

Dealing with **overriding mandatory rules**

Avoiding them
or adapting to them?

The Panel

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- **Stephan Jäger**, Jager Heintel, Munich, IDI country expert for Saudi Arabia
- **Edoardo Marcenaro**, Head of Legal and Corporate Affairs, Enel Global Infrastructure & Networks, Rome
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Overriding mandatory provisions Definition in Art. 9 Rome I Reg.

«Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for **safeguarding its public interests**, such as its **political, social or economic organization**, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation»
(art. 9.1 Rome I, substitute art. 7 Rome Convention 1980)

Three cases under discussion

Case 1 – *Intra UE – Intra UE*

DUTCH PRINCIPAL – BELGIAN DISTRIBUTOR

Case 2 – *Extra UE – Intra UE*

US PRINCIPAL – EU AGENT (ITALIAN)

Case 3 – *Intra UE – Extra UE*

GERMAN PRINCIPAL – DISTRIBUTOR IN SAUDI ARABIA
(QATAR)

Case 1 - **DUTCH PRINCIPAL – BELGIAN DISTRIBUTOR**

A Dutch principal enters into an exclusive distribution contract with a Belgian distributor for Belgium. The contract provides Dutch law as the governing law (choice of law clause) and exclusive jurisdiction of the courts of Amsterdam (forum clause). The principal terminates the agreement with a six months' notice in conformity with the contract.

Under Belgian distribution law (Book X Belgian Code on Economic Law) the Belgian distributor claims a compensation based on a longer notice period (18 months) and a goodwill compensation of 1 year semi-gross profits.

Case 2 – **US PRINCIPAL – EU AGENT (ITALIAN)**

2.1. ARBITRATION IN THE US

An US principal appoints an exclusive commercial agent for Italy. The agreement provides AAA arbitration with venue in Los Angeles and California law as governing law, which law does not recognize any indemnity in favor of the agent in case of termination of the contract.

2.2. EXCLUSIVE JURISDICTION OF US COURT

An US principal appoints an exclusive commercial agent for Italy. The agreement provides once again California law as the governing law whereas the solution of disputes is devolved to the exclusive jurisdiction of the Courts of Los Angeles.

Case 3 - **GERMAN PRINCIPAL – DISTRIBUTOR IN SAUDI ARABIA (QATAR)**

A German principal is negotiating an agreement with a distributor in Saudi Arabia (Qatar).

The Principal wants to avoid goodwill indemnity and local rules and suggests DIS Arbitration in Germany, a choice of German law and an express waiver of goodwill indemnity.

Is that the best option?

Final remarks

In perspective, the application of art. 9 Rome I Regulation will simplify the question of dealing with overriding mandatory provisions

Thanks for your kind attention!

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