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DIRECT DISTRIBUTION

Ownership structures
May a foreign supplier establish its own entity to import and distribute its products in your jurisdiction?

Yes. Generally, foreign businesses operate under the same rules as domestic businesses. However, specific restrictions and requirements (eg, permits or licences) may apply if (foreign or domestic) investors do business in the defence, pharmaceutical or financial sectors.

Law stated - 8 Februar 2026

Ownership structures
May a foreign supplier be a partial owner with a local company of the importer of its products?

Yes. There is no specific investment legislation and no minimum percentage of German shareholders required.

Law stated - 8 Februar 2026

Ownership structures
What types of business entities are best suited for an importer owned by a foreign supplier? How are they formed? What laws govern them?

The types of business entities that are best suited are:

- limited liability companies (GmbH and UG);
- stock corporations (AG); and
- limited partnerships (KG).

The criteria for the choice of entity used are liability, taxation, financing, personal involvement and control, and flexibility. For larger companies, a GmbH or an AG are typically best suited. Their shareholders' liability is limited to the respective share capital.

The minimum share capital varies between €50,000 (AG), €25,000 (GmbH) and €1 (for the GmbH subtype, UG). The transfer of shares in a GmbH or a UG typically has to be approved by the other shareholders and notarised, whereas shares in an AG are freely transferable. However, the GmbH is a more flexible and procedurally less demanding form of entity than the AG.

GmbH, UG and AG entities are formed by one or more founding shareholders, who adopt the articles of association and appoint the managing directors, and additionally, in the case of an AG, a supervisory board (of at least three members) in a notarial deed. These entities exist upon registration at the commercial register. Alternatively, a supplier may purchase an existing, inactive shelf company and, as an advantage, start operating immediately.

Partnerships are often preferred for tax reasons, especially the KG, which – for reasons of limiting liability – is often combined with a corporation as a general partner (GmbH & Co KG or AG & Co KG). They require at least two partners.

The governing laws are as follows:

- the Limited Liability Companies Act for the GmbH and UG;
- the Stock Corporation Act for the AG; and
- the German Civil Code and the German Commercial Code for partnerships.

Law stated - 8 Februar 2026

Restrictions

Does your jurisdiction restrict foreign businesses from operating in the jurisdiction, or limit foreign investment in or ownership of domestic business entities?

Generally, no. Foreign businesses operate under the same rules as domestic businesses. By way of exception, the Federal Ministry for Economy and Technology can restrict or prohibit acquisitions of or participation in domestic business entities by individuals or business entities seated outside the European Union, Iceland, Liechtenstein, Norway (together, the European Economic Area) or Switzerland. Preconditions to this are:

- the foreign investor acquires 10 or 20% of the voting rights in a German company where the domestic business entity pertains to critical infrastructure sectors (eg, energy, information technology, telecommunications, transport, traffic, health, water, food, finance and insurance; the relevant percentage – 10 or 20% of voting rights – depends on the critical infrastructure sector concerned); or
- the foreign investor acquires 25% or more of the voting rights of any other German company; and
- the acquisition endangers national public order or security (sections 55 to 59 of the Foreign Trade and Payments Ordinance).

Law stated - 8 Februar 2026

Equity interests

May the foreign supplier own an equity interest in the local entity that distributes its products?

Yes.

Law stated - 8 Februar 2026

Tax considerations

What are the tax considerations for foreign suppliers and for the formation of an importer owned by a foreign supplier? What taxes are applicable to foreign businesses and individuals that operate in your jurisdiction or own interests in local businesses?

A foreign supplier especially has to consider:

- whether the importer itself shall pay income tax or the supplier as owner, or both; and
- whether the supplier might be subject to double taxation (both in Germany and its state of origin) and whether it can be avoided.

To foreign businesses and individuals that operate in Germany, two levels of taxation apply, namely:

- trade tax, which applies to all businesses and individuals in Germany and is paid on taxable earnings (as a local tax, its rate differs from municipality to municipality); and
- income tax, which depends on the business entity.

Corporations are subject to corporate income tax (15% flat rate) and their shareholders are subject to a tax on capital gains and dividends. The average overall tax burden for corporations in Germany is 30% (corporate income tax and trade tax).

A partnership itself is not subject to income tax, but its partners are subject to either corporate (if business entities) or personal (if individuals) income tax.

Individuals pay personal income tax. The tax rate increases with the income (to a maximum of 45% for an income of €250,000), but trade tax payments can be set off against it. Special tax rates apply for dividends and capital gains.

For dividends, capital gains, interest payments and licence fees, withholding tax may apply. This amounts to 25% of the capital gain distributed to the owning business (plus a further solidarity surcharge of 5.5%, which is added to the tax amount). These taxes may be refunded in the case of double taxation if a treaty with the country of origin of the owning business exists.

Law stated - 8 Februar 2026

LOCAL DISTRIBUTORS AND COMMERCIAL AGENTS

Distribution relationships
What alternative distribution relationships are available to a supplier?

Any conceivable distribution relationship is available. The following distribution relationships are typically used. While deciding for any option, consider also EU product safety and product liability regulations (cf. Rohrßen, in Röhricht et al., HGB, 7th Ed. 2026, Vor § 84 paragraph 3 ff).

- In-house sales force, which allows for direct influence on employees and an easy margin calculation but generally entails high labour cost (including social security).
- Self-employed commercial agents, who sell the products on the supplier's behalf. The supplier keeps direct contact with and sells directly to the customers, with

greater control over the activities of the agent and over the margins. Commercial agents have to provide detailed market reports. Unlike an employee's salary, an agent's commission can be exclusively profit-oriented (namely subject to successfully soliciting customers) and linked to the turnover. Within the EU, protective agency law applies, including minimum termination notice and indemnity provisions.

- Distributors, who buy and, thus, take ownership of the products and sell them on their own behalf, adding a margin to cover their own costs. They assume liability and, in return, gain profit from the margin, while the suppliers' margins are rather low. The distributor is obliged and motivated to market and distribute the products that he or she purchases from the supplier and to safeguard the latter's interests. Distributors are subject to limited control by the supplier over their activities but are also less protected than commercial agents.
- Commission agents, who are midway between commercial agents and distributors. They sell products in their own name but for the supplier's account. The supplier bears the sales risk, even if the commission agents have products in a consignment stock to which the supplier retains the title. The supplier can influence the commission agent without observing the strict antitrust law that applies to distributorship agreements.
- Franchisees, who, like distributors, buy and sell products on their own behalf. A franchisee is entitled and encouraged to use the franchisor's trade name, trademarks, know-how and brands, based on the acquired licences of intellectual property rights, to market and sell the goods or services. Franchisors are typically already established within the marketplace, often already with a solid customer base. In return, the franchisee usually pays an initial fee and ongoing royalties. The franchisor, based on the experience acquired with the established business, must disclose the key risks and issues linked to the franchise and often provides assistance and guidelines in the marketing and selling of the goods or services to maintain the brand identity.
- Private label products, namely products produced by the supplier under the trademarks of the retailer (in contrast to manufacturer brands).
- Trademark licences, which are especially used where the trademark owner has already introduced well-known brands but does not have its own manufacturing capacities or knowledge. To enter into a new product market, the licensor can grant licensees, who have the necessary technical and commercial know-how, a licence to produce and sell the products under the licensor's trademark. The agreement usually, but not necessarily, grants an exclusive licence for a certain territory, and it requires maintaining product quality and upholding the brand image.
- Joint ventures, which are joint projects between legally and economically independent companies in which the partners share management responsibility and financial risk. The setting-up of a joint venture is based on a common interest of the partner companies that is expressed in a joint venture agreement, which also regulates the distribution of profits and joint control.
- Concession agreements, aimed at selling the supplier's products within sales areas in department stores, operated by the supplier, typically using the department store's payment system.

Law stated - 8 Februar 2026

Legislation and regulators

What laws and government agencies regulate the relationship between a supplier and its distributor, agent or other representative? Are there industry self-regulatory constraints or other restrictions that may govern the distribution relationship?

Employment contracts

Employment contracts with the in-house sales force are governed by sections 611 to 630 of the German Civil Code (BGB) and several laws on employees' protection.

Commercial agency contracts

Commercial agency contracts are governed by sections 84 to 92c of the German Commercial Code (HGB). The commercial agent is, like the employee, strongly protected, for example, by mandatory rules on minimum notice periods, commission payments and goodwill indemnity.

Distributorship contracts

Most EU member states' laws do not expressly regulate distributorship contracts. However, the legal vacuum was mostly filled by case law, for example, with respect to the supplier's duty to take back unsold stock upon termination of the contract. German agency law applies by analogy to the distributor if the latter is integrated into the supplier's sales organisation and obliged (contractually or factually) to submit the customer data during or upon termination of the contract.

Antitrust law also applies to distributorship contracts. Pursuant to article 6(3a) of the Rome II Regulation, the antitrust regulation of any affected market must be complied with.

Franchise contracts

Franchise contracts are not explicitly governed by statute law. They combine elements of licensing, sales and management of another's affairs. Generally, agency law applies by analogy (see the German Federal Court of Justice (BGH), decisions of 12 November 1986, on mineral water, and 17 July 2002, ***Hertz***). Moreover, being standard form contracts (pre-formulated and provided by the franchisor for multiple franchisees), franchise contracts must comply with the quite strict German laws on standard form contracts (BGH, decision of 11 October 2018, ***RE/MAX***; comment by Rohrßen, ***ZVertriebsR*** 2019, 325).

Industry self-regulatory constraints

Certain industry self-regulatory constraints exist, for example, in the automotive industry (where members of the European Automobile Manufacturers Association have agreed to a code of good practice, stipulating minimum notice periods and methods for the resolution of contractual disputes) or in franchising, where members must adhere to the European Franchise Federation's or the German Franchise Association's code of ethics.

Contract termination

Are there any restrictions on a supplier's right to terminate a distribution relationship without cause if permitted by contract? Is any specific cause required to terminate a distribution relationship? Do the answers differ for a decision not to renew the distribution relationship when the contract term expires?

