



## Agency Agreements in Europe

**O**ne of the most common concerns for importers or manufacturers involved in international trade is to find an orderly method for bringing their goods to the ultimate consumer without the cost of setting an expensive supply chain. The answer in many cases is to use a distributor or an agent.

Although the terms “distributor” and “agent” are often used interchangeably, they are treated quite differently in law. An agent acts on behalf of his principal. He can enter into a legally binding arrangement, such as a contract, on his principal’s behalf, but he does not

become liable under it himself. A distributor, by contrast, is an independent trader. He is given the right, often exclusively, to sell products by a manufacturer on a certain basis, for example in a particular territory. He purchases the goods himself and sells them on at his own risk, making a profit on the difference between his buying price and his selling price.



Given the widespread use of agents in international trade, the EU issued a Council Directive to govern self-employed commercial agents. It sets out the rights and duties

of agents and their principals, subject to the overall principle that both parties must act in good faith towards each other. Although the Directive’s main purpose was to achieve harmonisation, it gave the member states the power to interpret certain parts of the Directive in different ways.

In this issue of the Proteus newsletter, we look at key differences in agency

arrangements in European countries. In particular we look at the different remedies available to an agent on the termination of the agreement, both where the contract is for a fixed period and where it is not, whether the parties can contract out of any statutory regulations

and whether the parties can choose the governing law and jurisdiction that will apply to their contract.

Country	Implements Commercial Agents Directive?	Abbreviated Definition	Regime Extended to Distributors?
Belgium	Yes	<p>An Agent is one who acts on behalf of a person (the "Principal") who has given the Agent authority to act on his behalf in relation to dealings with a third party.</p> <p>Agency covers various different business relationships. For example: a sales agency agreement enables an agent to make contracts with third parties on behalf of the Principal and bind the Principal so that there is a contract between the Principal and the third party (but none between the Agent and the third party). Other types of agency agreement include marketing or introducing agency whereby the Agent finds customers and introduces them to the Principal who then enters into contracts with those customers.</p>	No. However, in the case of an exclusive distribution contract of an indefinite period there is a special Belgian law which protects the distributor from breach of contract by the principal. As opposed to the agency regime, there is no limit on the amount of damages the Courts may award.
France	Yes	A mandatory contract where payments are paid by reference to commission on sales	No
Germany	Yes	<p>An Agent is one who acts on behalf of a Principal who has given the agent authority to act on his behalf.</p> <p>If the Agent makes it clear to a third party that he has authority to conclude a contract on his behalf - and in doing so he acts within the scope of that authority - the Principal is bound by the act of his Agent. However, if the third party does not know that the Agent acts on behalf of the Principal, the agent becomes liable himself/herself. It has to be obvious to the third party that the agent acts for the Principal, otherwise the agent becomes the contractor. The authority may be limited.</p>	No
Italy	Yes	<p>An Agent is one who acts on behalf of a person (the "Principal") who has given the Agent authority to act on his behalf in relation to dealings with a third party (Article 1742 of the Civil Code).</p> <p>An Agent is not authorised to enter into a sales contract on behalf of the Principal, unless he is specifically authorised to do so ("agente con rappresentanza").</p> <p>In general, all contracts arranged by the Agent have to be submitted to and approved by the Principal.</p>	No
Netherlands	Yes	The Agency Agreement is an agreement for a definite or an indefinite period of time, where one party, the Principal, assigns to another party, the Agent, the right to act for a remuneration as an intermediary to conclude agreements and to conclude these agreements possibly in the name of and at the expense of the Principal, without a relationship of subordination.	No
Norway	Yes	<p>A commercial agent is one who in the course of a business, and pursuant to a contract of a fixed or indefinite term with the Principal, has agreed to sell or purchase goods on the Principal's behalf either by obtaining orders for the Principal or by entering into agreements in the Principal's name.</p> <p>A commercial traveller is an employee who visits third parties and sells or purchases goods by obtaining orders for the employer or by entering into agreements in the employer's name. Although an employee, he has extra rights as a "commercial traveller".</p>	No
Spain	Yes	The Agency Agreement is an agreement for a definite or an indefinite period, where one party, the Principal, grants to another party, the Agent, the right, for remuneration as an intermediary, to conclude contracts on behalf of (and possibly in the name of) the Principal, but without being an employee of the Principal.	Although there is no general rule to this effect, the courts will sometimes apply agency rules when a distribution agreement is terminated, based upon case law.
Switzerland	No	<p>According to art. 418a of the Swiss Code of Obligations ("CO") an agent is one who agrees to act on a continuous basis as an intermediary on behalf of one or several Principals in business transactions or to conclude such transactions in their name and for their account without being in an employment relationship with such Principals.</p> <p>The legal definition stresses two elements that are typical of an agency: independence of the agent and the continuous nature of the business relationship.</p>	No
United Kingdom	Yes	The definition is broadly the same as Belgium. The agency may be oral or written: the regulations apply equally. The regulations apply to agencies for supply of goods, not services.	No. The Courts will look at the substance of the relationship, not necessarily the label that the parties apply.

