

Q&A DOCUMENT | 13 March 2023

## Q&A on Distribution Agreements

### Part I: Legislative framework

Q1. Please specify the legislative framework generally applicable to the conclusion and execution of distribution agreements (a)? Please include a link to the official publication of the applicable rules (e.g., relevant link to the Official Gazette) (b) and, if available, to the English translation of the legislative framework (c).

a. Legislative framework:

Croatian Competition Act

(Official Gazette number 79/09, 80/13, 41/21)

Croatian Obligations Act

(Official Gazette number 35/05, 41/08, 125/11, 78/15, 29/18)

Vertical Agreements Block Exemption Regulation

(Official Gazette number 37/2011)

Distribution and Motor Vehicles Service Agreement Block Exemption Regulation

(Official Gazette number 78/2011)

b. Link(s) to official publication:

The Croatian Competition Act is available via these links: [810](#), [1671](#) and [1877](#).

Croatian Obligations Act is available via these links: [586](#), [1495](#), [1382](#) and [707](#).

Vertical Agreements Block Exemption Regulation is available via this [link](#).

Distribution and Motor Vehicles Service Agreement Block Exemption Regulation is available via this [link](#).

c. Link(s) to English translation:

An official English translation is not publicly available.

Q2. Other than for agency agreements pursuant to Directive 86/653 (EEC) on the coordination of the laws of the Member States relating to self-employed commercial agents, are there specific rules depending on the distribution format (e.g. franchising, exclusive distribution)?

No.

Q3. Other than general contract law and competition law, are there other rules which may generally restrict the parties when drafting and concluding distribution agreements (e.g., rules in relation to unfair contract terms in B2B

contracts, specific requirements in the context of a prohibition of abuse of economic dependence)?

Yes.

If yes, which general rules apply (a)? Where available, please also include a link to the official publication of the applicable rules (b) and to the English translation of the regulatory framework (c).

a. General rules:

Croatian Trade Act

(Official Gazette number 87/2008, 96/2008, 116/2008, 76/2009, 114/2011, 68/2013, 30/2014, 32/2019, 98/2019, 32/2020)

Croatian Act on Prohibition of Unfair Trading Practices in the Food Supply Chain

(Official Gazette number 117/2017, 52/2021)

b. Link(s) to official publication:

Croatian Trade Act is available via these links: [698](#), [1965](#), [648](#), [508](#), [1349](#), [2222](#), [3351](#), [2998](#), [2790](#).

Act on Prohibition of Unfair Trading Practices in the Food Supply Chain is available via this [link](#).

## Part 2: Pre-contractual phase

Q4. Are there mandatory provisions in relation to the disclosure of pre-contractual information prior to concluding and/or executing distribution agreements?

No.

Q5. Is there a standstill obligation linked to the requirements imposed for the pre-contractual phase?

No.

Q6. Does the relevant regulatory framework impose sanctions if the pre-contractual obligations are not (fully) respected?

Yes.

If yes, which sanctions apply (e.g., nullity of contract, penalty payment)?

Pursuant to the Croatian Obligations Act, there is an extra-contractual liability for conducting negotiations contrary to the principle of good faith and fair dealing. Also, the Croatian Obligations Act sets out the general principle of extra-contractual liability for making confidential information available to third parties or using such information in one's own interests which has been received through negotiations, regardless if an agreement was entered into or not.

Q7. Can a party be held liable if it terminates the pre-contractual negotiations?

Yes.

If yes, on what grounds (a); under what conditions (b); and what consequences are generally linked to such liability (c)?

*a. Grounds for pre-contractual liability:*

Art. 251 Croatian Obligation Act.

*b. Conditions for pre-contractual liability:*

Pre-contractual liability may arise if a party does not negotiate in line with the principle of good faith and fair dealing, for example without the intention to conclude an agreement. This does not preclude a party to terminate pre-contractual negotiations at any time, as long as it is doing so in good faith.

*c. Consequences of pre-contractual liability:*

The damaged party may be entitled to damages, for the entire damage suffered, i.e. not only direct losses, but also, at least theoretically, the lost profits.

Q8. Are there other relevant rules and/or restrictions that apply during pre-contractual negotiations between supplier and distributor?

No.

## Part 3: Contractual phase

### A. Form of distribution agreements

Q9. Must a distribution agreement be executed in writing to be valid and enforceable?

No, never.

Q10. Are there any (other) requirements as to the form of the distribution agreement for it to be valid and enforceable?

