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INTERNATIONAL FRANCHISING: STRATEGIC RESILIENCE IN A TURBULENT WORLD

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WORKSHOP 2

FULFILLING DISCLOSURE OBLIGATIONS IN EUROPE: HOW TO DEAL WITH 27+ JURISDICTIONS

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Introduction

Almost all European jurisdictions require franchisors to provide prospective franchisees with certain information prior to entering into a franchise agreement. The legal framework for such an obligation — the sources of law, the required scope, temporal or linguistic requirements, the systematic integration into the respective legal landscape, the risks and consequences of missing or insufficient disclosure, and the standards a franchisor must adhere to in order to comply with disclosure requirements — could not be more diverse.

Literally every single country in Europe has taken its own (different) approach to address the fact that a significant asymmetry must be assumed when negotiating franchise agreements: the franchisor possesses knowledge and insights regarding the franchise concept it has developed, its profitability, weaknesses, strengths, competitors, and much more, whereas the franchisee is reliant on obtaining such information from the franchisor, as it is not publicly available. A franchisee must be able to make the decision to base their economic livelihood on the franchisor's franchise concept on the foundation of realistic, honest, and complete information which only the franchisor is able to provide.

At the same time, a franchisor will want — and must — be wary of revealing all of its trade and business secrets. This brings non-legal aspects into focus, which also play a role in one form or another within the context of pre-contractual disclosure, such as good faith, fairness, trust, industry standards, ethical principles, standards developed by trade associations, political considerations regarding the legal system, the desire for harmonization, and much more. It is therefore no wonder that pre-contractual disclosure is a kind of "black box" for franchisors who have successfully developed their concept outside of Europe and now wish to expand into Europe.

So let's shed a little light on this black box.

This paper provides a comprehensive overview of disclosure requirements across selected European jurisdictions, with particular emphasis on material elements that warrant careful consideration prior to the structuring or execution of transactions. The authors also clear up the myth that pre-contractual disclosure in Europe is mainly about meeting regulatory requirements.

1. From highly regulated to "*Laisser-faire*" – there's just about everything in Europe

1.1. A little history of how franchising and disclosure obligations developed in Europe

By way of introduction, it is instructive to examine the historical development of disclosure regulation in Europe – and in the United States.

(i) Origins in the United States

The modern framework for franchise disclosure finds its origins in the United States during the mid-1960s, a period marked by widespread fraudulent practices within the franchise sector. In response to these developments, legislative intervention was deemed necessary.

In August 1967, Senator Philip Hart of Michigan introduced the *Franchise Competitive Practices Act*.[1] Although the bill was subsequently withdrawn, it was reintroduced in April 1969 with certain modifications. The proposed legislation focused primarily on regulating the substantive relationship between franchisors and franchisees, including provisions governing termination, cancellation, and refusal to renew franchise agreements absent "good cause." "Good cause" was defined as a franchisee's failure to operate substantially in accordance with the franchisor's reasonable and essential operational standards. The bill further proposed a minimum notice period of 90 days.[2] Despite these provisions, the bill did not pass the Senate.

In May 1970, Senator Harrison Williams of New Jersey introduced a distinct legislative proposal, the *Franchise Full Disclosure Act of 1970*.[3] In contrast to Senator Hart's approach, Senator Williams' bill shifted the regulatory focus from the ongoing franchise relationship to pre-contractual disclosure obligations. Specifically, it sought to regulate the nature and extent of information to be provided by franchisors to prospective franchisees prior to the execution of a franchise agreement. This bill likewise failed to secure Senate approval.

Notwithstanding the failure of these federal initiatives, they generated significant legislative momentum at the state level. Individual states began to assess the need for franchise-specific regulation, particularly in relation to disclosure.[4] California was the first jurisdiction to enact such legislation, introducing the *California Franchise Investment Law* (CFIL), which entered into force on 1 January 1971 as part of the California Corporations Code.[5, 6] The CFIL constitutes a pure disclosure regime. Its definitional framework draws upon Senator Hart's earlier proposal, while its disclosure requirements reflect the principles articulated in Senator Williams' full disclosure model.

At the federal level, the Federal Trade Commission (FTC), acting pursuant to its authority under the FTC Act, was tasked with establishing uniform rules governing pre-contractual disclosure in franchise arrangements.[7] This resulted in the promulgation of the Original FTC Rule on 21 December 1978, which entered into force on 21 October 1979.[8] In conjunction with the rule's adoption, the FTC issued interpretative materials, including the *Statement of Basis and Purpose* and the *Final Interpretive Guides*, both of which remain relevant for interpretative purposes.[9] Over time, the FTC has supplemented these materials through the publication of several hundred advisory opinions.[10]

[1] S.2321, 90th Cong., 1st Sess. (1967) and subsequently S.1967, 91st Cong., 1st Sess. (1969).
[2] Meiklejohn, Alexander M. (red.), *Franchising: cases, materials and problems*, ABA Publishing, Chicago, 2013, p. 15 f.
[3] S.3844, 91st Cong., 2nd Sess. (1970).
[4] Senator Williams held hearings in the Senate Subcommittee he chaired (Senate Subcommittee on Urban and Rural Economic Development of the Banking Committee) in January 1970, the so-called Williams hearings. Among the witnesses heard in these hearings was the Chief Counsel of the Federal Trade Commission (FTC). The FTC later played a major role in franchising through the "FTC Rule".
[5] The first state to legislate on the relationship between franchisor and franchisee was Delaware with the Franchise Security Law, which was enacted on July 7, 1970.
[6] CORP sections 31000 – 31516.
[7] Section 5 of the Federal Trade Commission Act (FTC Act) (15 USC 45).
[8] This first set of rules was called "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures", but was called the "FTC Rule" or "FTC Franchise Rule". There has later been a revised set of rules called the "Amended Rule".
[9] The CFR is the Code of Federal Regulations where the FTC is found under "Title 16" and Chapter 1. The now updated "original SBP" and "Interpretive Guides" are found as Parts 436 and 437 and are cited "16 CFR Parts 436 and 437".
[10] See https://www.ftc.gov/policy/advisory-opinions - visited 2026-03-17.

The FTC Rule has since been subject to revision, culminating in the current iteration, commonly referred to as the Amended Rule, which entered into force on 1 July 2007. In parallel, numerous states have enacted complementary legislation, including both disclosure statutes and laws governing the substantive franchisor–franchisee relationship, thereby supplementing the federal framework.[11]

(ii) Developments in Europe

The European regulatory landscape developed somewhat later, with France emerging as the first jurisdiction in Europe to adopt a statutory disclosure regime. In 1989, **France** enacted Law No. 89-1008 of 31 December 1989, commonly referred to as the *Loi Doubin*.[12] Although not limited to franchising, the law applies broadly to agreements involving the licensing of intellectual property rights.[13] It imposes an obligation on the licensor or franchisor to provide a pre-contractual disclosure document to the prospective licensee or franchisee no later than twenty days prior to the execution of the agreement or the payment of any consideration.

Spain introduced franchise-specific regulation in 1996 through provisions incorporated into the Regulation of Retail Trade, subsequently implemented by Royal Decree 2485/1998.[14] This regulatory framework was revised in 2010, particularly with respect to pre-contractual disclosure obligations and registration requirements.[15] The obligation to register franchise agreements with the Spanish Franchisor Registry was later abolished in 2018.[16]

In **Lithuania**, franchise regulation was introduced through the Civil Code in 2001.[17] Rather than imposing a formal disclosure document requirement, the legislation mandates that franchise agreements be concluded in writing and registered with the Register of Legal Entities.