Termination: Fixed Term	Termination: Indefinite Term	Compensation on Termination	Contract Out of Regime?	Right to Choose Law/Jurisdiction?
The contract expires automatically at the end of the term unless the parties decide to continue it, in which case it becomes a contract of an indefinite term.	The contract can be terminated immediately for serious breach of contract.  Otherwise the contract is terminable by notice as stated in the contract, subject to a statutory minimum.	In the case of a contract of indefinite term, 1 month for each year that the contract has been in existence up to a maximum of 6 months, with the possibility of restricting the notice period to 3 months for the agent in the contract.	No	Yes, but because it concerns compulsory law the Courts can declare themselves qualified to judge these matters if a Belgian agent starts legal proceedings before a Belgian Court.
The contract expires automatically at the end of the term unless the parties decide to continue it, in which case it becomes a contract of an indefinite term.	The contract is terminated by notice as stated in the contract, subject to a statutory minimum.	On average, two years commission.  Exceptionally compensation can be for three years commission and sometimes it is for less than two years commission.	No	Yes
If a fixed term contract expires, it will end and no compensation will be due. If the contract is allowed to continue it will become an indefinite term.	Terminable by notice according to the contract subject to the minimum period stipulated by law.	Depends on terms of agency agreement. However, pursuant to s.89b of the German Commercial Code the Principal is obliged to pay compensation to the Agent in certain circumstances, for example (i) if the Agent found a customer and the Principal gains a continuing commercial advantage from that customer; following the termination of the contract or (ii) if the Agent would lose his right to commission already earned as a result of the termination.	No	Yes
The contract expires automatically at the end of the term unless the parties decide to continue it, in which case it becomes a contract of an indefinite term.	Yes, as a general rule.	Yes, in line with Directive 86/653 as that is implemented by Italian law	No	Yes
The contract expires automatically at the end of the term unless the parties decide to continue it, in which case it becomes a contract of an indefinite term.	Yes, notice period as agreed upon in the contract.  If no notice period is stipulated in the contract, the notice period 4 months increased by one month, if the Agreement has been in existence for 3 years and by two months if the contract has been in existence for 6 years.	Yes, regardless of whether the term is fixed or indefinite.  The Agent has to claim compensation within one year following the termination of the Agreement.  No compensation is due under the conditions mentioned in Article 18 of the Directive.	No	Yes
The contract expires automatically at the end of the term unless the parties decide to continue it, in which case it becomes a contract of an indefinite term.  The parties can agree that any right to compensation is excluded if the contract expires at the end of the fixed term.	Notice period as agreed upon in the contract, subject to a minimum period of one month.  Compensation rights cannot be excluded.	Compensation is due if the Agent has brought the Principal new customers or significantly increased the volume of business with existing customers and the Principal continues to derive substantial benefits from the business with such customers.  The agent can lose the right to compensation on termination according to certain provisions in the statute.	The parties can contract out for a fixed term contract.	Yes, but an agreement regarding the use of a different country's law cannot deprive the agent of his rights according to the Norwegian law.
The contract expires automatically at the end of the term unless the parties decide to continue it, in which case it becomes a contract of an indefinite term.	Notice period as agreed upon in the contract, subject to a minimum period of one month for each year of duration of the contract (six months maximum).	Compensation is due if the Agent has brought the Principal new customers or significantly increased the volume of business with existing customers and the Principal continues to derive substantial benefits from the business with such customers with a maximum of the average of the commissions received by the Agent during the five years preceding the termination. If the contract is of an indefinite term, the Agent may also be entitled to receive additional compensation for investment expenses incurred at the request of the Principal to perform the contract. The right to compensation can be lost by the Agent in certain circumstances, as set out in the statute.	No	The applicable jurisdiction is always the domicile of the Agent.
According to Swiss law (art. 418 p to art. 418 s CO) an agency agreement may be concluded for a definite period of time or for an indefinite period of time. An agency agreement concluded for a definite period of time is terminated without further notice upon the expiration of the term. Otherwise, notice is required	The notice period is one month for the first year of contract (an agreement for a shorter notice period is possible but needs to be in writing). If the agency relationship has lasted for more than one year, the notice period is two months.  The parties may agree however upon a longer notice period or upon a different termination date.	Upon termination of an agency agreement, and for provided that the agent himself is not responsible of such termination, the Agent will be entitled to compensation calculated by reference to the Principal's client base (art. 418 u CO). An agreement to the contrary is invalid. Compensation is granted on the basis of substantial benefit to the Principal subject to a cap of the net earnings of the Agent for one year based on average commissions over the last five years.	Possible, but only for limited provisions	An agency agreement involving a Swiss Agent or a Swiss Principal may contain provisions as to the choice of a foreign jurisdiction and of a foreign law. The choice of law and the choice of jurisdiction must be express or result with certainty from the provisions of the agreement.
The contract expires automatically at the end of the term unless the parties decide to continue it, in which case it becomes a contract of an indefinite term.	Terminable immediately for serious breach. Otherwise by contractual notice, subject to minimum of one month (year 1), two months (year 2) and 3 months (thereafter).	Principle is to require principal to buy, out agent's interest in the goodwill of the principals business. Unlike other EEA states, the parties may agree basis. May be either "compensation" (which applies in default, and compensates for damage for loss of agency, no limit) or "indemnity" (equitable compensation for new/significantly increased customers, limited to one year's commission).	No	The regulations will apply if the agent acts in the UK unless the parties choose the law of another EEA country



