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Fact Sheet Agency – Spain (per April 2012)

1. How is an agent defined under national law?	An agent is a private individual or a legal entity, who undertakes the obligation, in exchange for remuneration, to promote trade acts or transactions as an independent broker without assuming the risk of these transactions.
2. How is the normal duration of a contract normally defined?	<p>The duration of the Agency contract can be agreed for a fixed period or an indefinite period. If a fixed period is not agreed, it shall be considered that the contract has been agreed for an indefinite period.</p> <p>A fixed period Agency contract shall be deemed to have converted into indefinite period Agency contract, if continued by both parties after the fixed period has expired.</p>
3. How long is the notice of termination?	The notice of termination is regulated in case of a contract with indefinite period. The notice of termination period is one month for each year of the contract, with a maximum of six months. If the contract had been in force for less than one year, the notice period would be one month.
4. What rights does the agent have to compensation or indemnity upon termination?	<p>The agent shall be entitled to an indemnity once finished the contract of Agency if and to the extent that:</p> <ul style="list-style-type: none">- the agent has brought the principal new customers- the agent has significantly increased the volume of business with existing customers <p>It is important that such benefits continue after the contract is finished.</p> <p>The amount of the indemnity may not exceed a figure equivalent to an indemnity for one year calculated from the commercial agent's average annual remuneration over the preceding five years and if the contract goes back less than five years the indemnity shall be calculated on the average for the period in question.</p> <p>Moreover, the agent is also entitled to compensation for damage suffered as result of the early unilateral termination of the contract by the principal in case that the principal do not respect the prior notice period.</p> <p>The Spanish law does not divert from Agency Directive.</p>
5. Are there any laws or regulations relating to restraint of trade/restrictive covenants	Among the provisions of the agency agreement, the parties may include a clause for the restriction or limitation of professional activities of the commercial agent following the termination of the Agency contract.



	<p><u>Characteristics of a restraint of trade clause:</u></p> <ol style="list-style-type: none">1) It may not last more than two years after the termination of the Agency contract, or not more than a year if the Agency contract has a duration of less than two years.2) It must be concluded in writing to be valid.3) It may only relate to the geographical area and/or group of people entrusted to the agent.4) It can only concern the kind of goods and services covered by the agent under the contract.
<p>6. Are any particular formalities required for an agency agreement to be legally valid and enforceable under national law?</p>	<p>Each party has the right to ask for the formalization of the written Agency contract in writing at all times with all possible modifications.</p> <p>Nonetheless, a contract not formalized in writing is still valid.</p>

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