Greece

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I. AGENCY

Agency and distribution agreements are in the forefront of agreements concluded between multi-nationals and their local subsidiaries throughout the EU territory. However the legal consequences deriving therefrom vary depending on the choice of the specific agreement, ie. agency or distribution agreement, given that each one entails different obligations (mainly) for the principal but also for the agent.

The purpose of this chapter is to outline the main features and the legal consequences deriving from the choice of the particular type of agreement under Greek law.

1.1 Definition of Various Types of Agency and Criteria to Distinguish

1.1.1 Independent Commercial Agents

EEC Directive 86/653 of 18 December 1986 "on the coordination of the legislation of Member States relating to commercial agents (independent professionals)" provides that Member States must harmonize their laws with the provisions of the Directive in question. However, it took 17 months for Greece to enact legislation to this effect. This legislation includes Presidential Decree 219/1991, as amended by Presidential Decrees 249/1993 and 88/1994.

The commercial agents to whom P.D. 219/91 (hereafter the "Decree") refers (and also the above Directive) are independent intermediaries entitled to collect a commission from their principal. Obviously the provisions of the above Decree apply only between contracting parties who are resident in the EU Member States. If one of the contracting parties is a EU Member State resident (citizenship, place of activity, registered office), and the other is a resident of a non-EU Member State, then the Decree applies only if the contracting parties have expressly agreed thereon. Also if the contracting parties are residents of third states, the provisions of the Decree are inapplicable, except if the parties have expressly agreed otherwise. As regards the governing law, the law that the parties have expressly chosen applies. If the parties have not stipulated expressly which is the applicable law, *lex loci* solutions i.e. the law of the place where the agreement was executed or the law of the place where the agreement is implemented applies. Greek courts will apply Article 25 of the Civil Code which provides: "Contractual obligations shall be governed by the law chosen by the parties, failing this shall be applicable the law which considering all relevant special circumstances is appropriate in regard to the contract". Ration temporise agreements precedent and subsequent to the entry into force of the Decree are governed as far as the rights and obligations of the contracting parties are concerned by its provisions (Article 11 of the Decree).

Greek courts tended to apply the provisions of the Civil Code concerning the contract for the lease of work and supplementarily the provisions concerning

mandate prior to the entry into force of the Decree, characterizing the agency agreement as a contract for the lease of independent services.[1] The controversy was settled by Article 1, para. 2 of the Decree which reproduces Article 1, para. 2 of the Directive and defines the commercial agent as "the one to whom in his capacity of independent intermediary is entrusted, on a permanent basis, either with the negotiation on account of another person hereafter called 'principal' the sale or purchase of goods, or with the negotiation and performance of these transactions in the name and on account of the principal".[2]

The consequences deriving from the above definition are the following:

(a) the agent organises independently his commercial activity without the intervention of the principal;
(b) the agent maintains his own professional premises; and
(c) the agent may maintain sub-agents in the place of his domicile or in other cities within the geographical area where he exercises his activity.

A necessary requirement is that he must be registered as a commercial agent in the relevant chamber of commerce or the commercial section of other chambers, the tax authority of the place where he exercises his profession and the Merchants Pension Fund (Article 1, para. 1a, b, c, d of the Decree).

Obviously the differentiation between the independent commercial agents and commercial agents or intermediaries who are remunerated is clear, given that the former are independent intermediaries who have a direct contact with the principal and are remunerated by him. The latter are remunerated by their employer and the provisions of labour law apply to them, whereas intermediaries are not recognized under Greek law.

1.1.2 Sales Representatives

Commercial agents and sales representatives may be under the close dependence of their employer and act in accordance with his instructions and supervision receiving a regular salary or a commission percentage or both.[3] In such cases it is admitted that they have entered into an employment contract of dependent work. In case the link with the employer is loose and there exist no commitments

[1] See, e.g., Decision No. 159/1990 of the Multi-member Court of First Instance of Thessaloniki, Armenopoulos, 123ff. (1990); Decision No. 70/1977 of the Supreme Court (Areios Pagos), *Commercial Law Review* (hereafter "CLR"), 553ff. (1987); Decision No. 1072/1972 of the Supreme Court, CLR, 338ff. (1973); Decision No. 887/1974 of the Supreme Court, CLR, 393ff. (1975); Decision No. 3857/1983 of the Court of Appeal of Athens, CLR, 584ff. (1984).

