Distribution Law Center
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Delchev & Partners law firm

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Q&A on Distribution Agreements

Part 1: Legislative framework

Q1. Please specify the legislative framework generally applicable to the conclusion and execution of distribution agreements (a)? Please include a link to the official publication of the applicable rules (e.g., relevant link to the Official Gazette) (b) and, if available, to the English translation of the legislative framework (c).

a. Legislative framework:

The Bulgarian Protection of Competition Act;

The Bulgarian Contracts and Obligations Act;

The Bulgarian Commercial Act.

b. Link(s) to official publication:

Not available. Bulgaria does not have an authoritative digital register for official publications.

c. Link(s) to English translation:

Not available.

Q2. Other than for agency agreements pursuant to Directive 86/653 (EEC) on the coordination of the laws of the Member States relating to self-employed commercial agents, are there specific rules depending on the distribution format (e.g. franchising, exclusive distribution)?

No.

Q3. Other than general contract law and competition law, are there other rules which may generally restrict the parties when drafting and concluding distribution agreements (e.g., rules in relation to unfair contract terms in B2B contracts, specific requirements in the context of a prohibition of abuse of economic dependence)?

Yes.

If yes, which general rules apply (a)? Where available, please also include a link to the official publication of the applicable rules (b) and to the English translation of the regulatory framework (c).

a. General rules:

On 26 February 2021 the Bulgarian legislator introduced amendments to the Bulgarian Protection of Competition Act thus transposing Directive (EU) 2019/633 of the European Parliament and the Council of 17 April 2019 on the unfair trading practices in the business-to-business relationships in the agricultural and food supply chain. Those

amendments are provided for in Chapter Seven “?” Bulgarian Protection of Competition Act and enter into force as of 1 November 2021.

By introducing the above mentioned amendments the Bulgarian legislator repealed Chapter Seven “?” Bulgarian Protection of Competition Act which contained rules prohibiting the abuse of a superior bargaining position.

b. Link(s) to official publication:

The Bulgarian Protection of Competition Act is accessible via this link.

c. Link(s) to English translation:

Not available.

Part 2: Pre-contractual phase

Q4. Are there mandatory provisions in relation to the disclosure of pre-contractual information prior to concluding and/or executing distribution agreements?

Yes.

If yes, which mandatory provisions apply (a) and which information must be disclosed (b)? Where available, please also include a link to the official publication of the applicable rules (c) and, if available, to the English translation of the regulatory framework (d).

a. Mandatory provisions:

Art. 12 Bulgarian Obligations and Contracts Act.

b. Information to be disclosed:

The parties have a general obligation to act in good faith in the conduct of negotiations and the conclusion of an agreement. Bulgarian case law maintains that the disclosure or declaration of false or inaccurate information or the non-disclosure of essential information in the pre-contractual phase may be considered a breach of the general obligation to act in good faith in the conduct of negotiations.

c. Link(s) to official publication:

Not available.

d. Link(s) to English translation:

Not available.

Q5. Is there a standstill obligation linked to the requirements imposed for the pre-contractual phase?

No.

Q6. Does the relevant regulatory framework impose sanctions if the pre-contractual obligations are not (fully) respected?

Yes.

If yes, which sanctions apply (e.g., nullity of contract, penalty payment)?

Art. 12 Bulgarian Obligations and Contracts Act contains a very general rule that the party which fails to act in good faith shall owe damages (if any). Please see, Q8.

Q7. Can a party be held liable if it terminates the pre-contractual negotiations?

Yes.

If yes, on what grounds (a); under what conditions (b); and what consequences are generally linked to such liability (c)?

a. Grounds for pre-contractual liability:

Art. 12 Bulgarian Obligations and Contracts Act.

b. Conditions for pre-contractual liability:

The parties have a general obligation to act in good faith in the conduct of negotiations and the conclusion of an agreement.

c. Consequences of pre-contractual liability:

The law contains a very general rule that the party which fails to act in good faith shall owe damages.

