning of the expression 'granting the use of intellectual property rights' depends on the intellectual property rules in each legal system. Neither ownership of such rights nor registration is always a prerequisite for being able to assign them or to grant their use. Thus, the franchisor may be the owner or merely have the legal rights to grant or transfer the intellectual property rights involved in the franchise relationship.

E. Intellectual Property Rights Necessary for the Operation of the Franchise Business

These words refer to the package of industrial and intellectual property rights relating to trademarks, trade names, shop signs, logos, insignia, utility models, designs, copyrights and related rights, software, drawings, plans or patents held by the franchisor for the operation of the franchise business.

F. Undisturbed and Continuous Use of Intellectual Property Rights

The franchisor is required to make reasonable efforts to guarantee the undisturbed and continuous use of intellectual property rights (Paragraph 2). In assessing what is reasonable, the nature and purposes of the contract, the circumstances of the case and the usages and practices of the trade or profession involved should be taken into account. (See further Article 1:302 PECL)

The franchisor's intellectual property rights are protected against abuse by the franchisee. Apart from the rules in intellectual property law and the licence agreement, the franchisee is under an obligation to strictly limit the use of the rights to the operation of the franchised business and in the manner provided for by the franchisor (see Article 3:303). Moreover, the franchisee is to be identified as a mere licensee of such rights.

The obligation to guarantee the undisturbed and continuous use of these rights may have different consequences depending on the national situation: e. g. the obligation to fulfil validity requirements according to national legislation (for example, renewing registration).

G. Character of the Rule

This is a mandatory rule; the parties are not free to agree otherwise.

H. Remedies

The obligation to grant the intellectual property rights involved in a franchise system is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the aggrieved party may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Granting of Intellectual Property Rights*
   None of the European legal systems include a specific statutory provision of this type. However, in a large majority of the legal systems either the granting of the right to use intellectual property rights or the transfer of intellectual property rights is recognized as an obligation of the franchisor in the case law, legal literature or model contracts.
   The obligation to grant the franchisee a right to use intellectual property rights exists under the following legal systems: FRENCH law (*Ferrier*, no. 687; *Huet*, no. 11621), GERMAN law (*Giesler/Nauschütt*, § 5 no. 122; *Martinek/Semler*, § 19 no. 10, art. 2.2. of the Ethikkodex of the German Franchise Association), GREEK law (CA Thessaloniki 1043/1998 Dikaio Epixeiriseon kai Etairion 1998 491; First Instance Court of Athens 23373/1998 Dikaio Epixeiriseon kai Etairion 1999 864), NETHERLANDS: Pres. Rb. Arnhem 29-04-1988, BIE 1989, 157-159 (*Quick-sportschoenen*), Hof 's-Hertogenbosch 23-05-1989, IER 1989, 93-94 (*Mc Donald's/Mc Mussel,) Van der Heiden* (1999) 32, 38-40). See also art. 1 III B EC Regulation 4097/88; art. 3.1 of the ICC Model Contract; arts. 1, 2.2 of the ECE.
   Under FINNISH law, even though there is no explicit obligation, it is considered to be included in the duty to cooperate. Under ENGLISH law such an obligation is probably considered to be an implied term (*Adams/Prichard Jones* Precedent I, (Clauses 4.1.4, 11.2)).

Under other legal systems the granting of intellectual property rights is a necessary element to classify a contract as a franchise agreement. Without it, there is no franchise contract, since the contract would not have a *causa*. This is the case in AUSTRIAN law; ITALIAN law: Tribunale di Milano, 30 April 1982, Soc. Standa c. Soc. Arcobaleno Market, Foro it., 1982, I, 2042; PORTUGUESE LAW: *Meneses Cordeiro* (1998) 76; *Ribeiro* (2000) 158; *Pinto Monteiro* (2002) 121; *Pestana de Vasconcelos* (2000) 25, STJ 14 April 1999, Agravo n/ 176/99-2; SPANISH law: *STS* of 15 May 1985, Aranz. 1985/2393.

2. *Undisturbed and Continuous Use*
Such an obligation has been defended by BELGIAN and FRENCH authors. (BELGIUM: *Verbraeken* & *de Schoutheete*, no. 152; FRANCE: *Ferrier*, no. 687.) Also in SPAIN, authors have defended such an application. They suggest the application of the art. 1474 cc (concerning sales contracts) or art. 1554 cc concerning rent contracts by way of analogy to franchise contracts. Both the seller and the sellor must provide respectively the undisturbed us of the object sold or rented.

Article 3:202: Know-How

(1) Throughout the duration of the contract, the franchisor must provide the franchisee with the know-how which is necessary to operate the franchise business.
(2) The parties may not derogate from this provision.

Comments

A. General Idea

One of the franchisor's main obligations is the obligation to provide the franchisee with the relevant know-how, by means of operational manuals, or, in the case of general knowledge and experience, through ongoing assistance.

Know-how is to be provided as part of the initial package to enable the franchisee to start the operation of the business, but also during the entire duration of the agreement in so far as necessary to operate the business activities correctly.

According to the present Article the franchisor must provide the franchisee with the necessary know-how during the entire period of the contract. It implies that if during the contract's period the know-how is changed or updated, the franchisor must provide the franchisee with the updated know-how.

B. Interests at Stake and Policy Considerations

Know-how plays a central role in the franchise system. The franchisor's know-how is, together with the appeal of the trademark, the most interesting value which the franchisor has to offer to a franchisee. As a result, even relatively inexperienced entrepreneurs can start a sophisticated business concept. In addition, the franchisor and the other franchisees have an interest in the franchisee being provided with relevant know-how from the outset in order to maintain the standard and reputation of the whole franchise chain. This guarantees that the same method of exploitation will be used, which ensures the maintenance of the common image and reputation of the network and therefore eventually benefits both parties in franchising. If, within that period, the operational system has to be modified, the franchisee must be made aware of such changes. In that way the franchisee will be able to adapt the operational method and consequently continue the correct operation of the business.

C. Relation to the PECL

The PECL do not contain such a rule.

D. Necessary Know-How

Know-how is defined by art. 1(f) of EC Regulation No. 2790/1999 as ' … a package of non-patented practical information, resulting from experience and tested by the supplier, which is secret, substantial and identified: in this context "secret" means that the know-how, as a body or in the precise configuration and assembly of its components, is not generally known or easily accessible; "substantial" means that the know-how includes information which is indispensable to the buyer for the use, sale or resale of the contract products; "identified" means that the know-how must be described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality.'

Necessary know-how includes technical information, financial data, advice on site selection and the layout of the premises, the provision of start-up materials and any other specifications specifically relating to the system and the intellectual property rights and the utilisation thereof contained in the operating manuals or the agreement.

E. Regularly Reviewed Know-how

Any modification of the operational method has to be communicated promptly to the franchisee. This is mainly done by updating the operational manuals and assisting the franchisee in adapting to the changes.

F. Protection of Know-How

Protection of the franchisor's know-how from misuse by franchisees and competitors is taken care of by the provision which imposes on the franchisee the obligation to follow the business method and instructions (Article 3:303) and by the confidentiality obligation in the general chapter (Article 1:204).

G. Relation to Article 3:205 (Information during the Contract)

The communication of know-how is a very particular manifestation of the franchisor's obligation to inform. It is considered to be one of the main obligations for the franchisor since it concerns the indications as to how the business method is to be operated which are vital to allow the franchisee to exploit the franchise business. Such information is confidential because it forms part of the business secrets of the franchisor.

These specific characteristics justify that the obligation to communicate know-how, although, strictly speaking, contained in a more general obligation to inform, is formulated here as a specific obligation in a separate provision.

H. Character of the Rule

This is a mandatory rule; the parties are not free to agree otherwise.

I. Remedies

The obligation to provide know-how is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the aggrieved party may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. Know-How

The content of know-how in the present Article corresponds with the definition given by art. 1 of the EC Regulation 2790/1999 on Vertical Agreements (see also note 1 to Article 3:101). In ITALY a similar definition is included in art. 1 para 3 L 129/2004. A corresponding definition is also used in BELGIAN, DUTCH, PORTUGUESE and SPANISH case law or by the authors of these legal systems. (BELGIUM: *Verbraeken & de Schoutheete* no. 150; THE NETHERLANDS: HR 25-1-2002, *NJ* 2003, 31 note J. B. M. Vranken; SPAIN: STS 27-9-1997, RJ 1997\6646, STS 30-4-1998, RJ 1998\3456, *Hernando Giménez* 245, *Uría* 739, contra *Echebarría Sáenz* (1995) 307)

Art. 1 of the the EC Regulation 2790/1999 on Vertical Agreements defines know-how as follows:

'… a package of non-patented practical information, resulting from experience and testing by the supplier, which is secret, substantial and identified: in this context, "secret" means that the know-how, as a body or in the precise configuration and assembly of its components, is not generally known or easily accessible; "substantial" means that the know-how includes information which is indispensable to the buyer for the use, sale or resale of the contract goods or services; "identified" means that the know-how must be described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfils the criteria of secrecy and substantiality;'

Under the ECE and in the comments of the ICC MODEL CONTRACT different definitions are employed. However, within these definitions the common features of know-how are: confidentiality, substantiality and identification.

2. *Granting Know-How*

Under none of the legal systems is there an explicit statutory obligation to provide the franchisee with the necessary know-how. However, in a majority of the legal systems such an obligation has been accepted in the case law, legal literature or model contracts.

Under some legal systems such an obligation has been accepted as such, for instance under DUTCH law: HR 25-1-2002, NJ 2003, 31 note J. B. M. Vranken; PORTUGUESE law: *Ribeiro* (2000) 167, *Pestana de Vasconcelos* (2000) 27, *Menezes Cordeiro* (1998) 76.

Under other legal systems it is inferred from the duty to cooperate. FINLAND; GERMAN law: *Flohr*, 108; *Giesler/Nauschütt*, § 5 no. 116; *Martinek/Semler*, § 19 no. 10; GREEK law: Court of Appeal of Thessaloniki 1043/1998 Dikaio Epixeiriseon kai Etairion 1998 491; First Instance Court of Athens 23373/1998 Dikaio Epixeiriseon kai Etairion 1999 864

However, under the FRENCH and SPANISH legal systems granting know-how is to be considered a validity requirement. Without this, the franchise contract is void, since there is no *causa* (FRANCE: CA Paris, 7. 06. 1990, D. 1990, IR. 176.; 31. 03. 1993, RJDA 1993, n° 613. Com. 19. 02. 1991, D. 1992 somm. 391, obs. *D. Ferrier; Huet*, no. 11621; SPAIN: SAP Barcelona 10-5-2000, JUR 2000\211264, SAP Barcelona 23-12-2003, AC 2004\433). However, another situation is distinguished as well. When there is know-how, but the franchisor refuses to provide it to the franchisee, the contract can be terminated by the court because of non-performance and damages can be granted (Com. 24. 05. 1994, Cont. Conc. Consomm. 1994, n° 191 with note *L. Leveneur*).

See also art. 9 of the ICC Model Contract, art. 1 of the ECE.

Article 3:203: Assistance

(1) The franchisor must provide the franchisee with assistance in the form of training courses, guidance and advice, in so far as necessary for the operation of the franchise business, without additional charge for the franchisee.

(2) The franchisor must provide further assistance, in so far as reasonably requested by the franchisee, at a reasonable cost.

Comments

A. General Idea

Providing the franchisee with the right to use the intellectual property rights and with the know-how concerning the franchisor's method is generally not sufficient to allow the franchisee to successfully manage the business. In addition to such information, the franchisee may need assistance from the franchisor on using the information concerned in practice.

Paragraph 1 imposes on franchisors an obligation to assist the franchisees in order to provide them with the necessary support in commencing the operation of the business (initial assistance) and to solve problems which may arise throughout the duration of the relationship regarding the operation of the business concept (ongoing assistance). The franchisor is not only obliged to provide assistance actively but also to respond to the franchisee's demands for assistance when the requested assistance is necessary to enable the franchisee to operate the business correctly.

The content of the obligation to assist is specified in the wording of the Article: assistance is provided in the form of training courses, guidance and advice.

Paragraph 1 *in fine* indicates that the assistance that is necessary in order to allow the franchisee to adequately operate the franchised business is to be provided without any additional cost for the franchisee. It means that the payment to be made in exchange for assistance is deemed to be included in the payments made by the franchisee for the right to operate the franchisor's business method.

Paragraph 2 concerns the obligation for the franchisor to respond to requests from the franchisee for further assistance. The franchisor is obliged to provide such assistance when the request is reasonable. The franchisor can charge the franchisee for the provision of further assistance in so far as the additional cost is reasonable.

B. Interests at Stake and Policy Considerations

This provision is mainly aimed at safeguarding the franchisee's expectations concerning the system which the franchisee has entered. Franchisees need certainty as to the proper way in which to conduct the franchised business, and it is only the franchisor which can provide this.

On the other hand, the obligation to assist (Paragraph 1) and to be responsive to requests for further assistance insofar as they are reasonable (Paragraph 2), is a burden imposed on the franchisor since it requires the franchisor continuously to keep up with the activities of the franchisees and to collaborate actively with the members of the network during the entire period of the agreement in order to guarantee that they operate the business correctly.

However, by providing active assistance to the franchisees, the franchisor thus guarantees a uniform exploitation throughout the network which is in the interest of all the franchisees, and ultimately of the franchisor as well.

C. Relation to the PECL

The PECL do not contain such a rule. The concepts of 'reasonableness' in this Article refer to Article 1:302 PECL.

D. Necessary Assistance

Assistance is to be considered as a broad concept. It comprises the organisation of training courses, the provision of advice based on general knowledge and experience, e. g. advice on real estate and financial planning and visits to premises, in so far as is required in order to allow the franchisee to adequately operate the franchise business.

Assistance *in situ* may include additional training (usually in an area of weakness or with respect to a newly introduced service, good, method or technique), the identification of the franchisee's successes and weaknesses, the establishment of strategies to attain the goals which have been set, conversations with employees and customers, and technical assistance.

The obligation (in the interest of the franchisee) to provide assistance on-site must be differentiated from the right (in the interest of the franchisor) of inspection under Article 3:304.

E. Responsive to Reasonable Requests for Further Assistance

Standard assistance from the franchisor may not suffice to provide all franchisees with sufficient certainty concerning the method by which to conduct the business. Franchisees may need additional input from their franchisor. Through the present provision franchisees are granted the right to demand further assistance from the franchisor at a reasonable cost, in so far as such requests are reasonable. To assess whether requests are reasonable, the nature and the purposes of the contract, the circumstances of the case and the usages and practices of the trade or profession involved should be taken into account. (See further Article 1:302 PECL.) Normally, requests which are meant to achieve guidance which serves to meet the specific needs of the franchisee in order to guarantee the adequate operation of the business, will be considered reasonable.

F. Without Additional Cost

Necessary assistance, jointly with the intellectual property rights and know-how, are part of the business package which the franchisor must transfer to the franchisee in exchange

for direct or indirect financial remuneration. Therefore, such remuneration covers the provision of assistance which is necessary for the operation of the business. Only demands for specific assistance which is not necessary in general terms, but which may be necessary for the particular franchisee in order to meet the franchisee's needs as regards the adequate operation of the business and the maintenance of the quality standards, could lead to extra costs for the franchisee, in so far as the additional cost is reasonable.

G. Character of the Rule

This is a default rule; the parties are free to agree otherwise.

H. Remedies

The obligation to provide assistance is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the aggrieved party may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Obligation to Provide Assistance*
   In all legal systems the franchisor's obligation to provide assistance is considered to be one of the franchisor's main obligations by case law, legal authors or model contracts. (BELGIUM: *Verbraeken* & *de Schoutheete* No.151; FRANCE: *Dutilleul* & *Delebecque*, no. 955, *Ferrier,* no. 692, *Huet*, no. 11621; NETHERLANDS: *Van der Heiden* (1999), 58 PORTUGAL: *Ribeiro* (2000) 179 ff, *Pestana de Vasconcelos* (2000) 32; *Menezes Cordeiro* (1998) 76; SPAIN *SAP* Valencia 21-05-1993 (AC 1993\1024), *Hernando Giménez* 272 et seq.; under GREEK law the situation appears to be the same as under the present Article.)
   Under FINNISH, GERMAN and ITALIAN law this obligation follows from the doctrine of good faith or the duty to cooperate. (ITALIAN law: eg Lodo Arbitrale, Torino 11 July 1995, *Società X c. Società Y*, unpublished in *Frignani*, 157). In addition, under GERMAN law the rule concerning commercial agency is applied by way of analogy to franchising as well. (GERMANY *Giesler/Nauschütt*, § 5 no. 91; *Küstner/Thume*, no. 1694, *Martinek/Semler*, § 19 no. 10; Number 2.2. of the Ethikkodex of the German Franchise Association).
   Also ENGLISH authors seem to defend an obligation to provide assistance (*Adams/Prichard Jones* 348).
   See also art. 15 of the ICC Model Contract and arts. 1, 2.2 of the ECE.

2. *Free of Extra Charge*
   The ICC Model Contract states, in Article 15.5: 'The Franchisor shall use its reasonable endeavours to also provide the Franchisee with additional specific training, at the latter's request, to meet its specific needs at the Franchisee's sole expense and on the dates and at the locations stipulated by the Franchisor.'Also according to the defini-

tion of the ECE assistance is free of charge: in exchange for the fee the franchisee is entitled, among other things, to ongoing assistance. Also according to BELGIAN law the price is included in the royalties (*Verbraeken* & *de Schoutheete* no.158).

Article 3:204: Supply

(1) When the franchisee is obliged to purchase the products exclusively from the franchisor, or from a supplier designated by the franchisor, the franchisor must ensure that the products ordered by the franchisee are supplied within a reasonable time, in so far as practicable, and provided that the order is reasonable.
(2) Paragraph 1 also applies to cases where the franchisee, although not legally obliged to purchase from the franchisor or from a supplier designated by the franchisor, is in fact required to do so.
(3) The parties may not derogate from this provision.

Comments

A. General Idea

The present Article is meant to establish (under Paragraph 1) that in the case that the franchisee is forced to obtain its goods or services only from the franchisor or from a supplier that is appointed by the franchisor, the franchisor must guarantee that the orders for the supply of the franchisee are rendered within a reasonable time, no matter whether the supplier is the franchisor or a third party designated by the franchisor, in so far as the demands for supply are reasonable.

This provision also concerns cases where parties do not explicitly agree on an exclusive purchasing obligation for the franchisee but where the franchisee has recourse, in fact, to no other source of supply than the one provided by the franchisor or by the suppliers designated by the franchisor – e. g. when only the products supplied by the franchisor and suppliers designated by the franchisor meet the quality standards required. According to Paragraph 2, the franchisor is also obliged to guarantee the delivery of the products to the franchisee within a reasonable time when there is de facto exclusivity.

B. Interests at Stake and Policy Considerations

It is a very common practice in franchising that parties agree on an exclusive purchasing clause in favour of the franchisor. This obligation means that the franchisee's needs for supply can only be met either by the franchisor or by suppliers designated according to which the franchisee is obliged to purchase the products which are the subject of the franchise exclusively from the franchisor or from other suppliers designated by the franchisor.

Exclusive purchasing obligations are justified when they aim to assure that the products distributed within the franchise network fulfil the objective quality standards of the franchisor's network. However, such a constraint is likely to have very negative consequences for the franchisee when the franchisor or the designated suppliers refuse to meet the franchisee's orders for supply, restrict the amount to be delivered or delay delivery without any business-related justification. This provision is meant to reduce these negative effects by assuring that the decision whether or not to supply the franchisee is not at the sole discretion of the franchisor or the designated suppliers.

This rule may be deemed a very burdensome obligation since the franchisor is obliged to guarantee that the franchisee is provided within a reasonable time with the supplies ordered, even when the counterpart of the franchisee in the sales contract is not the franchisor but another supplier designated by the franchisor. The rationale of this rule is that when the franchisee grants exclusivity to the franchisor, the former should obtain some advantage in return.

The obligation is, however, limited to guarantee the delivery of reasonable orders. The reasonableness test is meant to protect the supplier against orders for supply which demand the delivery of products which are not actually needed to enable the franchisee to operate the business. These are orders which exceed what the franchisee would normally order according to the contract and to the franchisee's actual needs for supply. Furthermore, the franchisor is only obliged to guarantee delivery in so far as it is practicable to do so (for the franchisor or for the designated suppliers) taking into account the suppliers supply capacity.

A prompt delivery of the products is eventually beneficial for both parties. An adequate supply permits the franchisee to continue with the operation of the distribution business whilst at the same time it prevents temptations, on the side of the franchisee, to purchase competing products in order to fulfil its need for supply. Such a reaction of the franchisee would be certainly risky for the franchisor and the other franchisees because it may alter the uniform quality of the products within the franchise network.

C. Relation to PECL

The PECL do not contain such a rule. However, the concept of reasonableness within this provision refers to Article 1:302 PECL. The performance of the obligations in the sales contract concluded between the franchisor and the franchisee or between the designated suppliers and the franchisee is governed by the provisions on sales.

D. Designated Suppliers

In correspondance with the franchisor's prerogative to restrict the franchisees' freedom of business by compelling them to purchase the products from selected suppliers, the franchisor is obliged to guarantee that the designated suppliers provide the franchisee

within a reasonable time with the products which the franchisee orders, provided that these orders are reasonable.

E. Reasonable Time

The franchisor and the designated supplier are obliged to supply the franchisee within a reasonable time from the moment the supply order is given. The reasonableness of the period within which the franchisor must warn the franchisee is governed by Article 1:302 PECL.

F. Practicability

The franchisee is entitled to demand the fulfillment of the supply orders in so far as it is not unreasonable for the franchisor and the third designated suppliers to fulfil such demands in view of their actual supply resources. Supply would also be impracticable if the supplier encounters an insuperable obstacle to perform or the fulfilment of such an obligation would cause inconvenience or expenses on the supplier's side which are substantially disproportionate to the demands of the franchisee.

G. Reasonable Order

To assess whether an order is reasonable, the nature and the purposes of the contract, the circumstances of the case and the usages and practices of the trade or profession involved must be taken into account (see further Article 1:302 PECL). In this respect it is particularly relevant whether the franchisee pursues delivery of products of the quality, quantity and modality which is required by the franchise contract and which enable the franchisee to operate the distribution activities adequately, and whether the orders fall within the scope of the franchising contract, i. e. the franchisee is to be provided with the products which are the subject of the franchise. Special market conditions could justify demands for supply which exceed the franchisee's normal requests.

H. De Facto Exclusivity

Paragraph 2 concerns the situation where the parties have not agreed explicitly upon exclusive purchasing obligations, but where there is an exclusivity *de facto*. Such is the case when the franchisee has in fact no possibility to be supplied by any other supplier because e. g. the other suppliers do not meet the quality standards imposed by the franchisor or it is not possible to find the products which are the subject of the franchise in the market. Other examples are situations where better prices of the products offered by the franchisor have led the franchisee to purchase exclusively from the franchisor; or where the franchisee has been buying exclusively from the franchisor from the start of their contract and in fact an exclusive sales relationship is the result.

I. Character of the Rule

This is a mandatory rule; the parties are not free to agree otherwise.

J. Remedies

The obligation to guarantee delivery is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the aggrieved party may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Apart from the case of unreasonable orders, refusals may only be justified either by a right to withhold performance (Article 9:201 PECL) or by an excuse due to an impediment (Article 8:108 PECL).

Notes

1. *In General*
   A stipulation that the franchisee may only purchase certain goods from the franchisor or designated sellers is rather common in franchise contracts. (See also Art. 18.1 ICC Model Contract).
   Only, under BELGIAN law does there seem to be a rule which is similar to the present Article (*Verbraeken* & *de Schoutheete*, no. 153). For the other legal systems no rules were found in the legislation, case law or literature.

Article 3:205: Information during the Performance

The obligation to inform (Article 1:203) requires the franchisor in particular to provide the franchisee with information concerning:
(a) the relevant market conditions,
(b) the commercial results of the franchise network,
(c) the characteristics of the products,
(d) the prices and terms for the sale of products,
(e) any recommended prices and terms for the resale of products,
(f) any relevant communication between the franchisor and customers in the territory,
(g) any advertising campaigns relevant to the operation of the franchise.