[2] For the differences between commercial agency, agency, brokerage and order see, e.g., Liacopoulos, A., *General Commercial Law*, vol. I, 101–2 (1991); Pampoukis, K., "Commercial Agency Operating as Order-Differentiation Between Order and Brokerage", *Armenopoulos*, 213ff. (1986); Liacopoulos, A., "The Agency Agreement", CLR, 574–9 (1990) with citations; Decision No. 159/1990 of the Multi-member Court of Thessaloniki, CLR, 611ff. (1990) where the relevant concepts are defined.

[3] See, e.g., Decision No. 3640/1990 of the Athens Court of Appeal, *Labour Law Bulletin* (hereafter "LLB"), 904, (1990).

as to time, place of work and manner of provision of services the contract is one related to the lease of independent services and possibly lease of work.[4]

1.2 Basic Aspects of Commercial Agency under P.D. 219/91 and Court Practice

The following paragraphs represent the state of the law in the light of the Decree and court practice.

1.2.1 Formalities

The law requires that agency agreements be drawn up in writing. However, in order that the existence and contents of an agency agreement be proven, evidence must be produced including witnesses and presumptions. Difficulties may arise in the case of agents who do not fall under the definition of merchant, although in practice an agent in most cases will act in the capacity of a merchant in the meaning of the Commercial Code. In any case the capacity of a merchant is not presumed but must be proven accordingly.

1.2.2 Exclusivity

Exclusivity is a usual term in agency contracts and, therefore, the parties are free to determine the formulation of the relevant provisions. However, precision is recommended in order to avoid disputes in the implementation of the agreement.

1.2.3 Consideration of Agent (Commission)

Under the provisions of the Decree the commercial agent is entitled to the agreed commission.[5] In the absence of an agreement to the contrary and of specific provisions, the commission is fixed as a percentage on the value of the agreement in which the agent acts as an intermediary or concludes on account of the principal depending on the local customs in force in the place where he carries out his activities, the goods mentioned in the agency agreement, and in general all the elements related to the commercial act in question.

A consideration in the meaning of the Decree is deemed to be the kind of commission of the commercial agent determined on the basis of the number and the value of sales negotiated. The provisions pertaining to commission apply provided the commercial agent is remunerated in whole or in part by commission.

In particular for a commercial act entered into during the term of the agency agreement, the commercial agent is entitled to commission, if he is responsible

[4] Decision No. 893/1996 of the Supreme Court, LLB, 416 (1987); Decision No. 107/1987 of the Supreme Court, LLB, 1060 (1987); Decision Nos. 1772/1986, LLB, 880 (1987) and 740/1984, *The Accountant*, 797 (1985); Decision No. 23386/1993 of the Athens Court of Appeal, *ibid.*

[5] Decision No. 159/1990 of the Multi-member Court of First Instance of Thessaloniki, Armenopoulos, 123 (1990); Liacopoulos, *op. cit.* 104; Antonopoulou, M., *The Commercial Representatives*, 39–45 (1994).

for a defined geographical area and the act has been concluded with a customer who carries out his activity within the area in question. On the other hand, for a commercial act entered into after the expiry of the commercial agency agreement, the commercial agent is entitled to commission:

(a) if the act is due mainly to the activity he has carried out during the term of the agreement; and
(b) if in compliance with the terms of the previous paragraph, the order of the third party reached the agent or the principal prior to the termination of the commercial agency agreement.

The agent is not entitled to commission in case of a commercial act entered into during the term of the agency agreement, if the same is due to the previous agent, except if due to his activity it is deemed fair that the commission be distributed between the two agents, ie. the previous and the new agent.

The claim to commission arises from the time and to the extent that one of the following events occurs:

(i) the principal has proceeded to the execution of the commercial act;
(ii) the principal should have executed the commercial act on the basis of the agreement entered into with the third party; and
(iii) the third party has executed the commercial act.

The commission is paid at the latest on the last day of the month following the quarter during which the relevant action took place. The right to commission becomes extinct provided that it derives from the behaviour of the third party and the mandator that the agreement will not be executed and the non-execution is due to events for which the principal is liable. The agent is entitled to request that all necessary information be furnished to him and mainly an extract of entries made in the commercial books for the verification of the commission due. The above are mandatory law provisions, i.e. no derogation is allowed therefrom.

