



Franchising - a study for the European Parliament

Brussels, 12.07.2016

Prof. Dr. Hans Schulte-Nölke

Dr. Aneta Wiewiórowska

European Legal Studies Institute Osnabrück



- **Effect of existing EU-legislation** on the well- and malfunctioning in the area of franchise?
- Does EU Regulation No 330/2010 need **adjustments / better enforcement**?
- Could possible European solutions be found in **self-regulatory initiatives**?
- The **current systems at EU level** (cross-border cooperation, exchange of best-practices)?
- Would additional action e.g. the **introduction of a new EU instrument be needed**?



Legal landscape:

- EU Regulation No 330/2010 (on vertical restraints)

Possible Adjustments: (long-term competition clauses, purchase options, multi-franchising, block exemptions)

- National laws (competition law, private law)



Scope of research:

Belgium (dr. Stijn Claeyes), **Estonia** (prof. Irene Kull), **France** (prof. Juliette Senechal), **Germany** (Anne-Katrin Suilmann), **Italy** (dr. Guido Comparato), **The Netherlands** (dr. Joasia Luzak), **Poland** (dr. Aneta Wiewiórowska-Domagalska), **Romania** (dr. Lucian Bojin), **Spain** (dr. Odavia Bueno Diaz)



Initial assumptions v market reality:

- Availability of sources
- Market transparency
- Intensive contacts with parties' representatives
- Necessary methodological adjustments



Franchising – the double jeopardy:

- **Structural superiority** of the franchisor over the franchisee *combined with*
- **Mutual vulnerability** of the parties (franchisor gives up his trade secrets, franchisee gives up his independence)



EU approach and the MS reaction:

- Franchising specific rules evolved into general rules for distribution contracts
- Private law repercussions: disregarded?
- MS: all but one: either (soft) law or case law that tries to support franchisees
- The chain reaction: competition law while removing some barriers introduces new ones



Conclusions:

- Markets highly differentiated
- Lack of balance in self-representation
- No convincing arg. to support competition law choices
- Content of vertical restraints sets private law standards



Recommendations:

- Strengthening franchisees self-organisation
- Verifying market reality (anonymous contact points)
- Verifying competition law assumptions and impact
- Considering further actions