Comments

A. General Idea

This provision includes an obligation for the franchisor to provide information (without being requested by the franchisee) and specifies the types of information that should normally be disclosed. The obligation to inform comprises more than communicating know-how or providing assistance. It refers to all the relevant data concerning the exploitation of the franchised business, such as general information concerning the market, research projects, improvements made to the business method or commercial results. The list of required information is not exhaustive.

In certain circumstances it may be reasonable for the franchisor to charge the franchisee for the specific information to be provided.

B. Interests at Stake and Policy Considerations

Both parties have an interest in being kept informed concerning facts and developments which are relevant to their performance. It can make their performance easier and more successful. The reciprocal exchange of information throughout the franchise network also benefits the whole network: it will lead to a continuous improvement of the business method.

This provision is aimed at guaranteeing that the franchisee, that is obliged to conduct the franchise business according to the concept of the franchisor, is provided with all the relevant information regarding the franchisor's business method which allows the proper performance of the franchisee's obligations. This obligation also serves to meet the interests of the franchisor, since by providing such information the franchisor guarantees that all franchisees operate the business in a uniform manner and meet the quality specifications required.

C. Relation to PECL

This Article may be regarded as a further specification of the obligation to cooperate (Article 1:202) and the obligation of good faith and fair dealing (Articles 1:201, 1:202 PECL). Comparable obligations are included in Articles 2:307 and 4:202.

D. Necessary Information

The franchisee must be provided in due time with all the information which the franchisee needs for the proper operation of the franchise business (Article 1:203).

In particular, the information to be provided normally includes the disclosure of the following features:

(a) Market Conditions

This mainly regards up-dated information concerning the state of competition and the state of demand.

(b) Commercial Results of the Franchise Network

The welfare and success of the franchisor's method requires that all the members of the network operate the system in a uniform manner. It means that the achievement of the expected profit by a franchisee does not only depend on its isolated efforts to operate the franchise outlet but also depends on the business efforts of the other franchisees. Therefore, the individual business activity of each franchisee has an impact on the business results of the other members. The information on whether the other members are achieving positive or negative commercial results is an indicator of whether the system is working adequately.

This obligation imposes indirectly an obligation on each franchisee to inform the franchisor concerning the individual commercial results, but this is in any case the common practice in franchising since the ongoing payments are generally calculated on the basis of the achieved benefits of each franchisee.

(c) Characteristics of the Products

Franchisees are intermediaries in the distribution channel since they undertake the obligation to pass on the products of the franchisor to customers. The relevant information regarding such products is in the hands of franchisors. In fact, it is for the franchisor to establish the quality standards which are to be met by the products offered to consumers. An adequate performance of the contractual obligations of franchisees requires adequate and accurate knowledge concerning the products and services offered to third parties during the time the franchisee carries out its task as a distributor. Therefore the franchisor shall provide the franchisee with updated information on the characteristics of the goods and services which are to be distributed.

(d) Prices and Conditions for the Sale of Products

Franchise contracts generally contain a sales agreement by which the seller (franchisor) agrees with the buyer (franchisee) on the terms under which the sale of the products is to be carried out. Among them is the sales price. Due to the generally long-term character of franchise agreements, these conditions may change during the course of the relationship. If such is the case it is for the franchisor, as the supplier of the products and consequently the one which has access to such an information, to inform the franchisee.

(e) Any Recommended Prices and Terms for the Resale of Products

In addition to the sales contract concluded between franchisor and franchisee, in franchising agreements there is another sales contract. This is the sales contract concluded between the franchisee and the customer for the resale of products. Usually franchisors recommend which prices are to be charged to the customer. The franchisees will typically respect such recommendations in order to ensure a competitive position in the market and a certain harmonization with the price policy and the advertising campaigns throughout the network which eventually benefits all franchisees.

(f) Relevant Communication with Customers in the Territory

Any contact between the franchisor and customers belonging to the territory where the franchisee's outlet is located which can be relevant as to the operation of the business by the individual franchisee (e. g. preferences of customers, expected changes in demand) is to be communicated to the franchisee.

(g) Advertising Campaigns

The success of franchisees in conducting the business depends on the maintenance of the reputation of the network which is made known to customers through advertising. The franchisor is under an obligation to ensure an adequate advertising strategy and to coordinate the promotion activities of the members of the network (Article 3:207). Such an obligation necessarily implies giving information to the franchisees regarding the advertising initiatives taken by the franchisor, notably regarding those which do not involve the participation of franchisees on a local level.

E. No Formalities

There is no formal requirement as to the way in which this obligation must be performed, e. g.: in writing. Nevertheless, in practice such information will generally be provided in writing.

F. Character of the Rule

This is a default rule; the parties are free to exclude all or some of the specific instances mentioned in this Article.

G. Remedies

The obligation to provide information during the contractual stage is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the aggrieved party may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *The Franchisor's Obligation to Inform its Franchisee*
   Under none of the legal systems is there an explicit statutory obligation for the franchisor to provide information to the franchisee during performance. However, under a majority of the legal systems, such an obligation is considered to be included in the obligation to cooperate or it follows from the doctrine of good faith by legal authors. The items mentioned in Article 3:205 recur in the case law and legal literature of a majority of the legal systems. (DUTCH law, *Van der Heiden* (1999) 59 ff; ENGLISH law; FINNISH law; GERMAN law: *Giesler/Nauschütt*, § 5 no. 123, 165, § 8 no. 18; *Martinek/Semler*, § 19 no. 60-67; GREEK law: First Instance Court of Athens 1733/2000 Dikaio Epixeiriseon kai Etairion 7/2000 746 with annotation by *Kostakis*; ITALIAN law: eg Lodo Arbitrale, Torino 11 July 1995, *Società X c. Società Y*, published in: *Frignani* (1999) 157; PORTUGAL: *Pestana de Vasconcelos* (2000) 32).
   In addition, under GERMAN law the law on commercial agency (§ 86 a II HGB) is also applied by way of analogy to franchising (*Giesler/Nauschütt*, § 5 no. 123, 165, § 8 no. 18; *Martinek/Semler*, § 19 no. 60-67).
   However, under FRENCH law this obligation follows from the obligation to assist, which is based on good faith. (See also: art. 11, 15.7 of the ICC Model Contract.)

Article 3:206: Warning of Decreased Supply Capacity

(1) When the franchisee is obliged to purchase the products exclusively from the franchisor, or from a supplier designated by the franchisor, the franchisor must warn the franchisee within a reasonable time when the franchisor foresees or ought to foresee, that the franchisor's supply capacity or the supply capacity of the designated suppliers will be significantly less than the franchisee had reason to expect.
(2) Paragraph 1 also applies to cases where the franchisee, although not legally obliged to purchase from the franchisor or from a supplier designated by the franchisor, is in fact required to do so.
(3) The parties may not derogate from this provision to the detriment of the franchisee.

Comments

A. General Idea

This provision concerns situations where the franchisee is obliged to purchase the contract products only from the franchisor or from other suppliers designated by the franchisor. This rule establishes that in such cases the franchisor must warn the franchisee when the franchisor foresees or ought to foresee an important decrease in the franchisor's supply capacity or in the supply capacity of the authorized suppliers. This obligation does not concern decreases in the supply capacity of the franchisor or authorized third suppliers which can be reasonably expected by the franchisee. How-

ever, it regards situations where the supply capacity of the suppliers turns out to be significantly less than what the franchisee had reasons to expect.

Paragraph 2 extends the obligation for the franchisor in franchise relationships where, even though the parties have not agreed on a contractual obligation to exclusive purchasing, the franchisee is, in fact, obliged to buy on an exclusive basis from the franchisor or from authorized suppliers.

B. Interests at Stake and Policy Considerations

An exclusive purchasing obligation implies that the franchisee is not allowed to find sources of supply other than the one provided by the franchisor or the designated supplier. Eventually, this means that the franchisee entirely depends on the supply capacity of the franchisor and the authorized suppliers. Therefore, also in the situation that the franchisor or the authorized suppliers cannot supply the products involved in the franchise business, the franchisee cannot approach other suppliers.

This provision intends to protect the franchisee in such situations. It aims to avoid situations where it is not possible for the franchisee to continue operating the business because the suppliers cannot deliver the required supplies due to a decrease in the supply capacity. Due to the franchisor's warning, the franchisee is able to adapt the new availability of supplies to the demand of customers and hence to avoid orders that the franchisor is not able to meet. In view thereof, the franchisor must warn the franchisee as soon as possible, so that the latter may react promptly.

This obligation may be deemed burdensome for the franchisor. However, this strict obligation is justified, since the franchisor is the one that imposes on the franchisee the obligation to purchase exclusively from the selected suppliers (see Article 3:204). In addition, this obligation is not unreasonably burdensome since the franchisor does not have to provide the franchisee with the reasons as to why the supply capacity will change and since there are two limits to the obligation of the franchisor: (1) the decrease in the supply capacity must be foreseeable and (2) the decrease cannot be reasonably expected by the franchisee.

This obligation to warn is also in the franchisor's interests. If the warning is given a sufficient time in advance, the franchisee will be able to adapt to the new supply availability and find solutions which avoid the disappointment of customers when they are not provided with the products they expect. Consequently the franchisor's reputation will not be negatively influenced.

C. Relation to PECL

This obligation may be regarded as a further specification of the obligation to cooperate and the obligation of good faith and fair dealing contained in articles 1:201 and 1:202 PECL respectively. The concept of 'reasonableness' in this Article refers to Article 1:302

PECL. According to Article 1:303 PECL, the franchisor's warning becomes effective when it reaches the franchisee. Similar obligations to warn are included in Articles 2:309 and 4:203.

D. Supply Capacity

The supply capacity of the franchisor or of the designated suppliers concerns the availability of products of the type which the franchisee has ordered or usually orders.

E. Designated Third Suppliers

In correspondance with the franchisor's prerogative to restrict the freedom of business of the franchisees by compelling them to purchase the products from selected suppliers, the franchisor is obliged, according to this provision to warn the franchisee when the franchisor foresees or ought to foresee that the supply capacity of the selected suppliers will be significantly less than what the franchisee had reason to expect.

F. Reasonable Time

In principle, the warning must be given a sufficient time in advance in order to allow the franchisee to react and adapt to the new supply availability. To assess what is reasonable, the nature and purposes of the contract, the circumstances of the case and the usages and practices of the trade or profession involved should be taken into account. (See further Article 1:302 PECL.)

G. Significant Decrease

The franchisor must warn the franchisee when the supply capacity will be significantly less than expected. It follows that no obligation arises in the case of a minor or temporary obstacle to supply.

H. Expectations of the Franchisee

The franchisee will normally expect to be provided with the amount of products purchased from the franchisor or the designated suppliers and which corresponds with the franchisee's needs for supply with a view to an adequate operation of its business.

I. De Facto Exclusivity

Paragraph 2 equates situations where the parties have explicitly agreed on exclusive purchasing obligations with situations where there is no explicit agreement, but nonetheless there is a situation of actual exclusivity. This is the case when the franchisee has in fact no possibility to buy from other suppliers because no one meets the quality standards imposed by the franchisor or because it is impossible to find the products which are the subject of the franchise in the market.

J. Character of the Rule

This is a mandatory rule; the parties are not free to agree otherwise.

K. Remedies

The obligation to warn against decreased supply is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the aggrieved party may resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *In General*
   This rule has been taken from the Directive on commercial agency (art. 4(2)b). It can be considered a specific instance of the obligation to provide information and to cooperate. See the notes to Articles 1:202, 1:203. Under the legal systems studied no specific information concerning such an obligation in relation to franchising was found.

Article 3:207: Reputation of Network and Advertising

(1) The franchisor must make reasonable efforts to promote and maintain the reputation of the franchise network.
(2) In particular, the franchisor must design and co-ordinate the appropriate advertising campaigns aiming at the promotion of the franchise network.
(3) The activities of promotion and maintenance of the reputation of the franchise network are to be carried out without additional charge to the franchisee.

Comments

A. General Idea

Under this provision the franchisor must make reasonable efforts to promote and maintain the network. These efforts include maintaining the good reputation of the intellectual property rights related to the franchise business. In the same manner it requires the observation of due diligence in assuring that the know-how is up-dated and is in conformity with the relevant circumstances. The maintenance of such a common reputation also depends on the extent to which uniformity is preserved. Such uniformity is achieved when all the members within the network follow the common guidelines for conducting the business. All these aspects, pursuant to this provision, fall under the franchisor's control. In addition, the franchisor must actively promote the business.

Paragraph 2 stresses the importance of advertising as a crucial activity in maintaining the good reputation of the network. Since the success of a franchise business largely depends on the appeal of the formula and the trademark, the franchisor must make reasonable efforts to promote the franchise chain through advertising campaigns. The advertising efforts, the costs of which are to be borne by the franchisor, point to the activities of design and coordination of the campaigns followed by the members of the network (Paragraph 3).

This Article does not include advertising campaigns where the initiative is taken by the franchisee as an independent entrepreneur and which are intended to promote the franchisee outlet on a local level.

B. Interests at Stake and Policy Considerations

The reputation and image of the franchisor's method of business with respect to consumers attract businesses which are interested in adopting the same formula in order to have a high possibility of making a profit. The economic profitability of the franchise business for both franchisor and franchisee depends on the maintenance of the good reputation and image of the network towards consumers. Therefore, both parties' activities will be aimed at maintaining the good reputation of the network.

Since the franchisor is in the position to exercise control over the intellectual property rights and know-how related to the business concept and especially over the activities of the members of the network, it is for the franchisor to devote reasonable efforts to promote and maintain the good reputation of the network, especially by guaranteeing a uniform operation of the business formula by the franchisees in the network.

The maintenance of the good reputation of the network necessarily requires an adequate promotional activity to be carried out by the franchisor in co-ordination with all its franchisees to guarantee a common image in the eyes of the public.

This obligation, which may seem very burdensome for franchisors, may not in practice have such a negative impact. What generally occurs is that franchisors are reluctant to grant a great deal of discretion to franchisees in promoting the franchise business. The reason for this is that a uniform and reputable image of the system is normally made known to customers through advertising. Therefore, contracts generally contain clauses whereby the franchisor undertakes the obligation to control promotional activities.

C. Relation to the PECL

The PECL do not contain such a rule. However, the concept of reasonableness within this provision refers to Article 1:302 PECL. Chapter 4 on distribution includes a similar rule (Article 4:205).

D. Reasonable Efforts

The franchisor is required to make reasonable efforts to guarantee the maintenance of the good reputation of the franchise network. To assess what is reasonable the nature and purposes of the contract, the circumstances of the case and the usages and practices of the trade or profession involved, among other things, should be taken into account. (See also further Article 1:302 PECL).

E. Appropriate Advertising Campaigns

Appropriate advertising campaigns mainly refer to advertising campaigns on an international, national or regional level which are aimed at promoting of the franchisor's business on a general level. The initiative is to be taken by the franchisor, who is furthermore obliged to guarantee that all members of the network uniformly follow the campaigns.

Some of the advertising campaigns may require the participation of franchisees on a local level. The franchisee must participate on a local level in the advertising campaigns launched by the franchisor in so far as these campaigns are reasonable.

F. Without Additional Cost

Pursuant to this Article, the costs of promoting and maintaining the reputation of the network are to be paid by the franchisor. In other words, the price that the franchisee has to pay as a contribution to the advertising campaigns launched by the franchisor is deemed to be included in the periodical payments incurred by the franchisee. This is a presumption against uncontrolled and unilateral 'grossing-up' of royalties in the guise of advertising costs. It therefore intends to protect the franchisee in that the franchisee does not have to pay for the advertising unless the contract explicitly says so and the franchisee was properly informed of this during the pre-contractual stage.

The exception to this rule regards those situations where the franchisee must participate on a local level in the advertising campaigns launched by the franchisor. If that is the case, the costs of local advertising are to be covered by the franchisee provided that the price is reasonable.

G. Character of the Rule

This is a default rule; the parties are free to agree otherwise.

H. Remedies

The obligation for the franchisor to maintain the welfare of the franchise network is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the franchisee may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Reasonable Efforts to Promote and Maintain the Network's Reputation*
   This obligation has been accepted by a large majority of the legal systems. However, its legal basis and character differs from country to country.
   Under some legal systems such an obligation has been accepted by legal authors. (DUTCH law: *Van der Heiden* (1999) 87, *Kneppers-Heynert*; FRENCH law: *Dutilleul* & *Delebecque* no. 955, *Ferrier* no. 691; PORTUGUESE law: *Ribeiro* (2000), 161 ff.; SPANISH law: *Echebarría Sáenz* (1995) 376 et seq.; *Hernando Giménez* 269). The situation appears to be the same under GREEK law. See also art. 15.7 of the ICC Model Contract)
   Under GERMAN law such an obligation may be inferred from the doctrine of good faith (§ 242 BGB, *Giesler/Nauschütt* § 5 no. 143 et seq., BGHZ 136, 295)
   Under FINNISH law there is no such specific rule ([reference]); the situation appears to be the same under ENGLISH law.

2. *Advertising*
   Under none of the legal systems there is such a specific statutory obligation.
   However, under PORTUGUESE law such an obligation is inferred from the obligation to maintain the reputation of the network (*Ribeiro* (2001) 196). Also under DUTCH law a lower courts has recognized such an obligation (*Praktijkgids*, 1998, 105-106).
   Under BELGIAN and SPANISH law such an obligation is included in the obligation of assistance. However, this obligation is restricted to national or even international campaigns (BELGIUM: *Verbraeken* & *de Schoutheete* no. 151 (c); SPAIN: *Echebarría Sáenz* (1995) 311).

Most model contracts include an explicit contractual term in this respect. (Arts. 15.6 and 15.7 of the ICC Model Contract; ENGLAND: *Adams/Prichard Jones* Precedent I, Clause 6.4; see for GERMAN law: *Martinek/Semler*, § 19 no. 10; ITALY: *Frignani*, 291;

3. *Costs*

According to BELGIAN law sometimes these costs are regarded as being included in the fee, whereas in other circumstances, the franchisee may be charged for this (*Verbraeken* & *de Schoutheete* no. 158).

According to Article 16.1 ICC Model Contract the franchisor must pay a certain percentage of its gross quarterly sales to contribute to the Franchisor's promotional activities in relation to the business. It seems that the franchisor must bear the costs of the initial advertising compaign (art. 15.6).

Section 3:
Obligations of the Franchisee

Article 3:301: Fees, Royalties and Other Periodical Payments

(1) The franchisee must pay to the franchisor fees, royalties or other periodical payments agreed upon in the contract.
(2) If fees, royalties or any other periodical payments are to be determined unilaterally by the franchisor, Article 6:105 PECL applies.

Comments

A. General Idea

In practice, the parties to a franchise contract generally agree on an initial payment, which is viewed as an 'admission ticket' to enter the franchise network. It is normally a fixed amount which essentially covers the franchisor's initial training and recruitment costs. In addition, parties further agree on periodical payments or royalties, which are to be paid during the whole duration of the contractual relationship, in exchange for the continuous exploitation of the business, ongoing assistance provided by the franchisor and so on. This provision spells out the franchisee's obligation to pay these fees, royalties and periodical payments.

However, where the contract states that such fees are to be determined (at a later stage) by the franchisor unilaterally and the franchisor's determination of the price is unreasonable, a reasonable price is substituted by law in accordance with Article 6:105 PECL.

B. Interests at Stake and Policy Considerations

In many franchise relationships periodical fees cannot be established at the moment of concluding the contract for its whole duration. Sometimes it is not even possible to establish an objective mechanism beforehand. In those cases it may be reasonable to accept the validity of a contract which leaves the determination of a term, even one as important as the periodical fee, to one party, which is very often the franchisor. However, the law must closely monitor the use which the franchisor makes of such a discretionary power, especially in the case of franchise contracts where the franchisee is frequently heavily dependant (as a result of extensive investments) on the continuity of the contractual relationship.

This Article provides the franchisee with strong protection in the case of an abuse by the franchisor of its discretionary power: the legal effect is not the invalidity of the

unreasonable term (and maybe as a result the invalidity of the whole contract) but the substitution of a reasonable term by law. If the franchisor does not want to continue the contractual relationship on these reasonable terms, it is left with no other choice but to end the contract. However, in that case it will have to respect the rules contained in Chapter 1. In particular, it will have to give reasonable notice.

Such strong protection is necessary in order to avoid the situation where a franchisor can effectively end the contract without having to give reasonable notice simply by unreasonably raising the fee, thus forcing the franchisee to end the contract.

C. Relation to PECL

This Article applies – specifically concerning fees, royalties or any other periodical payments in franchise contracts – what Article 6:105 PECL generally states concerning the price and any other contractual term in any contract. This Article aims to ensure that any fees, royalties or any other periodical payments which are to be established unilaterally by the franchisor are covered by the policy laid down in the PECL provision. An additional justification for the presence of this specific Article is that the unreasonable unilateral determination of fees is one of the most recurrent problems in franchise relationships. Therefore, a clear and specific rule is appropriate.

D. Reasonable Fee

Reasonableness in the context of the Article is to be judged by the criteria included in Article 1:302 PECL. For instance, the circumstances of the case and the applicable usages must be taken into account as well as what persons acting as franchisor and franchisee in the same situation would consider reasonable.

E. Calculation of Royalties and Periodical Payments

Royalties and periodical payments are frequently calculated on the basis of the franchisee's quarterly gross sales. Since these payments are to be made on a periodical basis and during the entire course of the agreement, they are normally increased by the franchisor to adapt the price to inflation and other circumstances relating to the contract (for example, an increase in production costs, an increase in the value of the shares of the franchise company, improvements to the system) and the franchisee. The contract may provide for a mechanism or criteria which determine variations in the amount which is periodically due.

F. Character of the Rule

This rule is mandatory, in accordance with Article 6:105 PECL.

G. Remedies

Strictly speaking, there is no remedy. In the case of an unreasonable unilateral determination of the fee by the franchisor, a reasonable fee is substituted by law. If the franchisor fails to pay the reasonable fee the franchisee may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Payment of Fees, Royalties or Other Periodical Payments*
   In most legal systems it is accepted by case law, legal authors or model contracts that the franchisee must pay an entrance fee and subsequently royalties or other periodical payments.
   (BELGIUM: *Verbraeken & de Schoutheete* no. 158; FRANCE: *Ferrier* no. 695, *Huet*, no. 11621; FINLAND; GREECE: *Georgiadis*, 203, *Alepakos*, 936, *Voulgaris*, 902, ITALY: *Frignagni*, 291; NETHERLANDS: *Van der Heiden* (1999) 60 ff; PORTUGAL: *Ribeiro* (2001) 184, *Pestana de Vasconcelos* (2000) 34; SPAIN The franchisee must pay an entrance fee (*pago de entrada*) to the franchisor and periodic payments as agreed, e. g. a payment on the profits obtained; SWEDEN (SOU 1987:17, 57); (See also art. 1 ECE; arts 20, 21 of the ICC Model Contract.)

2. *Unilateral determination of Fees, Royalties and Other Periodical Payments*
   If the fees, royalties and other periodical payments are determined unilaterally by the franchisor in a large number of the legal systems such a price is substituted by a reasonable one if the price concerned is unreasonable. (ENGLAND: *Adams/Prichard Jones* §542; GERMANY: § 315 III (2) BGB. The paras regarding unfair contract terms under § 305 BGB are not applicable even in case the term regarding the determination is expressed within general terms of business (*Giesler/Nauschütt*, § 9 no. 22, 23; see also § 307 III BGB.)
   Under FINNISH law any unfair term in a contract may be substituted by reasonable ones under the general clause. (Article 36 of the Contracts Act).
   Under a minority of the legal systems the contract is void if it includes an unreasonable price unilaterally determined by the franchisor (SPAIN: art.1449 CC, art. 1555, para. 1 CC).

Article 3:302: Information during the Performance

The obligation to inform (Article 1:203) requires the franchisee in particular to provide the franchisor with information concerning:

(a) any claims brought or threatened by third parties in relation to the franchisor's intellectual property rights.

(b) any infringements by third parties of the franchisor's intellectual property rights.

Comments

A. General Idea

In correspondance with the franchisor's obligation to make reasonable efforts to ensure the undisturbed use of intellectual property rights regarding the operation of the franchise business (Article 3:201), under this provision the franchisee is required to inform the franchisor if the franchisee becomes aware of any claim brought or infringement made by a third party regarding the franchisor's intellectual property rights – it will mainly concern claims and infringements by third parties located in the local market where the franchisee operates. This list of information obligations is not exhaustive.