1.2.4 Territory

The issue of territory may be freely agreed upon by the contracting parties, whether linked with exclusivity or not. The geographical area of the agreement may include the entire territory of Greece (together with other neighbouring countries) or part thereof.

1.2.5 Main Obligations of Principal

In general both the agent and the principal are required to act with due diligence, precision, honesty and good faith in the conclusion, promotion and execution of commercial acts. The principal's main obligation is to act according to the law in good faith and good morals during the term of the agreement. In particular the principal must:

(a) place at the disposal of the agent the necessary information and documents (i.e. price lists., leaflets etc.), concerning the goods in question;[6]
(b) provide to the agent the necessary information for the execution of the agreement, and in particular inform the agent within a reasonable period as soon as he foresees that the volume of the sales will be appreciably lower than the one which the agent should expect in the normal course of events; and
(c) inform the agent as regards the acceptance or rejection on his part, as well as the non-performance of a commercial act for which he has acted as an intermediary.

If the agent or the principal fail to perform the above obligations or other obligations provided in the Decree they are obligated to pay an indemnity for positive damage sustained or lost profits on the basis of the provisions of the Decree or the Civil Code.

1.2.6 Main Obligations of Agent

The agent has the following obligations:

(a) To care for the interests of the principal.
(b) During the term of the agreement and in every particular case to care with due diligence during the negotiation and conclusion of contracts with third parties, which the principal has assigned to him.
(c) To announce to the principal all the information in his possession, for example, as regards price, quality, necessary qualities of products, trademarks, patents etc. The information in possession of the agent must have been acquired in a lawful way, for example, by marketing, and not illegally, such as by industrial espionage.

    The question has arisen whether the agent is obligated to carry out marketing from time to time and inform the principal accordingly. In our opinion he has the obligation to do so following instructions and at the expense of the principal.
(d) To comply with the recommendations of the principal in accordance with the provisions of the Civil Code on agency and mandate.

1.2.7 Duration

Agency agreements may be entered into for a fixed term or for an indefinite term. In the former case the agreement expires automatically upon expiry of the agreed term. In the latter case no expiry date has been included in the agreement and same may be terminated following notice which must be communicated to the other party within a fixed time limit. Under the provisions of the Decree the time

[6] However, the principal is not obligated to disclose the information pertaining to the basis of his product, e.g. the synthesis of colour or drink or perfume or metal etc. given that same may lead to an infringement of his rights deriving from the product such as fame etc.

limit is one month for the first year of the agreement, two months from the beginning of the second year, three months from the beginning of the third year, four months from the beginning of the fourth year, five months from the beginning of the fifth year and six months from the beginning of the sixth year and the following years. Such time limits may not be derogated from by agreement of the parties, but longer time limits may be agreed upon by same. If the parties have not agreed otherwise, the expiry of the termination time limit must coincide with the end of the calendar month. In the case of an agreement of a definite term that continues to be executed by the two parties, same is transformed into an agreement of indefinite term following its expiry.

One must differentiate between the termination of an agreement concluded for a fixed or for an indefinite term respectively. In the former case every contracting party may terminate it by following the agreed time-limit, as indicated above (i.e. one month for the first year etc.). These provisions apply also in case of transformation of an agreement for a fixed term into one for an indefinite term. An agency agreement may be terminated at any time, be it for a definite or an indefinite term, without complying with the above time-limits in only two cases:

(a) in case one of the parties fails to perform in whole or in part his contractual obligations, for example, the non-payment of commission; and
(b) in case of *force majeure*.[7]

1.2.8 Indemnification upon Termination

Upon termination of the agency agreement, be it for a fixed or for an indefinite term, the right to compensation of the commercial agent arises under certain conditions. Under the provisions of the Decree the commercial agent is entitled to compensation following the expiry of the agency agreement in two cases, i.e.:

(a) if and to the extent he has obtained new customers for the mandator during the term of the agreement; and
(b) if he has promoted significantly the affairs with existing customers to an extent that the mandator maintains substantial benefits deriving from the transactions with such customers.