Estonia followed in 2002 by incorporating franchise provisions into its Law of Obligations Act.[18] The Estonian framework primarily regulates the contractual relationship between the parties and does not impose specific pre-contractual disclosure requirements, relying instead on general statutory duties of disclosure.

Italy enacted comprehensive franchise legislation in 2004, drawing significant inspiration from the UNIDROIT Model Franchise Disclosure Law of 2002.[19] The Italian statute provides a detailed legal definition of franchising, requiring that the parties be legally and financially independent. It further mandates that franchise agreements be executed in writing and have a minimum duration of three years, thereby affording franchisees a reasonable opportunity to recoup their investments. In addition, the law imposes a pre-contractual disclosure obligation, requiring that a disclosure document be provided at least thirty days prior to execution.

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[11] Grueneberg, Susan & Hurwitz, Ann (red.), *The FTC Franchise Rule,* ABA, Publishing, Chicago USA, 2008, p. 85 f.
[12] The law is called the "Loi Doubin", named after the then French Minister of Commerce, François Doubin.
[13] Law No. 89–1008 of December 31, 1989, now transferred to the Civil Code 2016, article 1112-1.
[14] Article 62 of Law 7/1996 Ley de Ordenación del Comercio Minorista.
[15] Royal Decree 201/2010.
[16] Royal Decree 20/2018.
[17] Book 6, Chapter XXXVII (Articles 6.766–6.779) of the Civil Code.
[18] Chapter 19 (§§ 375 – 378) of the Law of Obligations Act.
[19] Law No. 129 of May 6, 2004 - *Norme per la disciplina dell'affiliazione commerciale*.

Belgium introduced franchise-specific legislation in 2005, likewise influenced by the UNIDROIT Model Law.[20] The Belgian regime requires franchisors to provide both a pre-contractual disclosure document and a draft franchise agreement at least one month prior to signing. The legislation has subsequently been amended, most notably in 2014 and 2024, with respect to disclosure requirements.[21]

Sweden adopted its Franchise Disclosure Act in 2006, also drawing on the UNIDROIT Model Law, albeit in a more limited form.[22] The Swedish legislation establishes a comparatively concise disclosure framework and is addressed in greater detail in a separate section of this paper.

Latvia introduced franchise provisions in 2010 through amendments to its Commercial Law.[23] These provisions include pre-contractual disclosure obligations of a reciprocal nature, requiring not only the franchisor but also the franchisee to disclose material information relevant to the agreement.

Romania enacted franchise legislation as early as 1997, initially focusing on defining the franchise concept and establishing its legal framework.[24] The law was substantially amended in 2019 to include, inter alia, mandatory disclosure requirements and the establishment of a National Franchise Registry.[25]

The Netherlands most recently introduced the Dutch Franchise Act, which entered into force in 2021.[26] This legislation imposes comprehensive pre-contractual disclosure obligations on franchisors, requiring the provision of all information necessary to enable prospective franchisees to make an informed decision. It further establishes a mandatory standstill period of four weeks prior to contract execution, during which no agreement may be concluded, no payments may be made, and no amendments may be introduced to the draft agreement.

(iii) Other European Jurisdictions

In several European jurisdictions—including **Germany**, **Greece**, **Portugal, Poland, Finland, Denmark,** and **Norway**—there is no specific franchise legislation. Nevertheless, disclosure obligations may arise under general principles of contract law or statutory provisions governing pre-contractual duties of information, particularly within civil and commercial codes.

(iv) The UNIDROIT Model Law

Between 1986 and 2002, the International Institute for the Unification of Private Law (UNIDROIT) undertook extensive work in the field of international franchising.[27] This initiative culminated in the publication of the *Guide to International Master Franchise Arrangements* (1999), followed by the *Model*

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[20] Belgian Code on Economic Law "BCEL" (Code de droit économique/Wetboek van economisch recht) Book I, Title 2, Article I.11 (definitions applicable to Book X) and Book X, Title 2, Article 26.
[21] The Belgian Disclosure Act, BCEL Book X.
[22] The Swedish Franchise Disclosure Act - *Lag (2006:484) om franchisegivares informationsskyldighet*.
[23] The Commercial Law of Latvia, articles 474 – 480.
[24] Government Ordinance no. 52/1997.
[25] Law No. 179/2019.
[26] The Dutch Franchise Act (Wet franchise) is implemented as Title 16 of Book 7 of the Dutch Civil Code.
[27] UNIDROIT is an independent intergovernmental organization based in Rome, Italy, established in 1926, created to harmonize private law among states.

Franchise Disclosure Law and its accompanying *Explanatory Report* (2002).[28 & 29] These instruments have had a notable influence on the development of franchise legislation in several European jurisdictions.

1.2. Examples of different approaches to disclosure obligations: Sweden, England, Germany, and Poland

Each of the four different countries which we will examine a little more detailed in this section have a different way of dealing with pre-contractual disclosure obligations. And it is interesting to note that the existence of specific franchise disclosure laws does not necessarily mean that the actual format and content of a (proper) disclosure document is determined by such laws. Instead, standards defined by national Franchise Associations and other organizations may be more relevant (e.g. in Sweden), while in other countries with no specific franchise laws general contract law and extensive case law based on this define what is required. In other words: the absence of specific legislation does not necessarily mean a higher degree of freedom or flexibility for the franchisor, while regulated countries may provide for a rather lax and flexible approach.

(i) Sweden: specific legislation – but no case law (yet)

As early as 1982, a Swedish Member of Parliament introduced a motion proposing legislation on franchising. At that time, the primary objective was to ensure that employees of franchisees would enjoy the same negotiation rights vis-à-vis the franchisor as those granted to employees under employment law in relation to their employers. This idea continues to resonate in contemporary discussions on joint employment liability in certain jurisdictions.

Two parliamentary inquiries into franchising have been conducted in Sweden, in 1987 and 2004.[30] The latter inquiry recommended that no specific franchise law be enacted, but rather that an additional provision be introduced into the Contract Terms Act.[31] Despite this recommendation, the government chose to enact the Swedish Franchise Disclosure Act.[32] The Act is influenced by the UNIDROIT Model Franchise Disclosure Law; however, the Swedish legislator did not adopt the Model Law in its entirety but instead incorporated certain key features without fully embracing its underlying structure and rationale.[33] The reaction from the Swedish franchise industry was that the resulting Act would be largely symbolic and unlikely to have any significant legal effect, given the limited effectiveness of its remedies.

