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Fact Sheet Agency – Germany (March 2012)

How is an agent defined under national law?	A commercial agent is a <u>self-employed</u> individual or entity, who <u>independently</u> of the principal and on <u>an ongoing basis</u> , negotiates commercial transactions (such as the sale or purchase of goods or services) on behalf of the principal. Acting independently means organising the work without instruction/direction from the principal.
How is the normal duration of a contract normally defined?	The duration of the agency contract can be for a fixed period or an indefinite period. A fixed period agency contract shall be deemed to have converted into an indefinite period agency contract if it is continued by both parties after the fixed period has expired.
How long is the notice of termination?	The minimum notice of termination is as follows - during the first year: one month - during the second year: two months - during the third to the fifth year: three months - after the fifth year: six months The parties may agree on longer notice periods.
What rights does the agent have to compensation or indemnity upon termination?	A commercial agent is entitled to indemnification, if - the contract is terminated, - the principal gained considerable advantages from new clients, negotiated by the commercial agent, and - the indemnity payment is equitable The right to indemnification cannot be waived before the termination of the contract. The commercial agent has to make a claim for indemnification within one year after termination of the contract.
Are there any laws or regulations relating to restraint of trade/restrictive covenants	The parties may agree to a non-competition clause for after the term of the agency agreement. Such non-competition clause has to be in writing and the non-competition obligation must not last longer than two years. The agent must be adequately compensated.
Are any particular formalities required for an agency agreement to be legally valid and enforceable under national law?	None other than the normal formalities required in respect of offer and acceptance.

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