The amount of indemnity due following the expiry of the agency agreement cannot exceed an amount equivalent to the annual average of commissions received by the agent during the last five years. If the agreement expired earlier, the indemnity is calculated on the basis of the average commissions of the period in question. However, the payment of an indemnity does not deprive the agent

[7] Argyriadis, A., "Termination of Agency Agreements", CLR, 155–6 (1987); Androtsopoulos, A., *The Commercial Agency Agreement*, 268–9, 272–8, 279–91 (1968); Rokas, K., *Studies of Commercial Law*, vol. II, 550–1 (1971); Stavropoulos, St., *Interpretation of Commercial and Maritime Law*, 131 (2nd ed., 1980); Mitroulis, Th., "Termination of Commercial Agency-Requirements and Consequences", CLR, 36 (1963); Decision No. 1271/1982 of the Multi-member Court of First Instance of Thessaloniki, CLR, 401 (1983).

of his claim to restitution of further damage sustained, i.e. positive damage and lost profits deriving from the agreement in accordance with the provisions of the Civil Code or even from tort (Articles 298, 914 of the CC).

The above provision is inequitable given that the benefit of the principal is not presumed and, further, that the agent bears the burden of proof of the substantive requirements for the payment of indemnity (literally speaking it is not an indemnity but a claim for remuneration). However, an indemnity is due in every case of termination of the agreement and, therefore, it includes the case of expiry of its duration under the above-mentioned exceptions. In other words, no indemnity is due:

(i) in cases where the mandator terminates the agreement because of the agent's error and termination of the agreement is justified at any time; and
(ii) in cases where the agent terminates the agreement.

Yet an indemnity is due again in cases where the termination is due to the mandator's fault or justified by reasons related to age, disability or illness of the agent because of which the continuation of the performance of his duties cannot be reasonably requested.

The jurisprudence and doctrine claim that the phrase "... so that the mandator maintains substantial benefits deriving from the affairs with new (or old) customers ..." must be interpreted broadly but also taking into account the circumstances of each particular case. Along this line of interpretation it is admitted that substantial benefits are maintained not only when the agreements entered into by the agent survive (permanent agreements), but also when, even indirectly, the actions of the agent have established a clientele (for example, market of spare parts, circle of potential buyers, establishment of the agent's enterprise in the relevant market etc.).[8]

In general it is sufficient that the entrepreneur derives profits from the clientele even after the expiry of the agreement.[9] The indemnity due in such a case is fair (Article 288 of the Civil Code) as to the amount and cannot exceed the above-mentioned limits. The factors determining the amount of compensation are the quantification of the entrepreneur's benefit, the duration of the contract and other objective criteria, and not the social status of the agent, according to the prevailing view.[10]

The agent's claim to compensation or restitution for services rendered is subject to prescription if he does not notify the principal within one year from the termination of the agency agreement to this effect.

1.2.9 Non-competition after Termination

The non-competition obligation following the expiry of the agreement is valid if and to the extent it has been agreed in writing, even without a fair consideration.

[8] Liacopoulos, *op. cit.*, 105; Antonopoulou, *op. cit.*, 55.
[9] Brox, H., *Handlesrecht und Wertpapierrecht*, 138 (8th ed., 1990).
[10] Liacopoulos, *ibid.*

The content of the non-competition clause pertains to the professional activity of the agent following the expiry of the agreement and mainly to the non-representation of principals producing or distributing competitive homogeneous products. On the other hand, it may also entail the prohibition of the disclosure of certain secrets of the principal as regards technology, know-how, synthesis and other qualities of the products.[11]

The non-competition clause pertains:

(a) territorially, to the geographical sector for which the agent was responsible (save this sector, there exist no further restrictions); and
(b) professionally, to the type of goods, whose agency was assigned to him under the agreement.[12]

The provisions of the Treaty of Rome (Articles 85ff.) concerning competition must be also taken into account.

The non-competition obligation is valid for one year at most following the expiry of the agency agreement. However, this Article may not impair the provisions of national law, which imposes other restrictions as to the validity or the application of clauses containing a non-competition clause or which provide that courts may mitigate the obligations of the contracting parties deriving from such an agreement (Civil Code, Law 146/1914 on illicit competition etc.).

[11] Antonopoulou, *op. cit.*, 61.
[12] The French Loi No. 91-593 adds the word "and of services".

2. DISTRIBUTION

2.1 Definitions

The distribution agreement is a continuous contractual relationship whose content is the conclusion of a frame agreement (i.e. a preagreement with an option right) on the basis of which the seller-manufacturer is obliged to sell the products to the agent for the particular territory. The distributor is obliged to maintain the business organization corresponding to the image which the consumers have for the manufacturer of the products by following the instructions of the seller-manufacturer and, further, he has the right to resell the products and collect the profit.[13]

The organization includes as a rule:

(a) advertising;
(b) personnel for the promotion of sales;
(c) personnel for the provision of information as regards the use of products and, in general, technical support (repairs);
(d) stock in order to avoid shortage in the market; and
(e) protection of the interests and fame of the seller-manufacturer.