Bulgarian case law and the predominant legal doctrine maintain that the damaged party may seek damages only related to its negative interest, i.e. the losses incurred (which is the actual decrease in the damaged party's property), but not damages related to its positive interest, i.e. the loss of profit (which in contrast is the expected increase in the damaged party's property that did not ensue).

Q8. Are there other relevant rules and/or restrictions that apply during pre-contractual negotiations between supplier and distributor?

No.

Part 3: Contractual phase

A. Form of distribution agreements

Q9. Must a distribution agreement be executed in writing to be valid and enforceable?

No, never.

Q10. Are there any (other) requirements as to the form of the distribution agreement for it to be valid and enforceable?

No.

B. Content of distribution agreements

Q11. Other than restrictions imposed by EU competition law (including Regulation (EU) 330/2010), do specific rules and/or restrictions apply in distribution agreements with respect to

- the territory in which or the customers to whom the goods/services will be sold;
- an exclusivity granted to the distributor;
- (exclusive) sourcing/purchasing obligations;
- resale prices;
- non-compete clauses

No specific rules apply.

Q12. Do specific rules and/or restrictions apply in distribution agreements with respect to

- obligations of the supplier vis-à-vis the distributor, including in relation to the remuneration of the distributor;
- obligations of the distributor vis-à-vis the supplier or vice versa;
- a non-solicitation clause during and/or after the term of the distribution agreement;
- minimum sales quota imposed on the distributor;
- specific sector rules?

No specific rules apply.

C. Term and termination

1. Term

Q13. Is an oral or written distribution agreement that does not specify the term always considered to be an agreement of indefinite duration?

Yes.

Q14. Does a distribution agreement of definite duration that is continued after its expiry turn into a distribution agreement of indefinite duration?

No.

2. Termination

Termination for convenience (irrespective of any default or exceptional circumstance) of distribution agreements of definite duration

Q15. Can a distribution agreement of definite duration be terminated for convenience?

Yes.

If yes, is an express provision allowing for termination for convenience necessary?

Yes.

Q16. Must a reasonable notice period be observed in order for the termination to be valid even if the distribution agreement provides for the immediate termination for convenience?

No.

Q17. What are the consequences for the terminating party if it does not comply with prescribed (statutory, contractual, case law) rules for termination (e.g. in relation to the notice period)? Does the termination continue to have effect (a)? Will damages have to be paid and, if yes, how are those damages calculated (b)?

a. Will the termination continue to have effect?

If there is a validly expressed and received will for termination but the prescribed period is not complied with (eg because no or shorter notice period has been given by the terminating party) it is likely that the court will hold that the termination will take effect as of the elapse of the prescribed period. Please, see also answers to Q21.a. and c. which are also relevant here.

b. Will damages have to be paid, and, if yes, how are those damages calculated?

The terminated party may be entitled to damages by the wrongfully terminating party for any loss suffered by the terminated party (losses incurred and loss of profit) which arises as a direct and immediate consequence and could have been foreseen by the terminated party. If the wrongfully terminating party acted in bad faith the damages include all direct and immediate damages.

Termination for convenience (irrespective of any default or exceptional circumstance) of distribution agreements of indefinite duration

Q18. Can a distribution agreement of indefinite duration be terminated for convenience even if the agreement does not provide for termination for convenience?

Yes.

If yes, must a reasonable notice period be observed?

Yes.

If a reasonable notice period must be observed, how is this reasonable notice period calculated (e.g. 1 month per year) (a)? Should a minimum notice period be observed (b), is there a maximum notice period (c)?

a. How is this reasonable notice period calculated (e.g. 1 month per year)?

There are no general contractual statutory rules on termination for convenience of agreements with indefinite duration which do not contain an express clause in that respect except for certain special cases for which there is no indication (eg case law or legal doctrine) to apply across the board (eg leases). However, it may be argued that there may not be agreements that last forever, including in the absence of a breach or other cause for termination which should therefore be subject to termination with a reasonable notice. However, we are not aware of any established case law on this matter. What would be a reasonable notice period should be assessed on a case by case basis, including if such termination would be justified as at the moment it is made, the balance of parties' interests, etc.

b. Should a minimum notice period be observed? If yes, how long is this minimum notice period and are the parties allowed to contractually deviate from this minimum notice period

See, Q18.a.

c. Is there a maximum notice period? If yes, how long is this maximum notice period and are the parties allowed to contractually deviate from this maximum notice period?