The supplier's right to terminate without cause is restricted. No restriction applies to a decision not to renew the distribution relationship when the contract term expires unless good faith or antitrust law, in rare cases, demand continued delivery.

The principal's and the agent's right to terminate the agency agreement without cause can be contractually agreed upon. However, there are mandatory notice periods to observe, in accordance with section 89(1) HGB, depending on the contractual term (similarly to article 15(2) of the Commercial Agency Directive): the period is one month in the first year, two months in the second year, three months in the third, fourth and fifth years and six months after five years. The notice periods are set by law and cannot be shortened. In the event of contractual extension, the supplier's notice period cannot be shorter than the agent's (section 89(2) HGB). The agreement can be terminated without a notice period only if there is cause (section 89a HGB), and the terminating party cannot reasonably be expected to carry on the contractual relationship until its ordinary termination (taking into account all circumstances of the single case and weighing the interests of both parties).

A recent decision by the Higher Regional Court of Munich (OLG München, decision of 22 February 2024, Case No. 23 U 7165/21) highlights additional restrictions on contractual termination provisions. The court ruled that a termination clause may be invalid if it creates unreasonable termination obstacles (***Kündigungserschwernis***) for the commercial agent. In this case, the commercial agent remained contractually bound until the end of the notice period and was required to continue performing obligations, including maintaining an office, while essential payments were withdrawn. This led to a severe financial burden, amounting to an almost total loss of income. The court ruled that the discontinuation of advance payments upon termination constitutes an undue hardship and thus an inadmissible obstacle to termination, as the commercial agent was left without income while still having to fulfil contractual duties. Such a contractual clause, which effectively disrupts the contractual balance and places an excessive burden on the agent, was found to be incompatible with section 89(2) HGB.

Pursuant to section 89a(1) sentence 2 HGB, the exclusion or restriction of the freedom of termination is not permitted. An impermissible restriction of the freedom of termination may also be given indirectly by stipulating difficulties in terminating the contract in the form of financial or other disadvantages (BGH, decision of 19 January 2023, Case No. VII ZR 787/21). This was also confirmed by the Higher Regional Court of Munich in its decision of 7 December 2023, Case No. 23 U 6109/21, whereby it found that a contractual agreement stating that the commercial agent must compensate for any remaining under-earnings upon termination of the contract is invalid pursuant to section 134 BGB in conjunction with section 89a (1) sentence 2 HGB on the grounds of termination aggravation.

If a contract term was not agreed upon, a distributorship agreement can be terminated (sections 314, 573, 620(2) and 723 BGB). The length of the notice period depends on the case, considering also the distributor's investments. For example, one-year periods were deemed suitable in the automotive sector (BGH, decision of 21 February 1995, ***Citroën***). In rare cases, a renewal of the relationship may be imposed by antitrust law.

Generally, agency law applies to the termination of franchise agreements (mutatis mutandis). However, longer periods may be deemed necessary in specific cases, for example, if the supplier's product forced the franchisee to make considerable investments.

Law stated - 8 Februar 2026

Contract termination

Is any mandatory compensation or indemnity required to be paid in the event of a termination without cause or otherwise?

A commercial agent can claim indemnity if he or she has brought new customers or has significantly increased the business volume with already existing customers, resulting in benefits for the supplier, and if the payment of indemnity can be deemed equitable in the specific case (section 89b HGB). The relevant calculation is based on the commissions earned over the previous 12 months of activity, with both new customers and existing customers with whom the agent has substantially increased the business (while it is no requirement that the agent loses commission; accordingly, agents earning a one-time commission are not per se excluded from an indemnity, cf European Court of Justice (ECJ), Case No. C-574/21). The indemnity cannot exceed an amount equal to the past five years' average annual commission (section 89b(2) HGB). The indemnity claim cannot be waived before termination. In the case of multi-level distribution, each level of commercial agents can claim indemnity from its principal, whereby the goodwill indemnity that has been paid by the principal to the main agent in respect of the customer base brought by the sub-agent is capable of constituting, for the main agent, a substantial benefit, thus resulting in an indemnity claim by the sub-agent against the main agent (cf ECJ, 13 October 2022, Case No. 593/21, commented by Rohrßen, ***ZVertriebsR*** 2023, issue 1; details: Thume/Rohrßen, in: ***Graf von Westphalen et al.***, HGB (German Commercial Code), 6th ed. 2023, §§ 84 et seq on the entire commercial agency law).

Indemnity may, however, be reduced or even excluded for reasons of equity if the sub-agent has taken over the position of the main agent after termination and thus continues its activities towards the same customers for the same products in a direct relationship with the main principal instead of the main agent. In this case, the commercial agent (here ex sub-agent) does not lose its customer base, so there is no loss to be compensated (cf ECJ, 13 October 2022, Case No. 593/21, BB 2022, 2572, paragraph 37 f, commented by Rohrßen, ***ZVertriebsR*** 2023, issue 1).

According to section 89b(3) no. 2 HGB, the claim to indemnity does not arise if the principal has terminated the agency contract and there was a compelling reason for such termination owing to culpable conduct on the part of the commercial agent. In its decision of 20 November 2020 (case no. 89 O 21/20), the Regional Court of Cologne addressed whether grounds for termination that become known only after the termination notice can be considered under section 89b(3) HGB. The exclusion of the indemnity claim under section

89b(3) HGB requires that a compelling reason was the actual cause of the termination. This means that, under section 89b(3) HGB, only those circumstances may be considered that were known to the terminating party at the time of termination and actually led to the decision to terminate. Consequently, grounds for termination that only became known after the termination notice was given cannot be invoked retroactively to exclude the agent's indemnity claim.

However, the indemnity amount may be reduced by an equity deduction if justified by equity considerations. The Regional Court of Cologne (LG Cologne, decision of 3 May 2024, case no. 89 O 16/23) has provided important clarification regarding cases where commercial agents receive one-time commissions rather than ongoing commission payments. The court ruled that one-time commissions do not preclude an indemnity claim. The decisive factor is not the type of commission payment, but whether the commercial agent could have continued securing further commission-relevant contracts with the customers he or she had acquired. The court further emphasised that projected commission losses must be taken into account when assessing the indemnity. Thus, even a one-time commission payment can lead to projected commission losses that must be considered in the indemnification. Consequently, a blanket equity deduction based solely on the payment of one-time commissions is not justified. Instead, it must be examined on a case-by-case basis whether and to what extent a deduction is appropriate (cf also ECJ, 23 March 2023, Case No. 574/21).

To retain the indemnity, the commercial agent needs to notify the principal within one year of termination; otherwise, he or she loses the right to indemnity. Indemnity is not due if:

- the agent terminates the contract (unless owing to circumstances attributable to the principal or because of the agent's advanced age or illness);
- the principal terminates the contract owing to default attributable to the agent (which would justify immediate termination for cause); or
- the agent, upon agreement with the principal, assigns and transfers its rights and duties under the agency contract to a third person.

The right to indemnity cannot be excluded by the parties unless the agent acts outside the European Economic Area (EEA) (section 92c HGB). This has been confirmed by the ECJ of Justice in its ruling on the international scope of the Commercial Agency Directive (decision of 16 February 2017, ***Agro Foreign Trade & Agency Ltd/Petersime NV***; cf Rohrßen***, ZVertriebsR*** 2017, 181 et seq). For details on the different levels of protection of commercial agents in various countries, see Rothermel,***Internationales Kauf-, Liefer- und Vertriebsrecht*** (2nd ed. 2021), with overviews of 65 countries in Chapter H.

Distributors can claim indemnity only by analogic application of agency law. A distributor's indemnity can amount to its average annual net margin. For a long time, it was disputed whether a distributor's goodwill indemnity could be excluded under German law in advance when the distributor operates outside Germany but within the EEA. The BGH has recently denied such exclusion, provided the preconditions for analogic application of agency law are given, arguing that agency law restrictions applied to distributorships as well by way of analogy, and hence in the distributor's favour (BGH, decision of 25 February 2016, ***Convection-reflow Soldering Systems***).

In its decision of 24 September 2020, the BGH clarified that the substantial benefits of the principal within the meaning of section 89b(1) sentence 1 no. 1 HGB consists of being able

to continue to use the business relationships created by the commercial agent or authorised dealer after termination of the contract. It is therefore a matter of valuing this customer base created by the commercial agent or distributor ('goodwill') (BGH, decision of 24 September 2020, Case No. VII ZR 69/19, juris-paras 18, 20).

Franchisees can likely claim indemnity based on analogic application of agency law, but this has not yet been ruled out (BGH, decision of 23 July 1997, ***Benetton***). The Federal Court of Justice has denied the franchisee's indemnity claim in the single case, but it would quite likely affirm it in the case of distribution franchising, where the franchisee buys the products from the franchisor, arguing that where the franchisee has been entrusted with the distribution of the franchisor's products and, after termination of the contractual relationship, the franchisor alone is entitled to the customers newly acquired by the franchisee during the term of the contract, the situation is similar to distributorship and commercial agency situations (BGH, decision of 29 April 2010, Case No. I ZR 3/09, ***Joop***). However, no indemnity can be claimed where the franchise concerns anonymous bulk business and customers continue to be regular customers on a de facto basis (BGH, decision of 5 February 2015) or production franchising (bottling contracts, etc) where the franchisor or licensor is not active in the sector of products distributed by the franchisee or licensee (***Joop***).

Commission agents may also claim indemnity based on analogic application of agency law (BGH, decision of 21 July 2016, ***Thomas Philipps***). The claim can probably be avoided, in particular by excluding the commission agent's obligation to transfer the customer base to the principal (for details, see Franke and Rohrßen***, IHR*** 2017, 62–70).

Law stated - 8 Februar 2026

Transfer of rights or ownership

Will your jurisdiction enforce a distribution contract provision prohibiting or restricting the transfer of the distribution rights to the supplier's products, all or part of the ownership of the distributor or agent, or the distributor or agent's business to a third party?

A provision that prohibits the transfer of distribution rights will be enforced (section 399 BGB). Distribution rights are not assignable without the supplier's consent if the supplier has a reasonable interest in the distributor's or agent's personal performance (sections 613 and 664 BGB).