Further requirements may be imposed on the distributor, for example, appropriate and spacious premises for the exhibition of products, as in the case of the exclusive distribution of cars and spare parts, and mainly a minimum annual consumption of products.[14]

The definition of the distributor, already established in the jurisprudence of the European Court, and followed by Greek courts, is the following:

The distributor is an independent merchant (businessman) who has adopted the business organization of the manufacturer of known products, is connected with him by means of a continuous contractual agreement, and undertakes on a continuous basis in his own name and for this account to resell (distribute) the products specified in the frame agreement in the agreed territory, to promote the sales thereof and to cover at his risk the expenses related to the organization and promotion of the products, and further to use the tradename or the trademark of the manufacturer together with his tradename.[15]

It must also be mentioned that under Greek law the distribution agreement described above is neither a sale nor a commercial agency agreement. It is in principle a continuous contractual agreement, having the main characteristics of

[13] Pampoukis, *op. cit.*, 213; Farmakidis, N., *The Exclusive Distribution Agreement*, 7-8 (1990).
[14] Farmakidis, *op. cit.*
[15] Schmitthoff, C., "Exclusive sales agreements" in *The Export Trade* (1975); Treitel, G. H., *The Law of Contract*, 565 (1979); Tzouganatos, D., "The legality of the exclusive distribution agreements in accordance with the competition law provisions of the EC Treaty", CLR, 160 (1989); Argyriadis, A., "The Commercial Agency Agreement", CLR, 153ff. (1987).

the lease of independent services[16] and, therefore, it may be terminated only for an important reason or within a reasonable time limit, the provisions of commercial agency being applicable by analogy.[17]

2.1.1 Formalities

Greek law does not require that the distribution agreement be made in writing. Therefore an oral agreement is valid. As a rule the renewal of such an agreement is made orally, even if the initial agreement has been concluded in writing. The agreement in question is renewed tacitly when the parties fulfill their obligations on a continuous basis. The existence of a distribution agreement can be proven by all legitimate means of evidence, including witnesses and presumptions.[18]

2.1.2 Exclusivity

Exclusive distribution agreements are not prohibited under Greek law, provided that the limits specified in Articles 85 and 86 of the Treaty of Rome are complied with. A distribution agreement is exclusive when the distributor undertakes to resell (distribute) the products in the determined territory and use the tradename or trademark of the manufacturer. Case law and doctrine maintain the view that exclusive distribution agreements are valid, provided they do not infringe mandatory rules of law or good morals.[19] Parallel imports are in line with Greek law, provided they do not infringe illicit competition rules and Articles 85 and 86 of the Treaty of Rome.[20]

2.1.3 Territory

The majority of Greek case law and doctrine maintain the view that the manufacturer is obliged to sell his products exclusively to the exclusive distributor

[16] Argyriadis, *ibid*; Farmakidis, *op. cit.*, 10–12; contra, for example, Decision No. 7964/1983 of the Athens Court of Appeal, CLR, 44 (1982); Decision No. 2680/1987 of the Court of Appeal of Thessaloniki, CLR, 584 (1987).

[17] Argyriadis, *op. cit.*, 157; Farmakidis, *op. cit.*, 13.

[18] Decision No. 904/1976 of the Court of First Instance of Ioannina, 202, Ephimeris Elliuon Nomicon (Newspaper of Greek Jurists), 202, vol. 44 (1976); Decision No. 929/1967 of the President of the Court of First Instance of Athens, 136, CLR, 136, vol. 18 (1967); Decision No. 2676/1974 of the Court of Appeal of Athens, Nomicon Vima (Legal Tribune), 1416, vol. 22 (1974); Decision No. 36/1967 of the Court of Appeal of Athens, Nomicon Vima, 997, vol. 15 (1967); Decision No. 59/1977 of the Single-member Court of First Instance of Corinth, CLR, 477, vol. 28 (1977).