No.

### B. Content of distribution agreements

Q11. Other than restrictions imposed by EU competition law (including Regulation (EU) 330/2010), do specific rules and/or restrictions apply in distribution agreements with respect to

- the territory in which or the customers to whom the goods/services will be sold;

- an exclusivity granted to the distributor;
- (exclusive) sourcing/purchasing obligations;
- resale prices;
- non-compete clauses?

No.

Q12. Do specific rules and/or restrictions apply in distribution agreements with respect to

- obligations of the supplier vis-à-vis the distributor, including in relation to the remuneration of the distributor;
- obligations of the distributor vis-à-vis the supplier or vice versa;
- a non-solicitation clause during and/or after the term of the distribution agreement;
- minimum sales quota imposed on the distributor;
- specific sector rules?

Yes specific rules apply to obligations of the supplier vis-à-vis the distributor, including in relation to the remuneration of the distributor.

If yes, what do these specific rules and/or restrictions entail?

There are no statutory provisions governing specifically distribution agreements in general, so distributors sometimes claim additional remuneration under the rules relating specifically to agency agreements (Art. 830 Croatian Obligations Act). An agent is entitled to additional remuneration if having found new clients for the principal or if having significantly increased the business with the existing ones, however provided that the additional remuneration is justified by the circumstances in that individual case. So far, the courts (first or second instance) have not supported such a standpoint, however we are awaiting the stance of the Supreme Court.

Furthermore, the Croatian Act on Prohibition of Unfair Trading Practices in the Food Supply Chain and Croatian Trade Act stipulate statutory unfair trade practice rules ("Croatian UTP rules") applicable to the distribution of agricultural and food products where the buyer holds significant bargaining power (presumed if the annual turnover of minimum 15 million HRK, i.e., EUR 1,990,842.13 according to the fixed conversion rate). Although Croatian UTP rules are primarily there to discipline buyers, there is a list of unfair trading practices of suppliers, for example, unjustified unilateral termination (in unwritten form, without cause, or without appropriate termination period). Although Croatian UTP rules do not specify the duration of the appropriate termination period, some guidance was provided within soft law, i.e., Croatian Competition Agency Guidelines. According to the Croatian Competition Agency Guidelines, 30 days would be deemed as a minimum when it comes to the appropriate termination period.

## C. Term and termination

### 1. Term

Q13. Is an oral or written distribution agreement that does not specify the term always considered to be an agreement of indefinite duration?

Yes.

Q14. Does a distribution agreement of definite duration that is continued after its expiry turn into a distribution agreement of indefinite duration?

Yes.

If yes, what is meant by 'continuation' (a) and what should a party do to avoid this (b)?

a. What is meant by 'continuation'?

Continuation includes performing activities that arise from the distribution agreement after its expiry, as if the agreement did not expire.

b. What should a party do to avoid this?

To avoid continuation, i.e., tacit prolongation of the distribution agreement concluded on a definite period, a party should avoid performing any activities which were arranged under the agreement after its expiry. Hence, a party should stop performing any activities (e.g. deliver or make orders) and, if there is an order, explicitly state that that is a one-off order/delivery.

### 2. Termination

**Termination for convenience (irrespective of any default or exceptional circumstance) of distribution agreements of definite duration**

Q15. Can a distribution agreement of definite duration be terminated for convenience?

Yes.

If yes, is an express provision allowing for termination for convenience necessary?

Only in certain instances.

If only in certain instances, please explain when an express provision is required?

Generally, under Croatian law, agreements of definite duration end upon the expiration of the agreed period unless otherwise stipulated in the agreement, i.e., an express provision allowing for termination for convenience is necessary. However, in certain instances a distribution agreement of definite duration cannot be terminated for convenience at all. Namely, if related to the distribution of agricultural and food products, and the buyer has

significant bargaining power, due to which Croatian UTP rules are applicable, a provision of a distribution agreement enabling the buyer to terminate for convenience is null and void. Please note that the same Croatian UTP-based principle applies onto distribution agreements of indefinite duration.

Q16. Must a reasonable notice period be observed in order for the termination to be valid even if the distribution agreement provides for the immediate termination for convenience?

No.

Q17. What are the consequences for the terminating party if it does not comply with prescribed (statutory, contractual, case law) rules for termination (e.g. in relation to the notice period)? Does the termination continue to have effect (a)? Will damages have to be paid and, if yes, how are those damages calculated (b)?

