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Fact Sheet Agency – Italy (May 2012)

<p>How is an agent defined under national law?</p>	<p>A commercial agent is defined as a “self-employed” intermediary who has continuing authority to negotiate the sale or purchase of goods on behalf of another person (the Principal). On the ground that the object of the agency contract is to develop a business in favour of another person, this work activity is also mentioned as a para - subordinate job.</p> <p>The main features of this job are: organizational autonomy, stability of a specified geographic working area, exclusive right.</p>
<p>How is the normal duration of a contract normally defined?</p>	<p>Under Article 1742 of the Italian Civil Code, the agent assumes permanently the charge of promoting business in favour of the Principal; this means that generally the duration of the appointment has an indefinite term.</p> <p>However, it is possible to enter into a fixed-term contract and in this event, except for extension or renovation of the Agency Agreement, the contract with a fixed term will turn into a contract with indefinite term, if the parties continue their relationship after the deadline, according to Article 1750 of the Italian Civil Code.</p>
<p>How long is the notice of termination?</p>	<p>If the Agency Agreement has an indefinite duration, each Party can terminate the contract at any time, by giving to the other Party a written and specified advance notice.</p> <p>The advance notice is not necessary, if there is a specified clause (termination clause), which expressly provides the automatic termination of the Agreement in the event of breach of obligations by the other party.</p> <p>Minimum notice period are: 1 months for the first year; 2 months for the second year; 3 months for the third year; 4 months for the fourth year; 5 months for the fifth year, 6 months for the sixth year and for the subsequent years.</p> <p>The Parties can agree longer notice periods.</p>
<p>What rights does the agent have to compensation or indemnity upon termination?</p>	<p>Upon termination of the Agency Agreement, the agent must receive the payment of his commissions, at the percentage rate that has been agreed by the Parties in the Agency Agreement. There are different kinds of percentage: constant percentage; constant percentage with reward; increasing percentage; decreasing percentage; overpriced.</p> <p>The indemnity upon termination is established under the rules of the Italian Civil Code. The parties can derogate these rules with a</p>



	<p>specific clause, which must be in favour of the Agent. However, the Principal must also give an indemnity to the Agent, only in case:</p> <p>a) the agent found new clients or he/she significantly increased the business of the Principal and the latter continues to receive advantages from the affairs concluded with those clients;</p> <p>b) there would be an equity payment of the indemnity according to the circumstances of the situation and the loss of profit for the agent.</p> <p>Entitlement to the indemnity lapse within one year after the termination of the Agency Agreement if the agent does not require it. With this regard, it is sufficient an extra-judicial claim in order to stop the prescription period.</p>
<p>Are there any laws or regulations relating to restraint of trade/restrictive covenants?</p>	<p>The agent, who has only one Principal, is the mono-mandatory agent. In this case, the agent cannot undertake the charge from other business enterprises, which sell the same sort of product or work in the same branch and which are in competition with the Principal in the same geographic area.</p> <p>The competition ban must be expressly written in the Agency Agreement and it cannot last for more than two years after termination of the contract. The acceptance of the non-competition clause does not entail the right to an indemnity, like a general commercial commission. In this case, the indemnity is agreed by the Parties, according to the Collective Economic Agreement and regarding terms and conditions of the pact, nature of the agency agreement, indemnity upon termination, etc.</p> <p>The exclusive right is not an essential clause of the Agency Agreement; the parties can expressly agree not to establish any exclusivity right. In the absence of a specific clause, the judge, in order to settle disputes in this area of law, will pay attention to the conduct of both parties.</p>
<p>Are any particular formalities required for an agency agreement to be legally valid and enforceable under national law?</p>	<p>The contract must be in written form and must specify: a) the lack of any dependant bond with the agency; b) the strictly personal nature of the charge, c) duration of the agreement (usually indeterminate duration); d) the object of the commercial activity; e) the percentage rate of the commission of the agent; f) the exclusive geographic working area; g) occasionally, the governing law and settlement of disputes.</p> <p>Registration of the Agency Agreement: the registration is not a requirement for the validity of the contract. However, Italian administrative bodies may require the agent to register his activity at the Chamber of Commerce (CCIAA), only for tax reasons.</p>

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