Proteus is an international network of law firms with members in nine European states. In addition, the network has close working relationships with law firms in many other major economies and with most other European countries.

If you have questions concerning the subject matter of this newsletter or if you would like further information about our network, please contact our secretary Christiaan Bossers at BDB Law in Belgium or contact any of our members direct. Contact details of each of the members are set out below.

#### Netherlands

##### ADVOCATENKANTOOR WIELAND

Arsenaalstraat 3, 4531 CZ TERNEUZEN  
Tel: (31) 115 619565 Fax: (31) 115 694612  
Email: advowiel@tref.nl  
Contact: Frank Wieland

#### Norway

##### STORENG, BECK & DUE LUND ANS

Advokatene, Bydoy, PO Box 36  
0211 Oslo  
Tel: (47) 22 54 52 50 Fax: (47) 22 54 52 51  
Email: tom@sbdll.no Website: www.sbdll.no  
Contact: Nils Storeng

#### Switzerland

##### SIMONETTI CALVARESE NAEF

Via Nassa 21, 6901 Lugano, Switzerland  
Tel: (41) 91-92 36 802 Fax: (41) 91-92 32 655  
E-mail: simonetti@csnlaw.com Website: www.csnlaw.com  
Contact: Claudio Simonetti

#### Belgium

##### BDB & Partners

BOSSERS, DIERCKXSENS & BOEYNAEMS  
Advocatenassociatie, B-2000 ANTWERPEN, Amerikalei 191  
Tel: (32) 323 887 88 Fax: (32) 323 892 93  
Email: info@bdblaw.be Website: bdblaw.be  
Contact: Christiaan Bossers

#### France

##### MAURO, CHAMOZZI & PIERRE

Avocats à la Cour  
5 Rue Lincoln - 75008 Paris  
Tel: (33) 01 45 63 28 20 Fax: (33) 01 45 63 28 12  
Email: mauro.avocats@wanadoo.fr  
Contact: Jean Frédéric Mauro

#### Germany

##### ADVOS

Rechtsanwälte, Temme v. Schoeler Kleyensteuber,  
Zoche Posner  
Düsseldorf München Berlin Frankfurt a.M.  
Am Bonnhof 6, 407474 Düsseldorf  
Tel: (49) 211 51 60 560 Fax: (49) 211 66 69 97  
Email: duesseldorf@advos.info Website: www.advos.info  
Contact: Dr. Jürgen Temme or Martin Löffler

#### Germany

##### HORN & VISÉ

Rechtsanwälte, Kaiserswerther Straße 95  
40476 Düsseldorf  
Tel: (49) 211 4912826 Fax: (49) 211 4912880  
Email: info@horn-vise.de Website: www.horn-vise.de  
Contact: Joachim Visé

#### Italy

##### ROSSI & QUAGLIUOLO

Studio Legale, Via Quadronno 4  
20122 Milano, Italy  
Tel: (39) 02 58308 221 Fax: (39) 02 58308 800  
Email: robros@rossiquagliuolo.it Website: www.rossiquagliuolo.it  
Contact: Roberto Rossi

#### Netherlands

##### RISCHEN & NIJHUIS

Haringvliet 86,  
3011 TG ROTTERDAM  
Tel: (31) 10 433 2777 Fax: (31) 10 404 7959  
Email: rischen@rischen-nijhuis.nl Website: www.rischen-nijhuis.nl  
Contact: Roderich Rischen

#### Spain

##### BUFETE CARRERAS LLANSANA

Balmes, 49, 7º,  
08007 Barcelona  
Tel: (34) 93 454 8000 Fax: (34) 93 454 1186  
Email: luis-carreras@bufete-carreras.es  
Website: www.bufete-carreras.es Contact: Luis Carreras

#### United Kingdom

##### CAMPBELL HOOPER SOLICITORS

35 Old Queen Street, London, SW 1H 9JD, United Kingdom  
Tel. 0044 20 7222 9070 Fax 0044 870 191 6722  
Email: martinwright@campbellhooper.com  
Website: www.campbellhooper.com  
Contact: Martin Wright

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