*a. Will the termination continue to have effect?*

Termination would not continue to have effect, as it was not given according to the rules for termination. Having that in mind, the parties would still be under obligation to perform under the agreement until the notice period expires and all obligations which became due prior to the notice period expiration must be settled.

*b. Will damages have to be paid, and, if yes, how are those damages calculated?*

Damages can be requested if the termination notice was given in inopportune time since the Croatian Obligations Act stipulates that termination should not be done “at bad times”, meaning that the counterparty is in a difficult position or would be put in a difficult position with such termination. Court practice usually presumes that the notice was not served inopportune if the other party had enough time to adjust its business and if the termination has not worsened the situation for the other party. However, the term “inopportune” is assessed on a case-to-case basis, taking all the circumstances into consideration.

**Termination for convenience (irrespective of any default or exceptional circumstance) of distribution agreements of indefinite duration**

Q18. Can a distribution agreement of indefinite duration be terminated for convenience even if the agreement does not provide for termination for convenience?

Yes.

If yes, must a reasonable notice period be observed?

Yes.

If a reasonable notice period must be observed, how is this reasonable notice period calculated (e.g. 1 month per year) (a)? Should a minimum notice period be observed (b), is there a maximum notice period (c)?

*a. How is this reasonable notice period calculated (e.g. 1 month per year)?*

The notice period, unless agreed upon, should generally be calculated customary or appropriate, and should not be served at, what the law calls, an inopportune time. According to court practice, this usually means that the notice should not be served in such a way that it causes damage to the other party. This refers to the damage which may occur due to the termination notice only, and not to any harmful consequences of the fact that the parties are no longer cooperating.

If the distribution agreement does not stipulate a notice period, three months' notice period is generally appropriate. However, in some national court decisions, a six months' notice period was considered adequate – in those cases, the parties had been in longstanding distribution relationships (usually exceeding five years).

There is, however, a notion of a "reasonable notice period" under the Croatian UTP rules (See, Q12 in respect of applicability). A provision enabling the buyer to terminate without a reasonable period is null and void. There is no definition of a reasonable notice period, although the decisional practice of the Croatian Competition Agency suggests it should generally be at least 30 days.

*b. Should a minimum notice period be observed? If yes, how long is this minimum notice period and are the parties allowed to contractually deviate from this minimum notice period*

There is no prescribed minimum notice period; therefore the notice period is either as determined by the distribution agreement or a reasonable notice period.

*c. Is there a maximum notice period? If yes, how long is this maximum notice period and are the parties allowed to contractually deviate from this maximum notice period?*

No, the notice period is usually customary or appropriate, if not fixed within the distribution agreement.

Q19. Is a contractual notice period always legally valid and enforceable?

No.

If not, which rules of mandatory law can have an impact on this?

A contractual notice period could be disputed if it is, for instance, inappropriately short or set contrary to the principle of good faith and fair dealing or not considered reasonable under the Croatian UTP rules.

Q20. What are the consequences for the terminating party if it does not comply with prescribed (statutory, contractual, case law) rules for termination (e.g. in relation to the notice period)? Does the termination continue to have effect (a)? Will damages have to be paid and, if yes, how are those damages calculated (b)?

*a. Will the termination continue to have effect?*

Termination will not continue to have effect if the party does not comply with the rules for termination. Pursuant to the Croatian Obligations Act, this would mean delivering notice in such a way as to secure its receipt; with specified notice period or the exact date of the termination. Also, termination has to be done in line with the

Croatian UTP rules (if applicable), otherwise it could be interpreted as unfair trading.

*b. Will damages have to be paid, and, if yes, how are those damages calculated?*

Damages can be requested if the termination notice was given in inopportune time, since the Croatian Obligations Act stipulates that termination should not be done “at bad times”, meaning that the counterparty is in a difficult position or would be put in a difficult position with such termination. Court practice usually presumes that the notice was not served inopportune if the other party had enough time to adjust its business and if the termination has not worsened the situation for the other party. However, the term “inopportune” is assessed on a case-to-case basis, taking all the circumstances into consideration. Also, damages can be requested due to unfair trading if the termination was not done in line with the Croatian UTP rules.

Q21. Must the terminating party comply with certain formalities?

Yes.

If yes or only in certain instances, when is a written notice required (a), must the notice contain a motivation in order for the termination to valid (b) and what are the consequences if any of the formalities are not observed (c)?