B. Interests at Stake and Policy Considerations

Both parties have an interest in being kept informed concerning facts and developments which are relevant to their performance. It can make their performance easier and more successful. Reciprocal exchange of information throughout the franchise network also benefits the whole network: it will lead to a continuous improvement of the business method.

However, the present provision moderates the burden of the obligation to inform for franchisees since in most cases only this information is relevant to the proper functioning of the franchising network.

C. Relation to PECL

This Article may be regarded as a further specification of the obligation to co-operate (Article 1:202) and the obligation of good faith and fair dealing in Articles 1:201 and 1:202 PECL. A comparable information obligation is included in Article 4:302.

D. Character of the Rule

This is a default rule; the parties are free to exclude the franchisee's obligation to inform.

E. Remedies

The obligation to provide information during the contractual stage is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the franchisor may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *The Franchisee's Obligation to Inform the Franchisor*
   According to legal authors there is such an obligation in BELGIAN law (*Verbraeken & de Schoutheete*, no. 160). Under FRENCH law, the franchisee has the obligation to contribute to the protection of intellectual property rights; the obligation to inform the franchisor of infringements, claims brought or threatened by third parties can be considered a part thereof (*Dutilleul & Delebecque*, no. 955, *Ferrier*, no. 701). With respect to the other legal systems no specific information has been found.

Article 3:303: Business Method and Instructions

(1) The franchisee must make reasonable efforts to operate the franchise business according to the business method of the franchisor.
(2) The franchisee must follow the franchisor's reasonable instructions in relation to the business method and the maintenance of the reputation of the network.
(3) The franchisee must take reasonable care not to harm the franchise network.
(4) The parties may not derogate from this provision.

Comments

A. General Idea

The franchisee is under an obligation to conduct its business in accordance with the franchisor's method. This method is communicated to the franchisee through a business package that comprises intellectual property rights, know-how and assistance. The present provision is aimed at guaranteeing a uniform operation of the franchise business and the protection of the franchisor's business values. In other words, the franchisee does not only have a right to obtain intellectual property rights (Article 3:201), know-how (Article 3:202) and assistance (Article 3:203) from the franchisor. The franchisee is also under an obligation to actually use intellectual property rights, know-how and assistance.

Moreover, the franchisee must follow the instructions given by the franchisor regarding the method by which to conduct the franchise system, in so far as such instructions are reasonable in order to guarantee the correct functioning of the system.

B. Interests at Stake and Policy Considerations

This rule aims to guarantee that the intellectual property rights, the know-how and the knowledge provided through assistance are followed by all franchisees within the network. Such protection of the network is essential, both for franchisors and franchisees,

which equally depend on the economic strength of the trademark and which share a common interest in guaranteeing the image and reputation of the franchise network.

In addition to the general obligation to follow the franchisor's business method, the franchisee is also required under Paragraph 2 to follow indications which may frequently be given by the franchisor during the relationship. The maintenance of the quality standards and uniformity of the franchise network may not be attainable unless the franchisee follows such instructions.

Such an obligation is to be measured against the interest of the franchisee in managing its business as an independent entrepreneur. As such, it is obliged to follow the method and instructions of the franchisor provided that they do not hinder its independence.

C. Relation to the PECL

The PECL do not contain such a rule. However, the concept of reasonableness in this Article refers to Article 1:302 PECL. Comparable obligations are laid down in Articles 2:202 and 4:304 concerning instructions.

D. Reasonable Efforts

Reasonableness in the context of the Article is to be judged by the criteria included in Article 1:302 PECL. For instance, the circumstances of the case or the applicable usages must be taken into account as well as what persons acting as franchisor and franchisee in the same situation would consider reasonable.

E. Reasonable Instructions

Apart from being reasonable the instructions must also be necessary to guarantee the maintenance of the quality standards required by the franchisor's method; they must not change the method articulated through intellectual property rights, know-how and assistance and they must not hinder the legal status of the franchisee as an independent entrepreneur -the franchisee may arrange its activities and use its time as it thinks fit.

Reasonableness in the context of the Article is to be judged by the criteria included in Article 1:302 PECL. For instance, the circumstances of the case and the applicable usages must be taken into account as well as what persons acting as franchisor and franchisee in the same situation would consider reasonable.

F. Reasonable Care not to Harm the Franchise Network

Although it is in the franchisee's own interests to ensure the reputation of the franchise network, this provision stresses the importance thereof for the welfare of the franchise network to avoid any misbehaviour on the part of franchisees which may result in damaging the image of the franchise system. Consequently, the franchisee is expressly required to take reasonable care not to harm the network.

G. Character of the Rule

This is a mandatory rule; the parties are not free to agree otherwise.

H. Remedies

The obligations to follow the franchisor's concept and instructions and to take reasonable care not to harm the network are obligations in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the franchisor may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Reasonable Efforts to Operate according to the Franchisor's Business Method*
   Such an obligation has been accepted in most legal systems by case law or legal authors.
   AUSTRIA: *Holzhammer*, 103; *Krejci*, *Grundriss*, 404; BELGIUM: *Verbraeken* & *de Schoutheete*, no. 159 (b); FINLAND; FRANCE: *Dutilleul* & *Delebecque*, no. 955, *Ferrier*, no. 696, *Huet*, no. 11623; GERMANY: *Giesler/Nauschütt*, § 5 no. 160; NETHERLANDS: *Kneppers-Heynert* 15-16, 99-100, *Barendrecht* & *Van Peursem* 114, Articles 4 and 10 NFV Model Franchise Agreement. Article 10.1 of the ICC Model Contract; Art. 2.3 of the ECE.

2. *Obligation to Follow Instructions*
   Such an obligation is accepted in various legal systems' case law or by legal authors. BELGIUM: *Verbraeken* & *de Schoutheete* no. 159 (b); FRANCE: *Dutilleul* & *Delebecque*, no. 955, *Huet*, no. 11623.3 ; art. 10.7 ICC Model Contract.
   Under GERMAN law a majority of the legal authors and the courts apply § 86 HGB by way of analogy to franchising. Under this provision the commercial agent must follow the principal's reasonable instructions (BGH, *NJW* 1984, 2102; *Koller/Roth/Morck*, Vor § 84 HGB no. 10, 11; *Münchener Kommentar zum Handelsgesetzbuch*, § 86 HGB no. 3).

3. *Reasonable Care not to Harm the Franchise Network*
Under a number of legal systems such an obligation is recognized by case law and legal authors. FRANCE: *Dutilleul* & *Delebecque*, no. 955, *Huet*, no. 11621.1; ITALY: The use of the commercial symbols of the franchisor by franchisees that operate under the common standards may result in discrediting the image connected to them, and may thus damage not only the franchisor, but the whole network. Case law on the liability of a franchisee for damaging the 'commercial image' of the franchisor is rather rare. (E. g.: Tribunale di Milano, 23 November 1994, A. B. Sportsman Club s. r. l. c. Vico s. r. l., in Giur. it., 1996, I, 2, 382 (note *Cipriani*, Sul danno all'immagine del "franchisor"); PORTUGUESE law: *Ribeiro* (2000) 161 ff.; arts. 10.7, 10.11 of the ICC Model Contract; art. 2.3 of the ECE.

Article 3:304: Inspection

(1) The franchisee must grant the franchisor reasonable access to the franchisee's premises to enable the franchisor to check that the franchisee is complying with the franchisor's business method and instructions in so far as it is necessary to achieve the objectives of the contract.
(2) The franchisee must grant the franchisor reasonable access to the accounting books of the franchisee.

Comments

A. General Idea

This provision imposes on the franchisee the obligation to allow the franchisor to enter the franchisee's premises to inspect whether the franchisee complies with the quality standards of the franchisor's business method and with the instructions given by the franchisor regarding the operation of the franchised business (see Article 3:303).

Pursuant to Paragraph 2, the franchisee is also required to allow reasonable access to its accounting books.

B. Interests at Stake and Policy Considerations

Inspection is an effective method for the franchisor to check whether the franchisee manages the franchise business in accordance with the guidelines provided by the franchisor and which must be respected by all franchisees in order to maintain the common image and reputation of the network. Thus, it is indirectly beneficial for the other franchisees.

The franchisor is granted the right to have reasonable access to the accounting books of the franchisee in so far as this is required in order to ascertain the actual results of the franchisee in the operation of the business which will allow the franchisor to determine the amount of the ongoing payments to be made by the franchisee (see Article 3:301).

This right of the franchisor is to be measured against the right of the franchisee to organise its business as an autonomous entrepreneur. Therefore, inspection as a control activity is to be allowed by the franchisee, provided, however, that it is carried out within the limits imposed by the independent status of franchisees.

C. Relation to the PECL

The PECL do not contain such a rule. However, the concept of reasonabless in this provision refers to Article 3:201 PECL. Comparable obligations are laid down in Article 2:204 Paragraph 3 concerning access to the books. As to inspection of the premises a comparable obligation is included in Article 4:305.

D. Inspection

Inspection is a control activity exercised by the franchisor concerning the way in which the franchisee carries out the operation of the business. An inspection is carried out by visiting the franchisee's premises in order to check *in situ* whether the franchisee is conducting the business in conformity with the franchisor's method and quality standards and by having access to the franchisee's accounting books.

E. Reasonable Access

Reasonableness in the context of the Article is to be judged by the criteria included in Article 1:302 PECL, for instance the circumstances of the case or the applicable usages must be taken into account as well as what persons acting as franchisor and franchisee in the same situation would consider reasonable.

Obviously, an inspection should not take place in the middle of the night or five times a week. Reasonable access must take place during normal working hours and with a normal frequency and, more generally, only in so far and in such a way as is necessary to guarantee that the business is conducted in accordance with the franchisor's business method. Moreover, the inspection of the accounting books is to be done in so far as it is necessary to assess the business results of the franchisee which will allow a determination of the ongoing payments.

F. Character of the Rule

This is a default rule; the parties may agree otherwise.

G. Remedies

The obligation to allow an inspection is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the franchisor may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Right to Inspect the Franchisee's Premises*
   Under most legal systems such a right is recognized either by case law or by legal authors or is included in model contracts. (BELGIUM: *Verbraeken* & *de Schoutheete*, no. 165; FINLAND; FRANCE: *Dutilleul* & *Delebecque*, no. 955; ITALY: *Frignani*, 117; NETHERLANDS: *Kneppers-Heynert*, 15 et seq., cf. art. 20(1) NFV Model franchise agreement; PORTUGAL: *Ribeiro* (2001) 191; SPAIN: *STS* 29-11-1996 and 4-3-1997, *Echebarría Sáenz* (1995) 378, *Hernando Giménez*, 280 et seq.; art. 10 para 13 ICC Model Contract; art. 2.3 ECE)
   Under GERMAN law this obligation is inferred from good faith in some circumstances (*Giesler/Nauschütt*, § 5 no. 165; *Martinek/Semler*, § 19 no. 12).

2. *Access to the Books*
   Under FRENCH law authors recognize such an obligation and consider it to be part of the franchisor's right of inspection. (*Dutilleul* & *Delebecque*, no. 955).
   Under GREEK law the franchise must provide the franchisor with full access to his financial data and client files (First Instance Court of Athens 1733/2000 *Dikaio Epixeiriseon kai Etairion* 7/2000 746 with annotation by *Kostakis*). Under BELGIAN law the franchisee must provide the franchisor with the required financial data. However, it is unclear whether the franchisor has access to the franchisee's books. (*Verbraeken* & *de Schoutheete* no. 165).
   Under SPANISH law, from the obligation to pay the price in accordance with agreed criteria, commentators tend to infer an obligation to inform and more specifically an obligation to give account (art. 243 C.Co), since the franchisee must inform the franchisor of its volume of sales or benefits to establish the periodical payments, and there is also the franchisor's right to control which is allowed in order to verify such information (*Hernando*,).
   Also in art. 2.3 of the ECE a right for the franchisor to have access to the franchisee's books is included. With respect to the other legal systems, no specific information has been found.

Chapter 4:
Distribution
Section 1:
General

Article 4:101: Scope and Definitions

(1) This Chapter applies to exclusive distribution, selective distribution and exclusive purchasing contracts.
(2) A distribution contract is a contract under which one party (the supplier) agrees to supply the other party (the distributor) with products on a continuing basis and the distributor agrees to purchase them and to sell them in the distributor's name and on the distributor's behalf.
(3) An exclusive distribution contract is a distribution contract under which the supplier agrees to supply products to only one distributor within a certain territory or to a certain group of customers.
(4) A selective distribution contract is a distribution contract under which the supplier agrees to supply products, either directly or indirectly, only to distributors selected on the basis of specified criteria.
(5) An exclusive purchasing contract is a distribution contract under which the distributor agrees to purchase products only from the supplier or from a party designated by the supplier.

Comments

A. General Idea

Distribution contracts are agreements concluded between a supplier (which may also be the manufacturer of the products) and a distributor (which may either be a wholesaler or a retailer). The supplier agrees to supply the distributor with products. The distributor commits itself to purchasing, distributing and promoting such products in its own name and on its behalf.

There are different types of distribution contracts. The type of collaboration between the parties differentiates these contracts from each other. The agreement itself addresses what type of exclusivity, if any, is granted. However, exclusivity is not an essential feature of a distribution agreement.

This Chapter contains rules, which only apply to specific types of distribution contracts: exclusive distribution, selective distribution, and exclusive purchase agreements respectively. Different obligations apply depending on the type of exclusivity the parties agree

upon. However, these rules may also apply to other distribution contracts (e. g. basic framework agreements) by way of analogy. Furthermore, when the contract provides for bilateral exclusivity, both regarding purchase and supply, all obligations listed in this chapter will apply.

B. Interests at Stake and Policy Considerations

As said, under this Chapter the parties have different obligations depending on the type of exclusivity they have agreed upon. The underlying notions are (i) that if parties agree on any exclusivity, they normally have a closer relationship, which requires a higher degree of collaboration and loyalty to each other and (ii) a party that grants exclusivity to the other party does so in order to obtain some advantage in return.

Consequently, a supplier which refrains from dealing with other distributors by granting exclusive or selective distributorship, is for instance entitled to give instructions and to verify their compliance (Article 4:304). As to the distributor, if the distributor agrees to buy a certain type of product exclusively from one supplier, the distributor receives information, advertising materials, et cetera in exchange (Article 4:204).

In a limited number of cases the parties' freedom of contract is restricted. This is especially the case where exclusivity is granted unilaterally. These exceptional (mandatory) rules are meant to compensate to some extent for imbalance in bargaining power (see Article 4:203 Paragraph 2 concerning exclusive purchasing contracts).

In contracts where no exclusivity has been agreed upon, the parties do not have strong commitments towards each other. As a result, only basic obligations apply. A non-exclusive or a non-selective agreement could be regarded as nothing more than a loose contract to co-operate and to have some points agreed upon when and if the parties decide to buy/sell the products in question.

Distribution contracts, which include exclusivity clauses, are rather similar to franchise contracts. For this reason, the obligations of the parties in these two different contracts are dealt with in a consistent manner. This prevents any opportunistic classification of the agreements by the parties aimed at circumventing a less favourable regime.

C. Relation to the PECL

The PECL do not contain any definition of distribution contracts. All rules contained in the PECL apply to distribution contracts unless a provision in Chapter 1 or this Chapter deviates therefrom.

The rules contained in Chapter 1 apply to any distribution contract and those in this Chapter apply to any distribution contract which includes exclusivity clauses. The successive sales or service contracts concluded within the framework of the distribution agreement are specifically regulated by the provisions on sales or services as regards, for

example, the delivery conditions, payments, documents to be provided by the supplier, limitations of liability, et cetera or provisions on services. Comparable scope rules are laid down in Articles 2:101 and 3:101 on commercial agency and franchise respectively.

D. Purchasing and Selling of Products

The term 'products' in these Principles refers to both goods and services. The same terminology has been adopted by (European) competition law and is consistent with commercial practice. In relation to services, 'to purchase' includes 'to take and to pay for' and 'to sell' includes 'to supply or to provide'.

E. Distribution of Services

By means of a distribution contract parties organize the distribution of both goods and services. Some examples of the distribution of services include the distribution of music on the Internet and the distribution of information concerning the financial markets.

F. Continuing Basis

A distribution relationship consists of a commercial co-operation between the parties, which may last for a varying, but usually substantial period of time. This relationship may last even if for some time no sales or service contracts are concluded. A single sales contract or even a mere accidental succession of sales contracts between the same parties do not amount to a distribution contract.

G. In the Distributor's Name

This Chapter only applies where the party that distributes products to third parties does so in its own name. In other words, the distributor sells the products which it has bought from the supplier. This is the main difference with commercial agency where the commercial agent.

H. On the Distributor's Behalf

In promoting the sale of the products, the distributor pursues its own interest. This implies that commission agents do not fall within the scope of this Chapter.

I. Framework Agreement

A distribution contract is a framework agreement (*contrat cadre*), which provides the context for subsequent contracts (*contrats d'application*). A framework contract usually

only defines the basic elements of the subsequent contracts, without establishing the specific modalities.

Whereas the *contrat d'application* is usually of short duration and binds the parties to precise obligations, the framework agreement is meant to establish a relationship of ongoing collaboration between the parties. The number of 'application' contracts will usually result from the orders by the distributor to the supplier.

J. Exclusive Distribution Contracts

In exclusive distribution contracts, the supplier undertakes to supply the products only to one distributor, to the exclusion of other potential distributors, in a specified territory (territorial exclusivity) or to a certain group of customers (exclusive customer allocation). This provides the distributor with some protection against intra-brand competition (i. e. from products of the same brand brought on to the market by other distributors). The extent of this protection depends on the agreement.

The definition in Paragraph (3) includes both sole distributorship and exclusive distributorship. In the case of a 'sole distributorship' the supplier is entitled to sell directly to customers, whereas in the case of exclusive distributorship, the supplier also agrees to refrain from direct sales.

Examples of exclusive distribution agreements first appeared in the motor industry. Subsequently, these contracts have become common in virtually all branches of the wholesale and retail sector (agricultural machinery, electrical appliances, furniture, beauty products and computer equipment).

Examples of exclusive customer allocation include differentiation between the business and consumer market, between the day and night-time market, et cetera.

In return for territorial exclusivity or exclusive customer allocation, the distributor usually agrees only to buy the supplier's products (exclusive purchasing contract (see below, Comment L) or not to represent competing products (contractual non-competition clause).

K. Selective Distribution Contracts

Selective distribution contracts result in closed sales organisations. The supplier limits the distribution of the products to those distributors that possess the qualifications that correspond most closely to the supplier's sales policy.

The selection may be based on either qualitative or quantitative criteria. Examples of qualitative criteria are: the employment of technically qualified staff, the possibility to display the products separately from others, the maintenance of a sufficiently representative selection or a sufficiently wide stock of products, et cetera. Quantitative criteria

are: the number of distributors in relation to the population of the territory to be served and a minimum turnover in the products et cetera.

A supplier will opt for this form of distribution in order to maintain the prestige of its brand or image (jewellery, cosmetics, et cetera), to ensure the efficient and speedy distribution of perishable products (fish), to provide a high level of pre-sales and/or after-sales services which is required because of the technological nature of the products to be distributed (personal computers, electronics, cars, high-tech equipment, et cetera).

L. Exclusive Purchasing Contracts

If the distributor undertakes to purchase the products (belonging to a certain market category) from the supplier only, the contract will be classified as an exclusive purchasing contract. The exclusivity may be either total or limited to a certain percentage of the distributor's requirements. It may also result from an obligation to purchase a quantity of products that in fact corresponds to the distributor's needs (*de facto* exclusivity). Normally, exclusive distribution agreements also include an exclusive purchase clause. In exchange for the distributor's control of the sale of the supplier's products in a given territory, the distributor then agrees not to buy the contract products from any other than the given supplier. These types of contracts are recurrent, for example, in the petrol and the beer distribution industries.

M. Mixed Contracts

Some contractual relationships have the characteristics of a distribution agreement as well as another contract. This is the case, for example, where a distributor also sells some products in the supplier's name, thus acting as a commercial agent (see Chapter 2 on Commercial Agency). Or, the distributor may purchase with a view not only to reselling the goods but also to transforming or incorporating them into a product for resale. In such cases the rules on distribution regulate those aspects of the contractual relationship which fall under the scope and definitions rule as set out in Article 4:101.

N. De Facto Distribution Contracts and De Facto Exclusivity

The relationship that provides the framework for consecutive application contracts is the most characteristic element of distribution contracts. If such a relationship *de facto* exists without the parties ever having formally agreed thereon, either in writing or orally, the rules contained in this Chapter may nevertheless apply, together with the general provisions contained in Chapter 1. This follows from the general rules on the formation of contracts. See Article 2:211 PECL (Contracts not Concluded through Offer and Acceptance). Comment A to this Article stresses that a contract may be concluded by conduct alone. In such cases it is not easy to discern when the parties reach an agreement which amounts to a binding contract.

The same holds true for distribution contracts presenting *de facto* exclusivities. Rather than formally imposing exclusivity, the supplier may induce the distributor to obtain all or the major part of the distributor's supplies from the supplier. The latter may do so by granting discounts which are conditional upon total or *quasi*-total loyalty to the supplier's products (loyalty discounts). In such a case, the rules in this Chapter on exclusive purchase agreements apply in spite of the written contract that contains no exclusive purchasing clause.

O. Competition Law

Distribution contracts may be invalid pursuant to the application of EC and national competition law. In this respect, especially relevant is Commission Regulation (EC) No. 2790/1999 of 22 December 1999 on the application of Article 81 (3) of the Treaty to categories of vertical agreements and concerted practices, and the various exceptions for specific branches of trade (e. g. Commission Regulation (EC) No. 1400/2002 of 31 July 2002 on the application of Article 81 (3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector). The provisions provided in this Chapter only apply to exclusive distribution, selective distribution and exclusive purchasing contracts to the extent that they are valid in the light of competition law.

P. Character of the Rule

This is a scope rule. Parties cannot, in their agreement, classify a contract as a contract which is different from a distribution contract if their agreement contains the essential elements included in the present provision. Conversely, if the parties classify a contract as a distribution contract although it does not contain the essential elements set out in this Article, the rules contained in this Chapter will, in principle, apply in so far as they are consistent with the agreement of the parties.

Q. Remedies

No remedies stem from this provision since, as a scope rule, it does not itself establish obligations for the parties. The parties' obligations are formulated as obligations by means of specific Articles in this Chapter and in Chapter 1 where remedies are also provided.

Notes

1. *Scope*
   BELGIAN law is the only European legal system which contains specific statutory provisions concerning distribution contracts. (BELGIUM: *Wet 27 juli 1961 betreffende de eenzijdige beëindiging van de voor onbepaalde tijd verleende concessies van alleenverkoop*,

B. S., 5 oktober 1961, zoals gewijzigd door Wet 13 april 1971, B. S. 21 april 1971). As to which rules are applied to distribution contracts in the other countries, see the notes to Article 1:101.

2. *Definition of Distribution*

Apart from BELGIAN law, there are no statutory definitions of distribution contracts under the legal systems studied. Under the other legal systems distribution contracts are defined by legal authors and case law.

According to all these legal systems distribution includes the supply of products on a continuing basis and the sale by the seller of the products to third parties in its own name and on its own behalf. (AUSTRIA: EvBl 1990/96, EvBl 1998/104, EvBl 1991/76; *Krejci*, 402; see *Heller, Löber*, 110; *Hämmerle/Wünsch*, 311; BELGIUM: art. 1 § 2 *Alleenverkoopwet*; FRANCE: *Ferrier* no. 1 et seq., *Huet*, no. 11596; FINLAND; GREECE: distribution contract σύμβαση διανομήρ/ *simvasi dianomis*, *Georgakopoulos* 1999 435; ITALY: the words distribution contracts refer to different types of contracts that are employed for the distribution of goods and services. Most commonly used in in commercial practice are the following: *rivendita autorizzata, concessione di vendita* and *franchising Pardolesi* (1988) 4, *Cagnasso* (1983) 17 ff; THE NETHERLANDS: *distributie contract*, *Barendrecht* & *Van Peursem*, 3; *Geel*, 108; *Van den Paverd*, 13; PORTUGAL: *contrato de concessão commercial Pinto Monteiro*, 108 ff.; *Menezes Cordeiro*, 509 ff.; *Pinto Monteiro*, 45; *Brito*, 179 ff.; *Coelho Vieira*, 15; STJ 4/05/1993, BMJ 427, 1993, 530; STJ 22/11/1995, BMJ 451, 1995, 454; STJ 5/06/1997, BMJ 468, 1997, 434; STJ 23/01/1997, www.dgsi.pt, JSTJ00032260; SPAIN: *contratos de distribución o concesión* STS of 17 May 1999, RJ 1999\4046 and 16 November 2000, RJ 2000\9339, *Memento Lefebvre* (2003-2004) 522; SWEDEN: (*återförsäljningsavtal)* (*Håstad*, 295).

