



DROIT DES AFFAIRES
DROIT INTERNATIONAL
DROIT SOCIAL

Mont-Saint-Aignan, 9 February 2016

EUROJURIS INTERNATIONAL 2015 – 32002285

INTERNATIONAL LITIGATION GROUP:

Report on Munich meeting (30 Oct 2015)

Topic: International distribution agreements

Attendees:

Thierry CLERC (IFL, Paris - France)
Johannes BRAND (EINEM – Frankfurt, Germany)
Benedykt FIUTOWSKI (BFP – Krakow, Poland)
Alejandro ESPADA (Barcelona, Spain)
Pietro BEMBO (SL BEMBO - Milan, Italy)
Dominique WALRAVENS (RACINE - Brussels, Belgium)
Timo MÄENPÄÄ (BACKSTROM – Helsinki, Finland)
Pier Paolo PERACCHINO (SL FACCIO & POLLERI- Turin, Italy)
Pierantonio PAULON (Paese, Italy)
Vahit KAYA (KAYA & PARTNERS - Istanbul, Turkey)
Francis WALLACE (RIX & KAY – Brighton, UK)
Johannes KLAGES (SAGAWE & KLAGES – Hamburg, Germany)
Paul HUANG (ALLBRIGHT LAW – Shanghai, China)
Martijn MAATHUIS (KINGFISHER – Amsterdam, The Netherlands)
Aline DIEZ (GLOCK LIPHART PROBST & PARTNER – Munich, Germany)
Fabienne LEGRAND (LEGRAND & VENNOTEN - Leuven, Belgium)
Frits BIENFAIT (VAN DAM & KRUIDENIER - Rotterdam, The Netherlands)

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Présent dans 50 pays

▪ A number of **country reports on international distribution contracts** were made, namely:

- For Australia: Frank DI GIANTOMASSO
- For Belgium : Dominique WALRAVENS
- For Finland: Timo MÄENPÄÄ
- For India: Dinesh SINGH
- For France: Thierry CLERC
- For Germany: Johannes BRAND
- For Italy: Pietro BEMBO
- For Poland: Benedykt FIUTOWSKI
- For the UK : Francis WALLACE

▪ **Presentation** by Rechtsanwalt Thomas BAIZ (Cologne, Germany) on contract dealers:

He reminded us of international legislation such as:

- For sale agreements: CISG
- For distribution agreements: ROME I

A clear and valid choice of law clause must be included in the contract.

There are 3 main groups of sales agents:

- Commercial agents
- Commissioned agents
- Contract dealers.

In Germany, distribution agreements are not governed by any specific regulation but can be classified as agency contracts in return for payment if the following conditions are completed.

The main condition for the claim is the dealer's integration into the supplier's distribution system, comparable to the commercial agent.

Such integration is indicated by the following:

- Obligation to transfer the customer portfolio
- Obligation to stock contractual goods
- Obligation to hold products for demonstration purposes
- Obligation to report on a regular basis
- Obligation to undertake advertising measures.

A number of clauses in distribution agreements are classified as "unreasonable discrimination" such as: unilateral right to amend contractual clauses, warranty exemption, limitation of buying-back the contractual goods, price of buy-back goods reduced down by 25%...

In case of termination, the notice period will depend on the duration of the contract and the dealer's investment.

For car dealers, for instance, there is a 2-year notice period.

Necessity to have a warning of termination.

Necessity for the distributor to declare the case to the court within 2 months of the warning.

Obligation for the principal to buy stocks upon termination.

At the EU level, calculation of the compensation claim (EU 26 March 2009 C348/07): the supplier gross profit is to be used as a basis to calculate the compensation claim.

This rule was recently applied in Germany in 2015 by the Court in Düsseldorf.

Then the speaker developed some aspects such as:

- Consequences of German antitrust law on dealer's agreement
- "Black clauses" (such as price fixing, limitation of the sale's area...)
- "Grey clauses" (such as non-competition for more than 5 years...)

As a conclusion, the speaker addressed the influence of EU law, which bans such clauses as:

- o Have a website in 1 language
- o Redirect sales from agent to supplier
- o Limit the amount of online sales
- o ...

▪ **Participants' questions and explanations**

Benedykt FIUTOWSKI (Poland) explained the "social existence" concept.

Dominique WALRAVENS (Belgium) said a few words on Belgian legislation, which protects the distributor's interests very much.

▪ **Report on ERA by Johannes BRAND**

He, Pierantonio PAULON and Thierry CLERC participated in a seminar in Trier last October 2015.

Topic: *How to handle international commercial cases?*

Duration: 1.5 day

Cost: approx.. €300.00 (+ accommodation)

It would make sense that some, if not all, members could attend the next ERA seminars in Trier.

Speakers and attendees are really of a high level.

▪ **Suggested Agenda for the Practice Group Days in Marseilles 2016**

- General Terms and Conditions of Sale or Purchase at international level

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