A transfer of ownership (change of control) cannot be hindered. However, the distributor can agree not to transfer ownership, and, in the event of a breach, the supplier is entitled to damages, including, if possible, retransfer of ownership (section 137 BGB). In addition, the parties can agree on a termination right in the case of change of control.

Law stated - 8 Februar 2026

REGULATION OF THE DISTRIBUTION RELATIONSHIP

Confidentiality agreements

Are there limitations on the extent to which your jurisdiction will enforce confidentiality provisions in distribution agreements?

Limitations exist, especially regarding the draft of standard business terms. Confidentiality provisions shall clarify the scope of confidentiality (what, who and how long). Contractual penalties may only apply if the receiving party culpably breached confidentiality, and the amount of the penalty has to be reasonable (sections 310, 307 and 343 German Civil Code (BGB) and section 348 German Commercial Code (HGB)).

Law stated - 8 Februar 2026

Competing products

Are restrictions on the distribution of competing products in distribution agreements enforceable, either during the term of the relationship or afterwards?

Non-compete obligations towards distributors and franchisees are enforceable if they conform to antitrust law. Generally, agreements that aim at or result in restraints of competition are prohibited by antitrust law, namely by the German Act Against Restraints of Competition (GWB) and articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), details: Rohrßen, VBER 2022, EU Competition Law for Vertical Agreements.

Unless agreements contain hardcore restrictions, a safe harbour is provided by the De Minimis Notice of 30 August 2014 and the Vertical Block Exemption Regulation (VBER) (ex Regulation (EU) No. 330/2010, updated in 2022 because of the rise of internet sales and replaced by Regulation (EU) No. 2022/720). Agreements between non-competitors are safe if each party's market share does not exceed 15% in any relevant market affected.

If one party's market share exceeds 15%, but all market shares are below 30%, the parties can agree upon a non-compete obligation during the contractual term for a maximum period of five years. For non-competes, EU competition law now provides for new leeway: According to the European Commission so-called evergreening non-competes (ie, those that are tacitly renewable beyond a five-year term) can also be exempt under the VBER if the buyer can effectively renegotiate or terminate the vertical agreement with a reasonable notice period and at a reasonable cost in such a way that the buyer can effectively switch its supplier (Guidelines on Vertical Restraints of 30 June 2022, paragraph 248; cf Rohrßen, VBER 2022: EU Competition for Vertical Agreements, Chapter 5.22). This time limit does not apply if the products are sold on premises owned by the supplier or leased by the latter from third parties who are independent of the buyer. In any case, the non-compete obligation cannot exceed the term for which the buyer is entitled to occupy the premises. Upon termination of the contractual term, a non-compete obligation involving a party with a market share exceeding 15%, but without market shares exceeding 30%, is valid if it is necessary to protect the know-how granted to the distributor and limited to competing products, to the distributor's premises and to a one-year term.

If one party's market share exceeds 30%, a non-compete obligation and any other restriction of competition can only benefit from the individual exemption under the strict criteria of article 101(3) of the TFEU (efficiency defence).

Restraints within franchisee agreements can be exempted. They are considered not to restrict competition in terms of EU antitrust law if they are essential for running the franchise system (similar to the ancillary restraints doctrine under US law) (cf Court of Justice of the European Union, 28 January 1986, ***Pronuptia***). This is particularly true for non-compete obligations (for details, see Rohrßen, VBER 2022: EU Competition for Vertical Agreements, Chapter 7).

Non-compete obligations towards agents are enforceable. As the principal bears all risks connected with the sale and purchase of the products or services, antitrust law generally does not apply (Guidelines on Vertical Restraints of 19 May 2010, paragraphs 12 et seq, 18 and 49, now replaced by the Guidelines on Vertical Restraints of 30 June 2022, paragraph 29 et seq, with special comments on agency agreements in the platform economy in paragraphs 46 et seq). Specific limits apply under German commercial agency law to post-contractual non-compete obligations that were stipulated before termination: they must be limited to a two-year period, to the agent's territory or customers, and to the contractual products or services, and they must be done in writing and delivered to the agent. The principal is obliged to pay indemnity for the non-compete obligation's term (section 90a HGB).

Law stated - 8 Februar 2026

Prices

May a supplier control the prices at which its distribution partner resells its products? If not, how are these restrictions enforced?

Generally, a supplier must not control the resale price or price level of its distributors or franchisees (except for suppliers selling newspapers, magazines and books, section 30 GWB). A violation of this rule represents a hardcore restriction and is therefore generally void (see article 4(a) VBER and Guidelines on Vertical Restraints of 10 May 2010, paragraphs 48 and 223, respectively Guidelines on Vertical Restraints of 30 June 2022, paragraphs 185 et seq; for practical tips cf Rohrßen, ***ZvertriebsR*** 2020, 406 et seq). By exception, the supplier can enforce the efficiency defence (eg, when introducing a new product or a coordinated short-term, low-price campaign). The supplier can also influence resale prices by recommending resale prices or setting maximum resale prices.

Suppliers can control the price at which they sell the products or services via agents because the antitrust law restrictions do not apply.

However, this strong market position must not be abused. Such abuse is deemed to exist if the supplier, through its own or affiliated dealerships, offers sale prices at the authorised dealer's level of trade that are so low that the dealer is unable to offer them at an economically profitable price and that are only possible for its own or affiliated dealerships by the entrepreneur compensating for their resulting loss. The decision of the Vienna Supreme Court of 17 February 2021 – 16 Ok 4/20d on section 4 paragraph 3 of the Austrian Cartel Act is also significant for Germany due to the comparable legal situation under section 20 paragraph 1 sentence 1 and section 19 paragraph 1 and paragraph 2 No. 1 of the German Act against Restriction of Competition (GWB).

Law stated - 8 Februar 2026

Prices

May a supplier influence resale prices in other ways, such as suggesting resale prices, establishing a minimum advertised price policy, announcing it will not deal with customers who do not follow its pricing policy, or otherwise?

A supplier may recommend resale prices or set maximum resale prices if the parties' market shares do not exceed 30% and if the recommendation or maximum resale price is not backed up by further negative (eg, pressure) or positive (eg, incentives) factors from one party (article 101(1) TFEU and article 4(a) VBER), such as announcing that the supplier will not deal with customers who do not follow its pricing policy.

Establishing a minimum advertised price policy is exempt from antitrust law if it is regarded as a recommendation. Otherwise, it can – very rarely – be exempted under the efficiency defence.

If, on the other hand, a supplier announces it will not deal with distributors or franchisees refusing its pricing policy, it will be treated as fixing the selling prices.

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Prices

May a distribution contract specify that the supplier's price to the distributor will be no higher than its lowest price to other customers?

A most favoured nation or customer clause can be enforced only if agreed between non-competitors and if the parties' market shares amount to a maximum of 30% (otherwise, only the efficiency defence can be used to argue that the clause does not represent a prohibited restriction of competition).

Law stated - 8 Februar 2026

Prices

Are there restrictions on a seller's ability to charge different prices to different customers, based on location, type of customer, quantities purchased, or otherwise?

Generally, based on freedom of contract, a seller can charge different prices to different customers. However, this general rule does not apply if a seller:

- holds a dominant or similarly strong market position (sections 19 and 20 GWB and article 102 TFEU); and
- differentiates on grounds of race or ethnic origin. The same is true for grounds of gender, religion and disability. A different treatment is allowed if it is based on objective grounds, especially where it serves to avoid threats, prevent damage, etc (sections 19 and 20 Anti-Discrimination Act).

Geographic and customer restrictions

May a supplier restrict the geographic areas or categories of customers to which its distribution partner resells? Are exclusive territories permitted? Is there a distinction between active sales efforts and passive sales that are not actively solicited, and how are those terms defined?

Whether measures restrict competition and are prohibited is to be determined by the antitrust law of the country in which the measures have an effect (the effects doctrine). Within the European Union or the European Economic Area (EEA), a supplier is generally prohibited from restricting the territories in which or the customers to whom its intermediary sells; such restrictions are generally null and void (article 101(1)b, (2) TFEU and article 53 EEA Agreement). The following restrictions are, however, exempt from the ban owing to block exemption:

- active sales into an exclusive territory or customer group reserved to the supplier or another distribution partner;
- sales to end users if the distribution partner is a wholesaler;
- sales from members of a selective distribution system to unauthorised distributors within the system's territory; and
- sales of components, supplied for incorporation, to customers who would use them to produce analogous products (article 4(b-d and f) VBER 2022/720).

Active sales (now defined in article 1(1)(l) VBER 2022/720) refers to actively approaching actual or potential customers (eg, by direct, unsolicited mail, email, calls or visits) in a specific territory through specifically targeted promotions. Passive sales (now defined in article 1(1)(m) VBER 2022/720) refers to the response to unsolicited requests from individual customers, including advertisements addressed to customers outside exclusive territories or customer groups, if done reasonably.

This also holds true for the internet: in principle, online sales may not be excluded. A supplier may only require its intermediary to meet specific quality standards, especially in selective distribution systems (Guidelines on Vertical Restraints of 10 May 2010, paragraphs 51 and 54). The ECJ shed further light on internet resale restrictions within selective distribution systems during deliberation on the Higher Regional Court of Frankfurt's request to give a preliminary ruling on how to interpret European antitrust rules, namely article 101 of the TFEU and article 4(b) and (c) of the VBER (decision of 19 April 2016, ***Coty Germany,*** File No. 11U 96/14 (Kart)). According to the ECJ's decision of 6 December 2017 (***Coty Germany,*** Case No. C-230/16), manufacturers of luxury products may stop the distributors within their selective distribution network from selling the goods via third-party platforms if the contractual clause meets the following three conditions: "(i) that clause has the objective of preserving the luxury image of the goods in question; (ii) it is laid down uniformly and not applied in a discriminatory fashion; and (iii) it is proportionate in the light of the objective pursued." If these ***Metro***-criteria for selective distribution (referring to the ***Metro*** case of 25 November 1977, Reference No. 26/76) are not met, the clause may nevertheless benefit from an exemption under the VBER by reason of article 101(3) of the TFEU, because banning sales

via third-party online platforms does not, at least according to the court, under a selective distribution system for luxury goods, constitute a hardcore restriction as listed in article 4 of the VBER, which would otherwise exclude applying the block exemption to the whole vertical agreement (cf paragraph 47 of the Guidelines on Vertical Restraints of 10 May 2010). In particular, the third-party platform ban would not constitute a restriction of customers in terms of article 4(b) of the VBER, or a restriction of passive sales to end users in terms of article 4(c) of the VBER. The court left open whether this interpretation also applies to goods other than luxury goods and outside selective distribution. The German competition authority made the following declaration immediately via Twitter on 6 December 2017: "The #ECJ has taken care to limit its findings to genuine luxury products. #Brandmanufacturers have not received carte blanche to issue blanket #platformbans. First assessment: Limited impact on our practice."

