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Fact Sheet Agency – Austria (April 2012)

<p>How is an agent defined under national law?</p>	<p>a) Authorised person to act on behalf of another (called “businessman”), such as by procurement of transactions or executing a transaction, except immovable property, for example real estate.</p> <p>b) Agents are permanently in charge. They act</p> <ul style="list-style-type: none"> - independently - commercial - in the name and for the account of the businessman
<p>How is the normal duration of a contract normally defined?</p>	<p>Depends on the contract:</p> <p>a) If the contract is temporary, it ends automatically pro rata temporis.</p> <p>b) If there is no time lapse, the contract can be terminated by either party by</p> <ul style="list-style-type: none"> - contractual notice of dismissal or - dismissal for cause (important reason assumed: e.g. breach of duty, decease, assault, other serious breaches of the contract) <p>c) The dismissal can be formless:</p> <ul style="list-style-type: none"> o parol or written o explicit or by implication <p>d) Further options are</p> <ul style="list-style-type: none"> o partial termination o dismissal with the option of altered conditions
<p>How long is the notice of termination?</p>	<p>a) The period of notice depends on the particular length without any interruption in the duration of the contract - and thus on the <u>date of termination</u></p> <ul style="list-style-type: none"> - within the first treaty year: at least 1 month - within the second treaty year: at least 2 months - within the third treaty year: at least 3 months - within the fourth treaty year: at least 4 months - within the fifth treaty year: at least 5 months - within the sixth and every following treaty year: at least 6 months <p>b) The arrangement of <u>longer terms</u> is admissible.</p>
<p>What rights does the agent have to compensation or</p>	<p>Depends on certain requirements:</p>



indemnity upon termination?	<p>b) <u>No claim</u> of compensation in case of</p> <ul style="list-style-type: none">- dismissal by the agent, when there is no reasonable issue, imputable to the businessman- advanced termination of contract by the agent without important reason- advanced termination of contract by the businessman (default of agent assumed) <p>c) <u>Claim</u> on compensation in case of</p> <ul style="list-style-type: none">- dismissal by the businessman, without important reason, imputable to the agent- advanced termination/dismissal of contract by the businessman without any default of the agent- advanced termination of contract by the agent (default of the businessman assumed)- advanced termination/dismissal by the agent due to reasonable motive- advanced termination/dismissal of contract by the agent due to age, decease or infirmity <p>These claims are to confer, even if the agent acted in a member state of the EU and the businessman's office is in a non-EU country, whereas the contract is subject to the right of the non-EU country.</p>
Are there any laws or regulations relating to restraint of trade/restrictive covenants	<p>a) During contract in effect the agent is basically allowed to act for more than just one businessman at the same time.</p> <ul style="list-style-type: none">- no law or regulation with a generell non-competition clause- different doctrine: branch-orientated non-competition-clause (even without appropriate agreement in contract) <p>b) Art. 81 Abs 1 EG: No breach in view of agency agreements, if the financial and commercial risks of the agent are just marginal or inexistent. But: Possible breach in terms of sole distribution agreements.</p> <p>c) No cartel ban after Art. 81 Abs 1 EG, if the non-competition clause is limited to at most 5 years (a indefinitely non-competition clause would be a breach)</p>
Are any particular formalities required for an agency agreement to be legally valid and enforceable under national law?	<p>a) Agency agreements are formless. There are no certain formalities prescribed by statute or regulation. They can be concluded</p> <ul style="list-style-type: none">- Orally or written- by implication or implied <p>b) Exception: Written form must be adhered to, if the parties have agreed on it. In respect of implied and amicable terms derogation is possible.</p>