[19] See, for example, Decision No. 59/1977 of the Single-member Court of First Instance of Corinth, *op. cit.*; however, a parallel activity of a third party is deemed as illicit competition in compliance with Article 1 of L.146/1914, if the requirements mentioned therein are met, ibid; Decision No. 929/1967 of the President of the Court of First Instance of Athens, *op. cit.*; Decision No. 2676/1974 of the Court of Appeal of Athens, *op. cit.* For a detailed analysis see Decision No. 13321/1972 of the Single-member Court of Athens, CLR, 122, vol. 24 (1972); Decision No. 1572/1967 of the Multi-member Court of First Instance of Athens, CLR, 137, vol. 19 (1967).

[20] Decision No. 5808/1976 of the Court of Appeal of Athens, CLR, 484, vol. 28 (1976); Decision No. 1/1972 of the Supreme Court, CLR, 283, vol. 23 (1972); Decision No. 59/1977 of the Single-member Court of First Instance of Corinth, *op. cit.*

in the agreed territory. This means that the manufacturer is not allowed to sell his products to another person or to have a commercial agent or supplier in the territory of the exclusive distributor.[21] Furthermore the manufacturer is obliged to bind also the other exclusive distributors not to sell his products in the territory contractually determined for the exclusive distributor. In practice this obligation of the manufacturer is accompanied by a clause contained in the agreement by means of which the former is obliged to indemnify the distributor with a predetermined amount.[22] As regards the territory same must be identical to the entirety or part of the Greek territory.

2.1.4 Obligations of Supplier

Under Greek law contracting parties are free to determine the contents of a distribution agreement provided that the latter does not infringe upon mandatory rules of Greek law or rules of EU law.

The main obligation of the manufacturer in case of an exclusive distribution agreement is to sell his products exclusively to the exclusive distributor in the agreed territory, as mentioned above. Other ancillary obligations include the obligation of the manufacturer to furnish all the necessary documents and certificates to the distributor including the necessary advertising material and leaflets with instructions related to the use and purpose of the products. In practice a clause is inserted as a rule in the agreement stipulating that such leaflets and certificates remain the property of the manufacturer. On his part the manufacturer is obliged to inform the distributor on time as regards difficulties related to the supply of products, changes in technology, developments, sales in other markets etc.[23] Another obligation of the manufacturer relates to the protection of the clientele of the distributor and is different from the protection of the distributor's territory. Finally, the manufacturer must provide equal treatment to all the exclusive distributors.[24]

2.1.5 Obligations of Distributor

The main obligations of the distributor include the following:

(a) the distributor buys the agreed products and resells them on his own responsibility;
(b) the distributor is obliged to protect the interests of the manufacturer in the territory;

[21] Decision No. 59/1977 of the Single-member Court of Corinth, *op. cit.*, 479; Decision No. 2676/1974 of the Court of Appeal of Athens, *op. cit.*, 1416; Decision No. 9/1968 of the President of the Court of Appeal of Athens, *op. cit.*, 134; Decision No. 13321/1972 of the Single-member Court of Athens, *op. cit.*; Decision No. 1572/1967 of the President of the Court of First Instance of Thessaloniki, *op. cit.*; Rocas, *op. cit.*; Karavas, Commercial Law, 799, vol. A (1947–50).
[22] Farmakidis, *op. cit.*; Tzouganatos, *op. cit.*, 160.
[23] Farmakidis, *op. cit.*, 29 and the literature mentioned therein.
[24] *Ibid.*

(c) sometimes the distributor must pursue a continuous inerease of sales in the territory and follow the instruetions of the manufacturer;
(d) the distributor must not sell competitive products or sometimes must sell only the produetsof the manufacturer;
(e) sometimes the distributor must advertise the products and participate in exhibitions;
(f) the distributor is obliged not to disclose the professional secrets of the manufacturer; and
(g) sometimes the distributor is obliged to serve the interests of the clientele.

2.1.6 Term

Under Greek law the distribution agreement may be terminated either upon the expiry of the agreed term or following the notice of termination by either party for an important reason.

Termination is the only legitimate way of dissolution of the distribution agreement, as it has no retroactive effect and does not impair the validity of sales agreements concluded prior to its termination. Termination produces its effects from the moment notice is received by the other contracting party. The application of the provisions of commercial agency is safe, given the controversy surrounding the doctrine and the contrary opinion of the courts.[25] For this reason it is recommended that an express provision be included in the agreement specifying the time limit related to the notice of termination. However, longer time limits than the ones mentioned in Article 4, para. 8 of the Decree may be agreed upon by the parties. The notice of termination as a rule is written and delivered to the addressee by registered mail (Article 167 of the Civil Code). However the agreement may be terminated for an important reason without complying with any time-limit (Articles 672, 766, 767, 585, 587 of the Civil Code). It is for the judge to determine whether such an important reason exists in the case under consideration. Furthermore the important reason must be attributed to the fault of the delinquent party (e.g. lack of credibility of one party, violation of the secrecy duty of the distributor etc.).