In BELGIAN statute law and AUSTRIAN, GERMAN and PORTUGUESE case law and literature distribution contracts are defined to include only the distribution of goods rather than the distribution of goods or services (AUSTRIA: *Holzhammer*, 104; BELGIUM: art. 1 § 2 *Alleenverkoopwet*; GERMANY: *Küstner/Thume*, no. 1139-1150). Moreover, under GERMAN law there is an additional requirement in order to define a distribution contract: i. e. the distributor's integration into the supplier's sales system (BGH, *NJW* 1971, 30; *OLG Zweibrücken*, *BB* 1983, 1301; *Küstner/Thume*, no. 1142; *Rohe*, 450; § 14 no. 1; *Ulmer*, 206).

However, under ENGLISH law, distribution contracts will be classified as contracts for purchase for resale and the rules concerning those contracts apply accordingly (*Chitty-Reynolds* no. 31-003).

3. *Exclusive Distribution, Selective Distribution, Exclusive Purchasing*

The definitions of exclusive agreements adopted in this Article correspond to the ones in Commission Regulation (EC) No. 2790/1999 of 22 December 1999 on the application of Article 81 (3) of the Treaty to categories of vertical agreements and concerted practices.

The same distinction is made by GERMAN and DUTCH legal writers and courts (GERMANY: *Martinek/Semler*, § 14 no. 1; *Rohe*, 449 *Küstner/Thume*, no. 1261-1278; *Ulmer*, 138; NETHERLANDS: *Barendrecht* & *Van Peursem*, 10 et. seq.).

FRENCH and SPANISH authors distinguish between exclusive and selective distribution contracts. Under FRENCH law, exclusive distribution contracts also seem to

include exclusive purchasing contracts (FRANCE: *Dutilleul* & *Delebecque*, no. 925, 930, 935, *Huet*, no. 11607 ff; 11615).

Also BELGIAN law seems to distinguish only between exclusive and exclusive purchasing agreements. However, BELGIAN law does not seem to distinguish selective distribution agreements. Art. 1 § 1 sub 3 *Alleenverkoopwet* refers to another category: distribution contracts whereby the supplier imposes important obligations on the distributor and which are of such importance that in the case of ending of the contract, the distributor incurs severe damages.

Under GREEK law the same distinction is made as under Article 4:101 i. e. between common distribution contracts (*koines simvaseis dianomis*), selective distribution contracts (*simvaseis epilektikis dianomis*) and exclusive distribution contracts (*simvaseis apokleistikis dianomis*) (*Georgakopoulos* (1999) 435-6) However, also another distinction is made between simple distribution (*apli simvasi dianomis*) and distribution with added legal rights (*simvasi dianomis me prostheto xaraktira dikaioxrisias*).

Some ITALIAN legal scholars discern three different types of distribution contracts:
(i) sales of a certain amount of products to be determined, plus a clause of unilateral or bilateral exclusivity, (ii) concession of (re)sale of the products within a certain area, (iii) a commitment by the *concedente* to sell its products only to one *concessionario* and (or) by the *concessionario* to buy them from only one *concedente*. (*Oreste Cagnasso-Gastone Cottino*, 133).

Section 2:
Obligations of the Supplier

Article 4:201: Supply

The supplier must supply the products ordered by the distributor, in so far as it is practicable and provided that the order is reasonable.

Comments

A. General Idea

The supplier must consistently honour the supply orders of the distributor. However, parties are free to agree that the supplier is not obliged to honour all the orders that the distributor will place. This follows from the non-mandatory character of this rule. Moreover, the supplier is only bound to supply products in so far as the supplier is in a position to do so, taking into account the supplier's actual possibilities (i. e. productivity capacity, stock capacity, et cetera). There is no obligation to supply in the case of impracticability. Last, the supplier is not bound by orders placed by the distributor that are not reasonable.

B. Interests at Stake and Policy Considerations

In most cases supply of the products ordered by the distributor will be in the interest of both parties. The supplier sells the products to the distributor and the latter is able to bring them to the market and to make a profit by reselling them. However, this may not always be the case. The supplier, for various reasons, may either be unable or unwilling to supply the distributor.

This Article obliges the supplier to honour the orders placed by the distributor, unless there are pressing reasons not to do so. The aim is to prevent a supplier from arbitrarily refusing to supply its distributors, and thus to provide the distributor with legal certainty.

However, this Article does not impose a mandatory obligation to supply upon the supplier. The rationale is to preserve the supplier's freedom of contract, so that the supplier is not forced to enter into undesired sales contracts.

The distributor's interest and the general interest are protected by the rules on unfair contract terms (see Article 4:110 PECL) and by competition law.

C. Relation to the PECL

The PECL do not contain such a rule. However, the concept of reasonableness in this Article refers to Article 1:302 PECL. As far as the performance of the contract of sale of products is concerned, the rules on sales are applicable.

D. Obligation to Supply and Contrat d'Application

The obligation to supply stems from the framework agreement. This provision does not define the terms of supplied goods. Provisions on sales or services provide the specific modalities of the "application" contracts (e. g. the time of delivery, conformity of the products, remedies, et cetera).

Non-performance of the *contrat d'application* may have consequences for the distribution relationship. The latter issue is dealt with by the Article on termination (Article 1:304) in Chapter 1. Under Article 1:304, the distributor may terminate the contract if the non-performance of a *contrat d'application*, or a series of such contracts, amounts to a fundamental non-performance.

E. In so far as Practicable

The distributor is entitled to demand the fulfilment of its orders as long as this is not excessive for the supplier, taking into account the supplier's actual resources. An order will not be regarded as practicable if the supplier encounters insuperable obstacles or fulfilment would cause inconvenience or expenses on the supplier's part to the extent that it would be substantially out of proportion to the distributor's interest for the supplier to fulfil the obligation to supply.

F. Reasonable Order

In accordance with Article 1:302 PECL reasonableness depends upon the nature and purposes of the contract, the circumstances of the case and the usages and practices of the trade or profession involved. Special market conditions can justify orders exceeding the distributor's normal requests (e. g. a larger order for national team football shirts before the World Cup Finals). An order will be unreasonable if it goes beyond the limits of what would be a normal exercise of such a right by a careful and diligent distributor. This occurs, for instance, when the distributor places extra orders at the very last minute, although the distributor had foreseen (or could have foreseen) long before its actual order the forthcoming need for a much larger amount of products and the distributor knew (or should have known) of the limited supply capacity of its supplier. More generally, the distributor should place the order a reasonable time before the distributor foresees a forthcoming extra need.

G. Character of the Rule

This rule is a default rule; the parties are free to agree otherwise.

H. Remedies

The obligation to supply is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the distributor may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Obligation to supply*
According to GREEK law the supplier has an obligation to provide the distributor the goods to be distributed (*Georgakopoulos* (1999) 435). Moreover, according to SPANISH legal authors, the supplier must supply the products in any situation (*Fernandez* (1999) 354; *Sanchez Calero* (2000) 177). This also seems to be the case under FRENCH law with respect to bilateral exclusive distribution contract, *contrat de concession* (*Dutilleul* & *Delebecque*, no. 942).
Under DUTCH law, authors agree that where the supplier has economic power the supplier is not allowed to refuse to supply the goods or services to the distributor (*Barendrecht* & *Van Peursem*, 63 et. seq., *Geel*, 108; *Van de Paverd*, 21-22)
Under GERMAN law pursuant to the doctrine of good faith (§ 242 BGB) the BGH held that the supplier may not refuse the distributor's orders arbitrarily (BGH, *BB* 1958, 541; OLG Bremen, *BB* 1966, 756; *Küstner/Thume*, no. 1289; *Martinek/Semler*, § 14 no. 15). Moreover, if the parties agree that the distributor must purchase a minimum quantity of goods and if they agree upon a competition ban, the supplier must supply (BGH, *BB* 1972, 193; *Küstner/Thume*, no. 1290; *Martinek/Semler*, § 14 no. 15).
However, under ITALIAN law there is no general obligation on the side of the supplier to fulfil the orders of the distributor *Pardolesi* (1979) 257. Whether there is such an obligation depends upon the contractual agreement concluded by the parties. And, cases in which parties define rigidly the obligation to supply at the moment of the conclusion of the contract, i. e. the supplier will be bound to supply a specific amount of goods at specific intervals of time, are rare Delli Priscoli, 797, Boero, 308, *Cagnasso*, 37, *Pardolesi*, 230. Nonetheless, a refusal to supply by the supplier would certainly be evaluated with regard to the general principle of good faith in performance of the contract (art. 1375 cc).
Under AUSTRIAN, ENGLISH and FINNISH law in the absence of special legislation the obligation to supply is not defined.

Article 4:202: Information during the Performance

The obligation to inform (Article 1:203) requires the supplier to provide the distributor with information concerning:
(a) the characteristics of the products,
(b) the prices and terms for the sale of the products,
(c) any recommended prices and terms for the resale of the products,
(d) any relevant communication between the supplier and customers,
(e) any advertising campaigns relevant to the operation of the business.

Comments

A. General Idea

This Article states what information the supplier must make available to the distributor during the contract. It follows from Article 1:203 that the parties must supply each other with the information which they have at their disposal and which their counterpart needs for the proper performance of their obligations under the contract. The present provision further specifies certain types of information which are included in the supplier's obligation to inform.

The supplier has to provide some basic information that enables the distributor to distribute the products effectively. The information concerns the characteristics of the products, the prices and terms for the sale of the products and any recommended prices and terms for the resale of the products. In addition, the supplier must inform the distributor about relevant communication with customers and advertising campaigns that it has started.

B. Interests at Stake and Policy Considerations

The aim of this provision is to ensure that the distributor obtains information which is relevant in order to promote the sales of the products efficiently (e. g. knowing their characteristics and thus being in a position to inform its customers thereof) and competitively (e. g. knowing the recommended prices that other distributors may charge). It is also in the interest of the supplier to inform the distributor about general quality requirements for the distribution of the products it supplies, or about new advertising campaigns. The obligation is not unreasonably burdensome for the supplier, since it only has to communicate information which is available to him and in so far as this is needed by the distributor.

Such further information is required because of the high degree of collaboration between the parties in exclusive distribution, selective distribution and exclusive purchase contracts. Moreover, distribution contracts including any exclusivity are rather similar to franchise contracts. Therefore, they should be treated in a similar way, in order to avoid attempts at opportunistic classification by the parties.

C. Relation to PECL

This Article is a specification of Article 1:203 on Information. The present Article spells out more explicitly which information is required from the supplier. Comparable obligations to provide information are included in Chapter 2 (Commercial Agency) and Chapter 3 (Franchise).

D. Information to be Provided

The supplier must actively provide the distributor with the information which it possesses and which the distributor needs to achieve the objectives of the contract. 'Information' includes 'documentation' relating to the products (brochures, leaflets, et cetera) or to advertising campaigns. This obligation continues throughout the whole contractual relationship. It also implies that the supplier has to promptly update the distributor as soon as new relevant information (e. g. concerning modifications and improvements to the products offered and sold) becomes available. Depending on the circumstances, the obligation to inform includes information of specific types. This Article mentions, in a non-exhaustive list, information regarding:

(a) The Characteristics of the Products

In principle, a supplier has to inform the distributor about the products and their use. This enables the distributor to pass such information on to its customers, and to take the general quality requirements et cetera into account. The provision of this product information may include the supply of documentation, guidelines, management and operation manuals and recipes.

(b) The Prices and Terms for the Sale of the Products

A supplier must communicate its prices to the distributor. Prices referred to in the present Paragraph are those relating to the contract between the distributor and the supplier.

The supplier must also inform the distributor about the supplier's terms for the sale of goods and services, including e. g. guarantees, conditions of delivery, et cetera.

(c) Any Recommended Prices and Terms for the Resale of the Products

A supplier must communicate any recommended prices and terms to the distributor. These prices relate to the contract between the distributor and the final customers. This information is relevant because the distributor is then aware of what others may charge, and, depending on this, it will decide its own price policy in order to be competitive in the market.

The supplier must also inform the distributor about any recommendation as to the terms for the resale of the products; e. g. regarding after-sales services, limitation clauses, credit et cetera.

(d) Any Relevant Communication between the Supplier and Customers

The supplier must inform the distributor about any wishes, preferences or complaints by the customers. More in general, it must provide any noteworthy information concerning the customers in the territory or within the specific group exclusively allotted to the distributor which the supplier possesses.

(e) Any Advertising Campaigns Relevant to the Operation of the Business

The supplier must inform the distributor of any advertising campaigns, so that the distributor is able to participate in them and to benefit therefrom. Compliance of this obligation may require the supply of the relevant documentation together with samples of the promotional material.

E. No Formalities

There is no formal requirement for the way in which this obligation must be performed. Nevertheless, in practice such information will normally be given in writing. It may be problematic for the supplier to prove that it properly supplied the distributor with all the required information, when such information is presented otherwise than in a written document.

F. Competition Law

The obligation to inform under Paragraph (1) (c) only applies to recommended prices which do not amount to price maintenance clauses that are invalid according to competition law.

As an independant merchant, the distributor is free to set the prices charged for the products. However, practice demonstrates the recurrent use of resale price maintenance clauses. These are clauses whereby the distributor of a product undertakes vis-à-vis the supplier to maintain a certain price level when distributing the products. In its group exemption concerning vertical restrictions (Regulation 2790/99), the EU Commission has taken a relatively lenient approach concerning maximum vertical price restrictions. Maximum prices and recommended prices that do not amount to a fixed or minimum resale price as a result of pressure or incentives created by any of the parties are now exempted. In contrast, other forms of resale price maintenance, e. g. minimum resale prices and minimum margins, are still a serious infringement that could lead to invalidity and to the imposition of fines. If the agreement does not fall under Article 81 (1) (e. g. because it is not capable of affecting trade between Member States), the resale

price maintenance clause will be legal under EU law, but will still have to be reviewed under the applicable national law.

G. Character of the Rule

This rule is a default rule; the parties are free to agree otherwise.

H. Remedies

The obligation to inform is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the distributor may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Information during the Performance*
   None of the legal systems contain an explicit statutory rule similar to the present Article.
   However, under FINNISH, GERMAN, ITALIAN, PORTUGUESE law a similar obligation follows from a general duty of good faith or loyalty (GERMANY: § 242 BGB (*Küstner/Thume*, nos. 1300, 1302, *Martinek/Semler*, § 14 no. 63, 64; ITALY: arts. 1175 cc and 1375 cc, Cass. 24-3-1999, n. 2788. Moreover, under GERMAN and PORTUGUESE law the rules concerning commercial agency are applied by way of analogy. (GERMANY: *Küstner/Thume*, no. 1300; *Martinek/Semler*, § 14 nos. 63, 64; PORTUGAL: art. 13 a DL 178/86 on Agency).
   In the NETHERLANDS as well as in SPAIN legal authors agree upon a supplier's obligation to provide the distributor with information concerning the products to be distributed (*Barendrecht* & *Van Peursem*, 92) (*Calvo* (1997) 1351). In SPAIN this is said to follow from the characteristics of the distribution contract as a confidential and reciprocally loyal relationship. In addition, this is said to be justified in view of the dependent situation of the distributor towards the supplier, which posseses the essential information regarding the marketed product. (See also art. 17.1 of the Model distribution contract *Guardiola Sacarrera* (1998) 140).
   Under GREEK case law it has been established that in the case of exclusive distribution the supplier must provide all the information and expertise needed for the distributor to trade his merchandise effectively and to conduct his business (see Efeteio Athinon 9658/1995, DEE 2/1996 at 154).
   Under FRENCH law, in the case of a *contrat de concession* an obligation to provide information with respect to advertising campaigns follows from the obligation to assist the distributor (*Dutilleul* & *Delebecque*, no. 942; *Ferrier*, no. 495 et seq.). Under FRENCH law it has been debated extensively whether the supplier may set a fixed price. The prevailing opinion seems to be that the supplier cannot impose a price upon the distributor, but it can only recommend such a price. (*Dutilleul* & *Delebecque*, no. 943, Cass. com. 22 juillet 1986 *D.* 1988 *D.* 1995 som. 85).

Article 4:203: Warning of Decreased Supply Capacity

(1) The supplier must warn the distributor within a reasonable time when the supplier foresees or ought to foresee that the supplier's supply capacity will be significantly less than the distributor had reason to expect.
(2) In exclusive purchasing contracts, parties may not derogate from this provision to the detriment of the distributor.

Comments

A. General Idea

The supplier has to warn his distributor of foreseeable and major decreases in its supply capacity within a reasonable period when the supplier forsees it or should have foreseen it. In the case of an exclusive purchase agreement, the rule is mandatory (Paragraph 2).

B. Interests at Stake and Policy Considerations

This Article protects the interests of the distributor. The distributor may have become dependant on the product output of a supplier. This especially occurs when the latter offers a 'unique' product (e. g. a patented innovation) or when the product constitutes a necessary component from the assortment of the distributor. The availability of specific models (e. g. brand new ones) and delivery times are elements which are capable of affecting seriously the (inter-brand) competitiveness of the distributor.

The present provision requires real collaboration between the parties. The supplier that is aware of a significant decrease in its supply capacity, must warn the distributor. On the basis of the supplier's warning, the distributor will be able to avoid damage and liability (e. g. in relation to those orders which the distributor has already accepted from customers).

This obligation is not unreasonably burdensome for the supplier. First, the supplier is only required to warn the distributor in the case of a major change in relation to what the distributor had reason to expect. Secondly, the distributor is neither entitled to know the reasons for the decrease nor is the distributor entitled to a warning in relation to a supply capacity it had no reason to expect. Finally, from Article 1:203 (Information) it follows that the obligation only arises in the case of actual knowledge. Hence, the supplier is not under an obligation to actively investigate in this respect.

Only in the case of exclusive purchase agreements is this rule mandatory. In those agreements, the distributor is left with no alternative but to order those products from the supplier. The distributor depends entirely upon the supply capacity of the supplier (e. g. the supplier's products are the only or main products which the distributor deals

with). Therefore, an important decrease in the supplier's supply capacity would have very serious consequences.

C. Relation to PECL

This obligation is a specific instance of the more general obligation to co-operate between the parties, spelled out in Article 1:202 on Collaboration. The reasonableness requirement refers to the concept which the PECL define in Article 1:302. According to Article 1:303 PECL, the supplier's warning becomes effective when it reaches the distributor. Similar obligations to warn are included in Articles 2:309 (Commercial Agency) and 3:206 (Franchising).

D. Reasonable Time

The supplier must warn the distributor concerning the forthcoming decrease in supply capacity within a reasonable time. When assessing what is reasonable, the nature and purposes of the contract, the circumstances of the case and the usages and practices of the trade or profession involved must be taken into account. (See further Article 1:302 PECL). In principle, the supplier must issue the warning as soon as the supplier is aware of the alarming fact. Moreover, the supplier must leave the distributor a certain amount of time to prepare a reaction and to adapt to the customers' demand. The supplier's warning allows the distributor to avoid the acceptance of orders that the distributor will probably not be able to fulfil.

E. Significant Decrease

The supplier is under an obligation to warn the distributor only when the supplier foresees that its supply capacity will be significantly lower. No obligation arises in the case of a merely temporary or minor obstacle to supplying. The present obligation applies both when the decrease of the supply capacity is the result of factors within the supplier's control and where the decrease is the consequence of market conditions or other external factors (e. g. a shortage of raw materials or industrial action).

F. Expectations of the Distributor

What amounts to the capacity which the distributor had reason to expect depends on the circumstances of the particular case. In the absence of other more decisive factors, the average supplies over the previous years may serve as a yardstick.

G. Character of the Rule

In exclusive purchasing contracts, this is a mandatory rule; the parties may not derogate from this obligation. In exclusive and selective distribution agreements, this rule is a default rule; the parties are free to agree otherwise.

H. Remedies

The obligation to warn of decreased supply capacity is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the distributor may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *In General*
   This rule is based on art. 4 (2) b of the Directive on commercial agency. None of the European legal systems have explicitly regulated this issue with respect to distribution contracts.
   According to SPANISH authors such an obligation may follow from the character of the distribution contract, which is a contract that is characterized by confidentiality and reciprocal loyalty (*Calvo* (1997) 1351). In addition, in the SPANISH Model distribution contract a similar stipulation is included in art. 17 (2) of the contract (*Guardiola Sacarrera* (1998) 140)
   Under ITALIAN law a similar obligation can only stem from general principles of good faith (1375 cc) and fair dealing (1175 cc). With respect to the other legal systems no information was provided.

Article 4:204: Advertising Materials

The supplier must provide the distributor, at a reasonable price, with all the advertising materials the supplier has which are needed for the proper distribution and promotion of the products.

Comments

A. General Idea

This Article requires the supplier to provide the distributor with advertising materials. The supplier has to supply only the materials it has at its disposal and which the distributor requests. However, the distributor is only entitled to ask for advertising materials which are necessary for the proper distribution and promotion of the products.

B. Interests at Stake and Policy Considerations

Providing the distributor with the advertising materials which the supplier possesses will usually be in the interest of both parties. On the one hand, this will contribute to a uniform image of the supplier's products in the eyes of the public and to a more effective campaign. On the other hand, the distributor will be identified in the eyes of the customers as a dealer in certain (branded) products. However, there may be cases in which the supplier prefers to refrain from supplying advertising materials to certain distributors. This Article aims at preventing any discriminatory behaviour, granting distributors equal treatment.

This provision clearly promotes the interests of the distributor. The distributor is free to choose whether or not to join a promotional campaign launched by the supplier. However, this Article is not too burdensome for the supplier. The supplier is not required to start a promotional campaign merely to please the distributor. In addition, the supplier is not required to search for advertising materials which the supplier no longer possesses, e. g. linked to old promotional campaigns. Moreover, the Article only refers to what is needed in order to promote the sales of the products.

C. Relation to PECL

This Article may be regarded as a specification of the obligation to co-operate encluded in Chapter 1 (Article 1:202). The concept of reasonableness in this Article refers to Article 1:302 PECL.

D. Advertising Materials

Advertising materials are additional and accessory materials related to the distribution activity, e. g. fittings for the distributor's premises such as posters, chairs, sunshades, signs and special offers.

E. Reasonable Price

The distributor that decides to participate in a campaign must have access to the advertising materials at a reasonable price. To asses what is reasonable, the nature and purposes of the contract, the circumstances of the case and the usages and practices of the trade or profession involved must be taken into account. (See further Article 1:302 PECL). It would, for instance, be unreasonable to charge the distributor a price which is completely out of proportion to the cost borne by the supplier for the advertising campaign. The same holds true for a price which is far higher than what other distributors have paid or the price in previous similar campaigns.

F. Character of the Rule

This is a default rule; the parties are free to agree otherwise.

G. Remedies

The obligation to supply advertising materials is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the distributor may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Advertising Materials*
   Under FINNISH law and GERMAN law there is such an obligation. In FINLAND it follows from the general duty to cooperate. In GERMANY it follows from good faith (§ 242 BGB) and from the analogous application of § 86a HGB to distribution contracts (*Genzow*, no. 84; *Küstner/Thume*, no. 1307). According to FRENCH authors such an obligation follows from the supplier's obligation to assist the distributor (*Dutilleul & Delebecque*, no. 942).
   Under ITALIAN law, there is no explicit obligation on the side of the supplier. However, from the general principle of good faith in performance of the contract (art. 1375 cc) and fair dealing (art. 1175 cc) such an obligation may be inferred. With respect to the other legal systems, no information was provided.

Article 4:205: Reputation of the Products

The supplier must make reasonable efforts not to damage the reputation of the products.