See, Q18.a.

Q19. Is a contractual notice period always legally valid and enforceable?

No.

If not, which rules of mandatory law can have an impact on this?

Based on general contractual statutory rules it could be argued that a contractual notice period would be invalid if it contradicts imperative statutory provisions and/or good morals. We are not aware of any established case law on this matter.

Q20. What are the consequences for the terminating party if it does not comply with prescribed (statutory, contractual, case law) rules for termination (e.g. in relation to the notice period)? Does the termination continue to have effect (a)? Will damages have to be paid and, if yes, how are those damages calculated (b)?

a. Will the termination continue to have effect?

If there is a validly expressed and received will for termination but the prescribed period is not complied with (eg because no or shorter notice period has been given by the terminating party) it is likely that the court will hold that the termination will take effect as of the elapse of the prescribed period. Please, see also answers to Q21.a. and c. which are also relevant here.

b. Will damages have to be paid, and, if yes, how are those damages calculated?

The terminated party may be entitled to damages by the wrongfully terminating party for the loss suffered by the terminated party (losses incurred and loss of profit) which loss arises as a direct and immediate consequence and could have been foreseen by the terminated party. If the wrongfully terminating party acted in bad faith the damages include all direct and immediate damages.

Q21. Must the terminating party comply with certain formalities?

Only in certain instances.

If yes or only in certain instances, when is a written notice required (a), must the notice contain a motivation in order for the termination to valid (b) and what are the consequences if any of the formalities are not observed (c)?

a. Is a written notice required? If yes, is a registered letter (or similar) required?

The will for termination must be expressed in a form prescribed by law or agreed by the parties otherwise it would be invalid. However, pursuant to the Commercial Act a party to a commercial transaction may not invoke such invalidity if it transpires from its behaviour that it has not objected to such invalidity.

A registered letter would be regarded as a written notice.

b. Must the notice contain a motivation in order for the termination to valid?

No motivation is required. However, a will of termination must be expressed or implied in the notice.

c. What are the consequences if any of the formalities are not observed?

Depending on the particular formality the termination may have effect even though the formality is not complied with (eg lack of a form in the absence of objection against it); or will have effect as of fulfilment of such a formality (eg no or shorter notice period is given); or will not have effect (eg in case of objection against the lack of form; or if no will for termination may be derived from the notice).

Q22. Can the parties stipulate the formalities in the distribution agreement?

Yes.

If yes, what are the consequences if those formalities are not observed?

Depending on the particular formality the termination may have effect even though the formality is not complied with (eg lack of a form in the absence of objection against it); or will have effect as of fulfilment of such a formality (eg no or shorter notice period is given); or will not have effect (eg in case of objection against the lack of form; or if no will for termination may be derived from the notice).

Q23. Is the terminated party entitled to damages or another type of compensation even if the correct notice period has been observed?

No.

Immediate extrajudicial termination on account of serious breach or exceptional circumstances

Q24. Is immediate extrajudicial termination possible even if the distribution agreement does not provide for early termination?

Yes.

If yes, on what grounds (a)? Can parties exclude these grounds for immediate extrajudicial termination in their distribution agreement (b)?

a. On what grounds?

Under general contractual statutory provisions, the creditor may terminate (rescind) the agreement where the performance by the debtor has become partly or entirely impossible due to the debtor's fault or due to objective reasons (the latter case may not be excluded by contract - see, Q24.b.); if due to the debtor's delay the performance has become useless; or if the obligation was due to be performed at a fixed time and it was not.

b. Can parties exclude these grounds for immediate extrajudicial termination in their distribution agreement?

Yes.