Notably, rather than adopting the definition of a "franchise agreement" found in the Model Law or in the original Block Exemption Regulation for Franchise Agreements, the legislator crafted an independent definition. This definition begins with the typical elements: (a) two parties enter into an agreement, (b) one party provides compensation to the other, and (c) the agreement concerns the use of a business concept for the marketing and sale of goods or services. However, the legislator added a further requirement: the agreement must include a provision obliging the franchisee to participate in recurring checks to ensure compliance with the agreement.[34] It remains untested in Swedish case law whether the absence of such a

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[28] https://www.unidroit.org/wp-content/uploads/2021/06/franchising1998-guide-1st-e.pdf - visited 2026-04-04.
[29] https://www.unidroit.org/english/modellaws/2002franchise/2002modellaw-e.pdf - visited 2026-04-04.
[30] SOU 1987:17 and DS 2004:55.
[31] Lag (1984:292) om avtalsvillkor mellan näringsidkare.
[32] Lag (2006:484) om franchisegivares informationsskyldighet. (cit. SwFDA).
[33] https://www.unidroit.org/english/modellaws/2002franchise/2002modellaw-e.pdf - visited 2026-04-10.
[34] SwFDA, art. 2.

provision would exclude an agreement from the scope of the Act.

Article 3 of the Act constitutes its core provision. It specifies the responsible party, the required action, and the manner and timing of compliance. The provision requires the franchisor to provide the franchisee with information concerning the content of the agreement and other relevant conditions. Such information must be clear, comprehensible, and provided in writing, and it must be delivered in good time prior to the conclusion of the franchise agreement.

In determining the scope of the disclosure obligation, the legislator adopted a flexible standard, requiring disclosure of information "necessary in view of the circumstances." One may question why the legislator did not instead adopt the more detailed list of 23 disclosure items contained in the Model Law. Nevertheless, the Act specifies a minimum set of *eight items* that must be disclosed.[35]

The disclosure document shall at least contain:

1. a description of the franchise activity that the franchisee is to operate,
2. information on other franchisees with whom the franchisor has concluded agreements within the same franchise system, and the scope of their activities,
3. information on the compensation that the franchisee shall pay to the franchisor, as well as other economic conditions relating to the franchise activity,
4. information on the intellectual property rights that will be granted to the franchisee,
5. information on the goods or services that the franchisee is obliged to purchase or rent,
6. information on any non-compete obligations that will apply during the term of the agreement or after its termination,
7. information about the term of the agreement, including conditions for modification, extension, and termination of the franchise agreement, as well as the economic consequences of termination, and
8. information on how disputes relating to the agreement shall be resolved and what shall apply with respect to liability for the costs of such proceedings.

Another notable departure from the Model Law and other international disclosure regimes concerns the timing of disclosure. The Act merely requires that disclosure be made "in good time."[36] To interpret this standard, one must turn to the preparatory works, which suggest that, as a rule of thumb, a period of approximately 14 days may suffice, although the appropriate timeframe ultimately depends on the scope and complexity of the information to be disclosed. In other disclosure regimes, a specific number of days is typically prescribed.[37]

The Act is strictly framed as marketing legislation. It empowers courts to order a franchisor to provide the required information prior to the conclusion of a franchise agreement, and such orders are typically coupled with a conditional fine. An injunction may be sought by a franchisee who has not received the required disclosure, or by an association of traders.[38] However, if a franchisor fails to comply with such an injunction, the only remedy available under the Act is the imposition of the fine. This fine is payable to the state, and the franchisee has no right to claim damages under the Act.

[35] SwFDA, art. 3.
[36] Legal preparatory works: Prop. 2005/06:98, p.27.
[37] Belgium one month, France 20 days, Italy 30 days, Spain 20 working days, Netherlands four weeks.
[38] SwFDA, art. 5.

The Act entered into force in 2006 and, to date, has not been applied in any Swedish court. One likely explanation is the limited choice of remedies for failure to disclose. There is little incentive for a franchisee to seek an injunction, as any fine imposed is payable to the state rather than to the franchisee. A more effective remedy for non-compliance might be to allow the franchisee to request that the franchise agreement be declared null and void. Such a right exists under Belgian franchise law for a period of two years following the conclusion of the agreement.[39] Additionally, nullity may be invoked within ten years where specific mandatory terms are missing. The availability of such remedies would likely enhance the practical significance of the Swedish Act and increase its value to franchisees.

Another possible explanation for the absence of case law is that the Swedish franchise industry had already developed a practice of providing pre-contractual information. Many large international franchise systems entered the Swedish market in the 1970s and 1980s and introduced disclosure documents. Swedish franchisors were also influenced by the European Franchise Federation and its Code of Ethics.[40] According to the Code, adopted as early as 1972, franchisors are required to provide prospective franchisees with full and accurate written disclosure.[41] Against this background, the Act may not have represented a significant change in practice. Indeed, it may be characterized as having a minimalist structure that imposed little additional burden on franchisors.

Finally, where there are deficiencies in pre-contractual disclosure of material information, other legal avenues remain available. A franchisee may, for example, seek damages based on the principle of *culpa in contrahendo*, or invoke general doctrines to adjust or invalidate unfair contract terms.[42]

(ii) UK: no franchise -specific legislation – but "pressure" from the industry to disclose

There is no statutory franchise disclosure regime in the UK. However, misrepresentation law, negligent misstatement principles, statutory controls on exclusions of liability, and emerging good faith doctrines operate as a de facto disclosure discipline, encouraging careful, evidence-based pre-contract disclosure by franchisors.

Under English law, there are no franchise-specific laws which impose pre-contract disclosure or regulate ongoing disclosure.[43] Instead, the franchisor/franchisee relationship is framed by contract, tort/misrepresentation, competition[44], and intellectual property laws. For example, the principle of caveat emptor (buyer beware) applies[45], placing responsibility on the buyer, or in this case, the franchisee, to conduct their own due diligence into a franchise before proceeding, although in practice this principle is significantly constrained by misrepresentation, negligent misstatement and statutory controls on the exclusion of liability. This is a stark contrast to certain EU Member States, such as France[46] or Sweden[47], which require a potential franchisor to produce documentation that provides franchisees with a fair picture

[39] The Belgian Disclosure Act, BCEL Book X art. 30.
[40] European Code of Ethics for franchising - https://eff-franchise.com/code-of-ethics/ - visited 2026-04-10. (Cit. The Code).
[41] The Code, art. 3.3.
[42] The Contracts Act, Avtalslagen, art 36.
[43] Global Legal Group, 'Franchise Laws and Regulations 2026: England & Wales' (ICLG, 12 November 2025) <https://iclg.com/practice-areas/franchise-laws-and-regulations/england-and-wales> accessed 23 March 2026.
[44] The Competition Act 1998 (Vertical Agreements Block Exemption) Order 2022, SI 2022/516
[45] Smith v Hughes (1871) LR 6 QB 597
[46] Code de commerce (France) art L 330-3; Code de commerce (France) art R 330-1 (Légifrance)
[47] Lag (2006:484) om franchisegivares informationsskyldighet (SFS 2006:484)

of the business opportunity before they make a decision.

