

Contractual issues in EU



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- A wooden gavel with a dark handle and a three-tiered head, resting on a thick stack of US dollar bills. The scene is set on a light-colored wooden surface with a visible grain. The lighting is warm, creating soft shadows.



Agency & distribution

You are the managing director of “Lebanon Tricots”, a garments company in Ghassanieh. With the help of **an agent** you have found interesting markets and in a few years you build up **an interesting market** share in Germany, Austria and Switzerland.

However, **after four years** sales are **going down**: your agent blames the **economic climate** in Europe. But you feel he is **not giving his best** and finally you decide to look for another agent, which you find quite quickly. You send an email to your agent informing him that you will **terminate your contract** with a notice of **three months**.

What are the legal issues that play a role here ?

- **“going down”** –did you set measurable goals in the contract ? Has the agent met these goals? Did you have regularly contact with your agent to discuss the situation? Have you made notes of the meetings/telecoms?

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- **“not giving his best”** – can you prove that it is his fault ?
- **“terminate your contract”** – was the contract for a certain period or not ?
- **three months** – what was agreed on notice time in the contract? What is fair and just?

Agency & distribution

GENERAL RULES

•Exclusivity

- Complex legislation
- Legally you cannot limit the territory.
- Basic principle EU:
FREE movement of goods.
- Customers may freely sell goods in other EU states.



•Disputes

- In general, the law of the country of the agent applies
- Make sure you agree on how to settle disputes
- If it comes to court: “what is just and fair?”

A photograph of two men in business suits leaning in and looking at a US dollar bill held between them. The man on the left is wearing a dark green suit, a light blue shirt, and a blue patterned tie. The man on the right is wearing a brown suit, a white shirt, and a red patterned tie. They are both looking intently at the bill, which is held by their hands. The background is plain white.

Legal aspects of negotiations

You are negotiating a **major outsourcing** contract with a company in France. You will produce products under license for the **French market** and if things go well, you may sell these products in **regional markets** as well. The value (profits) of the contract is estimated at **€ 700.000** per year

After almost **one year of negotiating**, -you visited the company in Lyon five times- only some **minor details** need to be settled before you can sign the contract.

Last week, you received a phone call from the Managing Director of the French company with bad news: they would **not pursue** the matter any further. They have decided to **outsource to Iran**, now that sanctions have been lifted.

What are the legal issues that play a role here ?

Legal aspects of negotiations

START

Free to disrupt



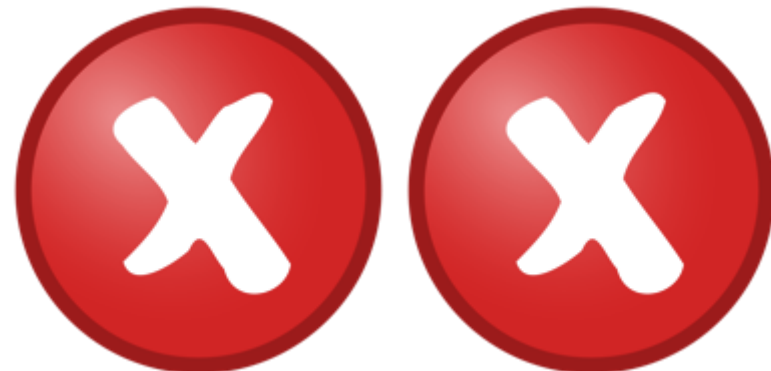
ADVANCED

Disrupting allowed, but **costs** have to be compensated



FINAL

Disrupting is a violation of good faith: full compensation of **damages** and **costs**



A man in a blue suit and striped tie is holding a black pen in his right hand and a blank white sheet of paper in his left hand. The text "Offers and contracts" is overlaid in the center of the image.

Offers and contracts

On March 6, you made an offer by email to a distributor in the UK for the sales of five shipments of goods. The validity of the offer was 30 days. Till yesterday you had not received a reaction on your offer.