Comments

A. General Idea

The supplier is under an obligation not to damage the good reputation of the products which it supplies. This means that the supplier must avoid behaviour which may cause such a damage. In certain cases, it must also take the necessary precautions to prevent such damage.

B. Interests at Stake and Policy Considerations

The positive image of the products in the minds of the final customers is one of the elements inducing distributors to promote the sales of such products. This provision requires the supplier not to harm the good reputation that attracted the distributor. Upholding the good reputation of the products should normally be in the interest of both parties. Taking necessary precautions in this respect may be costly.

However, as said, the provisions in this Chapter only apply to exclusive distribution, selective distribution and exclusive purchase agreements. In an exclusive purchasing agreement, the distributor agrees only to buy from one supplier. As a result, the distributor is effectively dependant on the good reputation of the products, somewhat similar to a franchisee. As regards exclusive distribution and selective distribution contracts, the rationale is that the exclusive or selective distributor expects to be in a privileged position with respect to the commercialisation of the products. From this, certain specific default obligations on the part of the supplier will arise. Furthermore, distribution contracts including exclusivities mainly relate to branded products. It is essential for their reputation not to harm the image of the brand.

C. Relation to the PECL

The PECL do not contain such a rule. However, the concept of reasonableness in this Article refers to Article 1:302 PECL. Chapter 3 on Franchising contains a similar rule (Article 3:207).

D. Reasonable Efforts

To assess what is reasonable, the nature and purposes of the contract, the circumstances of the case and the usages and practices of the trade or profession involved should be taken into account. (See further Article 1:302 PECL).

E. Liability of the Supplier

The supplier is only liable for a loss of reputation caused by its acts or omissions; e. g. by the supply of poor-quality products. This means that the supplier is not liable in the case of a breakdown of a brand which is exclusively the result of external factors such as the extraordinary success of a competing good or service.

F. Character of the Rule

This is a default rule; the parties are free to agree otherwise.

G. Remedies

The supplier's obligation to make reasonable efforts not to seriously damage the reputation of the products is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the aggrieved party may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Reputation of the Products*
   No European legal system contains a specific rule as the present Article.
   According to ITALIAN law, in the case of supply contracts (*somministrazione*) when the supplied party (*somministrato*) undertakes, in exchange for exclusivity, to promote the sales of the products supplied (Article 1568 para. 2 *cc*), the supplier must supply products of an adequate quality so as to completely satisfy the clientele obtained by the supplied party. It is disputed whether such an obligation can be inferred from the decision of the Cass. Sez. II civ. 22-2-1999, n. 1469 as to *concessione di vendita*, see the note by C. Maria, *Gius. Civ.*, 2000, fasc. 6 (giugno), pt. 1, 1813-1815 and see also note by R. Christian, *Resp. Civ. e Prev.* 2000, fasc. 2, 363-371). In SPANISH literature it has been defended that such an obligation could be inferred from the general rule of art. 57 C.Com which states that the distributor has to act with the diligence of an organized businessman (*Memento Lefebvre* 2001-2002, 486). Also under GREEK law such an obligation has been accepted.

Section 3:
Obligations of the Distributor

Article 4:301: Distribution

In exclusive and selective distribution contracts, in so far as it is practicable, the distributor must make reasonable efforts to promote the sales of the products.

Comments

A. General Idea

This Article requires the distributor to enhance the sales of the contract products. The distributor is under an obligation to make reasonable efforts to promote, develop and extend their market.

The obligation is restricted to cases of exclusive and selective distribution contracts.

B. Interests at Stake and Policy Considerations

Both parties have an interest in achieving the highest possible sales volume. The more the distributor sells, the more profit it makes and the more the supplier profits as well. This provision adds that promoting sales is not only a right of the distributor but also an obligation. In exclusive and selective distribution contracts, suppliers take the risk of 'betting everything on one single card'. The exclusive and selective distributors are the channels available for suppliers in order to reach the final market. Suppliers agree to refrain from selling to other distributors (in the same area or within the same group of customers) or to unauthorised distributors, respectively.

However, this obligation is not too burdensome for distributors. First, it only requires the distributor to take reasonable steps. Second, this applies only insofar as practicable. Thirdly, this obligation is in principle restricted to cases of exclusive and selective distribution agreements. By means of a selective distribution system, the distributor makes higher profits than it would have attained otherwise. Exclusive distribution offers the distributor a monopoly position which is, in some aspects, similar to that of the producer. In both cases, distributors are paid back by a certain degree of protection from intra-brand competition.

C. Relation to PECL

The PECL do not provide any specific obligation of this kind. However, the concept of reasonableness in this Article refers to Article 1:302 PECL.

D. Reasonable Efforts in so far as Practicable

This provision does not impose an obligation of result. The distributor is only under an obligation to make reasonable efforts to resell the supplier's products. In assessing what is reasonable, the nature and purposes of the contract, the circumstances of the case and the usages and practices of the trade or profession involved should be taken into account. (See further Article1:302 PECL).

The distributor must enhance the sales of the products as long as this is not excessive for the distributor, taking into account the distributor's actual resources.

E. Character of the Rule

This is a default rule; the parties are free to agree otherwise.

F. Remedies

The obligation to distribute is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the aggrieved party may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Obligation to Promote the Sales of the Products*
   Although there are no specific statutory provisions under the legal systems in this respect, according to the legal authors and case law of GERMANY, THE NETHERLANDS and SPAIN, there is a similar obligation for the supplier. However, in those countries the supplier's obligation to promote the sales of the goods or services is not restricted to exclusive and selective distribution contracts. (GERMANY: *Küstner/Thume*, no. 1314; *Martinek/Semler*, § 14 no. 13; NETHERLANDS: *Barendrecht & Van Peursem*, 113 ff, *Van de Paverd*, 21 ff.; SPAIN: *Calvo Caravaca* (1997) 1345; *De la Cuesta* (2001) 365).

Article 4:302: Information during the Performance

In exclusive and selective distribution contracts, the obligation to inform (Article 1:203) requires the distributor in particular to provide the supplier with information concerning:
(a) any claims brought or threatened by third parties in relation to the supplier's intellectual property rights,
(b) any infringements by third parties of the supplier's intellectual property rights.

Comments

A. General Idea

This Article indicates what specific information the exclusive or selective distributor is required to provide to the supplier during the contract. Whenever the distributor is aware of any infringement of or (possible) challenge to the supplier's intellectual property rights (IPR), it has to inform the supplier.

This obligation only applies to exclusive and selective distribution contracts.

B. Interests at Stake and Policy Considerations

The supplier has a clear interest in being informed of any threat or any infringement of its intellectual property rights. Often the distributor is in a position to provide the supplier with such information. This obligation is not too burdensome for distributors. First, from Article 1:203 it follows that the distributor only has to provide the information that the distributor possesses. Secondly, exclusive and selective distribution agreements often include the licensing by the supplier of intellectual property rights to the distributor. Therefore, it will be also in the interest of the distributor to inform the supplier of any IPR infringement.

In principle, the present obligation only applies in cases of exclusive and selective distribution contracts. The rationale is that if a supplier agrees not to sell to distributors other than the exclusive or authorised ones that is because of the supplier's trust in them. It may therefore be expected from a loyal distributor that it should provide the supplier with information which the distributor has that may prevent or limit any harm to the supplier (e. g. information concerning an infringement of any IPR rights).

The information required from the distributor is the same type of information required from a franchisee. Since there are similarities between these contracts, it is important to deal with them in a similar way in order to avoid problems of classification.

C. Relation to PECL

This Article is a specification of Article 1:203 on Information. The present Article spells out some more specific information which is required.

A comparable obligation to provide information concerning these issues is Article 3:302 of these Principles.

D. Information to be Provided

Exclusive and selective distributors must provide information they possess. This obligation lasts throughout the whole contractual relationship. The Article specifically mentions, in a non-exhaustive list, information regarding:

(a) claims brought or threatened by third parties in relation to the supplier's intellectual property rights

This information relates to claims and threats regarding trademarks, trade names or symbols, or other industrial property rights).

(b) Infringements by Third parties of the Supplier's Intellectual Property Rights

Exclusive and selective distributors should inform their suppliers if they are aware that third parties do not respect and infringe the supplier's intellectual property rights.

E. No Formalities

There is no formal requirement for the way in which this obligation must be performed, e. g. in writing.

F. Character of the Rule

This is a default rule; the parties are free to agree otherwise.

G. Remedies

The obligation to inform is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the supplier may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Obligation to Provide Information during Performance*
   Under none of the legal systems there seems to be a specific obligation of this type. However, under DUTCH law such an obligation has been defended by authors (*Barendrecht* & *Van Peursem*, no. 114).
   In SPANISH literature it has been argued that a distribution contract include specific obligations which can be derived from the reciprocal obligations of loyalty, good faith and the protection of the parties' interests. (*Dominguez García* (1997) 1354 ff), which includes inter alia the obligation for the distributor to inform the supplier periodically concerning the market situation, the perspectives of development, the state and prognosis on future sales, and the requirements of the clients in order to allow the supplier to adapt the quantity and quality of the products to the demands of the clientele. See also art. 10 (1) of the model distribution contract proposed by *Guardiola Sacarrera* (1998) 147.

Article 4:303: Warning of Decreased Requirement

In exclusive and selective distribution contracts, the distributor must warn the supplier within a reasonable time when the distributor foresees or ought to foresee that the distributor's requirement will be significantly less than the supplier had reason to expect.

Comments

A. General Idea

This Article requires the distributor to warn the supplier whenever it foresees a major decrease in its orders in comparison to what the supplier could reasonably expect. The distributor must notify the supplier within a reasonable time.

The obligation is restricted to cases of exclusive and selective distribution agreements.

B. Interests at Stake and Policy Considerations

This Article protects the interest of the supplier. On the basis of the distributor's warning, the supplier is able to adjust its production, and sometimes even its production capacity, to the new situation. This is especially important in those cases where the supplier sells to large distributors such as large retail chains, e. g. a supermarket chain which has become the only distributor of a leading brand on the national food retail market.

However, this obligation is not unreasonably burdensome for the distributor. First, there is no obligation to warn in the case of minor changes. Secondly, the supplier is not entitled to know the reasons why this change occurs. Thirdly, from Article 1:203 (Information) it follows that the obligation only arises in the case of actual knowledge. Hence, the distributor is not under an obligation to investigate in this respect.

In principle, this provision only applies to exclusive and selective distribution agreements. The reason is that under such agreements the supplier is largely dependent, for its entire sales, on the distributor's requirements. If they suddenly do not order any products, the supplier will encounter serious economic difficulties, since it is not in a position to bypass its distributors and sell to other distributors (within a certain area or group of customers) or to unauthorised distributors.

C. Relation to PECL

This obligation may be regarded as a specification of the more general obligation to co-operate between the parties which is spelled out in Article 1:202 on Collaboration. The reasonableness requirement refers to the concept which the PECL define in Article 1:302. Similar obligations to warn, for the commercial agent and the franchisee respectively, are provided for in Articles 2:309 and 3:206.

D. Reasonable Time

The distributor has to warn the supplier within a reasonable time. To assess what is reasonable, the nature and purposes of the contract, the circumstances of the case and the usages and practices of the trade or profession involved must be taken into account (see further Article 1:302 PECL). In principle, the distributor must issue the warning as soon as the distributor is aware of the alarming fact. Moreover, the distributor must leave the supplier a certain amount of time to react and to adapt to the new customer demand (e. g. by limiting its production).

E. Significantly Less

The distributor must only warn the supplier when it foresees an important decrease in its orders. No obligation arises in the case of only a minor decrease in orders. This obligation exists irrespective of whether the distributor requires less products as a consequence of factors within the distributor's control or whether this is due to market-related reasons.

F. Expectations of the Supplier

What the supplier has reason to expect depends on the circumstances of the case. In most cases, the average quantities ordered over the previous years will be a proper starting point for determining the supplier's reasonable expectations.

G. Character of the Rule

This rule is a default rule; the parties are free to agree otherwise.

H. Remedies

The obligation to warn of a decreased requirement is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the supplier may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

This rule is similar to the one provided by the Commercial Agency Directive (art. 4 (2)b). None of the European legal systems have also explicitly regulated this issue for distribution contracts.

Article 4:304: Instructions

In exclusive and selective distribution contracts, the distributor must follow reasonable instructions from the supplier which are designed to secure the proper distribution of the products or to maintain the reputation or the distinctiveness of the products.

Comments

A. General Idea

This Article requires the exclusive or selective distributor to follow reasonable instructions given by the supplier. The distributor must follow only those instructions which aim to secure the proper distribution of the products or to maintain their good reputation.

The obligation is restricted to cases of exclusive and selective distribution agreements.

B. Interests at Stake and Policy Considerations

This provision strikes a balance between two conflicting interests: (i) the distributor's interest in pursuing its own goals by means of an independant commercial policy and (ii) the supplier's interest in a professional and uniform presentation and distribution of its products in the market.

This Article protects the interest of the supplier, in that it grants the supplier the possibility to instruct its distributors. The maintenance of the good reputation and distinctiveness of the products may not be attainable unless the distributor follows such instructions. In the case for exclusive and selective distribution contracts, the distributors are the only channels through which the supplier can reach the final market (unless the supplier is entitled to undertake direct sales). In the case of selective distribution, giving instructions to the authorised distributors is not only a right of the supplier but also an obligation, in view of maintaining the same high quality standards within the selective distribution system.

However, the present Article also takes into account the distributor's interest to remain autonomous. The point here is that the distributor has an interest in the success of its entire assortment of products. Coordinating its behaviour with the commercial policy of the supplier necessarily implies restricting its freedom of manoeuvre (e. g. the distributor abandons the elasticity in the composition of its assortment). Moreover, the present provision does not require the distributor to follow any instruction by the supplier. The distributor has to comply only with those instructions that are reasonable and relevant in relation to the operation of the contract and insofar as they are reasonable. Secondly, the present obligation does not apply to any distributor, but only to exclusive and selective distributors, in exchange for their privileged position in the commercialisation of the contract products.

C. Relation to PECL

This Article may be regarded as a specification of the obligation to co-operate and the obligation of good faith and fair dealing contained in Articles 1:202 PECL and 1:201 PECL respectively, and of the obligation to collaborate contained in Chapter 1 (Article 1:202).

The reasonableness requirement refers to the concept which the PECL define in Article 1:302.

D. Reasonable Instructions

The distributor is only required to follow instructions which are reasonable. To assess what is reasonable, the nature and purposes of the contract, the circumstances of the case and the usages and practices of the trade or profession involved must be taken into account (see further Article 1:302 PECL). Elements to be taken into account to ascer-

tain whether certain instructions are reasonable include: the interests of the parties, the nature of the instruction given as well as their purpose. To be reasonable, instructions should not alter the equilibrium of the contract.

E. To Secure Proper Distribution

The supplier is entitled to instruct distributors with a view to ensuring the proper distribution of the products. Instructions of this kind for instance relate to the setting up and maintenance of specific commercial premises, the packaging of the products and the maintenance of a suitable number of samples of the products for marketing purposes.

F. To Maintain Reputation and Distinctiveness

Especially in the case of the distribution of branded products it is essential that the reputation and the distinctiveness of the products are maintained. Instructions for that purpose relate, for instance, to the arrangement of – or adhesion to – advertising campaigns, the maintenance of certain facilities for the clientele (i. e. assistance services or advice to the clientele), the presentation and display of the products.

G. Character of the Rule

This rule is a default rule; the parties are free to agree otherwise.

H. Remedies

The obligation to follow instructions is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the supplier may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. In General

None of the legal systems include specific statutory rules in this respect. However, PORTUGUESE, SPANISH and DUTCH legal authors agree upon a similar obligation to follow instructions. (SPAIN: *Calvo* (1997) 1353, *Domínguez García* in Calvo Caravaca/Fernández de la Gándara, 1353, *Fernandez* (1999) 353). This obligation is considered to be one of the distributor's main obligations according to PORTUGUESE authors (*Pinto Monteiro* (2002) 108; *Brito* (1990) 179). DUTCH writers argue that it follows from the nature of a distribution contract (*Barendrecht* & *Van Peursem*, 93, 114, 116; *Geel*, 104).

Under GREEK law the distributor must follow any instruction given by the supplier concerning the goods and the selling method. The closer and more qualified bond

there is between the parties, the more obligations follow from such a relationship. For instance, in an exclusive distribution agreement the distributor must abide by the instructions of the producer-supplier as to the marketing technique for the merchandise, the service of the products, and the stock of products that he must maintain (Efeteio Athinon 9658/1995, DEE 2/1996 at 154].

Under FINNISH, GERMAN and ITALIAN law it depends on the circumstances of the case whether such an obligation can be derived from good faith (GERMANY: § 242 BGB; ITALY: Article 1375 *cc*). Under AUSTRIAN law the situation seems similar to FINNISH and GERMAN law. (OGH 2001/12/07 7Ob265/01y *4 Ob 79/95*, OGH 1995/12/05 4Ob79/95).

Article 4:305: Inspection

In exclusive and selective distribution contracts, the distributor must provide the supplier with reasonable access to the distributor's premises to enable the supplier to check that the distributor is complying with the standards agreed upon in the contract and with reasonable instructions given.

Comments

A. General Idea

This Article requires the distributor to allow the supplier to examine whether the distributor performs its activity in accordance with the contract and with the instructions which have been given. The supplier's access is limited to the distributor's premises.

The obligation is restricted to cases of exclusive and selective distribution agreements.

B. Interests at Stake and Policy Considerations

The present obligation supplements the main obligation of an exclusive or selective distributor, which is simply to make reasonable efforts in order to promote the sales of the products. Inspection is an important instrument to ascertain whether the distributor has complied with the standards agreed upon in the contract and whether the distributor has followed the relevant instructions. This is fundamental in the case of selective distribution systems. In such cases, the distributor's obligation to provide reasonable access to the premises indirectly benefits other distributors as well. In fact, the poor commercialisation of the products may have negative consequences for other distributors of the same (branded) products.

However, the supplier's right to inspect may be very intrusive from the perspective of the distributor. For this reason, this obligation in principle is only restricted to exclusive and selective distribution contracts, since in those contracts the supplier grants distributors a privileged position in the commercialisation of its products. Moreover, the present obligation is not too burdensome for the distributor. The distributor is only under an obligation to provide reasonable access to the distributor's premises. The right to inspect does not imply a right for the supplier to have access to accounts. There is no reason that would justify a similar intrusion. Unlike in commercial agency, no commission is calculated on the basis of the contracts concluded nor are there, like in franchise agreements, any fees to be paid on the basis of volume.

C. Relation to PECL

This Article may be regarded as a further specification of the obligation to co-operate and the obligation of good faith and fair dealing contained in Articles 1:202 PECL and 1:201 PECL respectively, and of the obligation to collaborate contained in Chapter 1 (Article 1:202).

The reasonableness requirement refers to the concept which the PECL define in Article 1:302.

D. Reasonable Access

The supplier is entitled to carry out a reasonable inspection. To assess what is reasonable, the nature and purposes of the contract, the circumstances of the case and the usages and practices of the trade or profession involved must be taken into account (see further Article 1:302 PECL). In general, the supplier is permitted to check whether the standards agreed upon and the instructions have been met. Moreover, the supplier's inspection should not obstruct or alter the distributor's commercial activities.

E. Distributor's Premises

The supplier's inspection will mainly consist of periodical visits to the distributor's commercial premises, which is the location in which the distributor promotes the sales to its customers (e. g. quality control). This Article does not entitle the supplier to have access to the accounts of the distributor; i. e. the supplier is not entitled to request the distributor to render reports on sales, stock and prospective business, et cetera.

F. Standard Agreed Upon

The standards 'agreed upon in the contract' refers to both the obligations agreed upon in the framework agreement and those agreed upon in the single *contrats d'application* concluded on the basis of the framework agreement.

G. Character of the Rule

This is a default rule; the parties may agree otherwise.

H. Remedies

The obligation to allow an inspection is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the supplier may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *Inspection*
   Under none of the legal systems is there a statutory rule in this respect. However under PORTUGUESE law this obligation is recognized unanimously by the authors. (*Pinto Monteiro* 2002, 109; *Brito* 1990, 179; RP 5/07/1999, www.dgsi.pt, JTRP26.).
   Under AUSTRIAN law the Commercial Agency Act is applied by way of analogy to distribution contracts and the distributor must allow an inspection at its premises (OGH 1999/08/25 3Ob10/98m, OGH 1999/03/30 10Ob61/99i, contractually agreed: OGH 2000/10/23 8Ob74/00s).
   Under GERMAN, ITALIAN law concerning any type of distribution contract such an obligation may follow from the principle of good faith depending on the circumstances of the situation (GERMANY: § 242 BGB, *Genzow*, no. 79; *Küstner/Thume*, no. 1327; ITALY: arts. 1375 cc, *Galgano*, 631). Some SPANISH authors agree upon such a right of inspection (*Domínguez García* (1997) 1353, *De la Cuesta* (2001) 366).

Article 4:306: Reputation of the Products

In exclusive and selective distribution contracts, the distributor must make reasonable efforts not to damage the reputation of the products.

Comments

A. General Idea

This Article requires the distributor to avoid any behaviour which could seriously harm the good reputation of the supplier's products. This obligation requires the distributor to take the necessary precautions to avoid such damage.

The obligation is restricted to cases of exclusive and selective distribution agreements.

B. Interests at Stake and Policy Considerations

Maintaining the good reputation of the contract products is normally in the interest of both parties. However, the distributor may lose some interest in dealing with the contract products, if for instance it favours another product that it distributes as well, or if it envisages bringing the contractual relationship to an end. The present provision aims to prevent that the distributor damages their good reputation and obliges him to take the necessary precautions to avoid such damage.

In principle the present obligation is restricted to cases of exclusive and selective distribution agreements. First, these types of contracts mainly deal with branded products for which their image is of the essence and this image may be very easily damaged; e. g. the reputation of the products could be harmed by inadequate packaging, presentation and display of the products by the distributor. Secondly, the idea of commercialising the products via a few refined sales sites is aimed at reinforcing the image of 'exclusivity' attached to the products. Thirdly, since the supplier grants the distributor the privilege of being the only one or one of the few distributors dealing with certain products, it is fair to expect from the distributor a certain loyal behaviour towards the supplier and the products it trades.

C. Relation to the PECL and ECC

The PECL do not contain such a rule. However, the concept of reasonableness in this Article refers to Article 1:302 PECL.

D. Reasonable Efforts

In assessing what is reasonable, the nature and purposes of the contract, the circumstances of the case and the usages and practices of the trade or profession involved must be taken into account (see further Article 1:302 PECL). For instance, an advertising campaign promoted by the supplier which stresses the quality of the after-sales service could be undermined by the fact that the distributors fail to set up the necessary assistance service.

E. Liability of the Distributor

The distributor is only liable for a loss of reputation caused by the distributor's acts or omissions. If the loss of reputation is caused by a third party, or by specific market conditions, the distributor is not liable. This would simply be part of the ordinary commercial risk borne by both parties.

F. Character of the Rule

This is a default rule; the parties are free to agree otherwise.

G. Remedies

The obligation to make reasonable efforts not to seriously damage the reputation of the products is an obligation in the sense of Article 8:101 PECL. Therefore, in the case of non-performance the supplier may, in principle, resort to any of the remedies set out in Chapter 9 PECL.

Notes

1. *The Reputation of the Products*
   Under none of the legal systems there is a specific statutory rule that includes such an obligation. However, FRENCH and SPANISH legal authors argue that the distributor must maintain the image of the products (FRANCE: *Dutilleul & Delebecque*, no. 943; SPAIN: *Dominguez García* (1997), 1353, *Memento Lefebvre* (2003-2004) 522). In GERMAN law it is accepted that the supplier must maintain the good reputation of the trademark (*Genzow*, no. 85; *Küstner/Thume*, no. 1308). This obligation is founded on good faith (§ 242 BGB). The supplier must take all reasonable measures to ensure and maintain the highest quality of the traded product (*Qualitätssicherungspflicht*). However, the obligation to maintain the good reputation of the trademark is not limited to exclusive purchasing contracts, but is also applicable to all other types of distribution contracts.

