
Recent developments in Spanish distribution regulation

After many years of uncertainty regarding the legal regulations for distribution contracts, it seems that the Spanish Parliament has finally decided to approve specific regulations for distribution agreements.

As in other European Union (EU) countries, the Spanish legal system has no specific law governing distribution contracts. Spanish courts apply the Commercial Agency Act (implementation of Council Directive 86/653/EEC of 18 December 1986 on the Coordination of the Laws of the Member States relating to self-employed commercial agents) to distribution agreements by analogy – subject to the fulfilment of certain requirements – in issues such as goodwill compensation and damages for early termination. The evolution of analogue applications and interpretations of this regulation by the Spanish courts has been the source of a certain degree of legal uncertainty and has caused some controversy among stakeholders.

The forthcoming regulation stems from a controversial legislative initiative that has sparked major debate in the Spanish Parliament during the last few months. On 15 February 2011, a radical reform of the regulatory framework was suddenly approved, with regard to the legal framework of the distribution agreements for automobiles and commercial vehicles. The text of this amendment guaranteed a mandatory application of the legal regime contained in the Commercial Agency Act to car distribution agreements. The new regulations set the distributor's right to return products that had not been purchased within a period of 60 days from the date of purchase by the distributor. This controversial reform also recognised a positive right to goodwill compensation in the event of termination of contract by expiry of its term or any other cause; the distributor's right to compensation amounted to – at a minimum – the supplier's average yearly sales amount. The new regulation also stated the distributor's right



WHEN IS A COMMODITY SALES CONTRACT A MARITIME CONTRACT?

to compensation for investments undertaken in the supplier's interest and that could not be amortised prior to the date of termination of the contract. The amendment also established compensation for any individuals in the workforce that may have been laid off owing to the termination of a distribution contract. In light of the legal and economic effects of the new rules applicable to car distribution agreements, the introduction of this reform was a cause for major concern. Car manufacturers came out strongly against the new regulation, arguing that it severely harmed their economic interests.

Given the huge controversy between car manufacturers and dealers, the Spanish Government was forced to act as a mediator between the stakeholders, in order to attempt to reach a negotiated solution for this conflict of interests. As a result, car manufacturers

and dealers and political parties reached an agreement and the Spanish Parliament decided to cancel the new regulations, which were directed only at the automotive industry and had passed without the necessary consensus. In an aim to facilitate a positive outcome, the Government also committed to submit a preliminary draft of a specific act on commercial distribution to the Spanish Parliament within six months. The forthcoming legal framework on distribution contracts will attempt to establish a balanced relationship between distributors and manufacturers and – for the first time in Spain – will comprehensively regulate all contracts for commercial distribution. We eagerly await this legal project and hope it will end, once and for all, the legal uncertainty surrounding commercial distribution in Spain.