Unlike in Germany[48], English law also rejects a general organising principle of good faith across all contracts. The Court of Appeal in *MSC Mediterranean Shipping v Cottonex* reaffirmed the "orthodox view" that English law does not recognise a general duty of good faith, preferring "piecemeal solutions" to unfairness, rather than an overarching principle of good faith across all contracts[49]. However, there are some specific exceptions to this. In *Bates v Post Office (No.3)*, it was held that certain long-term, trust-based arrangements, often referred to as "relational contracts", can carry an implied duty of good faith, requiring parties to "*refrain from conduct which… would be regarded as commercially unacceptable by reasonable and honest people*."[50] It is generally accepted that franchise agreements are relational contracts and therefore this principle might apply to them. Another exception is the *Braganza* duty which states that where one party's contractual discretion affects both sides' interests, the decision must not be arbitrary, capricious or irrational.[51]

Though the UK takes a relatively lax legislative approach to pre-contract disclosure for franchises, many UK franchisors choose to join the British Franchise Association (BFA)[52], whose Code of Ethics (derived from the European Franchise Federation (EFF)[53]) is voluntary but influential in setting industry standards. The BFA promotes the use of a voluntary disclosure document by franchisors as part of the onboarding process for prospective franchisees.[54]

For a franchisor and franchisee to enter into any binding document with the franchisee's full knowledge, the BFA recommends that the franchisor should provide a "*full and accurate written disclosure of all information material to the franchise relationship, within a reasonable time prior to the execution of these binding documents*."[55] The content of the voluntary franchise disclosure document can vary between franchises.[56] However, it must be in plain English and easy to navigate.[57] When financial statements are made, the BFA states that franchisors must urge caution and include appropriate disclaimers, caveats, and qualifications.

A voluntary franchise disclosure document might include information about the sector within which the franchisor operates and provides an overview of the franchisor's specific business.[58] The BFA has placed emphasis for the document to address the sector as a whole. This is encouraged in order to avoid misrepresentation claims and to ensure that the pre-contractual narrative is controlled, consistent and

[48] Bürgerliches Gesetzbuch (BGB) § 242
[49] MSC Mediterranean Shipping Company SA v Cottonex Anstalt [2016] EWCA Civ 789
[50] Bates v Post Office Ltd (No 3) [2019] EWHC 606 (QB)
[51] Braganza v BP Shipping Ltd [2015] UKSC 17; Mid Essex Hospital Services NHS Trust v Compass Group UK and Ireland Ltd (t/a Medirest) [2013] EWCA Civ 200
[52] British Franchise Association, The Code of Ethics for Franchising (BFA, 2023) <https://www.thebfa.org/wp-content/uploads/The-Code-of-Ethics-for-Franchising.pdf> accessed 23 March 2026.
[53] European Franchise Federation, European Code of Ethics for Franchising (EFF, revised 2016) <https://www.eff-franchise.com/wp-content/uploads/2021/01/eff_european_code_ethics_franchising_2016.pdf> accessed 30 March 2026.
[54] Herrington Carmichael, 'A Franchisor's Guide to Setting up a Franchise Network' (British Franchise Association, 3 March 2023) <https://www.thebfa.org/news/a-franchisors-guide-to-setting-up-a-franchise-network/> accessed 23 March 2026.
[55] British Franchise Association, The Code of Ethics for Franchising (2023) <https://www.thebfa.org/wp-content/uploads/The-Code-of-Ethics-for-Franchising.pdf> accessed 23 March 2026.
[56] British Franchise Association, 'FAQ's' <https://www.thebfa.org/faqs/> accessed 23 March 2026.
[57] British Franchise Association, The Code of Ethics for Franchising (2023) <https://www.thebfa.org/wp-content/uploads/The-Code-of-Ethics-for-Franchising.pdf> accessed 23 March 2026.
[58] LexisNexis, Franchise disclosure document—checklist produced in partnership with Fiona Boswell (Knights plc) <https://plus.lexis.com/uk/document/?crid=e82dcea5-1e27-4b66-b0b3-6af41157e53d&pddocfullpath=%2Fshared%2Fdocument%2Fuk%2Furn:contentItem:8V39-8JM2-8T41-D07F-00000-00&pdisurlapi=true> accessed 23 March 2026.

capable of being evidenced if alter challenged.[59]

The document might also explain franchising, its pros and cons, what the franchisor looks for in a franchisee, outline the key commercial elements of the franchise agreement, and provide a description of the franchise package (for example, exclusive territory, equipment, training, IT solutions, and marketing collateral). Financial clarity is encouraged through a full investment requirement section (contractual and ancillary costs such as premises and fit-out, with any additional costs clearly flagged) and a financial statements section that distinguishes historic performance from forward-looking assumptions and presents both revenue and typical outgoings with prominent warnings.

Finally, the document could include an outline of the support and training the franchisor will provide and its costs, an explanation of other terms in a franchise agreement such as restrictive covenants and force majeure, a 'frequently asked questions' section, a copy of the EFF's Code of Ethics, and an outline of any next steps (e.g. producing a business plan, seeking independent legal advice for the franchise agreement, securing financial approval, etc.).

Despite having no statutory pre-contract disclosure regime, it can often be in a franchisor's interests to make formal franchise disclosure to a potential UK franchisee because false, misleading, or even incomplete pre-contractual statements can lead to wide civil liabilities. Under the Misrepresentation Act 1967, section 2(1) provides damages for non-fraudulent misrepresentation, subject to a reverse burden on the representor to prove reasonable belief in truth at the time of contracting.[60] Section 3 of the Act also holds that any contractual attempts to exclude or restrict misrepresentation liability are ineffective unless they satisfy the Unfair Contract Terms Act 1977 (UCTA) reasonableness test in section 11.[61] If a clause fails the reasonableness test the exclusion or non-reliance provision is of no effect, leaving the claimant free to pursue rescission and/or damages as if the clause were not present, and exposing the representor to liability notwithstanding the parties' agreed contractual risk allocation.[62]

In addition, pre-contract communications with prospective franchisees may, in certain circumstances, fall within the scope of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). While franchisees are often sophisticated commercial parties, the CPRs can apply where the franchise opportunity is marketed to individuals or micro-enterprises, particularly at the recruitment or pre-incorporation stage. The CPRs prohibit misleading actions and misleading omissions in commercial practices and can be engaged by exaggerated earnings claims, selective disclosure, or failure to correct materially misleading impressions. Although enforcement is typically regulatory, breaches of the CPRs may reinforce civil misrepresentation claims and undermine reliance on contractual disclaimers.

Similarly, under the *Hedley Byrne* principle, a duty of care may arise where a party assumes responsibility for statements on which it is reasonably foreseeable the counterparty will rely.[63] In the franchising context, performance forecasts presented with apparent expertise are a common area of risk. Where negligent misstatement is established, the primary remedy is an award of compensatory damages for pure economic loss (aimed at restoring the claimant to the position they would have been in, had the statement not been relied upon). In *Esso Petroleum v Mardon*, figures advanced by a party with superior knowledge were treated as carrying an obligation to exercise reasonable care and skill, and losses were

[59] Misrepresentation Act 1967, s 2
[60] Misrepresentation Act 1967, s 2
[61] Misrepresentation Act 1967, s 3; Unfair Contract Terms Act 1977, s 11
[62] Unfair Contract Terms Act 1977, sch 2
[63] Hedley Byrne & Co Ltd v Heller & Partners Ltd [1964] AC 465 (HL)

recoverable by the other party when the forecasts proved unsound.[64]

Parties to a franchise agreement often therefore turn to contractual devices to mitigate the risk of civil claims. Limitation of liability clauses can be used, particularly alongside insurance, to limit the exposure to civil claims. Their enforceability remains dependent on the UCTA reasonableness test and will consider the parties' commercial context and bargaining power.[65] Likewise, entire-agreement provisions that exclude liability for pre-contract statements, and any non-reliance wording, are treated as attempts to restrict remedies for misrepresentation and are therefore policed by section 3 of the Misrepresentation Act 1967 and UCTA.[66] This was confirmed in *First Tower Trustees v CDC*, which found that non-reliance clauses are indeed subject to this statutory reasonableness gateway.[67] Accordingly, even in the absence of a legislated disclosure protocol, the legal risk associated with pre-contract statements promotes careful, evidence-based disclosures by franchisors.