Annexes

Abbreviations

AA	Ars Aequi Juridisch Studentenblad (Zwolle [later Nijmegen], 1. 1951/1952 ff., cited by year and page)
AB	Wet algemeene bepalingen. Act of 15 May 1829 on the general provisions for the legislation of the kingdom (Stb. 28, The Netherlands)
ABGB	Allgemeines Bürgerliches Gesetzbuch, 1 June 1811 (JGS 946) (Civil Code, Austria)
AC	Law Reports, Appeal Cases (House of Lords) (London, 1.1875/76 ff.; the older part of the collection up to 1890 cited as Appeal Cases; from 1891 the abbreviation A.C. is used; cited by year, book, and page)
AcP	Archiv für die civilistische Praxis (Tübingen, 1.1818-50.1867; N.F. 1 = 51.1868-49 = 99.1906; 100.1906-120.1922; N.F. [= 3.F.] 1. = 121. 1923-29. = 149.1944; 30 = 150.1948/49-53 = 173.1973; 174.1974 ff.); incorporating Archiv für bürgerliches Recht; cited by volume, year and page
affd	affirmed
AG	Amtsgericht (Local Court, Germany and Austria); Aktiengesellschaft (joint-stock company, plc)
A-G	Advocaat-Generaal (Netherlands); Attorney-General (England); Avocat-Général (Belgium; France)
AGBG	Gesetz v. 9.12.1976 zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen (Act on General Contract Terms, 9 Dec. 1976; BGBl. 1976 I S. 3317, Germany) repealed [01.01.2002] by the Schuldrechtsmodernisierungsgesetz and inserted into the BGB
AID	Archeion Idiotiku Dikaiu (Triminiaia nomiki epitheorisis; Athens 1.1934-17.1954/59; cited by volume, year, and page)
AK	Astikos Kodikas (Civil Code, Greece, 23.2.1946 [A. N. 2250/1940; FEK A 91/ 1940 S. 597])
AllER	All England Law Reports (London, 1.1936 ff.; cited by year, book, and page)
Alm.Del	Almindelig Del (general part)
alt.	alternative
AmJCompL	The American Journal of Comparative Law (Baltimore 1.1952 ff.; cited by volume, year, and page)
AnDerCiv.	Anuario de Derecho Civil (Madrid 1. 1948 ff.; cited by volume, year, and page)
A.P.	Areios Pagos (Greek Supreme Court in Civil Matters)
AP	Audiencia Provincial (Court of Appeal, Spain)
App	Corte d'Appello (Court of Appeal, Italy)
App.Cas.	see AC
AR	Arrêté Royal (Royal decree, Belgium)
ArchN	Archeion Nomologicas (Athens 1.1949 ff.; cited by volume, year, and page)

Arm	Armenopoulos miniaia nomiki epitheorisis (Thessalonika 1.1946/47 ff.; cited by year and page)
Art(s).	Article(s)
AT	Audiencia Territorial (Court of First Instance, Spain)
Avd	Avdeling (Part)
Avv. e proc.	Avvocato e procuratore
AWSt-A	Reference term used in the publications of the BfAI; see BfAI
B	Baron
BB	Der Betriebs-Berater (Heidelberg, 1. 1946 ff.; cited by year and page)
BCLC	Butterworths Company Law Cases (London 1.1983 ff.; cited by year, book, and page)
BFD	Universidade de Coimbra. Boletim da Faculdade de Direito (Coimbra 1.1914/15-9.1925/26 = no. 1 – 90; 10.1926/28 –; cited by volume, year and page)
BG	Bundesgericht (Supreme Court, Switzerland); Bezirksgericht (Court of Appeal, former GDR; partly also Germany); Bezirksgericht (Court of First Instance, general jurisdiction, Austria)
BGB	Bürgerliches Gesetzbuch, 18 Aug. 1896 (RGBl. 195) (Civil Code, Germany)
BGBl.	Bundesgesetzblatt (Official Gazette, Germany) 1950; then in parts: BGBl. part I (1951 ff.) BGBl. part II (1951 ff.) BGBl. part III = Sammlung des Bundesrechts (Collection of Federal Statutes; Cologne, Bonn 1.1958 ff.); Official Gazette, Austria 1980-1938; 1945 ff., from 2004 distributed Online www.ris.bka.gv.at
BGH	Bundesgerichtshof (Federal Supreme Court, Germany – before 1990 only for West Germany)
BGHR	BGH-Rechtsprechung Zivilsachen (Cologne 1987, CD-ROM; cited by § und keyword)
BGHZ	Amtliche Sammlung der Entscheidungen des Bundesgerichtshofes in Zivilsachen (decisions of the German Supreme Court in civil matters) (Cologne, Berlin 1.1951 ff.; cited by volume and page)
BJC	Boletín de Jurisprudencia Constitucional (Bulletin of the Constitutional Court, Spain) (Madrid 1.1981 ff.; cited by volume, year, and page)
BOE	Boletín Oficial del Estado (Official Gazette, Spain) (Madrid 1.1936 ff.; cited by year, number, and date)
BolMinJus	Boletim do Ministério da Justiça (Bulletin of the Ministry of Justice) (Lisbon 1.1940/41 ff.; cited by volume, year, and page)
BRats-Drucks	Bundesratsdrucksachen. Verhandlungen des Bundesrates (Proceedings of the 2nd Chamber of the German Federal Parliament; Bonn 1949 ff.; cited by volume, year and, if necessary, by page)
B.R.H.	Belgische Rechtspraak in Handelszaken/Jurisprudence commercial de Belgique (Antwerp, 1968-1982)
BS	Belgisch Staatsblad; see Monit. belge
BT-Drucks.	Bundestagsdrucksachen. Verhandlungen des Bundestages (Proceedings of the 1st Chamber of the German Federal Parliament; Bonn 1949 ff.; cited by volume, year, and if necessary, by page)

Bull.civ.	Bulletin des arrêts de la Cour de Cassation rendus en matière civile (Bulletin of the decisions of the Court of Cassation in civil matters, France) (Paris 12.1804/05, 128.1926 ff.; cited by year, book, and number)
Bull.com.	Bulletin des arrêts de la Cour de Cassation rendus en matière commerciale (see Bull.civ.)
BVerfG	Bundesverfassungsgericht (Federal Constitutional Court, Germany)
BVerfGE	Amtliche Sammlung der Entscheidungen des Bundesverfassungsgerichts (Decisions of the Federal Constitutional Court, Germany) (Tübingen 1952 ff.; cited by volume and page)
BW	Burgerlijk Wetboek, 1 Jan. 1992 (Boek 1, 1 Jan. 1970: Stb. 1969, no. 167 in conjunction with KB, 4 June 1969 Stb. 1969 no. 259) (Boek 2, 26 July 1976: Stb. 1976 no. 228 in conjunction with KB, 12 June 1976, Stb. 1976 no. 342) (Boek 3, 4, 5, 6, 7, 7A, 1 Jan. 1992: Stb.. 1989 no. 61 b in conjunction with KB 20 Feb. 1990, Stb. 1990 no. 90) (Boek 8, 1 April 1991: Stb. 1991 no. 126) (Civil Code, Netherlands)
BW (old)	Burgerlijk Wetboek, 1 Sep. 1838 (Stb. 1831 nos. 1 and 6 in conjunction with KB, 10 Apr. 1838, Stb. 1838 no. 12) (Civil Code, The Netherlands)
CA	Audiencia Provincial (Spain); Corte d'Appello (Italy); Court of Appeal (England); Efeteion (Greece); Hof (The Netherlands); Hovrätt (Finland, Sweden); Inner House (Court of Session, Scotland); Kammergericht (Berlin, Germany); Oberlandesgericht (Austria, Germany); Relação (Portugal); Sadem pierwszej instancji (Poland)
Cass.	Hof van Cassatie/Cour de Cassation (Belgium); Cour de Cassation (France), Corte Suprema di Cassazione (Italy, when none other specified: sezione civile) (Court of Cassation)
Cass.ass.plén.	Cour de cassation, Assemblée plénière (France)
Cass.ch.mixte	Cour de cassation, Chambre mixte (France)
Cass.ch.réun.	Cour de Cassation, Chambres réunies (France)
Cass.civ.	Cour de cassation, Chambre civile (France)
Cass.com.	Cour de cassation, Chambre commerciale et financière (France)
Cass.req.	Cour de cassation, Chambre des requêtes (abolished) (France)
Cass.sez.lav.	Corte di Cassazione, sezione lavoro (Italy)
Cass.sez.un.	Corte di Cassazione, sezione unite (Italy)
Cass.soc.	Cour de cassation, Chambre sociale (France)
CC	Civil Code Code Civil (France, Luxembourg), 21 Mar. 1804; Burgerlijk Wetboek/Code Civil (Belgium); Codice Civile (Italy) (Gaz.Uff., 4 Apr. 1942, no. 79 and 79bis; edizione straordinaria); Código Civil (Spain) 24 July 1889 (Gaceta de Madrid no. 206, 25 July 1889); Código Civil (Portugal) (Decreto-Lei no. 47-344, 25 Nov. 1966) See also ABGB, AK, BGB, BW, DL, EOA/ VÕS, KC, ObcZ, OZ, Ptk
CCC	Contrats, concurrence et consommation (Paris, 1.1991 ff.)
CC Introd.Act	Civil Code Introductory Act (Eisagogikos nomos, Greece) (AN 2783/1941 FEK A 29/1941 p. 145); (Einführungsgesetz zum Bürgerlichen Gesetzbuch, Germany, see EGBGB)

Ccom	Commercial Code Código comercial (Portugal), 28 June 1888 (Diário do Governo no. 203, 6 Sep. 1888); Código de comercio (Spain) 22 Aug. 1885 (Gaceta de Madrid no. 289-328, 16 Oct.-24 Nov. 1885); Code de commerce (France) 1808; Wetboek van Koophandel/Code de commerce (Belgium, 10 Sep. 1807) See also HGB
CCP	Act 1/2000 on Civil Procedure (Spain), 7 January 2000 (BOE no. 7, 8 January 2000)
CE	Consticución Española (Constitution, Spain) 27 Dec. 1987, altered 27 Aug. 1992 (BOE no. 311.1., 29 Dec. 1978)
CE	Comunità Europea
CEE	Comunità Economica Europea
cf.	confer
CFI	Court of First Instance, general jurisdiction See further AG, Apygardu teismai, Apylinkiu teismai, AT, BD, BG, Civ., Conc., Corr, HC, Helyi birosàg, JP, Kerülti birosàg, KS, Ktg, LG, Linnakohus, Maakohus, MPr, OH, Okj, Okz, ØL, OS, PPr, Pr, Pret., Rb, Sady grodzkie, Sad okregowny, SH, Sh.Ct., TGI, TI, Trib., Trib.com., Trib.Corr., Trib.enfants, Varosi birosàg, Vred
Ch	The Law Reports. Chancery (London 1.1891 ff.; cited by year, volume and page)
chap.	chapter
Cir.	Circuit
CISG	Vienna UN-Convention on the International Sale of Goods of 11.4.1980 (http://www.uncitral.org/en-index.htm)
Civ.	Tribunal de première instance (Chambre civile, Belgium)
CJ	Colectânea de Jurisprudência (Coimbra 1. 1976 ff.; cited by year, volume and page)
CJ (ST)	Colectânea de Jurisprudência. Acórdãos do Supremo Tribunal de Justiça (Coimbra 1.1993 ff.; cited by year, volume, and page)
C.J.	Lord Chief Justice (England)
CLC	Commercial Law Cases (London, 2002 ff.)
CLJ	The Cambridge Law Journal (Cambridge 1.1921/23 ff., parts without volume numbers; cited, as far as possible, by volume, year, and page)
CLY	Current Law Yearbook (London 1.1947 ff.; cited by year and issue)
CMLR	Common Market Law Reports (London 1.1963 ff.; cited by volume, year and page)
Code jud.	Code judiciaire (Code of civil procedure, Belgium), 10 Oct. 1967 (Monit. belge, 31 Oct. 1967)
col	colona
Coll. Arb.	Collegio Arbitrale (Italy)
Col.Leg.Esp.	Colección Legislativa de España. First series, third part: Jurisprudencia civil (Madrid 1.1889 ff.; cited by volume, year, book, number and page)
COM	Publications of the European Commission (Brussels 1.1968 ff.)
Conc.	Conciliatore (Justice of the Peace, Italy)

ConsC	Code de la consommation, Loi n° 93-949 du 26 juillet 1993, relative au code de la consommation (partie Législative) (Journal officiel de la République Française of 27 July 1993, 10538) (Consumer Code, France)
ContrA	Contract Act (Finland: Lag om rättshandlingar på förmögenhetsrättens område of 13 June 1929 no. 228; Sweden: Lag om avtal och andra rättshandlingar på förmögenhetsrättens område [SFS 1915:218])
Contratto e Impresa	Contratto e Impresa (Padova 1.1985 ff.; cited by year and page)
Corr.giur.	Corriere giuridico (Milan 1. 1984 ff.; cited by year and page)
Corte Cost.	Corte Costituzionale (Constitutional Court, Italy)
Cost.	Costituzione of 27 Dec. 1947 (Constitution Italy; Gaz.Uff. no. 298, edizione straordinaria)
CPC	Codice di procedura civile
CPR	Civil Procedure Rules 1998 (SI 1998/3132) (England)
C.proc.civ.	(Nouveau) Code de Procédure Civile of 1.1.1976 (Code of Civil Procedure, France) (décret n° 75-1123, 5.12.1975); Codice di procedura civile of 21 Apr. 1942 (Code of Civil Procedure, Italy) (R.D., 28 Oct. 1940, no. 1443 Gaz.Uff. no. 253, 28 Oct. 1940); Código do Processo Civil of 28.12.1961 (Code of Civil Procedure, Portugal) (Decreto Lei Nr. 44129)
ctr.	contra
CuadCivJur.	Cuadernos Civitas de Jurisprudencia Civil (Madrid 1.1983 ff.; cited by year and page)
CurrLegProbl.	Current Legal Problems (London 1.1948 ff.; cited by volume, year and page)
D.	Recueil de jurisprudence Dalloz (Paris; also Recueil général des lois et arrêts resp. Recueil Sirey; 1801/02 ff.; with different forms and titles: D.A. (Recueil analytique Dalloz [1941-1944]); D.C. (Recueil critique Dalloz [1941-1944]); D.H. (Recueil hebdomadaire Dalloz [1924-1940]); D.P. (Recueil périodique et critique Dalloz [1924-1940]); Recueil Dalloz, Recueil Sirey, combined since 1955; Recueil Dalloz et Recueil Sirey; from 1965: Recueil Dalloz-Sirey; appearing in sections: D. Chron./Jur. [Chronique/Jurisprudence], D. I.R./ Légis. [Informations Rapides/Législation], D. Somm.Comm. [Sommaires Commentés]; cited by year, book, and page)
D	décret (decree, France)
DAOR	Le droit des affaires/Het ondernemingsrecht (Gent 1.2000/01 ff.)
DB	Der Betrieb. Wochenschrift für Betriebswirtschaft, Steuerrecht, Wirtschaftsrecht, Arbeitsrecht (Düsseldorf, 1.1948 ff.; cited by year and page)
D.C.	see D.
DDike	Dioikitiki Dike (Athens 1.1989 ff.; cited by year and page)
DEE	Dikaio Epicheiriseon kai Etairion (Enterprises and Company Law; 1.1995, Athens)
DH	see D.
Diário Rep	Diário da República. Portugese government gazette (Lisbon 1.1976 ff.; cited by year and number)
diss.	dissertation
DL	Decreto legge, decreto ley (Decree-law, Italy, Portugal)

DLgs	Decreto legislativo (Legislative Decree, Italy)
D.P.	see D.
D.P.C.	see D.
DPR	Decreto Presidente della Repubblica (Presidential decree, Italy)
DR	Diário da República (Official Gazette, Portugal, Lisbon 1.1976 ff.)
Droit soc	Droit social (Paris 1.1938 ff.; cited by year and page)
Dr.prat.com.int.	Droit et pratique du commerce international (Paris 1.1975 ff.; cited by year and page)
DTI	Department of Trade and Industry (United Kingdom)
EC	European Community
ECE	Economic Commission for Europe
ECE	European Code of Ethics adopted by the European Franchise Federation first in 1972 and amended in 2003
ECHR	European Court of Human Rights (Strasbourg)
ECJ	European Court of Justice (Luxembourg)
ECLR	European Competition Law Review (Oxford 1.1980 ff.; cited by volume, year, and page)
ecolex	Fachzeitschrift für Wirtschaftsrecht (Vienna 1.1990 ff.; cited by year and page)
ECR	European Court Reports. Reports of cases before the Court of Justice and the Court of First Instance (Luxembourg 1.1954 ff.) (until 1989 Reports of cases before the Court) (cited by volume, year, and page)
ed.	edition, editor(s)
EEC	European Economic Community
EED	Epitheorissis Egatikou Dikaiou (Review of Commercial Law) (Athens 1.1941 ff.; cited by volume, year, and page)
EEN	Ephimeris Ellinon Nomikon (Journal of Greek Jurists) (Athens 1.1934 ff.; cited by volume, year, and page)
Ef	Efeteion (Court of Appeals, Greece)
e.g.	exempli gratia (for example)
EGBGB	Einführungsgesetz zum Bürgerlichen Gesetzbuche (BGB Introductory Act, 18 Aug. 1896; RGBl. 604;) (Germany)
Eis.	Eisagogi (introduction)
EllDik	Elliniki Dikeosini (Athens 1. 1960 ff.; cited by volume, year, and page)
EOA	see VÕS
ErmAK	Ermineia tou Astikou Kodikos (Commentary to the Greek Civil Code)
ERPL	European Review of Private Law (Deventer 1.1994 ff.; cited by volume, year, and page)
et. al.	et alii (and others)
EU	European Union
EuZW	Europäische Zeitschrift für Wirtschaftsrecht (Munich, Frankfurt/Main 1.1990 ff.; cited by year and page)
EvBl	Evidenzblatt der Rechtsmittelentscheidungen (Vienna 1.1934 ff.; included in the ÖJZ [since 1946]; see there; cited by year and page)
EWCA Civ	Approved Judgment of the Court of Appeal, Civil Division, England and Wales

EWHC	Approved Judgment of the High Court, England and Wales
EWiR	Entscheidungen zum Wirtschaftsrecht (Cologne 1.1985 ff.; cited by §, number, year, and page)
Exchq	Court of the Exchequer
ExchqCh	Exchequer Camber
fasc.	fascicule
FEK	Fyllo Ephimeridas Kyberniseos (Government Gazette, Greece; Athens 1.1833; cited by year, volume, and if necessary, book, and number)
f(f)	following page(s)
FFR	Forsäkringsjuridiska föreningens rättsfallsamling (Stockholm 1939-1984; cited by year, volume and page)
FFS	Finlands Författningssamling (Official Gazette; Finland) (Helsinki 1.1860 ff.; cited by year, number, and page)
fn.	footnote
Foro it.	Il Foro italiano: raccolta di giurisprudenza civile, commerciale, penale, amministrativa (Rome, 1.1876 ff.; cited by year, book, and column)
Foro it.Mass.	Massimario del Foro italiano (Rome 1.1930 ff.; cited by volume, year, number, and column)
Foro pad.	Il Foro padano (Milan 1.1946 ff.; cited by year, book, and column)
FP6	Sixth Framework Programme on Research
FS	Festschrift
FTLR	Financial Times Law Reports (Brentford 1982, 1986-1988)
GazPal	La gazette du palais: feuille officielle d'annonces légales (Paris 1.1886 ff.; cited by year, book, and page)
GazUff	Gazzetta Ufficiale della Repubblica Italiana (Official Gazette; Italy) (Rome 1. 1860 ff.; cited by year, number and page)
GG	Grundgesetz (Basic Law, Constitution, Germany)
giur. civ. comm.	La Nuova giurisprudenza civile commentata: rivista bimestrale delle nuove leggi civili commentate, Padova: Cedam, 1.1985 ff.
Giur.cost.	Giurisprudenza costituzionale (Milan 1.1956-20.1975; then: Parte 1 = Corte costituzionale 21.1976 ff.; Parte 2 = Ordinanza di rinivio ed i ricorsi 21.1976 ff.; Parte 3 = Quaderni della giurisprudenza costituzionale 1. 1964-7.1968; new series 1.1972 ff.)
Giur.it.	Giurisprudenza italiana (Torino 14.1862-25.1873; 3rd series 26.1874-32.1880, 4th series 33.1881-43.1891, 5th series 44.1892–64.1912, 110.1958 ff.; cited by year, part, and if necessary, section and column)
Giur.it.Mass.	Massimario della Giurisprudenza italiana (Torino 1.1931 ff.; cited by year, number and page)
Giur.mer.	Giurisprudenza di merito (Milan 1.1969 ff.; cited by year, book and page)
Giur.tosc.	Giurisprudenza toscana (Milan et al. 1.1950 ff.; cited by year and page)
Giust.civ.	Giustizia civile. Rivista bimestrale di giurisprudenza (Milan 1.1951 ff.; cited by year, book and page)
Giust.civ.Mass.	Massimario annotato della cassazione Milan: Giuffrè, 5.1955(1955/56)-7.1957(1957/58); [8.]1958-[31.]1981; 32.1983-(Giustizia civile)

GmbH	Gesellschaft mit beschränkter Haftung (private company limited by shares)
HaL	Lag om handelsagentur (Sweden)
HD	Redogörelser och meddelanden angående högsta domstolens avgöranden (Collection of Judgments by the Finnish Supreme Court) (Helsinki 1.1926 ff.; cited by year, number and page)
HGB	Handelsgesetzbuch (Commercial Code, Germany, 10 May 1897; RGBl. p. 219, BGBl III 4100-1); Austria (March 1939, RGBL I 1938/1999)
HL	House of Lords (United Kingdom)
HL(Ir)	See LR
HLR	Housing Law Reports (London 1.1967 ff.; cited by year, volume, and page)
HL(Sc)	See LR
Hof	Gerechtshof (Court of Appeal, The Netherlands)
HovR	Hovrätt (Court of Appeal, Finland, Sweden)
HR	Hoge Raad (Supreme Court, Netherlands)
HvertrG	Handelsvertretergesetz (Austria)
ICC	International Chamber of Commerce
ICCLR	International Company and Commercial Law Review (London, 1990, cited by year and page)
ICLQ	International and Comparative Law Quarterly (London, 1952, cited by year, number and page)
ICR	Industrial Cases Reports (London 1.1975 ff.; cited by year and page)
i.e.	id est (that is to say)
IECL	The International Encyclopedia of Comparative Law (Tübingen, New York 1.1970 ff.; cited by volume, chapter and margin number)
Inner House	Inner House (Court of Session, Scotland)
IHR	Internationales Handelsrecht, Zeitschrift für das Recht des internationalen Warenkaufs und -vertriebs (Munich 1999, cited by year and page)
Inf. prev.	Informazione e previdenziale. Rivista bimestriale dell'avvocatura dell'Istituto Nazionale delle Previdenza Sociale (Rome 1.1985 ff; cited by year and page)
IntBusLawyer	International Business Lawyer (London 1.1973 ff.; cited by year and page)
IPRE	IPR-Entscheidungen 1-3, Österreichische Entscheidungen zum Internationalen Privatrecht bis 1983, ed. by Schwimann, 1984
I.R.	Informations rapides du recueil Dalloz, France; see D.
IRLR	Industrial Relations Law Reports (London 1.1972 ff.; cited by year and page)
J.	Judge (High Court, UK)
JBl	Juristische Blätter (Vienna 1.1872 ff.; cited by year and page)
JbOstR	Jahrbuch für Ostrecht (Munich 1.1960 ff.; cited by volume, year and page)
JclCiv	Collection des Juris-Classeurs. Juris-Classeur Civil. Directeurs à partir de 1980 Pierre Catala and Philippe Simler. (Paris 1962 ff.)
JCP	Juris-Classeur périodique; see Sem.Jur.
JCP E	Semaine Juridique édition entreprise (France); see Sem.Jur.
JCP G	Semaine Juridique édition générale (France); see Sem.Jur.
JCP N	Semaine Juridique éditions nouvelles (France); see Sem.Jur.
JCP Pan.	Panorama, Semaine Juridique (France); see Sem.Jur.