The European Commission disagreed; in its Competition Policy Brief of April 2018, the European Commission stated that the ECJ's argumentation in the ***Coty Germany*** case applies irrespective of the luxury character of the products marketed:

> *The arguments provided by the Court are valid irrespective of the product category concerned (i.e., luxury goods in the case at hand) and are equally applicable to non-luxury products. Whether a platform ban has the object of restricting the territory into which, or the customers to whom the distributor can sell the products or whether it limits the distributor's passive sales can logically not depend on the nature of the product concerned.*

The ECJ's decision in the ***Coty Germany*** case provides good abstract arguments that manufacturers of both luxury and other brand-name products may ban their sale via internet platforms either according to the ***Metro*** criteria or according to the VBER. In this regard, see also the decision of the Higher Regional Court of Hamburg of 22 March 2018, which held that the ban that a producer of food and cosmetics (ie, not luxury goods, but products "qualitatively committed to a high (production) standard") imposed on its own distributor to sell via third-party internet platforms was valid (for details see Rohrßen***, ZVertriebsR*** 2018, 277–285 (281)).

The new VBER has now vastly codified these principles, as in its article 4(e) VBER has added a new hardcore restriction: suppliers must not prevent the buyers' (or their customers') effective use of the internet to sell the contract goods or services, as it restricts the territory into which or the customers to whom the contract goods or services may be sold within the meaning of points.

With regard to resale restrictions, the EU Geo-blocking Regulation (Regulation (EU) No. 2018/302) prohibits traders from discriminating against customers within the European Union for reasons of nationality, place of residence or place of establishment with regard to the access to online interfaces (article 3) and the application of general conditions of access to goods or services (article 4). Within the range of means of payment accepted, traders shall not apply different conditions for payment transactions based on nationality, place of residence, place of establishment of the customer, location of the payment account, place of establishment of the payment service provider or place of issue of the payment instrument within the European Union (article 5). Where distribution agreements impose obligations to exercise any form of unjustified geo-blocking as laid down in articles 3, 4 and 5, those provisions shall be automatically void (article 6(2)). The Geo-blocking Regulation has

been applied since 3 December 2018. However, article 6(2) will only apply to agreements on passive sales concluded before 2 March 2018 as of 23 March 2020 (for details see Rothermel and Schulz*, K&R* 2018, 444–449; Rohrßen, *ZVertriebsR* 2018, 277–285 (283–284)).

Law stated - 8 Februar 2026

Geographic and customer restrictions

If geographic and customer restrictions are prohibited, how is this enforced?

Geographic or customer restrictions of resale, to the extent permitted, can be enforced through private legal action, namely by way of an action for an injunction, requiring the distributor to refrain from such breach of contract. If urgent, suppliers can request an interim injunction.

Law stated - 8 Februar 2026

Online sales

May a supplier restrict or prohibit e-commerce sales by its distribution partners?

Yes, a supplier may restrict e-commerce sales by its distribution partners (especially distributors or franchisees) under German and EU antitrust law; however, suppliers may hardly impose a comprehensive prohibition on the online sale of goods (or services) because they are considered passive sales (cf ECJ, decision of 13 October 2011, *Pierre Fabre,* Case No. C-439/09, reaffirmed in *Coty Germany*; paragraph 52 of the Guidelines on Vertical Restraints of 10 May 2010; and paragraph 212 of the Guidelines on Vertical Restraints of 30 June 2022; see also the *Asics* decision of the German Federal Court of Justice (BGH) of 12 December 2017, which states that a general ban on the use of price comparison tools is void, though setting up guidelines for the use of those tools may be valid (see Rohrßen*, ZVertriebsR* 2018, 277–285 (282–283)). Restrictions short of a total ban are commonplace, particularly the prohibition of sales via third-party online platforms (especially marketplaces), the ban of purely online sales by requiring the operation of brick-and-mortar shops (paragraph 52(c) of the Guidelines on Vertical Restraints of 10 May 2010) and setting quality criteria for internet sales regarding the domain name, the online store's appearance, the language, the services provided, etc (for details, see Rohrßen*, GRUR-Prax* 2018, 39–41 and *DB* 2018, 300–306). Such restrictions within a selective distribution system are allowed if they either meet the *Metro* criteria or can be exempt under the VBER, which requires that: the supplier's and the buyer's market shares do not exceed 30%; and there are no hardcore restrictions listed in article 4 of the VBER or excluded restrictions under article 5 of the VBER. To be exempt under the VBER, the new hardcore restriction of article 4(e) VBER must be observed: the distribution agreement must not have as its object "the prevention of the effective use of the internet by the buyer or its customers to sell the contract goods or services, as it restricts the territory into which or the customers to whom the contract goods or services may be sold (…)". What suppliers may explicitly impose, however, are other restrictions on online sales and restrictions on online advertising that do not have the object

of preventing the use of an entire online advertising channel (for details: Rohrßen, VBER 2022: EU Competition Law for Vertical Agreements, Chapters 4.5 and 9).

A supplier may require that e-commerce sales by its distribution partners (and now, also by their direct customers, cf Rohrßen, VBER 2022, Chapter 4.2.4) are not resold outside the distribution partner's assigned territory, but only with respect to active sales into the exclusive territory or an exclusive customer group reserved to the supplier or another distribution partner, and only provided that the supplier's and the distribution partner's market shares do not exceed 30%. Passive sales over the internet, that is, upon unsolicited requests from individual customers, can, in principle, not be restricted.

An alternative is to use commercial agents or commission agents because they are, in principle, exempt from the competition law restrictions: "Since the principal bears the commercial and financial risks related to the selling and purchasing of the contract goods and services all obligations imposed on the agent in relation to the contracts concluded and/or negotiated on behalf of the principal fall outside Article 101(1)" (paragraph 18 of the Guidelines on Vertical Restraints of 10 May 2010, now paragraph 30 of the Guidelines on Vertical Restraints of 30 June 2022).

A supplier may require reports of e-commerce sales in the same way that a supplier may require reports of any other sales from its distribution partner; however, care must be taken that this does not result in resale price maintenance. Invasion fees or similar amounts, regardless of how they are named (contractual penalties, liquidated damages, etc), may be stipulated in the distributorship agreement for any breach of contract for which the distributor is responsible, including active sales into territories exclusively reserved to the supplier or allocated to another distributor.

Law stated - 8 Februar 2026

Online sales

May a distributor or agent restrict a supplier's sales through e-commerce intermediaries into the distribution partner's territory? May it require the supplier to obtain reports of such sales by territory and a payment of "invasion fees" or similar amounts to the distribution partner?

A distributor or agent may restrict a supplier's sales through e-commerce intermediaries if this has been stipulated in the distribution agreement and only in the following cases:

- active sales into the exclusive territory or an exclusive customer group reserved to the (maximum five) exclusive distributor(s) or the supplier itself (this shared exclusivity of up to five exclusive distributors is new, the concept of exclusivity has been broadened by the VBER 2022, cf Rohrßen, VBER 2022: EU Competition Law for Vertical Agreements (2023), cf. ECJ, decision of 8 May 2025 – C-581/23 (Beevers Kaas BV vs Albert Heijn NV);
- sales to end users if the e-commerce intermediary operates at wholesale level;
- sales from members of a selective distribution system to unauthorised distributors in the system's territory; and
-

selling components, supplied for incorporation, to customers who would use them to manufacture the same kinds of products (article 4(b) VBER), provided that each party's market share does not exceed 15% on any relevant market affected.

Law stated - 8 Februar 2026

Refusal to deal

Under what circumstances may a supplier refuse to deal with particular customers? May a supplier restrict its distributor's ability to deal with particular customers?

A supplier may refuse to deal with customers because of freedom of contract, unless restrictions by antitrust or anti-discrimination law apply.

A supplier may restrict its distributor's ability to deal with particular customers only if an exemption from antitrust law is given.

Law stated - 8 Februar 2026

Competition concerns

Under what circumstances might a distribution or agency agreement be deemed a reportable transaction under merger control rules and require clearance by the competition authority? What standards would be used to evaluate such a transaction?

Typically, German or European rules on merger control do not apply to the conclusion of a distribution or agency agreement because the agreement is a form of cooperation between companies that differs from a merger or acquisition. By way of exception, the conclusion of a distribution agreement may be subject to merger control under:

- German law if it is considered a "combination of undertakings enabling one or several undertakings to exercise directly or indirectly a material competitive influence on another undertaking" (section 37 et seq GWB). However, this combination shall only exist if the parties are somehow affiliated; mere economic influence shall not suffice; and
- European law if it results in gaining direct or indirect control of the whole or parts of one or more other undertakings, including by contract (article 3(1b) of the Merger Regulation (Regulation (EC) No. 139/2004)). This control may also exist because of mere economic dependencies (which are to be measured on the circumstances of the case).

Law stated - 8 Februar 2026

Competition concerns

Do your jurisdiction's antitrust or competition laws constrain the relationship between suppliers and their distribution partners in any other ways? How are any such laws enforced and by which agencies? Can private parties bring actions under antitrust or competition laws? What remedies are available?