Contractual devices should therefore be used with nuance when it comes to franchise arrangements. In *Papa John's (GB) Ltd v Doyley*, the High Court examined exaggerated financial materials and concluded that standard-form, non-negotiable disclaimers and exclusions could not defeat liability where the franchisor's information proved inaccurate or unreliable, particularly given disparities in bargaining power.[68] In *Ali & Others v Abbeyfield (Vision Express) Ltd*, the High Court found Vision Express liable for fraudulent misrepresentation arising from pre-contract performance assertions, and non-reliance and other disclaimer language did not avail the franchisor.[69]

While limitations, entire-agreement provisions, and non-reliance language remain useful depending on context and in conjunction with other devices, they do not exonerate a franchisor from the consequences of inaccurate or careless disclosures. The safest course is to control what is said, maintain records of the same, and ensure that all statements are accurate and properly contextualised. In practice, these dynamics have led many franchisors (particularly those aligning with BFA/EFF best practice) to adopt a structured, written pre-contract disclosure document as a matter of risk management and evidential hygiene, even though no statute compels it. This can be helpful in supplying evidence needed to defend against misrepresentation and negligent misstatement claims.

The recent case of *APK Communications & others v Vodafone Ltd*, brought by approximately sixty current and former Vodafone store operators, has sparked widespread debate over the UK's non-statutory approach to franchising[70]. The claim, focusing on alleged unfair commission changes, disproportionate fines, and breaches of good faith[71], has drawn attention to how English courts will apply implied good-faith duties in long-term "relational" arrangements and *Braganza*-style limits[72] on the exercise of franchisor discretion in franchise-type networks.[73] Notably, in January 2026, the UK Prime Minister publicly

[64] Esso Petroleum Co Ltd v Mardon [1976] QB 801 (CA)
[65] Unfair Contract Terms Act 1977, s 11
[66] Misrepresentation Act 1967, s 3
[67] First Tower Trustees Ltd v CDS (Superstores International) Ltd [2018] EWCA Civ 1396; [2019] 1 WLR 637
[68] Papa Johns (GB) Ltd v Elsada Doyley [2011] EWHC 2621 (QB)
[69] Ali and Others v Abbeyfield VE Ltd [2018] EWHC 669 (Ch)
[70] Mobile News, 'Bitter Vodafone franchisee dispute heads toward trial as mediation fails' (10 December 2025) <https://mobilenewscwp.co.uk/news/article/bitter-vodafone-franchisee-dispute-heads-toward-trial-as-mediation-fails/> accessed 24 March 2026.
[71] Fieldfisher, 'APK Communications Limited and others v Vodafone Limited: a franchise case to watch' (10 April 2025) <https://www.fieldfisher.com/en/services/franchising/franchise-commercial-law-blog/apk-communications-limited-and-others-v-vodafone-limited-a-franchise-case-to-watch> accessed 24 March 2026.
[72] Braganza v BP Shipping Ltd [2015] UKSC 17
[73] Fox Williams, 'Franchisees, fairness and the future of good faith: Why the APK case could redraw the landscape' (26 June 2025) <https://www.foxwilliams.com/2025/06/26/franchisees-fairness-and-the-future-of-good-faith-why-the-apk-case-could-

committed to reviewing franchise legislation, stating he will "look closely" at the outcome of the Vodafone litigation.[74] This signals that the current common-law framework may be revisited if the case reveals systemic imbalances.

If reform does follow, the most realistic starting point is a UK-specific franchise statute that fills the current gap by mandating pre-contract disclosure, converting what is today an industry norm encouraged by the BFA/EFF Code of Ethics into a legal obligation. In jurisdictions that already regulate franchising, disclosure duties typically include historic and financial information, network-level litigation, fees, termination history, and sometimes cooling-off rights, to correct informational asymmetries at the point of entry. The Vodafone case makes the argument for UK-specific franchise rules much stronger. It shows that when a franchisor changes key terms on its own, franchisees find it hard to get a remedy using the current tools that are available to them, because those tools only become available after the harm has occured and they are slow, complex, and evidence-heavy to run.

Current franchise disclosure in the UK is driven by general contract and tort rules, rather than by any franchise-specific statute. This puts the onus on franchisors to be clear and accurate, and on franchisees to do proper due diligence. In practice, the risk of misrepresentation and negligent misstatement, together with UCTA controls on exclusion and non-reliance clauses, means many franchisors offering franchises in the UK now use a plain-English, written disclosure pack even though the law does not require them to do so. Doing so helps set expectations, reduces risk of disputes, and provides the records needed if things go wrong.

Looking ahead, the Vodafone litigation has put a spotlight on power imbalances and the limits of relying on after-the-fact legal remedies. It has also revived the policy debate about a UK franchise law – one which might mandate pre-contract disclosure. Whether or not Parliament acts, the safest course today is simple: tell the truth, show the evidence, and keep the paperwork. This approach protects both sides and best supports a fair, sustainable franchise relationship.

(iii) Germany: no specific legislation – but general legal principles and extensive case law

Franchisors who wish to expand into Germany and are therefore confronted with the obligation to inform must first understand the following: there is no codified franchise law in Germany, nor is the nature and scope of the pre-contractual disclosure obligation standardized by law. Nor is it appropriate to say that there is "the" pre-contractual disclosure obligation in the sense that there is a "model" or standardized format in which information must be provided to a prospect franchisee. And unlike, for example, in the different states in the U.S. with their extensive regulations on required content and format, the question of whether a franchisor has properly informed a prospective franchisee prior to the conclusion of the franchise agreement is in Germany not assessed in terms of compliance with statutory provisions or other regulations regarding the timing, form, and scope of such disclosure.

Nevertheless, franchisors in Germany are obligated to provide quite extensive information prior to the conclusion of a franchise agreement. And a franchisee may be entitled to early termination and may

redraw-the-landscape/> accessed 24 March 2026.

[74] Simon Goodley, 'Starmer vows to review franchise legislation in response to Vodafone case' (The Guardian, 7 January 2026) <https://www.theguardian.com/business/2026/jan/07/starmer-vows-to-review-franchise-legislation-in-response-to-vodafone-case> accessed 24 March 2026.

even claim damages from the franchisor on the grounds of improper or missing disclosure.

How does this fit together?

Germany is a civil law jurisdiction which makes it all the more unusual that the relationship between franchisor and franchisee — unlike the ones between e.g. tenants and landlords (of movable and immovable property), buyers and sellers, service providers and clients, customers and manufacturers of goods, and many others — is not regulated by law. Numerous types of contracts and the respective obligations of the parties are regulated in detail, but there is no mention of franchising in either the German Civil Code or the Commercial Code. A franchise agreement is considered to be an agreement of its own kind, a "multi-type contract" ("Typenkombinationsvertrag").[75]

The pre-contractual duty to provide information in Germany is also not comparable in approach to the disclosure requirements found particularly in Anglo-American legal systems (but also in some European jurisdictions such as in Italy, France, or Spain), where the focus is on the franchisor fulfilling legally prescribed disclosure obligations from a regulatory perspective. Such laws and regulations provide guidance for franchisors about what needs to be disclosed, as well as when and how.