JCP Som.	Sommaire, Semaine Juridique (France); see Sem.Jur.
JFT	Tidskrift utgiven av Juridiska Föreningen i Finnland (Helsingfors 1.1936 ff.; cited by year and page)
JLMB	Revue de jurisprudence de Liège, Mons et Bruxelles (Liége, 94.1987 ff)
JO	Journal Officiel de la République Française. Lois et Décrets. Official gazette of the French Republic. Acts and Decrees (Paris 1.1869 ff.; cited by date of issue)
JP	Juge de Paix (Luxembourg); Juge de Paix (Belgium) (Justice of the Peace)
JR	Juristische Rundschau (Berlin 1.1947 ff.; cited by year and page)
Jur.	Jurisprudence
Jura	Jura. Juristische Ausbildung (Berlin et al 1.1979 ff.; cited by year and page)
JuS	Juristische Schulung (Munich, Frankfurt am Main 1.1961 ff.; cited by year and page)
JUS	Rivista di scienze giuridiche (Milan 1.1940-4.1943; NS 1.1950-20.1969; 21.1974 ff.; cited by year and page)
JW	Juristische Wochenschrift. Organ des Deutschen Anwaltsvereins (Bulletin of the German Lawyers' Association) (Leipzig 1.1872-68.1939, 1940 merged with Deutsches Recht; cited by year and page)
JZ	Juristenzeitung (Tübingen 1.1945 ff.; Continuation of the German Rechtszeitschrift and the South German Juristenzeitung, volume 6.1951 ff.; cited by year and page)
KB	King's Bench
KB	The Law Reports. King's Bench Division (London, 1.1875/76 ff:; cited by year, book and page)
KB	Koninklijk Besluit (Royal decree, Belgium and The Netherlands)
KC	Kodeks cywilny (Civil Code, Poland)
KG	Kort Geding (from 1.1981 contained in Rechtspraak van de Week; see RvdW)
KG	Kammergericht (Berlin, Court of Appeal, Germany)
KommL.	Lag om Kommissions (Swedish Act)
KPolDik	Kodikas Politikis Dikonomias (Code of Civil Procedure, Greece) (Royal Decree 657/1971 FEK 219/1 Jan. 1971 p. 75)
KritE	Kritiki Epitheorisi (Athens 1.1994, cited by year and page)
Ktg	Kantongerecht (Local Court, The Netherlands)
La Ley	Revista jurídica española de doctrina, jurisprudencia y bibliografía (Madrid 1.1980 ff.; cited by year, book and page)
Lavoro 80	Lavoro 80 – Rivista di diritto del lavoro pubblico e privato (Milan 1.1981 ff.; cited by year and page)
Lav.prev.oggi	Lavoro e previdenza oggi (Milan 1.1974 ff.; cited by year and page)
Law Com.	Law Commission Report, England and Wales
LC	Lord Chancellor (UK)
LCA	Ley del Contrato de Agencia (Spain)
LD	Law Decree (Greece)
Legal Studies	Legal Studies. The Journal of the Society of Public Teachers of Law (London 1.1947 ff.; cited by volume, year and page)

LG	Landgericht (Germany); Landesgericht (Court of First Instance, general jurisdiction, also Court of Appeal for Local Courts, Austria)
LGDJ	Librairie Générale de Droit et de Jurisprudence; French publishing company
Lit.	litera
L.J.	Lord Justice (Court of Appeal judge, UK)
Lloyd's List Law Rep	Lloyd's List Law Reports (London 1.1919-32.1950; cited by volume, year and page)
Lloyd's Rep	Lloyd's Law Reports (London 1.1968 ff.; cited by volume, year and page)
loc. cit.	loco citato (the place already cited)
LQR	The Law Quaterly Review (London 1.1885 ff.; cited by volume, year and page)
LR	Law Reports. Publications of the Incorporated Council of Law Reporting (1865-1875 [the year of foundation of the High Court] in 11 series [here cited with the A & E, Ch.App., the C.P., the Eq., the Ex., the H.L., H.L. (Ir), H.L. (Sc)., P.C. and the Q.B.]; usually L.R. is put at the head of citations of decisions of the series up to 1875.1875 the 11 series were reduced to 6 [App.Cas., Ch.D., Q.B.D., C.P.D., Ex.D., P.D.]. Since 1881 the Law Reports are published in 4 series [App.Cas., Ch.D., Q.B.D., P.D.]. Since 1890 cited in a different way: the volume does not appear any more, but the year, put at the head within brackets; in case the reporting took more than one volume, the volume appears behind the year)
Ltd	Limited
MDR	Monatsschrift für Deutsches Recht: Zeitschrift für die Zivilrechts-Praxis (Cologne, Hamburg 1.1947 ff.; cited by year and page)
MJ	Maastricht Journal of European and Comparative Law (Antwerp, Baden-Baden 1.1994; cited by volume, year and page)
MLR	The Modern Law Review (London 1.1937/38 ff.; cited by year and page)
Monit belge	Moniteur belge des arrêtés des secrétaires généraux: journal officiel (Official gazette; Belgium) (Brussels 1.1831 ff.; cited by date)
MPr	Monomeles Protodikio (One-member First Instance Court, Greece)
MR	Master of the Rolls (Member and President of the Court of Appeal, UK)
MvA	Memorie van Antwoord. Parlementaire Geschiedenis (The Netherlands)
MvT, Parl. Gesch.	Memorie van Toelichting. Parlementaire Geschiedenis (The Netherlands)
n.	number (in Italian decisions and statutes)
NBW	see BW
ND	Neon Dikaion (New Law, Greece)
NdsRpflege	Niedersächsische Rechtspflege (Celle 1.1947 ff.; cited by year and page)
NedJur (kort)	See NedJur (supplementary collection of judgments that have not entered into effect; cited by year and number)
NedTIR	Nederlands Tijdschrift voor International Recht (Leiden 1.1953/54 with various titles; Nederlands International Law Review 22.1975 ff.; cited by volume, year and page)
NFT	Nordisk forsikringstidsskrift (Danish ed.); Nordisk försäkringstidskrift (Swedish ed.) (Copenhagen 1.1921 ff.; cited by year and page)

NGCC	Nuova Giurisprudenza Civile Commentata (Padova 1.1984 ff.; cited by year, book and page)
NILR	Netherlands International Law Review; see NedTIR
NJ	Nederlandse Jurisprudentie (Zwolle 1913 ff.; until 1935 cited by year and page, then by year, number and page)
NJA	Nytt Juidiskt Arkiv (Stockholm 1.1874 ff.; as of 1876 separation into two divisions: division 1: Rättsfall från högsta domstolen, until 1 Oct. 1983 called Tidskrift för lagstiftning; cited by year, number and page; division 2: Tidskrift för lagstiftning, cited by year, division and page)
NJB	Nederlands Juristenblad (Zwolle 1.1926 ff.; 1936-1943; same contents as Weekblad van het recht; cited by year and page)
NJW	Neue Juristische Wochenschrift (Munich et al. 1.1947 ff.; previously: JW; cited by year and page)
NJW-RR	NJW-Rechtsprechungsreport (Munich 1.1986 ff.; cited by year and page)
NoB	Nomiko Bima; miniaion nomikon periodikon (Law Tribune; Athens 1.1953 ff.; cited by volume, year and page)
no(s).	number(s); margin number(s)
Notiziario giur. lav.	Notiziario giuridico. Diritto del lavoro, diritto civile e commerciale, diritto amministrativo e costituzionale, diritto communitario (Torino 1.1970 ff., cited by year and page)
Nov.Dig.it.	Nuovissimo Digesto italiano (Torino 1957 ff.)
NRt	see Rt
NTBR	Nederlands Tijdschrift voor Burgerlijk Recht (Deventer 1.1984 ff.; cited by year and page)
obs.	observations
ÖJZ	Österreichische Juristenzeitung (Vienna 1.1946 ff.; cited by year and page)
ÖRZ	Österreichische Richterzeitung (Vienna 1.1908-3.1909, 7.1914-12.1919, 19.1926-31.1938, 32.1954 ff.; cited by year and page)
OGH	Oberster Gerichtshof (Supreme Court, Austria)
OH	Outer House (Court of Session, Scotland)
OJ	Official Journal of the European Communities (Brussels 1.1958 ff.; from 11.1968 ff.: issue C [Communication]: Information and Notice: Issue L [Législation]: Legislation; cited by issue, number, date and page)
OLG	Oberlandesgericht (Court of Appeal; Austria, Germany, Greece)
OLGR	OLG-Report. Zivilrechtsprechung der Oberlandesgerichte (Decisions of the Court of Appeal in civil matters, Cologne 1.1997 ff.; cited by year and page)
OLGZ	Entscheidungen der Oberlandesgerichte in Zivilsachen einschließlich der freiwilligen Gerichtsbarkeit (Decisions of the Court of Appeal in Civil Matters including Jurisdiction over Non-contentious Matters) (Munich, Berlin 1.1965 ff.; cited by year and page)
op. cit.	opere citato (work already cited)
P	President (official name, United Kingdom)
para(s)	paragraph(s)
Parl. St. Kamer	Parlamentaire Stukken Kamer (Publications of the committee of the chamber of the belgian parliament, Brussels)

Pas belge	Pasicrisie belge (Recueil général de la jurisprudence des cours et tribunaux de Belgique. I = Arrêts de la Cour de Cassation 3rd Series 1865-1924; 112.1925 ff.; II = Arrêts de la Cour d'Appel 3rd Series 1865-1924; 112.1925 ff.; III = Jugements des tribunaux 3rd Series 1865-1924; 112.1925 ff.; IV = Jurisprudence étrangère 3rd Series 1893-1924; 112.1925 ff.; V = Revue de droit belge 3rd Series 1893 ff.; cited by year, book and page)
Pasin belge	Pasinomie belge ou Collection complète des lois, décrets, arrêtés et règlements généraux qui peuvent être invoqués en Belgique (Brussels 1.1788 ff.; cited by year and page)
PC	Privy Council (United Kingdom)
PECL	Principles of European Contract Law.. Prepared by the Commission on European Contract Law. Parts I and II. Edited by Ole Lando and Hugh Beale (The Hague 2000); Part III. Edited by Ole Lando, Eric Clive, André Prüm and Reinhard Zimmermann (The Hague 2003)
plc	public limited company
Poder Judicial	Conseijo General del Poder Judicial (Madrid 1.1981 ff.; cited by year and page)
p(p).	page(s)
PPr	Polymeles Protodikio (Multi-member First Instance Court, Greece)
Pr	Protodikio (First Instance Court, Greece)
pr.	principium
Pret.	Pretura (Local Court, Italy)
Prg	De Praktijgids. Tijdschrift gewijd aan de rechtspraktijk en aan de jurisprudentie van de kantongerechten (Arnhem 1.1980 ff.; cited by year and number)
Prop	Proposition (Official proposal for a statute, Sweden)
QB (ComCt)	Queen`s Bench Division, Commercial Court
QB	The Law Reports. Queen's Bench Division (London 1.1890 ff.; cited by year, book, and page, additional LR cited: London 1865-1875)
QBD	Queen's Bench Division (London 1875/76-1890; cited by year, book and page); see LR
QC	Queen's Council
R.	Regina or Rex
R.	Règlement (order, France)
RabelsZ	Zeitschrift für ausländisches und internationales Privatrecht (Berlin, Tübingen, 1.1927 ff.; from vol. 26.1961: Rabels Zeitschrift für ausländisches und internationales Privatrecht; cited by volume, year and page)
RaDC	Rassegna di diritto civile (Naples 1.1980 ff.; cited by year and page)
RAJ	Repertorio Aranzadi de Jurisprudencia (Pamplona 1.1930/31, 2.1934 ff.; cited by year, number and page)
RAJ (TSJ y AP)	Repertorio Aranzadi de Jurisprudencia. Sentencias de Tribunales Superiores de Justicia y Audiencias Provinciales y otros Tribunales (Pamplona 1.1996 ff.; cited by year, number and page)
Rass.Avv.Stato	La Rassegna mensile dell' Avvocatura dello Stato (Rome 1.1948 ff.; cited by year, book and page)

Rass.dir.civ.	Rassegna di diritto civile (Naples 1.1980 ff.; cited by year and page)
Rb	Arrondissementsrechtbank (District Court, Court of First Instance, general jurisdiction, The Netherlands), Rechtbank van eerste anleg (Court of First Instance, Belgium)
RCJB	Revue critique de jurisprudence belge (1.1947 ff.; cited by year and page)
RCR	Relazione della Commissione Reale al progetto del libro ›obbligazioni e contratti‹ (see Pandolfelli et al., Codice civile, in the table of literature cited in an abbreviated form)
RD	Regio Decreto (Royal decree, Italy)
RdW	Österreichisches Recht der Wirtschaft (Vienna 1.1983 ff.; cited by year and page)
Reg.	Regulation
recht	Recht, Zeitschrift für juristische Ausbildung (Berne 1.1983 ff.; cited by year and page)
ref.	reference
RépDrCiv	Répertoire de droit civil (Paris 1.1951-5.1955; 2nd ed. 1.1970 ff.; see details in the table of literature)
Rep.Foro it.	Repertorio del Foro italiano (legislazione, bibliografia, giurisprudenza; Rome 1.1878 ff.; previously: Repertorio generale annuale di giurisprudenza, bibliografia e legislazione; cited by volume, year and column)
Rep.gen.	Repertorio generale della Giurisprudenza italiana (Torino 1.1890 ff.; previously: Repertorio generale annuale della Giurisprudenza italiana; cited by year, and column and number)
Rep.Giur.it.	Repertorio generale della giurisprudenza italiana (Torino 1.1848 ff.; cited by year, key word and number)
resp.	Respectively
Resp.Civ. e Prev.	Responsabilità Civile e Previdenza (Milan 1.1930 ff.; cited by year and page)
Rev.crit.dr.int.pr.	Revue critique de droit international privé (Paris, 1905, cited by year and page)
Rev.crit.jur.belge	Revue critique de jurisprudence belge (Brussels 1.1947 ff.; cited by year and page)
Rev.crit.légis. et juris.	Revue critique de législation et de jurisprudence (Paris 1.1851 ff.; cited by year and page)
Rev.dr.int.dr.-comp.	Revue de droit international et de droit comparé (Brussels 1.1924 ff.; 1940-48 not published; cited by volume, year and page)
Rev.dr.uniforme	Revue de droit uniforme. Uniform Law Review (Rome 1.1973 ff.; cited by year, part and page)
Rev.trim.dr.civ.	Revue trimestrielle de droit civil (Paris 1.1902-38.1939, 39/40.1940/41-78.1979 = tome 39-77, 79.1980 ff.; until 1977 by volume, then by year and page)
Rev.trim.dr.com	Revue trimestrielle de droit commercial (Paris 1.1948 ff.)
RG	Reichsgericht (Supreme Court of the German Reich, Germany)
RG	Relazione del Guardasigilli al progetto ministeriale delle obbligazioni (see Pandolfelli et al., Codice civile, in the table of literature cited in an abbreviated form)
RGD	Revista general de derecho (Valencia 1.1945 ff.)

RGDC	Revue générale de droit civil/Tijdschrift voor Belgisch Burgerlijk Recht (1.1987 ff.)
RGZ	Amtliche Sammlung der Entscheidungen des Reichsgerichtes in Zivilsachen (Decisions of the German Reichsgericht in civil matters) (Berlin 1.1872-172.1945; cited by volume and page)
RH	Rättsfall från Hovrätterna (Decisions of the Swedish Court of Appeal, changing places of publication, usually Stockholm, 1.1980 ff.; cited by year and number)
RIS-Justiz	Austrian internetpublication of OGH-decisions, www.ris.bka.gv.at/jus/; decisions are cited by date, number of legal subject and keyword
Riv.crit.dir.priv.	Rivista critica del diritto privato (Bologna 1.1989 ff.; cited by year and page)
Riv.Dir.Civ.	Rivista di Diritto Civile (Padova 1.1955 ff.; cited by year, book and page)
Riv.Dir.Com.	Rivista del Diritto Commerciale e del Diritto generale delle obbligazioni (Milan 1.1903 ff.; cited by year, book and page)
Riv.dir.eur.	Rivista di diritto europeo (Rome 1.1961 ff.; cited by year and page)
Riv.giur.lav.	Rivista giuridica del lavoro e della previdenza sociale (Rome 1.1954 ff.; part 1: Dottrina; part 2: Giurisprudenza; part 3: Previdenza; part 4: Diritto penale del lavoro; cited by year, book and page)
RIW	Recht der Internationalen Wirtschaft (Heidelberg 1954-1957 and 1975 ff.; from 1958 to 1974 Außenwirtschaftdienst des Betriebsberaters [AWD]; cited by year and page)
RJDA	Revue de jurisprudence du droit des affaires (Paris 1.1991 ff.; cited by year and page)
RLJ	Revista de Legislação e Jurisprudência (Coimbra 1.1868/69 ff.; cited by volume, year and page)
RM-Themis	Rechtsgeleerd magazijn Themis. Tijdschrift voor publiek- en privaatrecht. (Zwolle 1.1939 ff.; cited by year and page)
ROA	Revista da Ordem dos Advogados (Lisbon 1941 ff.)
RP	RP 189/1998 rd – Regeringens proposition till Riksdagen med förslag till lagstiftning om borgen och tredjemanspant (Finland)
RTD civ	Revue trimestrielle de droit civil (Paris, 1.1902 ff.)
RTD com	Revue trimestrielle de droit commercial (Paris, 1.1948 ff.)
Rv	Wetboek van Burgerlijke Rechtsvordering (Code of Civil Procedure, The Netherlands) (Stb. 1828 no. 14)
RvdW	Rechtspraak van de Week (Zwolle 1.1939 ff.; cited by year and number)
RW	Rechtskundig Weekblad (Antwerp 1.1931/32 ff.; cited by year and page)
S.	Sirey: see D.
Sadem pierwszej instancji	Court of Appeal, Poland
Sad Najwyzszy	Supreme Court, Poland
Sad okregowy	Circuit Court (Court of First Instance), Poland
Sady grodzkie	Court of First Instance, Poland
SAP	Sentencia de la Audiencia Provincial (Decision of a Court of Appeal, Spain)
SC	Session Cases. New Series.. Cases decided in the Court of Session, and also in the Court of Justiciary (J.C.) and the House of Lords (H.L.); Edinburgh 1.1907 ff.; cited by year and page)

ScanStudL	Scandinavian Studies in Law (Stockholm 1.1957 ff., cited by volume, year, and page)
sch.	schedule(s)
Scientia jurídica	Scientia jurídica. Revista de direito comparado português e brasileiro (Braga 1.1951/52 ff.; cited by volume, year and page)
Scot CS	Approved judgment of the Court of Session. Scotland
sec., secs.	section, sections
SEK	Reference of the Commission General Secretary's Office and of the Council of the European Union
SemJur	La Semaine Juridique Edition Entreprise. Cahiers de Droit de l'entreprise (Paris 1.1966 ff.; cited by year, part and number), Edition Générale. (also Juris Classeur Périodique; Paris 1.1927 ff.; cited by year, part and number), Edition Nouvelles, Panorama, Sommaire, also quoted as JCP
sent.	sentence(s)
Sez. giur.	Sezione giurisdizionale
SFS	Svensk författningssamling (Official gazette, Sweden) (Stockholm 1.1825 ff.; cited by year and number)
SGECC	Study Group on an European Civil Code
S.I.	Statutory Instrument
SLT (Rep)	The Scots Law Times (News and Reports, the latter with separate pagination) (Edinburgh 1.1893/94 ff.; Sheriff Court Reports 1.1922 ff., cited by year and page)
SOU	Statens offentliga utredningar (Government gazette, Sweden) (Stockholm 1.1939 ff.; cited by year, number, title and page)
s(s).	et sequentia
Stb	Staatsblad van het Koninkrijk der Nederlanden (Official Gazette; The Netherlands) (Zwolle 1.1813 ff.; cited by year and page)
STJ	Supremo Tribunal da Justiça (Supreme Court, Portugal)
STS	Sentencia del Tribunal Supremo (decision of the Supreme Court, Portugal, Spain)
subs.	Subsections
Suppl.	Supplement
Suppl.ord.	Supplemento ordinario (Part of the government gazette, Italy)
SvJT	Svensk Juristtidning (Stockholm 1.1916 ff.; cited by year and page)
SZ	Entscheidungen des österreichischen Obersten Gerichtshofs in Zivilsachen (Vienna 1.1919-20.1938; 21.1946 ff.; with changing titles; until vol. 34.1961: Entscheidungen des österreichischen obersten Gerichtshofs in Zivil- und Justizverwaltungssachen; cited by volume, number, and page)
tab.	tabulae
TBBR	Tijdschrift voor Belgisch Burgerlijk Recht; see R.G.D.C.
TC	Tribunal Constitucional (Constitutional Court; Spain)
Temi	Il Temi. Rivista di giurisprudenza Italiana (Parma, Milan et al. NS 1 = 22.1946 ff.; cited by year and page)
Temi nap.	Il Temi napoletana (Milan 1.1958 ff.; cited by year and page)

Temi rom.	Temi romana (Milan 1.1929-5.1933; [n.F.] 1.1952-40.1991; cited by year and page)
TGI	Tribunal de grande instance (Court of First Instance, France)
Themis	Hebdomacliaia dikastike ephemeris ekdiclomene en Athenais (Athens 1.1890/91 (1930)-65.1954/55; cited by volume, year and page)
TI	Tribunal d'instance (Court of first instance, France)
TLR	Annual Digest of the Times Law Reports (London 1.1884 ff.; cited by volume, year and page)
TPR	Tijdschrift voor Privaatrecht (Gent 1.1964 ff.; cited by year and page)
Trb	Tractatenblad van het Koninkrijk der Nederlanden (Official Gazette recording treaties in force in the Netherlands) (s'Gravenhage 1.1951 ff.; cited by year and page)
Treaty of Rome	Treaty establishing the European Community, 25 March 1957
Trib.	Tribunale (Court of First Instance, general jurisdiction; Court of Appeal in small claims matters; Italy); Tribunal de première instance (Court of First Instance; Belgium, France); Tribunal d'arrondissement (Court of First Instance, general jurisdiction, Luxembourg)
Trib.com.	Tribunal de Commerce (Commercial Court; Belgium and France)
TS	Tribunal Supremo (if not specified: senate for civil matters) (Supreme Court, Spain)
TSJ	Tribunal Superior de Justicia (Supreme Court of the autonomous regions, Spain)
UKHL	Approved judgment of the House of Lords (United Kingdom)
UNCITRAL	United Nations Commission for International Trade Law
UnfContTA	Unfair Contract Terms Act (France: Law no. 95-96 of 1. Feb. 1995 Art. 1 consolidated in ConsC Art. 132-1; United Kingdom: Unfair Contract Terms Act 1977)
UnifLRev	Uniform Law Review = Revue de droit uniforme; see Rev.dr.uniforme
v.	versus
V°	Verbo
V-C	Vice-Chancellor (UK)
vol	volume
WBl	Wirtschaftsrechtliche Blätter (Vienna, 1.1987 ff.; cited by year and page)
WL	West Law
WLR	The Weekly Law Reports (containing decisions in the House of Lords, the Privy Council, the Supreme Court of Judicature, Assize Courts; London 1.1953 ff.; cited by year, book and page)
WM	Wertpapier-Mitteilungen: Zeitschrift für Wirtschafts- und Bankrecht (Frankfurt/Main et al. 1.1947 ff.; cited by year and page)
WPNR	Weekblad voor privaatrecht, notariaat en registratie ('s-Gravenhage 1.1870 ff.; cited by year, number and page)
WR	The Weekly Reporter (London 1.1852/53 (1853)-54.1905/06 (1906))

ZEuP	Zeitschrift für Europäisches Privatrecht (Munich 1.1993 ff.; cited by year and page)
ZfRV	Zeitschrift für Rechtsvergleichung (Vienna 1.1960 ff.; cited by year and page)
ZHR	Zeitschrift für das gesamte Handels- und Wirtschaftsrecht (Heidelberg 1.1858-110.1944, 111.1948 under different titles: until vol. 60: Zeitschrift für das gesamte Handelsrecht, until volume 124 (1962): Zeitschrift für das gesamte Handels- und Wirtschaftsrecht; cited by volume, year, and page)
ZIP	Zeitschrift für Wirtschaftsrecht und Insolvenzpraxis (previously Insolvenzrecht; Cologne 1.1980 ff.; cited by year and page)
ZVglRWiss	Zeitschrift für vergleichende Rechtswissenschaft (Heidelberg 1.1878 ff.; cited by volume, year and page)

Table of European Legislation

EC-Treaty

81(1)	Art. 2: 101, Com., F (p. 159); Art. 3: 101, Com., B (p. 212), G (p. 210); Art. 4: 202, Com., F (p. 270)
81(3)	Art. 3: 101, Com., G (p. 153); Art. 4: 101, Notes, 3 (p. 262); Art. 4: 101, Com., O (p. 262)

Charter of Fundamental Rights of the European Union

30 (Article II31 of the Constitution)	Art. 1: 101, Com., G (p. 99)

EC-Regulation No 4087/88 of 30 November 1988 on the application of Article 85 (3) of the Treaty to categories of franchise agreements

	Art. 3: 101, Notes, 1 (p. 213)
1 III B	Art. 3: 201, Notes, 1 (p. 213)
3 a, b	Art. 3: 101, Notes, 1 (p. 213), 4 (p. 213)

EC-Regulation No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices

	Art. 3: 101, Com., G (p. 153)
1	Art. 3: 202, Notes, 1 (p. 227)
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Bibliography

Aalto, Sakari Aalto, Kauppaedustussopimuksen päättyminen, Helsinki: Finnish Lawyers Publishing, 2002.