Generally, agreements that aim at or result in restraints of competition are prohibited by antitrust law. Certain hardcore restrictions are generally prohibited regardless of the parties' market shares: for example, price-fixing, restricting the geographic areas or categories of customers and – under the new VBER – vertical agreements that have the purpose of preventing buyers or their customers from using the internet effectively for the online sale of goods and services remain unlawful hardcore restrictions (article 4(e) VBER). Other hardcore restrictions apply in particular to selective distribution (eg, no restriction of cross-supplies between distributors within a selective distribution system).

Unless there are hardcore restrictions, a safe harbour is provided by the De Minimis Notice and the VBER. However, if the market share of one of the parties exceeds 30%, an agreement or concerted practice that restrains competition can only benefit from the efficiency defence of article 101(3) of the TFEU.

Antitrust law is mainly enforced by the authorities (the European Commission and the German Federal Cartel Office), especially through fines. However, it can also be enforced by private action, aiming to remove the infringement of antitrust law or claim damages (section 33 et seq GWB).

Also agreements concerning minimum purchase obligations are permissible in principle. Under the De Minimis Notice, a minimum purchase agreement may be exempted if the parties' combined market shares fall below 10% or 15%. The percentage is reduced to 5% if the individual contract is part of comprehensive distribution agreements and the contract network covers at least 30% of the relevant market. In addition, the minimum purchase obligation may be exempted pursuant to article 2(1) VBER.

However, agreements on minimum purchase obligations are subject to the test of reasonableness (BGH, decision of 25 April 2001, Case No. VIII ZR 135/00; BGH, decision of 13 July 2004, Case No. KZR 10/03) and thus may be ineffective under German law of standard form contracts if they significantly exceed the distributor's resale opportunities. If a minimum purchase obligation is combined with a non-competition clause or an exclusive purchasing obligation, the manufacturer is only entitled to refuse orders from its authorised dealer for objective reasons.

Law stated - 8 Februar 2026

Parallel imports

Are there ways in which a distributor or agent can prevent parallel or "grey market" imports into its territory of the supplier's products?

Distributors or agents cannot directly prevent parallel imports. Instead, they can only demand that their supplier use its rights, if existent, to prevent parallel imports. As a general rule, the trademark proprietor of an EU trademark is entitled to prevent all third parties that do not have his or her consent from using any sign that is identical or similar to the EU trademark

in the course of trade, in relation to goods or services (article 9 of the Trademark Regulation (Regulation (EU) No. 2017/1001)). Such rights are exhausted 'in relation to goods which have been put on the market in the EEA under that trademark by the proprietor or with his consent' (article 15(1) of the Trademark Regulation). Trademark proprietors must present and prove only one of the elements of the infringement provided for under article 9 of the Trademark Regulation, and not the missing exhaustion (cf Higher Regional Court of Munich, decision of 19 July 2018; Rohrßen and Tenkhoff, ***GRUR-Prax*** 2018, 578). Moreover, the rights are not exhausted if a legitimate reason to prohibit the grey market sales exists, namely because the use of the trademark threatens to damage the good's reputation (as decided by the Court of Justice of the European Union, ***Dior/Evora***, Case No. C-337/95). In recent years, a court decision confirmed that this is especially true for the image of brands that have a luxury and prestige character, as also reflected in how they are advertised. The right to prevent such sales is, however, limited to cases with "a risk of damage to the reputation", especially where the trademark used by the reseller "substantially damages" the trademark's reputation. The court found that the use of a distribution channel that did not comply with the selective distribution system caused damage to the reputation of the luxury cosmetics to be distributed, namely by presenting the products amid other very standard products for daily use, low-priced products and special deals, all of which did not require any need to give advice to the customers (Higher Regional Court of Düsseldorf, decision of 6 March 2018; for details, see Rohrßen and Tenkhoff***, GRUR-Prax*** 2018, 235).

Law stated - 8 Februar 2026

Advertising

What restrictions exist on the ability of a supplier or distributor to advertise and market the products it sells? May a supplier pass all or part of its cost of advertising on to its distribution partners or require them to share in its cost of advertising?

When advertising and marketing products, the parties generally have to observe the Unfair Competition Act, avoid misleading advertising and adhere to the Ordinance obliging sellers to mark goods with prices, as well as further provisions that regulate market behaviour in the interest of market participants (eg, labelling of textiles or food products). The parties are free to agree on the cost of advertising.

Law stated - 8 Februar 2026

Intellectual property

How may a supplier safeguard its intellectual property from infringement by its distribution partners and by third parties? Are technology transfer agreements common?

A supplier may safeguard its intellectual propertyby registering its patents, trademarks, utility models and designs in the territory where the products shall be distributed now or in the future. Thus, the supplier can exert the respective rights in the case of infringement. In addition, a supplier may stipulate indemnity clauses in their distributor contracts to cushion the consequences of possible infringements.

Technology transfer agreements are common and governed by the Technology Transfer Block Exemption (Regulation (EU) No. 316/2014).

Law stated - 8 Februar 2026

Consumer protection

What consumer protection laws are relevant to a supplier or distributor?

Consumer protection laws apply at the end of the distribution chain. German statutory law grants a two-year warranty that products are free from defects from the moment of delivery. If a defect is detected during this period, the buyer can claim subsequent performance (ie, choosing between the remedy of the defect and the delivery of a new, defect-free product), a price reduction or withdrawal from the contract (all regardless of fault) and damages if the seller acted with fault (sections 437 and 280 et seq BGB). Although fault is generally assumed by law, the seller can exculpate itself, especially if it was not the manufacturer of the defective product. These consumer rights can neither be waived by the buyer nor contracted out by the supplier (sections 474 and 475 BGB).

If the product proves to be already defective when delivered, each seller within the distribution chain has a right of recourse against its own supplier (sections 445a, 445b and 478 BGB). To be able to enforce this right, the buyer (unless it is a consumer) must inspect the product at the time of delivery and inform the seller if any defect is detected (section 377 HGB).

In addition, special information duties towards consumers apply in the following cases:

- over-the-phone sales (section 312a(1) BGB);
- over-the-counter sales, except everyday sales (section 312a(2)2 BGB and article 246(2) Introductory Act to the Civil Code);
- e-commerce (section 312j BGB); and
- selling off-premises and distance contracts (section 312d BGB).

Statutory law also provides a limit to the fees that can be charged to a consumer for using certain means of payment, consumer hotlines, etc (section 312a(3–5) BGB). Finally, the consumer has a right of withdrawal in cases of distance and off-premises contracts (sections 312g and 355 BGB).

These consumer rights are harmonised throughout the European Union because they were aligned by EU Directive 1999/44/EC on the sale of consumer goods and EU Directive 2011/83/EU on consumer rights. However, there are differences relating to whether certain rules also apply in business-to-business relationships (eg, as regards the seller's obligation to give customers the opportunity to identify and correct input errors before placing their electronic orders), among other things.

Law stated - 8 Februar 2026

Product recalls

Briefly describe any legal requirements regarding recalls of distributed products. May the distribution agreement delineate which party is responsible for carrying out and bearing the cost of a recall?

For consumer products, the General Product Safety Regulation (GPSR) foresees obligations for suppliers (article 9(8) and (12)), importers (article 11(8) and (10)), dealers (article 12 (4)), and online marketplaces (article 22(12)); with indications on the recall notice (article 36) and new remedy obligations by the relevant economic operators responsible (article 37), such as repair, replacement or adequate refund for the product recalled, regardless of any warranty periods. Beyond these general rules, there are generally no specific requirements set by statute law in regard to product recalls. Instead, according to case law, manufacturers must keep their products under surveillance and, when detecting risks concerning legally protected goods (such as healthcare products), they must promptly adopt the necessary preventive or corrective measures. The extent and time of these measures depend particularly on the product concerned and on the extent of the possible damage (BGH, decision of 16 December 2008).

The distribution agreement can identify which party shall be responsible for a recall and the relevant costs. No specific limits apply to individual agreements; however, in court, standard business terms are strictly reviewed: they can be declared void and unenforceable if they are incompatible with essential statutory principles or entail an unreasonable disadvantage, if they limit essential contractual rights and duties or if they are surprising or ambiguous (sections 310(1), 307 and 305c BGB). Therefore, standard business terms should be drafted while taking into account who would typically be responsible for recalls and relevant costs, depending on the product (eg, whether it is ready-made).

Law stated - 8 Februar 2026

Warranties

To what extent may a supplier limit the warranties it provides to its distribution partners and to what extent can both limit the warranties provided to their downstream customers?

A supplier may limit the warranty rights granted by statutory law towards its distribution partners, subject to a few limits concerningindividual agreements. The agreements must not breach statutory prohibitions (section 134 BGB) and public policy (section 138 BGB). Further, they must not limit or exclude liability for wilful intent, fraudulently concealing defects (where a guarantee has been given) or product liability law (sections 202, 276, 444 and 639 BGB). If a consumer detects a defect in the product and the defect already existed upon the passing of risk to the distribution partner, a limitation of warranty can only be enforced if the supplier provides another compensation of equal value (section 478(2) BGB).

In standard business terms, statute law can hardly be derogated from, even in business-to-business contracts (sections 310(1) and 307 BGB).

It is possible to:

- modify the details of subsequent performance (namely the time, place and number of attempts);
- exclude liability for slightly negligent breaches of non-cardinal duties; and

- limit liability for slightly negligent breaches of non-cardinal duties to the typical damages foreseeable at the conclusion of the contract.

The same applies to warranties provided to each downstream customer unless the latter is a consumer, as a consumer's statutory rights cannot be waived or contracted out.

Law stated - 8 Februar 2026

Data transfers

Are there restrictions on the exchange of information between a supplier and its distribution partners about the customers and end-users of their products? Who owns such information and what data protection or privacy regulations are applicable?

The exchange of information about customers is restricted by the Federal Data Protection Act (BDSG), which implemented EU Directive 95/46/EC, repealed by Regulation (EU) No. 2016/679 (the General Data Protection Regulation (GDPR)). The collection, processing and use of information on customers are only allowed if permitted by law (eg, owing to the performance of a contract) or with the customer's consent (article 6 GDPR (formerly section 4 BDSG); see also section 51 BDSG). Details on commercial collection and data storage for the purpose of transfer are laid down in article 5 et seq of the GDPR (formerly section 28 et seq BDSG).