It is precisely this "regulatory mindset" that makes it so difficult for foreign franchisors, particularly those from the U.S., to understand what is required of them to properly inform prospective franchisees in Germany.

Sometimes, such "regulatory mindset" may lead international franchisors to assume that they can create an information document for Germany which is similar to one drafted under the legal regime of the Federal Trade Commission's "Franchise Rule" and its 23 categories ("items"), just "adapted". In fact, however, pre-contractual information under German law is not at all about meeting specific statutory (regulatory) requirements. Rather, it must be determined on a case-by-case basis whether and which information is relevant to a prospective franchisee in the circumstances with regard to a specific franchise system within the sales process, and the disclosure document must be prepared accordingly.

It is easier to understand the approach taken by the courts in Germany if one takes the terminology used into account: while the English word "disclosure" is translated as "Offenlegung", conversely, the German term "vorvertragliche Aufklärung" would be better translated as "pre-contractual <u>information</u>" in the meaning of "explanation" or "education". With this in mind, it becomes clear why the Higher Regional Court of Munich stated that a franchisee can expect, among other things, to receive "a clear, coherent, and comprehensible marketing concept" as well as "the experiential knowledge gained through sufficient testing of the business concept."[76]

In order to understand how the process for creating a proper pre-contractual disclosure document for the German market should be structured so that a franchisor meets the legal requirements, one must first understand where the obligation to disclose has its roots in the German legal landscape:

In the second book of the German Civil Code *("Bürgerliches Gesetzbuch – BGB"),* which governs the "Law of Obligations," there are two provisions in two different divisions (Division 1 and Division 3) that courts do not merely cite in disputes between a franchisee and a franchisor to establish an obligation for proper pre-contractual disclosure. Rather, these are provisions that must be taken into account in all

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[75] Martinek/Semler/Flohr VertriebsR-HdB/Flohr, 5. Aufl. 2025, §28 Rn. 318-320

[76] OLG München 24 U 63/95, NJW-RR 1997, 812

contractual relationships and their initiation.

Specifically, these are the provisions of **section 242** of the German Civil Code (BGB) (set forth in Division 1, "Content of Obligations," under Title 1, "Obligation to Perform") and **section 311** of the German Civil Code (BGB) (set forth in Division 3, "Obligations Arising from Contracts," under Title 1, "Creation, Content, and Termination," in Subtitle 1, "Creation"). In the English translation these provisions read as follows:

Section 242
Performance in good faith

An obligor has a duty to perform according to the requirements of good faith, taking customary practice into consideration.

Section 311
Obligations created by legal transaction and obligations similar to legal transactions

(1) In order to create an obligation by legal transaction and to alter the contents of an obligation, a contract between the parties is required, unless otherwise provided by statute.
(2) An obligation with duties under section 241 (2) also comes into existence by
1. the commencement of contract negotiations
2. the initiation of a contract where one party, with regard to a potential contractual relationship, gives the other party the possibility of affecting its rights, legal interests and other interests, or entrusts these to the other party, or
3. similar business contacts.
(3) An obligation with duties under section 241 (2) may also come into existence in relation to persons who are not themselves intended to be contractual parties. Such an obligation comes into existence in particular if the third party, by laying claim to being given a particularly high degree of trust, substantially influences the pre-contract negotiations or the conclusion of the contract.

The English translation of Section 241 of the German Civil Code (BGB), to which reference is made in Section 311 BGB and which is listed in the same division as Section 242 BGB, reads as follows:

Section 241
Duties arising from an obligation

(1) By virtue of an obligation, an obligee is entitled to claim performance from the obligor. The performance may also consist of forbearance.
(2) By its contents, an obligation may oblige each party to take account of the rights, legal interests and other interests of the other party.

The general legal principle set forth in section 242 BGB, namely, the obligation of each contracting party to perform its contracted duties in accordance with the requirements of "good faith," as this is customarily understood in the relevant situation, also applies, pursuant to section 311(2)(1) BGB, to the stage of contract negotiations.

Given the absence of (more) specific statutory requirements, the nature and scope of the pre-contractual duty to inform have been developed by courts applying at all times the underlying principle of good faith. It is thus also subject to constant change, which is attributable, among other things, to the fact that there is no landmark decision by Germany's highest court, the Federal Court of Justice *("Bundesgerichtshof" - BGH*), that would generally specify what a franchisor must disclose to a prospective franchisee in advance.

While there are some important decisions by the Federal Court of Justice regarding the scope of the duty to inform in other contexts (e.g., in connection with the intended sale of company shares), it is particularly the decisions of the Higher Regional Court of Munich that have defined and specified the requirements for proper disclosure in franchising and that are relied upon by courts in other German federal states in case of a dispute between a franchisor and a franchisee. Courts have repeatedly held that a special relationship of trust is established between a franchisor and a (prospect) franchisee which imposes an obligation on the franchisor to truthfully inform the franchisee on any aspect which is relevant to their future collaboration.

As early as 1993, the Munich Higher Regional Court (OLG) confirmed its previous case law, according to which a franchisor must observe the following:

1. The franchisor must inform the franchisee accurately and comprehensively about the profitability of the system.
2. A franchisor who is liable for damages due to a breach of the pre-contractual duty to disclose information cannot hold it against the franchisee as contributory negligence that the franchisee carelessly trusted the franchisor's promotional claims.[77]

These requirements have become increasingly specific over the years, with consideration given not only to the specific franchise concept but also to its stage of development (mature or new), the industry, and the prospective franchisee's level of experience.[78] Thus, the requirement for proper disclosure by a franchisor in the quick-service restaurant industry toward a prospective franchisee who is entirely inexperienced in the restaurant industry may differ from the requirement toward a franchisee with years of experience as an independent restaurant owner or for a franchisor whose franchise concept involves the operation of fitness studios.

In principle, a franchisee should be enabled, based on the information provided to them, to assess the business risks associated with entering into the franchise agreement. This does not involve informing the franchisee about general business risks, as the franchisee, as an entrepreneur, is expected to obtain the information necessary for this assessment themselves or to already have it at their disposal. The focus is (solely) on business risks specific to the system, which are often known only to the franchisor or are not readily accessible to a prospective franchisee. In accordance with the principles developed by case law, the franchisor must therefore provide information on the following:

- Results and experiences of existing franchise operations
- Services provided by the system headquarters
- Investment amounts (minimum capital, debt-to-equity ratio)
- Required work input from the franchisee
- Average annual revenue of the franchisees (or pilot businesses)

[77] OLG München 6 U 5495/92, NJW 1994, 667
[78] Martinek/Semler/Flohr VertriebsR-HdB/Flohr, 5. Aufl. 2025, §28 Rn. 47-52 with many references to court cases

- Information regarding the franchisor's operations (start date, economic development, etc.).

Market surveys, location analyses, pilot runs in multiple stores, and the assurance of product and service quality are also expected before the first franchisee can be recruited and before any information regarding the required investments and expected sales can be provided to them.