*a. Is a written notice required? If yes, is a registered letter (or similar) required?*

According to the Croatian Obligations Act, each of the parties may terminate for convenience by sending a written notice to the other party. The notice should be delivered in such a way as to secure its receipt; unless a specific way is agreed upon between the parties it is usually advisable to use the same method of communication as the parties used prior to the notice for documents of significance.

Additionally, under the Croatian UTP rules, a contractual provision enabling the buyer to unilaterally terminate the agreement in unwritten form is null and void.

*b. Must the notice contain a motivation in order for the termination to valid?*

Although this it is not explicitly prescribed, we would argue that a notice must contain a motivation in order for the termination to be valid.

*c. What are the consequences if any of the formalities are not observed?*

Damages can be requested due to unlawful termination by the party which received the termination notice. From the aspect of the Croatian UTP rules, such an action could be considered an unfair trading practice.

Q22. Can the parties stipulate the formalities in the distribution agreement?

Yes.

If yes, what are the consequences if those formalities are not observed?

Potential damages claim by the party which received the termination notice.

Q23. Is the terminated party entitled to damages or another type of compensation even if the correct notice period

has been observed?

No.

**Immediate extrajudicial termination on account of serious breach or exceptional circumstances**

Q24. Is immediate extrajudicial termination possible even if the distribution agreement does not provide for early termination?

Yes.

If yes, on what grounds (a)? Can parties exclude these grounds for immediate extrajudicial termination in their distribution agreement (b)?

**a. On what grounds?**

Parties can immediately terminate the agreement in case of non-fulfilment by the other party, serious breach of the agreement (as elaborated in more detail in the law) or impossibility to fulfil. Such grounds cannot be excluded, and they are granted under the Croatian Obligation Act.

**b. Can parties exclude these grounds for immediate extrajudicial termination in their distribution agreement?**

No.

Q25. Will an (extrajudicial) termination continue to have effect if the court rules that the agreement was wrongfully terminated on account of serious breach and/or exceptional circumstances?

No.

If not or only in certain instances, what are the consequences of the termination not being upheld?

Parties can initiate a separate damages compensation proceeding due to wrongful termination.

Q26. Does the terminated party have a right to compensation if it appears that the agreement was wrongfully terminated or dissolved on account of serious breach and/or exceptional circumstances?

Yes.

If yes, is this right based on statute or case law (a) and how is that compensation calculated and will the terminated party have a claim for any additional compensation in those circumstances (for example, goodwill) (b)?

**a. Is this right based on statute or case law and what this right entail?**

The right to challenge unlawful termination of an agreement and to request compensation is stipulated in local provisions. Therefore, the damaged party can file the claim to the court, with proof on damages which occurred due to the unlawful termination. As for the case law, court practice usually presumes that the notice was not served inopportune if the other party had enough time to adjust its business and if the termination has not worsened the situation for the other party. We would argue that the similar reasoning would be applied onto

damages compensation proceedings.

*b. How is that compensation calculated and will the terminated party have a claim for any additional compensation in those circumstances (for example, goodwill)?*

Compensation would be calculated as regular material damage (loss of profit during the termination period) or prevention of the profit increase. As for the additional compensation, this would be deemed by the court on case-to-case basis.

Q27. If a party believes that the distribution agreement has been wrongfully terminated or dissolved, can it apply to the judge in interim relief proceedings to have the effects of the termination suspended?

No.

## Part. 4: Post-contractual phase

Q28. Is the supplier required to repurchase the stock that is still at the distributor's disposal when the distribution agreement ends?

No.

Q29. Are there other post-contractual obligations that generally apply to either of the parties in the context of the termination of the distribution agreement?

No.

## Part 5: Dispute resolution

Q30. Do specific rules and/or restrictions apply as regards the choice of forum and/or jurisdiction?

No.

Q31. Can the parties opt for arbitration?

Yes.

If yes, are there any rules and/or restrictions as regards the enforceability of arbitration clauses in distribution agreements?

No.

Q32. What is the statute of limitations applicable to claims regarding the performance of a distribution agreement?

Any damages claim for breach of performance of a distribution agreement is limited to the limitation periods set in the Croatian Obligations Act. General limitation period is five years (for B2C, for example), however the limitation

period for most commercial (B2B) agreements is three years.

## **Part 6: Additional comments**

Croatian competition law adheres to the principles established under EU competition law so that there are no specific deviations in the law or the case law to be reported.