Adams, Jones & Hickey, J. N. Adams, K. V. Prichard Jones, J. J. B. Hickey, Franchising, Practice and precedents in business format franchising, fifth edition, London, Edingburgh, Dublin: Butterworths, 2004.

Alepakos, K. Alepakos, Legal issues of the franchise agreement, Nomiko Vima, 1995.

Ämmälä, Tuula Ämmälä, Lojaliteettiperiaatteesta eräiden sopimustyyppien yhteydessä, in: Lojaliteettiperiaatteesta: vastapuolen edun huonioonottamisesta eri oikeuden aloilla, Ari Saarnilehto (ed.), Turku 1994, 3-50.

Androutsopoulos, D. Androutsopoulos, The contract of commercial agency, Athina, 1968.

Argiriadis (1987) I, A. Argiriadis, Termination of commercial agency – requirements and consequences, Epitheorisi Emporikou Dikaiou, 1987, 53.

Argyriadis (1987) II, A. Argyriadis, Notice of termination of commercial agency – Conditions and Consequences, Epitheorisi Emporikou Dikaiou, 1987, 153.

Asser-Hartkamp II, A. S. Hartkamp, Mr. C. Asser's handleiding tot de beoefening van het Nederlands Burgerlijk Recht. Verbintenissenrecht, deel II, Algemene leer der overeenkomsten, 12de druk, Kluwer, Deventer, 2005.

Asser-Kortmann, S. C. J. J. Kortmann, L. J. M. de Leede, H. O. Thunissen, Bijzondere Overeenkomsten, Deel III, Overeenkomst van opdracht, arbeidsovereenkomst en aanneming van werk, W. E. J. Tjeenk Willink, Zwolle, 1994.

Augitidis, D. Augitidis, Systems of distribution and indemnification for goodwill, Chronika Idiotikou Dikaiou, A/2001, 590.

Axberg, Curt Axberg, Franchising: En handbok, 1993.

Baird, D. G. Baird, "Self-interest and Co-operation in Long-Term Contracts", 19 (1990) *Journal of legal studies*, 583.

Baldi 2001, R. Baldi, Il contratto di agenzia. La concessione di vendita. Il franchising, Milano, 2001.

Barendrecht, J. M. Barendrecht, De redelijkheid en billijkheid en het einde van de distributieovereenkomst, NJB 1994, 561-567.

Barendrecht & Van Peursem, J. M. Barendrecht, G. R. B. van Peursem, Distributieovereenkomst, Serie recht en praktijk, Kluwer, Deventer, 1997.

Beale, Harris & Sharpe, H. Beale, D. Harris & T. Sharpe, La distribution automobile au Royaume-Uni, une technique contractuelle complexe, in: *Le contrat aujourd'hui: comparaisons Franco-Anglaises*, D. Tallon, D. Harris (eds.), Paris: LGDJ, 1987.

Beale et al., H. Beale, A. Hartkamp, H. Kötz & D. Tallon, Cases, Materials and Text on Contract Law, Hart Publishing, Oxford and Portland, Oregon, 2002.

Bogaert/Lohmann, G, Bogaert and U. Lohmann (eds.), Commercial Agency and Distribution Agreements, law and Practice in the Member Stastes of the European Union, London, 2000.

Bortolotti & *Bandanini*, F. Bortolotti, G. Bandanini, Il contractto di agenzia commerciale, Milano: Cedam, 2003.

Bowstead & *Reynolds*, Bowstead and Reynolds on Agency, seventeenth edition by F.M.B. Reynolds, Sweet & Maxwell, London, 2001.

Bygglin, Gustaf Bygglin, Om franchiseavtal och upplösningsfrihet med särskild hänsyn till förhållandena på dagligvaruhandelns område. *Oikeustiede- Jurisprudentia* 1978, 89-157.

Cagnasso (1983), O. Cagnasso, La Concessione di Vendita, Problemi di Qualificazione, *Quaderni di Giurisprudenza Commerciale*, Milano, 1983, at 17 and ff.

Cagnasso & *Cottino*, O. Cagnasso, G. Cottino, Contratti Commerciali, Trattato di Diritto Commerciale, diretto da G. Cottino, Volume 9, Milano: Cedam, 2000.

Calvo Caravaca & *Fernandez de la Gandara*, A.L. Calvo Caravaca & L. Fernandez de la Gandara, Contratos Internacionales, Madrid Tecnos, Madrid, 1997.

Carnegie, A.R. Carnegie, Terminability of contracts of unspecified Duration, 85 (1969) LQR 392.

Castermans & *Krans*, A.G. Casterman, H.B. Krans, Tekst & Commentaar Burgerlijk Wetboek, Boeken 5, 6, 7 en 8, J.H. Nieuwenhuis et al. (eds.), Deventer: Kluwer, 2005, artt. 7:400-7:445.

Castrén, Martti Castrén, Jälleenmyyntisopimus vientikaupassa. Helsinki 1975.

Chitty, Chitty on Contracts, H. Beale (ed.), twenty-ninth edition, London: Sweet & Maxwell, 2004.

Cian & *Trabucchi*, G. Cian, A. Trabucchi, Commentario Breve al Codice Civile, Settima Edizione, a cura di G. Cian, Milano: Cedam, 2004.

Deligianis & *Kornilakis*, The Special Part of the Law of Obligations, Volume II, Thessaloniki, 1992.

Dominguez García (1997), M. Dominguez García, Los contractos de distribución: agencia mercantil y concesión comercial, in: Contratos Internacionales, L. Fernández de la Gándara, A.L. Clavo Caravaca (eds.), Madrid, 1997.

Douvlis (1982), B. Douvlis, The Integrated Distribution (in Greek), Peiraiki Nomologia, 1982.

Douvlis (1998), B. Douvlis, The agreement of exclusive distribution, Elliniki Dikaiosini, 1998.

Dutilleul & *Delebecque*, François Collart Dutilleul, Philippe Delebecque, Contrats civils et commerciaux 5e édition, Dalloz, Paris, 2001.

Echebarría Sáenz (1995), J.A. Echebarría Sáenz, El contrato de franquicia, Definición y conflictos en las relaciones internas, Madrid: McGraw-Hill, 1995.

Fabre-Magnan, Muriel Fabre-Magnan, Les obligations, Presses Universitaires de France, Paris, 2004.

Farmakidis, O. Farmakidis, The contractual exclusive distribution, Athina, 1990.

Felstead, A. Felstead, "The Corporate Paradox- power and control in the business franchise, International Thomson Publishing, 1994.

Ferrier, Didier Ferrier, Droit de la distribution, 3e édition, Paris: Litec, 2002.

sFilios, P. Filios, Law of Obligations, Special Part, volume 1/2, Athina, 1997.

Flohr, E. Flohr, Der Franchise-Vertrag – Formularhandbuch, 2nd edition, München, 2001.

Fontaine, M. Fontaine, Contracts à long terme et code civil Européen, in: Liber Amicorum Lucien Simont, Bruxelles: Bruylant, 2002, 681-693.

Franchising-käsikirja: Franchising-käsikirja: yhdistä osaaminen, yhteistyö, resurssit ja yrittäjyys kilpailueduksi (Franchising handbook),. Kimmo Marttila et al. (eds), Helsinki 1998.

Frignani (1990), A. Frignani, *Il Franchising*, Torino, 1990.

Galan Corona, E. Galan Corona, Los contratos de Franchising ante el Derecho Comunitario de la Libre Competencia (comentario a la Sentencia del Tribunal de Justicia de las comunidades Europeas de 28 de Enero de 1986), en Revista de Instituciones Europeas, Madrid, 1986.

Galgano, F. Galgano, Diritto Civile e Commerciale, Volume Secondo, Le Obbligazionie i contratti, Tomo Secondo, Padova, Cedam, 2004

Gallego Sánchez (1991), E. Gallego Sánchez, La Franquicia, Madrid: Trivium, 1991.

Geel, J. W. A. Geel, Inhoudsbepaling van de distributieovereenkomst, NTBR 1996, 100-109.

Genzow, F. C. Genzow, Vertragshändlervertrag, Köln 1996.

Georgakopoulos (1998), L. Georgakopoulos, Claim for indemnification for distributorship network and unlawful termination of a distribution contract, DEE, 1998, 112.

Georgakopoulos (1999), L. Georgakopoulos, Text-book on Commercial Law, Commercial contracts, (in Greek), Athina 1999.

Georgakopoulos (1979), L. Georgakopoulos, The law of long-term obligations, Athina, 1979.

Georgakopoulos (1992), L. Georgakopoulos, The Modern Practice of Commercial Law, Athina, 1992.

Georgiadis, A. Georgiadis, New contractual forms of the modern economy, Leasing/Factoring/ Forfaiting/Franchising, 3rd edition, Athina, 1998.

Georgiadis & Stathopoulos, A. Georgiadis & M. Stathopoulos, Astikos Kodikas (Commentary of the Greek Civil Code Article by Article), Athina 1980.

Giannakaki, S. Giannakaki, Legal issues and practice of the franchise agreement in Greece, DEE 1997, 1046.

Giesler/Nauschütt, P. Giesler and J. Nauschütt, Franchiserecht, Neuwied, Kriftel, 2002.

Goode, R. Goode, Commercial Law, Third Edition, London: Penguin, 2004.

Grosheide, F. W. Grosheide, Franchising en harmonisering van het recht in de EU: Molengrafica, Lelystad: Vermande, 1994.

Guardiola Sacarrera, E. Guardiola Sacarrera, Contratos de Collaboration en el Comercio internacional, 1st edition, Bosch (ed), Barcelona, 1998.

Haager, Bernd Christian Haager, Die Entwicklung des Franchiserechts in den Jahren 1999, 200 und 2001, NJW 2002, 1463-1474.

Halila & Hemmo, Heikki Halila, Mika Hemmo, Sopimustyypit, Helsinki: Finnish Lawyers Publishing, 1996.

Hammerstein & Vranken, A. Hammerstein & J. B. M. Vranken, Beëindiging en wijzigen van de overeenkomst. Een horizontale vergelijking, Kluwer, Deventer, 2003.

Handkommentar-BGB, edited by H. Dörner (et. al.), 2nd edition, Baden-Baden, 2002.

Harris, D. Harris, D. Campbell and R. Halson, Remedies in Contract and Tort, Butterworths, London, 1999.

Håstad, Torgny Håstad, Den nya köprätten, 1998.

Häyhä, Juha Häyhä, Lojaliteettiperiaate ja sopimusoppi. *Defensor Legis* 1996, 313-327.

Van der Heiden (1999), A. J. J. van der Heiden, Franchising, Deventer: Kluwer, 1999.

Hemmo (1996), Mika Hemmo, Irtisanomisvapaus ja pitkäkestoiset liikesopimukset, *Defensor legis,* 1996, 328-346.

Hemmo (1997) I, Mika Hemmo, Sopimusoikeus I, Helsinki, 1997.

Hemmo (1997) II, Mika Hemmo, Sopimusoikeus II, Helsinki, 1997.

Hernando Giménez, A. Hernando Giménez, El Contrato de franquicia de empresa, Madrid: Civitas, 2000.

Hesselink, M. W. Hesselink, De redelijkheid en billijkheid in het Europese privaatrecht, Kluwer Rechtswetenschappelijke Publicaties, Deventer: Kluwer, 1999.

Holzhammer, Holzhammer, Allgemeines Handelsrecht und Wertpapierrecht, 1998.

Huet, Jérôme Huet, Les principaux contrats spéciaux, Traité de droit civil sous la direction de Jacques Ghestin, LGDJ, Paris, 2001.

Hyvärinen, E. Hyvärinen, Ulkomaankaupan edustussopimukset, Helsinki 1997.
Joerges, C. Joerges (ed.), Franchising and the Law: Theoretical and Comparitive Approaches in Europe and the United States, Baden-Baden: Nomos, 1991.
Juurela (1994) I, Teuvo Juurela, Agenttisopimus, Helsinki, 1994.
Juurela (1994) II, Teuvo Juurela, Jälleenmyyntisopimus ja kilpailuoikeus, Helsinki, 1994.
Koller/Roth/Morck, I. Koller and W.-H. Roth and W. Morck, Handelsgesetzbuch, 2nd edition, München, 1999.
Kostakis, D. Kostakis, Franchising: Legal and business dimensions, Athina, 1998.
Koukiadis, I. Koukiadis, Over long-term obligational contracts, Harmenopoulos, 1974.
Kozyris, F. Kozyris, Franchising in Greece – Comparative remarks, EEEurD, 1997, (also in the special issue: FS for D. Eurygenis) 147.
Krejci, Krejci, Grundriss des Handelsrechts, 1995.
Küstner/Thume, W. Küstner and K.-H. Thume, Handbuch des gesamten Aussendienstrechts, Volume III, 2nd edition, Heidelberg, 1998.
Van Laarhoven, M. J. van Laarhoven, aansprakelijkheid voor het verschaffen van onjuiste informatie in een precontractuele verhouding, WPNR 2002/6484, 287-294.
Lando, Ole Lando, The EEC Draft Directive relating to self-employed commercial agents, The English Law Commission versus the EC Commission, RabelsZ 44(1980) 1-16.
Leloup, J. M. Leloup, les agents commerciaux, 4th edition, Delmas, Paris, 2001.
Liakopoulos, Th. Liakopoulos, General Commercial Law, Athina, 1990.
Mähönen, Jukka Mähönen, Siviilioikeuden yleiset periaatteet, in: Varallisuusoikeuden kantavat periaatteet, Ari Saarilehto (ed.), Helsinki: WSOY, 2000.
Malaunie Aynès, P. Malaunie, L. Aynès, Cours de droit civil, Tome VIII, Les contrats spécíaux civils et commerciaux par P. Malaurie, L. Aynès, P.-Y. Gautier, 14e édition, Paris: Éditions Cujas, 2001.
Marinos, M. Marinos, The prohibition of competition during the contract of commercial agency and distribution, DEE 1999, 671.
Martinek, M. Martinek, Moderne Vertragstypen, Volume II: Franchising, Know-How-Verträge, Management- und Consultingverträge, München, 1992.
Martinek/Semler, M. Martinek and F. Semler, Handbuch des Vertriebsrechts, München, 1996.
Martinez Sanz, F. Martinez Sanz, La indemnización por clientela en los contratos de agencia y concesión, 2nd ed., Madrid, 1998.
Menezes Cordeiro (1984), A. Menezes Cordeiro, Da boa fé no Direito Civil, I, 1984.
Menezes Cordeiro (1991), A. Menezes Cordeiro, Da pós-eficácia das Obrigações, Estudos de Direito Civil, Coimbra, 1991.
Menezes Cordeiro (2001), A. Menezes Cordeiro, Manual de Direito Comercial, I volume, Coimbra, 2001.
Miranda, S. Miranda, Spain, Practical Commercial Law, Longman, 1993
Möller, C. Möller, Der Franchisevertrag im Bürgerlichen Recht, AcP 203(2003) 319-347.
McKendrick, E. Mckendrick, Contract Law, Palgrave Macmillan Law Masters, 2005.
Minoudis, M. Minoudis, Exclusive or selective contracts, (reasoned consultation), DEE 7/1997.
Monteiro (1998), A. P. Monteiro, Contrato de Agencia-Anotação, 1998.
Muukkonen (1993), P. J. *Muukkonen*, Sopimusoikeuden yleinen lojaliteettiperiaate. *Lakimies* 1993:7, 1030-1048.
Muukkonen, P. J. Muukkonen, Yhteistyösopimukset ja lojaliteettivelvollisuus, in: Juhlajulkaisu Urho Kaleva Kekkonen 1900-3/9-1975.
Münchener Kommentar zum Handelsgesetzbuch, Volume I, K. Schmidt (ed), München, 1996.

Münchener Vertragshandbuch, Volume III, A. Schütze (ed), München, 1997.

Nikolaidis, G. Nikolaidis, Termination of commercial agency and compensation for goodwill, Athina, 2000.

Nysten-Haarala (1998), Soili Nystén-Haarala, Long-term Contract. Contract Law and Contracting. Finnish Lawyers Association. Helsinki 1998.

Nysten-Haarala (2002), Soili Nysten-Haarala, Kaukoviisas ennakoiva oikeusajattelu ja jälkiviisas tuomioistuinjuridiikka, in: Ennakoiva sopiminen (Proactive Contracting), Soile Pohjonen (ed.), Helsinki: WSOY, 2002, 141-188.

Oker-Blom, Max Oker-Blom, Yhteistyö, liikkeen perustaminen tai hankinta, in: Ulkomaankauppaoikeus, Lena Sisula-Tulokas (ed.), Helsinki: Finnish Lawyers Publishing, 1998, 192-226.

Pampoukis, K. Pampoukis, The commercial agency – a historical introduction, Episkopisi Emporikou Dikaiou, 1995, 696.

Pardolesi (1979) I contratti di distribuzione, Napoli, 1979.

Pardolesi (1988), R. Pardolesi, Contratti di Distribuzione, in: *Enc. Giur.*, IX, 1988, 1-8.

Van den Paverd, C. A. M. van den Paverd, De opzegging van distributieovereenkomsten, Kluwer rechtswetenschappelijke Publicaties, Deventer: Kluwer, 1999.

Perakis, E. Perakis, General part of commercial law, Athina, 1999.

Pestana de Vasconcelos (2000), L. M. Pestana de Vasconcelos, O Contrato de Franquia (Franchising), Coimbra: Almedina, 2000.

Pinto Monteiro (1994), A. Pinto Monteiro, Agência e distribuição commercial, Dereito: Revista Xurída da Universidade de Santiago de Compostela, vol. III, no. 1, 1994, 48 ff.

Pinto Monteiro (1998), A. Pinto Monteiro, Contrato de agência (anotoção), 3rd ed., 1998.

Pinto Monteiro (2002), A. Pinto Monteiro, Direito Comercial: contratos de distribuição commercial, Coimbra, 2002.

Pohjonen, Soile Pohjonen Ennakoiva sopiminen, Liiketoimien suunnittelu, toteuttaminen ja riskien hallinta, Helsinki: WSOY, 2002.

Pöyhönen, Juha Pöyhönen, Sopimusoikeuden järjestelmä ja sovittelu, Helsinki: Finnish Lawyers Publishing 1988.

Pratt, J. Pratt, Franchising Law and Practice, London: Sweet & Maxwell, 2000.

Ribeiro (1992), E. Ribeiro de Sousa, Contrato de agencia, Coimbra, 1992.

Ribeiro (2001), E. Ribeiro de Sousa, Contrato de agencia, Coimbra, 2001.

Riedl, K. Riedl, Franchising, Transnational governance through incomplete contracts and incomplete regulations, Florence: European University Institute, 2001.

Rocas, N. Rocas, Elements of commercial law I, Athina, 1998.

Rohe, M. Rohe, Netzverträge, Tübingen, 1998.

Saarnilehto, Ari Saarnilehto, Välityslausekkeen kohtuuttomuus. *Oikeustieto* 1997:2.

Saintier, S. Saintier, Commercial Agency Law a comparative analysis, Ashgate, 2002.

Sánchez Calero (2000), F. Sánchez Calero, Instituciones de Derecho mercantil, vol. II, 23 ed., Madrid, 2000.

Saracini & *Toffoletto*, E. Saracini, F. Toffoletto, Il contratto d'agenzia, Milano: Giuffre, 1996.

Schulze, R. Schulze (Hrsg.), Franchising im Europäischen Privatrecht, Baden-Baden, Nomos Verlagsgesellschaft, 2001.

Sinde Monteiro (1989), J. F. Sinde Monteiro, Responsabilidade por conselhos, recomendações ou informações, Coimbra, 1989.

Sisula-Tulokas, Ulkomaankauppaoikeus, Lena Sisula-Tulokas (ed.), Helsinki: Finnish Lawyers Publishing,1998.

Smit (1993), F. M. Smit, Opzegging van distributie-overeenkomsten, tekortschietend jurisprudentierecht, Advocatenblad 1993, 369-372.

Smit (1996), F. M. Smit, De agentuurovereenkomst tussen handelsagent en principaal, tweede druk, Zwolle: W. E. J. Tjeenk Willink, 1996.

Söderlund, H. Söderlund, Agenträtt: Kommentar till lagen om handelsagentur, Norstedts juridik AB, 1994.

Sohlberg, *Stig Sohlberg*, Franchisingjuridik, 1991.

Soria, J. V. Soria, El agente de Comercio, Valencia : Edit. Tirant lo Blanc, 1996.

Soufleros, H. Soufleros, The franchise agreement in the light of the Greek and European law of competition, Athina, 1989.

Stathopoulos, M. Stathopoulos, Contract law in Hellas, Athina, 1995.

Takki (1982), Tapio Takki, Itsenäistä kauppaedustajaa koskevan edustussopimuksen purkaminen "tärkeästä syystä", Oikeustiede – jurisprudentia XV 1982.

Takki (1990), Tapio Takki, Oikeuttaako kauppa-agentin huono myyntitulos päämiehen purkamaan sopimuksen "tärkeästä syystä"? *Defensor legis* 1990, 51-57.

Taxell (1972), Lars Erik Taxell, Avtal och rättskydd. Åbo 1972.

Taxell (1977), Lars Erik Taxell, Om lojalitet i avtalsförhållanden. *Defensor legis* 1977, 148-155.

Taxell (1987), Lars Erik Taxell, Avtalsrättens normer. Åbo 1987.

Teleranta, K. A. Telaranta, Kauppaedustaja, myyntimies ja yksinmyyjä, Helsinki: Finnish Lawyers Publishing, 1993.

Tellis, N. Tellis, The compensation for goodwill in commercial agency, Athina, 1997.

Tolonen, Hannu Tolonen, Siviilioikeuden yleiset periaatteet, in: Varallisuusoikeuden kantavat periaatteet, Ari Saarilehto (ed.), Helsinki: WSOY, 2000.

Le Tourneau, Philippe le Tourneau, Les contracts de franchisage. Franchisage de distribution, de comptoir, industriel, artisanal, financier. Franchisage de service. Franchisage international. Réseaux de franchisage, Paris: Litec, 2003.

Treitel, G. Treitel, The Law of Contract, Eleventh Edition, London: Sweet & Maxwell, 2003.

Tzouganatos, D. Tzouganatos, The agreements of exclusive and selective distribution and the law of competition, Athina, 2001.

Ulmer, P. Ulmer, Der Vertragshändler, München, 1969.

Voulgaris, I. Voulgaris, The franchise agreements in the international commercial and legal practice, Nomiko Vima, 1998, 897.

Uría, R. Uría, Derecho Mercantil, 21 ed. Madrid, 1994.

Vranken, J. B. M. Vranken, Mededelings-, informatie- en onderzoeksplichten in het verbintenissenrecht, W. E. J. Tjeenk Willink, Zwolle, 1989.

Ethical Rules of the Finnish Franchising Association (http://www.franchising.fi/esittely/saan not.htm).

Franchising Suomessa 2002 (Franchising in Finland). The Finnish Association for Franchising. Lohja 2002.

The ICC Model International Franchising Contract, ICC International Contracts Series, Paris, ICC Publishing S. A., 2000.

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