According to the case law of the Munich Higher Regional Court (and other courts confirming its legal assessment), a franchisor must also provide information regarding the "functioning and prospects of success" of the franchise system during contract negotiations and must not exaggerate in an unfair manner. The information provided by the franchisor regarding the franchise system

- must not be misleading (no exaggerated claims that would not stand up to scrutiny);
- must be complete (essential information must not be withheld);
- must be formulated clearly and transparently;
- must be factually correct;
- must reflect the current state of affairs and must not be outdated.[79]

In Germany, the franchisor can only comply with the aforementioned principle of disclosing all circumstances about which a prospective franchisee can reasonably expect to be informed, in accordance with the principle of good faith (Section 242 of the German Civil Code), if the franchisor also addresses those aspects that may not present its franchise system in the most favorable light. A franchisor should also clearly state whether or not the information provided with respect to an expected turnover or profit is based on a specific location or on the average of existing franchise operations or whether it reflects the turnover of the franchisor's own business operations.[80] It is essential to inform the prospective franchisee of all circumstances that the franchisor must assume are of material importance to the prospective franchisee in order to enter into the franchise agreement, which is typically long-term.[81] Since these circumstances vary from system to system and cannot be determined in the same way for all prospective franchisees, it is necessary to prepare an information document tailored specifically to the system (and to a certain degree even to the prospect franchisee)[82] in question.

The guideline on pre-contractual disclosure published by the German Franchise Association ("Deutscher Franchiseverband") in 2014 is a useful tool for franchisors in order for them to identify which information is relevant in general and how to present such information in a transparent and exact way.[83]

(iv) Poland: no specific legislation (yet) – but a franchise regulation is on the way

The Polish civil law system is continental (codified) one, but franchising agreement as such is not regulated; it is so-called "no name contract". However, the Polish jurisprudence and literature recognize its

[79] OLG München 8 U 5085/01, BB 2003, 443; OLG München 23 U 5590/05, BB 2007, 14
[80] OLG Hamm I-19 U 35/10, ZVertriebsR 2012, 177; OLG Düsseldorf I-22 U 62/13, ZVertriebsR 2014, 46; OLG Hamburg, 4 U 10/14, ZVertriebsR 2015, 107, 110;
[81] OLG Nürnberg 6 U 4404/00, NJW-RR 2001, 1558; BGH VIII ZR 32/00, BB 2001, 1167; Martinek/Semler/Flohr VertriebsR-HdB/Flohr, 5. Aufl. 2025, Rn. 47-52 with further references
[82] Lack of experience of a franchisee (first time entrepreneur) increases the asymmetry and needs to be addressed by franchisor: Fleischer, Informationsasymmetrie im Vertragsrecht, 2001, S. 416 ff.
[83] https://www.franchiseverband.com

basic features[84]. The rule of freedom of contract[85] is fully applicable to the franchising as a typical B2B relationship. The limits to abovementioned freedom of contract are stated in the PCC[86] e.g. in Article 58 § 1 of the PCC[87] (general rule regarding nullity of an act of law) and Article 58 § 2 of the PCC[88] (rule of nullity of an act of law inconsistent with the principles of community life).

Obviously, there are number of laws, which refer to obligations of the parties to the franchising agreement, such as provisions regarding IP rights, unfair competition, copyrights, competition and consumer protection (including vertical block exemptions regulations similar to EU rules), electronic trade law etc.

The Polish law does not provide the disclosure obligations of the pre-contractual information before the conclusion of the franchising agreement. However, the Polish Franchise Organization, participation to which is voluntary, considered disclosure a good practice. The members of the Polish Franchise Organization are obliged to apply the Code of Ethics for Franchising elaborated by the European Franchise Federation, in which the disclosure obligation and its scope is provided. Another voluntary code of conduct followed by franchisors and franchisees in Poland is the Code of Good Practice for the Franchise Market, which also contains provisions regarding the disclosure of information prior to the conclusion of a franchising agreement, a ban on misleading practices, etc.

The disclosure of the pre-contractual information has been provided in the draft of the franchising regulation – i.e. amendment of the PCC, which was finished in 2023 and sent to the Polish parliament. Under the proposed Article 764(12) (1) of the PCC the franchisor would be required to provide the other party with an up-to-date information document and a model franchise agreement no later than 14 days before the franchise agreement is concluded.

The said “information document” has been described in great detail in the draft and – pursuant to proposed Article 764(12) (2) of the PCC - should provide i.a.: 1) details identifying the franchisor; 2) a description of the franchisor’s business, in particular the number of current franchise agreements; 3) a description of the business to be carried out by the franchisee and the franchisee’s obligations; 4) fees payable to the franchisor and the method of their calculation; 5) a description of the franchisor’s services, in particular a description of the business concept or operating methods; 6) information on the franchisee’s estimated expenses for commencing performance of the agreement; 7) information on the average revenue generated by franchisees from business conducted within the franchise network and the method of its calculation; 8) information on whether the franchisee is expected to be obliged to enter into contracts with third parties designated by the franchisor; 9) information on the scope and means of the franchisor’s supervision over the franchisee’s performance of the agreement (in particular regarding the scope of access

[84] The basic features are the same as in the other jurisdictions i.e. a commitment by one party to the agreement (the franchisor) to grant the other party (the franchisee) permission to use the name, symbols, trademarks, patents, know-how, concepts or business methods, in return for the franchisee’s undertaking to conduct their business in accordance with the network organiser’s guidelines and to pay the fees due to the franchisor.

[85] Art. 353^1 of the Polish Civil Code: Parties executing a contract may arrange their legal relationship at their discretion so long as the content or purpose of the contract is not contrary to the nature of the relationship, the law or the principles of community life.

[86] PCC – Polish Civil Code – an act, which regulates the basic rules i.a. of the contract law in Poland.

[87] Article 58 § 1 of the PCC: A legal act which is inconsistent with statutory law or is designed to circumvent statutory law shall be null and void unless the appropriate provisions envisage a different effect, in particular that those provisions of the legal act which are null and void are replaced by the appropriate provisions of statutory law.

[88] Article 58 § 2 of the PCC: A legal act which is inconsistent with the principles of community life shall be null and void.

to the franchisee's trade secrets); 10) information on the rules governing the transfer of rights and obligations under the franchise agreement and the entry of a new party to the agreement on the franchisee's side, where such a possibility is provided for; 11) information on events constituting grounds for the imposition of contractual penalties and on the method of their calculation; 12) the term of the agreement and the conditions for its renewal (if any); 13) notice periods; 14) information regarding the non-competition clause.

The above comprehensive list of the information to be disclosed, provided in the draft of PCC amendment, shows that the disclosure duty is accepted practice in Poland. Additionally, the draft provides for the right of the franchisee to terminate the agreement with immediate effect, if the franchisor has failed to provide the franchisee with the information document or has included inaccurate or untrue information therein, and there are reasonable grounds to believe that, had the franchisee been duly informed, he would not have entered into the agreement, and a period of thirty days has not elapsed since the franchisee became aware of this[89].

The organizations representing franchisors involved in the works on the above draft pointed out that the term 'inaccurate or untrue information' is so vague that, in practice, it will give rise to serious problems of interpretation. In my opinion, the term "including inaccurate information" could be for sure misused as a termination ground.

The draft of the PCC amendments, containing disclosure duty, has been put into the Polish parliament "fridge" in 2023, and there is no indication that proceedings on the matter will begin any time soon. However, lack of specific provisions regarding disclosure duty and/or providing the other party to the franchising agreement with untrue pre-contractual information does not mean that there are no rules at all.