The owner of customer information, if contained in a database, is the person who produced the database, provided that its assembly, verification or presentation required a substantial qualitative or quantitative investment (section 87a et seq of the German Copyright Act).

Data transfer between the EEA and the United States can currently only take place on the basis of standard contractual clauses. Both the Safe Harbour Agreement and the subsequent Privacy Shield Agreement have been declared void by the ECJ's *Schrems* and *Schrems II* decisions (6 October 2015 and 16 July 2020). It is now recommended to save the data in the EEA. When this is not possible, companies must obtain the approval of the customers and employees affected to transfer the data to the United States. This can (only) be made by using standard contractual clauses that – according to the European Commission – offer sufficient safeguards on data protection for the data to be transferred internationally. However, this approach is not free of any risk. Customers or employees having doubts about whether their data is really sufficiently secured could contact the competent local data protection authority, which could under certain circumstances prohibit data transfers.

Law stated - 8 Februar 2026

Data transfers

What requirements apply to suppliers and their distribution partners with respect to protecting the security of customer data they hold?

Whenever a supplier or its distribution partner acts as a controller or a processor of personal data, they must implement appropriate technical and organisational measures to ensure an appropriate level of data security. These measures include:

- the pseudonymisation and encryption of personal data;
- the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
- a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

Both controllers and processors of data must also ensure that any natural person acting under their authority does not process the data, except on instruction from the controller or unless required by EU or national law (article 32 GDPR).

Law stated - 8 Februar 2026

Employment issues

May a supplier approve or reject the individuals who manage the distribution partner's business, or terminate the relationship if not satisfied with the management?

The distribution partner is, in principle, free to decide which individuals to employ in order to manage the distribution partner's business unless the parties have agreed on a veto right for the supplier, in particular where if the agent or distributor has to render the services in person.

A supplier may terminate the relationship with notice (if the agreement is of an indefinite term, or agreed), or without notice, but for cause. However, termination for cause requires a more concrete cause than dissatisfaction with the management (unless individually agreed). It may suffice if culpable mismanagement has resulted in a strong decrease in turnover.

Law stated - 8 Februar 2026

Employment issues

Are there circumstances under which a distributor or agent, or its employees, would be treated as an employee of the supplier, and what are the consequences of such treatment? How can a supplier protect against responsibility for potential violations of labour and employment laws by its distribution partners?

An agent may be considered a supplier's employee if the agent is not independent (ie, if he or she performs work that is subject to instructions and determined by the supplier). An agent acts independently if, based on the contractual framework and tasks, he or she freely organises his or her working time and activities (section 84(1)2 HGB). This also holds true – mutatis mutandis – for other types of distribution partners, especially distributors and franchisees.

If the sales intermediaries are classified as employees, they will be entitled to:

- employee protection, entailing, for example, a limited right of termination under the Dismissal Protection Act;

- continued payment of salary during public holidays, sick leave and holidays;
- minimum wage (in accordance with the Minimum Wage Act of 11 August 2014); and
- exclusive competence of labour courts if the employee has, over the previous six months of working activity, earned an average monthly salary not exceeding €1,000.

If the workers are classified as employees, the suppliers will also have to:

- pay social security contributions;
- pay income tax on salary; and
- adhere to worker participation and compliance with collective bargaining agreements, if applicable.

A supplier generally does not need to protect against responsibility for potential violations of labour and employment laws because the supplier is not required to respond to those violations unless it has contributed to them. However, the supplier can advise the distribution partner in the distribution agreement of the partner's sole responsibility.

Law stated - 8 Februar 2026

Commission payments
Is the payment of commission to a commercial agent regulated?

Yes, the agent has a right to:

- "del credere commission" if the agent assumes liability for fulfilment of contracts procured by the agent (section 86b HGB);
- follow-up commission (section 87 (1) alt 2 HGB) for intensified, existing customers to protect the commercial agent from direct business of the principal and to reward the advertising of regular customers. The prerequisite is repeat orders of the same type by the customer recruited by the agent. Such commission claim may, however, be contracted out, cf ECJ, decision of 13 October 2022, Case No. C-64/21 (***Rigall/Bank Handlowy***), cf Rohrßen, ***ZVertriebsR*** 2023, Issue 1;
- commission as soon as the principal has executed the transaction (section 87a (1) HGB);
- calculation of commission on a monthly basis, which can be extended to a maximum of three months (section 87c (1) HGB); and
- commission irrespective of delivery and payment, unless the principal is not liable for such failure (section 87a (3) HGB). The principal is liable for the failure if the underlying circumstances fall within his or her entrepreneurial or operational sphere of risk or stem from a risk he or she has assumed (BGH, decision of 27 September 2023, Case No. VII ZR 12/23).

-The principal fulfils his or her obligation under section 87c (1) HGB if he or she applies the commission rate he or she deems correct (Higher Regional Court Hamm, decision of 13 December 2021, Case No. 18 U 31/21, juris para 60).

The agent also has a right to request information, statements of account, an excerpt from the books and inspection of the business records or analogous documents by an auditor (section 87c HGB). In any specific case, the information relevant to the commercial agent's commission depends on the commission arrangement agreed upon between the commercial agent and the principal (cf BGH, decision of 25 July 2024, Case No. VII ZR 145/23). The statement of accounts must enable the commercial agent to identify the individual transactions subject to commission and to verify the calculation of the commission, hence the statement must list which transactions were carried out with which customers in the respective accounting period, what the relevant transaction value (usually: price of goods) is and what commission amount the commercial agent is entitled to claim.

An entitlement to a book extract also exists with regard to those transactions for which it is doubtful whether the commercial agent is entitled to commission, but not insofar as these are transactions for which there is no doubt that commission is not payable (Higher Regional Court Hamm, decision of 13 December 2021, Case No. 18 U 31/21, juris-para 82; Thume/Rohrßen, in: Röhricht et al., HGB, 6th ed. 2023, § 87c para 16).

The extract from the books must be provided as an organised compilation. Neither access to an electronic agency information system nor the mere transmission of collected commission statements is sufficient (cf Regional Court Frankfurt am Main, partial decision of 16 August 2024, Case No. 2-21 O 224/20).

According to the case law of the German Federal Court of Justice (BGH), a commercial agent can no longer assert the right to request an excerpt from the books under section 87c(2) HGB if they have explicitly agreed with the principal on the commission statement. However, such an agreement cannot be inferred from the agent's passive behaviour; a clear declaration of intent is required. The assumption of a tacit waiver is subject to strict requirements. The commercial agent's right to receive an excerpt from the books under section 87c(2) HGB is also not fulfilled merely by the principal answering the agent's inquiries regarding the commission statement. The fact that the agent only requests or sues for the excerpt after prolonged correspondence does not result in the loss of this right. Instead, the agent's right to review the commission statements remains intact, particularly if outstanding commission claims still exist (cf Higher Regional Court of Naumburg, decision of 20 November 2024, Case No. 5 U 66/24(Hs)).

The right to inspect the business records in accordance with section 87c (4) HGB extends to the entire (already existing) business records of the principal with relation to the payment claims of the commercial agent under the agency agreement covered by section 87c HGB, including electronically maintained business records. However, this does not give rise to a claim against the principal for the creation or external procurement of additional, unavailable documents. Rather, the right to inspect the books is limited to those documents that are held by the principal (Higher Regional Court Frankfurt, decision of 14 April 2022, Case No. 26 Sch 1/22, juris-paras 137 et seq).

The above-listed rules are mandatory and cannot be waived or contracted out (with the exception of follow-up commission, section 87(1) alt 2 HGB). Further details on the payment of commission (unless otherwise agreed) are provided under section 86b et seq of the HGB. According to section 87b(2) HGB, commission shall be calculated on the basis of the remuneration payable by the third party or the principal. However, this provision is dispositive, meaning that the amount of commission can also be made dependent on the quantity of

goods sold (Higher Regional Court Hamm, decision of 15 February 2021, Case No. 18 U 60/20, juris-paras 75 f).

If a contract procured by the commercial agent is partially not executed, the principal's obligation to pay the commission depends on the concept of 'reason for which the principal is to blame' as laid down in article 11 of the Commercial Agency Directive and interpreted by the ECJ (decision of 17 May 2017,***ERGO Poist'ovňa***). In that case, the commercial agent may be required to refund a part of his or her commission, under the conditions that the partial amount is proportionate to the extent to which the contract has not been executed and that the non-execution is not due to a reason for which the principal is to blame (for details, see Franke and Rohrßen***, IWRZ*** 2018, 107–111).

Agreements on commission are not subject to the strict review under German law of standard form contracts, as according to section 307(3)(1) BGB, the test of reasonableness applies only to provisions in standard business terms on the basis of which arrangements deviating from legal provisions, or arrangements supplementing those legal provisions, are agreed. Agreements on the direct object of the main service, on the other hand, as well as agreements on the remuneration to be paid by the other party, in particular insofar as they relate to its amount, are not subject to review in accordance with section 307(1) sentence 1, (2) BGB (Higher Regional Court of Hamm, decision of 15 February 2021, Case No. 18 U 60/20, juris-paras 72 and 75 et seq). However, this only applies to provisions that determine the type, scope and quality of the performance owed. Clauses that change, shape or modify the main performance promise in deviation from the law or the performance owed in good faith, on the other hand, are subject to review (BGH, decision of 9 April 2014, Case No. VIII ZR 404/12, NJW 2014, 2269 paragraph 43 et seq), including so-called ancillary price agreements.

Law stated - 8 Februar 2026

Good faith and fair dealing

What good faith and fair dealing requirements apply to distribution relationships?

The parties to distribution relationships have to safeguard each other's interests (sections 86, 86a and 90 HGB and section 242 BGB). Actually, the duty to safeguard interests under section 86 HGB is essential and mandatory for the agency agreement (for a list of mandatory commercial agency rules, see Rohrßen, ***ZVertriebsR*** 2023, issue 1).