The distributor must return all the documents in his possession to the manufacturer and remove all signs containing the trademark and distinctive signs of the manufacturer. The manufacturer must repurchase the stock and spare parts in exclusive distribution agreements, whereas in case of termination upon the expiry of the agreement, the disposal of stock can be made with his assistance. However, if termination is the distributor's fault, the manufacturer is not obliged to repurchase the stock.

2.1.7 Indemnification upon Termination

A differentiation must be made between the fair compensation to which the distributor is entitled by way of analogy of the provisions in force for commercial agency and the compensation to which the distributor is entitled in case the

[25] *Ibid.*

termination is effected by the manufacturer without any time-limit or for an important reason or for violation of the contractual obligations of the parties. The underlying rationale of the fair compensation at issue is that the manufacturer must pay a consideration for the benefit he enjoys following the dissolution of the distribution agreement which derives from the clientele attracted by the distributor. The fair compensation payable must be based on the commissions of the year in question and is calculated on the basis of the average of the last two years.[26] In particular with regard to the distributor, the average of the profits of the last two years must be taken into account by way of analogy of the provisions applicable to commercial agency. Thus the compensation in question is not a restitution of damage but a consideration for the clientele attracted by the distributor. For this reason the distributor is obliged to hand over this clientele to the manufacturer following the termination of the agreement by delivering, for example, lists of clients with their addresses, telephone numbers etc.

Lastly, the compensation payable in case of premature termination or for violation of the obligations of the parties includes the positive damage sustained and lost profits, for example, in the case where the manufacturer does not deliver the agreed quantities to the distributor.

The calculation of damage in such cases is extremely difficult. However the aggrieved party has a claim for omission in the future of actions violating the obligations undertaken by the parties. Premature termination not due to an important reason entails the invalidity of such termination. In such a case the compensation payable includes the damage sustained by the distributor and in particular:

(a) the expenses incurred for advertising as well as for press announcements and participations in exhibitions;
(b) the general operating costs pertaining to the trade of products which due to premature termination were produced but not distributed;
(c) the lost profits for readjustment of the enterprise;
(d) the repurchase of stock or spare parts; and
(e) the fair compensation for moral harm deriving from tort (Articles 914 and 919 of the Civil Code).[27]

2.1.8 Non-competition after Termination

Under Greek law the distributor as a rule undertakes the obligation not to sell competitive products or to sell only the products of the manufacturer, as indicated earlier. If no express provision is included in the agreement, the distributor may also sell other products that are not competitive with the products mentioned therein. However in such a case the distributor must inform the manufacturer

[26] This view has been adopted by Article 104 of the Draft Commercial Code.
[27] Farmakidis, *op. cit.*, 56–8.

accordingly. In case the distributor wishes to distribute competitive products the manufacturer must consent thereto.[28]

The clause included as a rule in the exclusive distribution agreements to the effect that competition is prohibited for the distributor following the termination of the agreement is valid, provided that it is not contrary to morality (Articles 178, 179 of the Civil Code and Article 5 of the Greek Constitution of 1975) only for a semester after the termination of the agreement, given that the agent may in any case terminate such an agreement and the effects of termination are produced after six months from termination.[29]

[28] Decision No. 929/1967 of the President of the Court of First Instance of Athens, *op. cit.*, 139; Decision No. 59/1977 of the Single-member Court of First Instance of Corinth, *op. cit.*, 479; Decision No. 13321/1972 of the Single-member Court of First Instance of Athens, *op. cit.*, 126; Decision No. 1572/1967 of the President of the Single-member Court of Thessaloniki, *op. cit.*, 137; Decision No. 3640/1990 of the Court of Appeal of Athens.

[29] Article 105 of the Draft Commercial Code mentions that two prerequisites must be met in order for such a clause to be valid as regards the commercial agent. First, an agreement in writing, and, second, the payment of a fair compensation to the commercial agent. In any case the prohibition for non-competition is mandatory for the agent.