

“Relations between franchisors and franchisees : Regulatory framework and current challenges”

European Parliament Workshop

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UEAPME

- Employers' organisation representing the interests at European level of crafts, trades and Small and Medium-Sized Enterprises
- 64 member organisations (national cross-sectoral associations and European trade federations)
- Represents 12 million enterprises in EU which employ over 55 million people in 34 countries
- Recognised European Social Partner

Positive approach towards franchising but...

- To remain competitive self-employed /SMEs need to co-operate, especially in retail.
- Good commercial co-operation depends on the efforts of every party
- Different formulas
- With internationalisation of the retail: tendency, becoming clear in the 80ties, to impose unacceptable unilateral provisions

Old problem

- Non-disclosure obligation
- Fear factor
- Culpabilisation of the franchisee
- Scarce jurisprudence and “biased” legal literature
- Unbalanced standard contracts
- Attempts to solve the problem through self-regulation and codes failed
- Legislation in some countries since beginning of this century
- No attention at EU level (Commission DG COMP and DG Internal Market) despite our attempts.

Main problems

- Non-disclosure clause
- Non-competition clause
- No transfer of know-how (certainly not in the case of a family business)
- Pre-emptive rights (valuation of the business)
- Performance obligations
- Extremely limited commercial freedom
- Too high prices: limited advantages
- Direct internet selling
- Digitalisation not taken into account
- ...

Non-competition clause

- Main problem: no or limited transfer of know-how
- Definition of know-how in Regulation 330/2010 is vague
- Protection of know-how does not justify the exclusion from the market
- Ineffective
- Not balanced
- Prevents effective competition between brands
- **Should be limited to the duration of the contract**

Self regulation? - European code

- European Codes (1972; 2016) do NOT give an answer to the main problems franchisees encounter
- Give extremely high importance to “know-how”
- Even contracts of adhering franchisors deviate from the code
- Unilateral
- **Experience of more than 30 years confirms: does not function**
- **Loosing time again is no option**
- Improved reporting or complaint system: complaints are known, can be even considered as a breach of the non-disclosure clause!
- Self-assessment tools : exists (awareness) but does not solve the problems

Regulation 330/2010

- Better enforcement is necessary but will not solve the immediate problems of the franchisees and will take too much time. (Art 29(1) Regulation 1/2003)
- Urgent need to adapt immediately Regulation 330/2010 in order to achieve a general solution and adapt it to digitalisation
- Better balance in representation? Is taken up by UEAPME.
- Possible Private law instrument could also be supported
- ADR system with equal representation franchisees/franchisors

Questions? Remarks?

Thank you for your attention!

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