In particular, the commercial agent is obliged to:

- check customers' creditworthiness;
- promptly inform the supplier about any business procured;
- keep any information obtained during his or her activity confidential; and
- refrain from acting for the supplier's competitors.

Similar obligations, except non-competition, also apply to distributors, commission agents and franchisees (cf the overview by Thume/Rohrßen, in: Röhricht et al, HGB, 6th ed. 2023, § 84 paragraph 40).

The supplier is obliged to assist and take care of its distribution partner subject, however, to the supplier's economic freedom.

Accordingly, commercial agents must refrain from any competition that is likely to harm the interests of their principal in accordance with section 86(1) HGB. If they violate this provision, they are liable for damages (cf eg, Regional Labor Court Berlin-Brandenburg, decision of 1 December 2022, Case No. 21 Sa 390/22, juris-paras 130, 143 et seq, 152–157, 167, 172).

The commercial agent's duty to safeguard the interests of the principal pursuant to section 86(1) HGH gives rise to a right to issue instructions. If the commercial agent acts on the basis of such instructions, he or she is acting in the interests of a third party and not independently, so that this activity is not subject to the prohibition of extrajudicial legal advice under section 3 Act on Out-of-Court Legal Services (RDG) (Higher Regional Court Dresden, decision of 26 April 2022, Case No. 14 U 2489/21).

According to section 86(1) HGB, the commercial agent is obligated to make efforts to negotiate or conclude business transactions and act in the principal's interests in doing so. In its recent decision of 22 September 2023 (Case No. 19 U 150/22), the Higher Regional Court of Cologne clarified that a commercial agent's duty to negotiate or conclude transactions does not automatically end upon termination of the agency contract. Instead, the commercial agent must continue efforts to secure business transactions and act in the principal's interest throughout the notice period, which is the time between the termination notice and the contract's actual end date. The court ruled that a commercial agent who fails to make sufficient efforts to secure new business during the notice period may be liable for damages under section 86(1) HGB. A significant decline in sales or transaction volume compared to previous years can serve as an indication of a breach of this duty. The burden then shifts to the agent to demonstrate that the decline was due to external factors rather than a reduction in their sales activities. This principle applies not only to commercial agents but also, by analogy, to other distribution intermediaries, including authorised dealers and franchisees. The ruling reinforces that contractual obligations remain binding throughout the notice period, requiring agents to continue promoting the principal's products or services until the contract formally ends.

The principal, on the other hand, must fulfil its obligations towards the commercial agent in accordance with section 86a HGB. This also includes the obligation to provide the commercial agent with the documentation required for the performance of his activities. The term "documentation" is to be understood broadly and, according to the BGH, also includes a point of sale system (BGH, decision of 17 November 2016, Case No. VII ZR 6/16). However, other opinions, including a recent decision by the Higher Regional Court of Cologne on 2 February 2024 (Case No. 19 U 73/23), take a more restrictive view. According to this view, only those documents that are specifically necessary for the agent to carry out his or her sales activities – such as workplace systems (hardware and software) – must be provided free of charge.

General business costs, such as office equipment, are to be borne by the commercial agent itself. Furthermore, cashless payment options are not to be provided by the principal as a required document, as the commercial agent can procure this payment service him or herself and thus continue to be able to carry out his activities (Berlin Court of Appeal, decision of 17 March 2022, Case No. 2 U 4/20, juris-para 18 et seq).

Law stated - 8 Februar 2026

Registration of agreements

Are there laws requiring that distribution agreements or intellectual property licence agreements be registered with or approved by any government agency?

No.

Law stated - 8 Februar 2026

Anti-corruption rules

To what extent are anti-bribery or anti-corruption laws applicable to relationships between suppliers and their distribution partners?

German anti-bribery and anti-corruption laws may also apply to the relationship between a supplier and its distribution partner, especially to practices such as:

- taking and giving bribes in commercial practice;
- restricting competition in the context of public invitations to tender; and
- taking or giving bribes to public officials, including inducing or assisting with those acts (section 298 et seq and section 333 et seq of the German Criminal Code).

Any underlying agreement to such practice can and typically will be declared void as being in breach of law (section 138 BGB); for example, an agency agreement that aims to bring about a bribe agreement with public officials (Higher Regional Court of Stuttgart, decision of 10 February 2010).

Law stated - 8 Februar 2026

Prohibited and mandatory contractual provisions

Are there any other restrictions on provisions in distribution contracts or limitations on their enforceability? Are there any mandatory provisions? Are there any provisions that local law will deem included even if absent?

No, except for mandatory provisions provided by the relevant statutes and case law. The respective statutory law will apply even if the contract is silent.

Law stated - 8 Februar 2026

GOVERNING LAW AND CHOICE OF FORUM

Choice of law

Are there restrictions on the parties' contractual choice of a country's law to govern a distribution contract?

The parties are generally free to choose the law governing their contract (article 3 of the Rome I Regulation). However, if all elements relevant to the choice of law at the time of the choice are located in a country other than that of the chosen law, the choice of the parties shall not prejudice the application of provisions that cannot be derogated from by agreement (article 3(3) and (4) of the Rome I Regulation).

Further, overriding mandatory provisions of the law of the forum cannot be excluded by choosing another law. Similarly, the courts may also apply overriding mandatory provisions of the country where the contractual obligations have to be performed (article 9 of the Rome I Regulation). One typical example of laws that the courts qualify as overriding mandatory rules within distribution agreements is the provisions of commercial agency law because they are based on the EU Commercial Agency Directive of 1986. Accordingly, the agent's claim for goodwill indemnity cannot be waived or contracted out when the agent acts within the European Union. This is true even if the parties choose the law of a non-EU country, as decided by the ECJ on 9 November 2000 (***Ingmar***)on the former Rome Convention on Law Applicable to Contractual Obligations of 1980. Arguments for applying the same principles under the Rome I Regulation exist; however, a clear confirmation by the courts has yet to be reached. According to a recent judgment of the Superior Court of Justice of Berlin (-***Kammergericht*** Berlin, decision of 1 July 2025, Case No. 2 U 37/22, paragraph 32) the ***Ingmar*** line of case law should not be applied to distributors, since they are not covered by the same above-mentioned Directive. Accordingly, a foreign manufacturer may validly choose a non-EU law and a non-EU court for its distributorship contracts, without automatically giving German distributors the right to rely on German compensation law under ***Ingmar***. However, this position has not yet been ruled on by the ECJ itself, so the final answer may change in future jurisprudence. As a consequence, legal certainty has increased in favour of suppliers.

Law stated - 8 Februar 2026

Choice of forum

Are there restrictions on the parties' contractual choice of courts or arbitration tribunals, whether within or outside your jurisdiction, to resolve contractual disputes?

The parties are generally free to choose a court, especially if:

- the other party is domiciled outside Germany in an EU member state, and the parties have agreed that a court or the courts of an EU member state shall have jurisdiction (article 25 of the Brussels Ia Regulation);
- the other party is domiciled in Iceland, Switzerland or Norway, and the parties have agreed that the courts of one of these states or of Germany will take jurisdiction over any disputes (article 23 of the Lugano II Convention); or
- both parties are merchants, legal persons under public law or special assets under public law, or the other party is domiciled outside Germany (section 38 of the Code of Civil Procedure (ZPO)).

As an alternative, the parties may choose arbitration (section 1029 et seq ZPO, article 1(2)d of the Brussels Ia Regulation and article 1(2)d of the Lugano II Convention). However, the choice of court proceedings or arbitration can hardly avoid overriding mandatory provisions.

This has been confirmed by the BGH (decision of 5 September 2012, following a decision of the Higher Regional Court of Munich of 17 May 2006).

In its decision of 24 November 2022 (C-358/21), the ECJ ruled on the validity of a choice of forum clause contained in general terms and conditions (GTCs), where a written contract merely referenced the GTCs via a hyperlink to a website that allowed the contracting party to read and store them. The key issue was whether a mere reference to the GTCs via a hyperlink – without explicitly providing them to the other party or requiring express acceptance (eg, through "click-wrapping") – was sufficient to constitute a valid choice of forum clause under article 23 of the Lugano Convention. The ECJ confirmed that it is sufficient if the contract includes a hyperlink that allows the counterparty to permanently access the GTCs.

Law stated - 8 Februar 2026

Litigation

What courts, procedures and remedies are available to suppliers and distribution partners to resolve disputes? Are foreign businesses restricted in their ability to make use of these courts and procedures? Can they expect fair treatment? To what extent can a litigant require disclosure of documents or testimony from an adverse party? What are the advantages and disadvantages to a foreign business of resolving disputes in your country's courts?

Suppliers and distribution intermediaries can make use of all means of dispute resolution, including out-of-court negotiation, mediation, arbitration or litigation. Restrictions exist only insofar as the application of overriding mandatory provisions cannot be excluded by means of dispute resolution. Fair treatment in German courts is to be expected because the judges are independent and impartial, well trained and determined beforehand, and the parties are entitled to due process under the Constitution (articles 101 and 103). The advantages of resolving disputes in Germany are, inter alia, that court rulings are quite foreseeable and trials relatively quick (17.5 months on average in the district courts, according to the latest statistics of the Federal Office of Justice). Moreover, more and more courts are establishing English-speaking court bodies, such as the Chamber for International Commercial Disputes of the Landgericht Frankfurt am Main; others have, for example, been installed in Hamburg and Cologne. The Chamber shall be an attractive forum for cross-border disputes of English-speaking parties, providing the benefit from Germany's reliable public dispute resolution mechanisms at no extra cost.

Law stated - 8 Februar 2026

Alternative dispute resolution

Will an agreement to mediate or arbitrate disputes be enforced in your jurisdiction? Are there any limitations on the terms of an agreement to arbitrate? What are the advantages and disadvantages for a foreign business of resolving disputes by arbitration in a dispute with a business partner in your country?

Yes, an agreement to mediate or arbitrate disputes will be enforced in Germany (section 1029 et seq and section 278a ZPO). Arbitration may be disadvantageous if only small sums are concerned (the costs for German courts are typically lower than the costs for arbitration if the amount in dispute is less than €5 million).