Q25. Will an (extrajudicial) termination continue to have effect if the court rules that the agreement was wrongfully terminated on account of serious breach and/or exceptional circumstances?

No.

If not or only in certain instances, what are the consequences of the termination not being upheld?

If a court would consider the extrajudicial termination of the distribution to be unlawful or abusive, the termination of the agreement will be without effect. In such case, the distribution agreement shall continue to remain in full force and effect and the sanctions for breach of contract and contractual liability shall apply (see, Q26.).

Q26. Does the terminated party have a right to compensation if it appears that the agreement was wrongfully terminated or dissolved on account of serious breach and/or exceptional circumstances?

Yes.

If yes, is this right based on statute or case law (a) and how is that compensation calculated and will the terminated party have a claim for any additional compensation in those circumstances (for example, goodwill) (b)?

a. Is this right based on statute or case law and what this right entail?

The right to compensation is based on statute (the Obligations and Contracts Act), which lists the sanctions available in case of breach of contract by the other party. The sanctions are as follows:

- the right to performance of the obligation together with a compensation for delayed performance or the right to compensation for non-performance;
- the right to rescind the agreement;
- the right to suspend the performance of its own obligation.

b. How is that compensation calculated and will the terminated party have a claim for any additional compensation in those circumstances (for example, goodwill)?

The terminated party may be entitled to damages by the wrongfully terminating party for any loss suffered by the terminated party (losses incurred and loss of profit) which arises as a direct and immediate consequence and could have been foreseen by the terminated party. If the wrongfully terminating party acted in bad faith the damages include all direct and immediate damages.

Q27. If a party believes that the distribution agreement has been wrongfully terminated or dissolved, can it apply to the judge in interim relief proceedings to have the effects of the termination suspended?

No.

Part 4: Post-contractual phase

Q28. Is the supplier required to repurchase the stock that is still at the distributor's disposal when the distribution agreement ends?

No.

Q29. Are there other post-contractual obligations that generally apply to either of the parties in the context of the termination of the distribution agreement?

No.

Part 5: Dispute resolution

Q30. Do specific rules and/or restrictions apply as regards the choice of forum and/or jurisdiction?

No.

Q31. Can the parties opt for arbitration?

Yes.

If yes, are there any rules and/or restrictions as regards the enforceability of arbitration clauses in distribution agreements?

No.

Q32. What is the statute of limitations applicable to claims regarding the performance of a distribution agreement?

The general statute of limitations applicable to claims regarding the performance of a distribution agreement is five years, unless otherwise provided by law (Art. 110 Bulgarian Obligations and Contracts Act).

The statute of limitations is 3 years with respect to claims for (i) indemnification and liquidated damages resulting from non-performance of contracts, and (ii) for rent, interest and other scheduled payments (Art. 111 Bulgarian Obligations and Contracts Act). Any agreement on a shorter or longer statute of limitations is void. Also, any waiver of the statute of limitations prior to its expiry is void (Art. 113 Bulgarian Obligations and Contracts Act).

In case of a sale of movable property, claims for hidden defects must be made within a six-month period as from the delivery. If the supplier knowingly failed to disclose the defect, the statute of limitations is 3 years. As an expressly provided exception the parties may agree on longer or shorter limitation periods (Art. 197 Bulgarian Obligations and Contracts Act).

Part 6: Additional comments

Bulgarian competition law generally adheres to the principles established under EU competition law so that there are no specific deviations in the law or the case law to be reported. It is interesting to note, however, that Art. 16(3) Bulgarian Protection of Competition Act provides that the *de minimis* rule does not apply to agreements which have as their object or effect the direct or indirect price fixing, the sharing of markets and/or clients or the limitation of the production and sales. The Bulgarian Commission on Protection of Competition stated in its Decision 125/2009 that the *de minimis* rule does not apply only in the event of object restrictions, i.e. no reference is made to restrictions by effect. Formally, however, Decision 125/2009 may not contradict Art. 16(3), the latter being superior. We are not aware of any Bulgarian case law dealing with the application of Art. 16(3) to the above described restrictions by effect.