This morning –just before today’s coffee break- you received an answer on your email:

“Offer accepted, proceed with first shipment”.

In the meantime, the price for your inputs has gone up with 10% . You need to adjust your sales prices.

What are the legal issues that play a role here ?

Legal aspects of negotiating

- The offer was accepted **outside** its validity, so you may refuse to deliver or demand a higher price
- However, you must **contest** the email. Failure to do so may result in the buyer demanding his goods at the quoted price. “Silence means agreeing”

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- Sales contract are **very rare**
- Joint ventures/license agreements:
NDA (non-disclosure agreement)
“**need-to-know basis**”

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“need-to-know basis”
- **Good faith** is the leading principle



"Sure I shot him — but I shot him in good faith!"



Dispute settlement

You are upset about the cancelling of the outsourcing deal with the French. After their phone call, you call a meeting with your team to see what can be done. It is clear that they have not acted in good faith.



What are your legal options ?

Dispute settlement



COURT

Independence

Legal skills

Relatively cheap

Possibility of appeal

No expert view, only legal

Lengthy proceedings

Decision is public

Dispute settlement



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ARBITRATION

Speed

Decision is binding

Decision not public

Impossibility of Appeal

More expensive

Impossibility of appeal

Dispute settlement



COURT	ARBITRATION	MEDIATION
Independence	Speed	Speed
Legal skills	Decision is binding	Decision is binding
Relatively cheap	Decision not public	Decision not public
Possibility of appeal	Impossibility of Appeal	Preservation of relation
No expert view, only legal	More expensive	Prior agreement needed
Lengthy proceedings	Impossibility of appeal	No guaranteed solution
Decision is public		



®

Intellectual property rights

You have a successful product on the Lebanese market with a registered brand. In 2010, you started looking at the EU market and –through an agency- had your brand registered at EUIPO in Alicante, Spain for the Benelux (Belgium, Netherlands, Luxembourg). However, it never came to the first shipment. You are targeting the EU market again now.

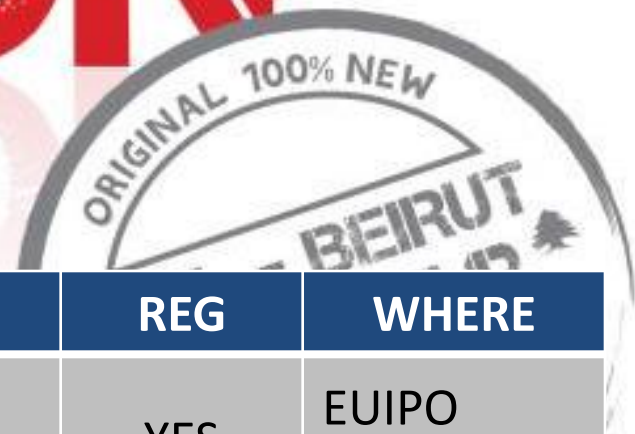
1.Under which Intellectual Property falls this case ?

- Patents
- Trade marks
- Copyright
- Industrial Design

2.Is your brand protected ?

3.Can you use the TM logo on your website, brochures ?

M A D E I N L E B A N O N



NAME	WHAT IS IT	VALIDITY	REG	WHERE
PATENT	Product, process, application	12/20 years no renewal	YES	EUIPO Alicante, SP
TRADE MARK	Name, sign, symbol, shape, "EUTM"	5 years, renewable	YES	EUIPO Alicante, SP
DESIGN	Compositions of lines and colours	5 years, max 15 years	YES	EUIPO Alicante, SP
COPYRIGHT	Publication of original work	70 years after death	NO	Proof of publication

Conclusions

	EU	USA
Legal roots	Roman law	Anglo-Saxon law
Contracts	Short/concise	Long/exhaustive
Disputes	Preserve relation	I'll sue you !
Criteria in court	Reasonable and just	What was agreed upon (in writing)