Limitations on an agreement to arbitrate with respect to the arbitration tribunal, the location of the arbitration or the language of the arbitration do not exist.

Typical advantages of arbitration are that proceedings are confidential and lead to a final decision without the opportunity to appeal, and the award is enforceable in far more countries than court judgments (because of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards).

Law stated - 8 Februar 2026

UPDATE AND TRENDS

Key developments

Are there any proposals for new legislation or regulation, or to revise existing legislation or regulation? Are there any other current developments or trends that should be noted?

Current developments especially concern the EU competition law enforcement and ECJ case law under the Vertical Block Exemption Regulation (VBER), new decisions on franchising, dual distribution and the rising supply chain and product compliance rules.

New EU competition law rules for distribution – revised Vertical Block Exemption Regulation

In July 2021, the European Commission published the proposed draft revised VBER and the draft revised Vertical Guidelines, which have been further amended and put into force on 1 June 2022. The new VBER (Regulation (EU) No. 2022/720) and guidelines replace the current VBER, which came into force in 2010 and expired on 31 May 2022. According to the new VBER, the basic framework remains unchanged: it exempts from prohibition agreements that: (1) are concluded vertically (between non-competitors); (2) between companies with market shares up to a maximum of 30%; and (3) do not contain hardcore restrictions. The prohibited hardcore restrictions continue to include resale price maintenance.

However, as set out in the background note accompanying the two drafts, significant changes were introduced to:

- readjust the safe harbour provided by the VBER to its intended scope, as regards the four areas of dual distribution, parity obligations, active sales restrictions and certain indirect measures restricting online sales;
- provide stakeholders with up-to-date guidance for a business environment reshaped by the growth of e-commerce and online platforms and ensuring a more harmonised application of the vertical rules across the EU; and
- reduce compliance costs for businesses, notably small and medium-sized enterprises, by simplifying and clarifying certain provisions perceived as particularly complex and difficult to implement.

For details, see Rohrßen, VBER 2022, EU Competition Law for Vertical Agreements (2023).

In a recent judgment (decision of 8 May 2025, Case No. C-581/23) the ECJ held that:

- exclusive distribution is block-exempt only if all excluded distributors are bound (explicitly or implicitly) not to actively sell into the exclusive territory;
- mere unilateral expectations are insufficient; and
- failure results in a hardcore restriction under article 101 Treaty on the Functioning of the European Union.

Companies operating an exclusive distribution system should ensure that exclusive territorial allocations are clearly stipulated and that distributors without territorial exclusivity are contractually prohibited from engaging in active sales into the protected territory. Where such stipulations are not yet in place, the associated risks should be mitigated through appropriate supplementary contractual provisions. As a consequence, exclusivity clauses now require even tighter drafting and documentation.

Franchising

From a franchise contractual perspective, a decision by the Higher Regional Court Munich (dated 7 November 2019, Case No. 29 U 4165/18 Kart) has found that franchisors may advertise products to be sold by outlets at low prices as long as the franchisees are not prevented from charging lower prices than those advertised; in this situation, the low prices only have the effect of a permissible maximum price-fixing in relation to the franchisees.

Moreover, the same court decision promotes reviewing clauses regarding advertising fees because the court established that the franchisor is likely subject to a fiduciary duty regarding the capital earned by advertising fees if the respective advertising fee clause stipulates that the franchisor becomes active for its franchise system. Accordingly, the franchisor's use of an advertising contribution by the franchisor contrary to this clause may breach the franchise contract. However, such breach does not generally give rise to a contractual or legal claim for the franchisee to prohibit such other use.

Finally, another recent decision (Higher Regional Court of Jena, 22 April 2020, Case No. 2 U 287/18) sets out the principles for price adjustment clauses applicable to continuing obligations. As the franchisor is generally obliged to develop its system or concept, franchise agreements regularly contain clauses on system adaptation as well as corresponding price adjustment clauses. Since franchise agreements are aimed at maintaining the uniformity of the respective system, they are by their very nature to be regarded as general terms and conditions and are thus subject to the strict provisions on general terms and conditions pursuant to sections 307 et seq German Civil Code (BGB). To comply with these provisions, price adjustment clauses should especially be formulated as clearly and understandably as possible, laying down the preconditions and the extent of a potential price adjustment. For details, see Rohrßen, ***ZVertriebsR*** 2021, 31 et seq.

Dual distribution – new rules on information exchange

There is an ongoing trend in distribution to move from single or multichannel distribution to cross-channel or even omnichannel distribution. This trend has had a further boost owing to

the restrictions implemented as a result of the covid-19 pandemic. The trend combines all channels to provide customers with a seamless shopping experience, integrating services such as click and collect, click and reserve, click and deliver, and in-store touchpoints.

To avoid friction within the distribution system, omnichannel distribution strategies require clear communication as well as stipulation between the supplier and its distribution partners regarding the use of online stores, social media, local mobile marketing and the coordination and integration of all these services (especially because restrictions on online sales have been under scrutiny by the antitrust authorities in recent years). As far as dual distribution (manufacturers selling directly to end customers and through sales intermediaries) is concerned, the VBER 2022, the Vertical Guidelines and the revised Horizontal Guidelines regulate the information exchange in dual distribution more in detail, recognising that a certain degree of exchange is characteristic for competitive markets. To be exempt under the VBER, the exchange of information between a supplier and its buyer shall be (1) directly related to the implementation of the vertical agreement and (2) necessary to improve the production or distribution of the contract goods or services (for details and examples, cf Rohrßen, VBER 2022: EU Competition Law for Vertical Agreements, Chapter 2.4.3 and Chapter 8).

Regulatory is rising – new regulatory requirements under EU law to be observed when distribution products

New regulatory frameworks, particularly under EU law, are reshaping the landscape of product distribution and compliance requirements.

A notable example is the Supply Chain Due Diligence Act, effective since 1 January 2023, which mandates compliance for German companies with a workforce of 1,000 employees since 1 January 2024. Affected entities are compelled to revamp their operational strategies, particularly focusing on procurement practices, to align with the Act's provisions.

Crucially, these companies must proactively mitigate potential violations of human rights and environmental obligations across their operations and supply chains. This involves instituting robust risk management systems tailored to departments such as procurement, compliance and sustainability. Moreover, they must conduct regular risk analyses to identify any lapses in compliance, with a focus on human rights and environmental concerns.

Policy formulation is pivotal, as companies are required to articulate their approach to human rights and environmental stewardship. This policy statement must delineate compliance procedures, identify specific risks and outline expectations from both employees and suppliers.

Preventive and remedial measures constitute another key aspect of compliance efforts. Based on the outcomes of risk analyses, companies must implement or review preventive measures such as supplier selection criteria, codes of conduct, training programmes and sustainable procurement strategies.

Furthermore, the establishment of a formal complaints procedure is mandated to facilitate the reporting of human rights violations or risks thereof. Comprehensive documentation and reporting are imperative, with companies obligated to maintain records of their compliance efforts and publish annual reports submitted to the relevant regulatory authority.

Non-compliance with the Supply Chain Due Diligence Act carries significant penalties. The competent authority, the Federal Office of Economics and Export Control, can impose fines

of up to €8 million for breaches of due diligence and reporting obligations. For companies with an average annual turnover exceeding €400 million, fines may amount to 2% of their turnover if they fail to implement remedial actions.

Moreover, companies risk exclusion from public tenders for up to three years, emphasising the importance of strict adherence to the Act's provisions. Notably, compliance is essential for all entities along the supply chain, not just the primary company or direct suppliers.

EU harmonisation legislation and public distribution law

In addition to the Supply Chain Due Diligence Act, the EU Deforestation Regulation, the Corporate Sustainability Due Diligence Directive, the Corporate Sustainability Reporting Directive, the Ecodesign for Sustainable Products Regulation, and the EU Chemicals Strategy for Sustainability including the forthcoming REACH reforms, distributors face further regulatory challenges arising from recent EU product regulations. These include the EU Battery Regulation (Regulation (EU) No. 2023/1542), the General Product Safety Regulation (Regulation (EU) No. 2023/988) (cf ***Spiegel***, ZVertriebsR 2023, 71–80), the Machinery Regulation (Regulation (EU) No. 2023/1230, cf. Rohrßen, ZfPC 2025, 6 ff. on robots as machinery with embedded AI), the Product Liability Directive 2024/2853 (cf. Rohrßen, ZfPC 2024, 2 ff.), the Regulation on packaging and packaging waste (Regulation (EU) No. 2025/40), the EU Batteries Regulation 2023/1542 (cf. ***Spiegel***, ZfPC 2024, 194 ff.) and the Ecodesign Regulation (Regulation (EU) No. 2024/1781), each imposing unique obligations on economic operators for their products across the supply chain.

Moreover, distribution agreements are increasingly influenced by EU harmonisation legislation, often referred to as "public distribution law". As the EU puts it: "Modern supply chains encompass a wide variety of economic operators who should all be subject to enforcement of Union harmonisation legislation." Such harmonisation legislation, also known as EU product safety law, covers many product categories and spans the entire supply chain, from the manufacturer/supplier to the importer and distributor. Public distribution law also covers the use of AI, which is regulated by the AI Act (Regulation (EU) No. 2024/1689). This regulation governs the use of AI and prohibits, among other things, its use when deploying subliminal, purposefully manipulative or deceptive techniques that materially distort a person's behaviour – such as impairing their ability to make informed purchasing decisions (cf the overview by Rohrßen, ZfPC 2024, 111 et seq; on machinery with integrated AI/the new EU Machinery Regulation and the AI Act, compare Rohrßen, ZfPC 2025, 5 et seq).

Compliance with these rules is essential for ensuring access to the EU market. The General Product Safety Regulation 2023/988 outlines the basic rules for product safety, while the Product Liability Directive establishes liability concerns for economic operators within the supply chain (for an overview, see Rohrßen, ZfPC 2024, 2 et seq).

Given the multifaceted nature of these regulatory developments, staying abreast of the latest legal requirements is paramount to ensure a compliant and functioning distribution set-up.

Law stated - 8 Februar 2026