The Polish Civil Code provides for the possibility of avoiding the legal consequences of a declaration of intent made, for example, under the influence of error or deception. Therefore, a franchisee who has made a declaration of intent (e.g. entered into a franchise agreement) with a franchisor who 'induced an error' – for example, by providing the franchisee with false information regarding the likely costs or profits, market trends, or the number of franchisees in the network – will be able to avoid the legal consequences of such a declaration of intent. Consequently, it may be held that the agreement was not concluded. The error to which the franchisee will refer must be – firstly – material, that is, it must justify the assumption that if the franchisee had not acted under the influence of the error and had assessed the matter reasonably, they would not have entered into the agreement, and secondly – the error must be caused by the franchisor, or the franchisor must be aware of it or could easily detect it; the provision of false (untrue) information by the franchisor will satisfy these conditions.

If an error was caused by the other party deceitfully, the avoiding of the legal effects of the declaration of intent made under the influence of the error may also take place if the error was not material or if it did not pertain to the contents of the act in law. The right of avoidance of legal consequences is subject to a time limit; it shall expire in case of an error (or deception), after one year from its detection.

Taking into account the general rules regarding avoiding the legal consequences of a declaration of intent made under the influence of error or deception, the franchisor should carefully formulate the

[89] Proposed Article 764(12)(4) of the PCC.

information provided to the potential franchisee before the conclusion of the agreement. For sure, they must be true and not misleading.

The general provisions of Polish contract law also allow for a claim of exploitation. Exploitation occurs when the performance of one party to the contract grossly outweighs that of the other party. Originally, exploitation was said to occur when one of the parties to the contract was infirm or entered into the contract whilst under duress (e.g. being heavily dependent on the other party).

Since 2022, the provisions of the PCC on exploitation have been supplemented with a new ground: 'lack of sufficient understanding of the subject matter of the contract'[90]. According to the official justification for this amendment, this is intended to mean 'a lack of the knowledge necessary to responsibly consider the purpose and consequences of concluding the proposed contract'. Although there is as yet no case law based on this provision that relates to franchise agreements, in my view it cannot be ruled out that 'lack of sufficient understanding of the subject matter of the contract' will be interpreted broadly – as a 'lack of understanding' resulting also from a failure to exercise due care and from negligence. There are no obstacles to applying the provision on exploitation in B2B relations. Thus, a franchisee to whom the franchisor has not provided any information about its network, or has provided only very general information, may face the allegation that the franchisor has exploited the franchisee, who 'did not have sufficient understanding' of the subject matter of the agreement.

The consequence of the claiming the exploitation by a franchisee may be the court's intervention in the franchise agreement: amendment (reduction) of the parties performances (e.g. franchising fee) or declaration of the franchising agreement being null and void.

Thus, taking into account the rules on exploitation, the franchisor should not limit the access to the necessary information before the franchising agreement is concluded.

As mentioned above the works on the draft legislations concerning franchising are currently on hold, but the discussions between the stakeholders are pending. For instance, Franchise Working Group of the Entrepreneurs' Council at the Office of the Spokesperson for SME has been reactivated last year and its work showed the deep division regarding the vision of franchising between the representatives of the franchisors and franchisees. Franchisees are pushing for the introduction of mandatory regulations governing franchising (like e.g.: fixed termination period for both parties, but shorter for the franchisors, limiting the post-contractual non-competition clause), while franchisors, without rejecting the need for statutory regulation, prefer drafts focusing on the freedom of contract rule. The results of the Franchise Working Group's work have been presented to the Ministry of Justice and the Ministry of Development and Technology with a request to commence work on regulating franchising, but the issue – although has not

[90] Article 388 of the PCC: § 1. If one of the parties, taking advantage of the other party's state of necessity, inefficiency, inexperience or lack of sufficient understanding of the object of the contract, in exchange for its own performance shall accept or reserve for itself or for a third party a performance whose value at the moment of the conclusion of the contract glaringly exceeds the value of its own performance, the other party may demand a reduction of its performance or an increase of the performance due to it or demand that the contract be declared null and void.
§ 1(1). If the value of the performance of one of the parties at the moment of the conclusion of the contract exceeds at least twice the value of the mutual performance, it shall be presumed that the former exceeds the latter glaringly.
§ 2. The rights set out in paragraph 1 shall expire after three years or, if a party to the contract is a consumer, after six years from the day of the conclusion of the contract.

been officially closed - seems to be fading away.

2. Different legal concepts – different obligations

In most cases, franchisors with an existing franchise concept have a disclosure document in place which they created for their home market. Such foreign disclosure documents may be a good starting point, at least with regard to certain information on the franchisor, on the franchise system in general, and the like. Such information needs to be disclosed in all jurisdictions. However, depending on the origin of such document, not all information contained therein may be relevant in all European jurisdictions, while for some European jurisdictions, relevant information may be missing. Further, in countries where the duty to inform is not based on specific franchise disclosure laws but on legal principles or statutory provisions pertaining to contractual relationships in general, it is often an easier approach to prepare a new document based on certain information to be provided by the franchisor on counsel's request. Also, the risk of falling into one of several traps a foreign franchisor may be completely unaware of should not be neglected when drafting a disclosure document on the basis of a (foreign) existing one.

2.1. Purpose of pre-contractual disclosure

The format as well as the kind of information to be provided may vary depending on the legal background of a disclosure obligation: is it a regulatory aspect that needs to be complied with, or is it the idea of protecting the weaker party, or else? Or both?

(i) Protecting the weaker party

Although franchising concerns a relationship between two entrepreneurs, it has been recognized in many jurisdictions (also in Europe) that the franchisee constitutes the weaker party in that relationship. In certain countries, a prospective franchisee is treated as a consumer and afforded protection under national consumer protection legislation.[91] In other jurisdictions, the prospective franchisee is accorded a consumer-like status by statute (or, as in Germany, the special status as a first time entrepreneur) and granted a right of withdrawal within seven to ten or even 14 days from the execution of the agreement.[92] Once a legislature concludes that the prospective franchisee is the weaker contracting party, the principle of caveat emptor is typically set aside in favor of introducing protective mechanisms for that party.

The most common contemporary method of protecting the weaker party in a franchise relationship is to impose a statutory duty on the franchisor to provide pre-contractual disclosure. The purpose of such disclosure requirements is generally described as enabling the franchisee to make an informed decision as to whether to enter into the agreement.

(ii) True description of the system: One-time disclosure vs. ongoing disclosure obligations

In most disclosure regimes, the disclosure document provided to the prospective franchisee is required to constitute a "snapshot" of the franchise concept as it exists at the time the agreement is concluded.[93] This approach aligns with the underlying purpose of pre-contractual disclosure, namely, to

[91] E.g. South Africa - The Consumer Protection Act 68 of 2008.
[92] E.g. Australia - Select Legislative Instrument No. 168, 2014 made under the Competition and Consumer Act 2010, and Malaysia - The Franchise Act 1998, Act 590.
[93] Fernlund, Franchising – friction between transnational business models and national legislation (doctoral thesis 2018). p. 170 f.

enable the franchisee to make a well-informed decision regarding entry into the agreement. European jurisdictions that have enacted disclosure legislation generally adhere to this "snapshot" principle. The requirement for annual updates as provided for by law e.g. in Malaysia, Australia, and the USA, does not exist in European jurisdictions.

(iii) Are there disclosure obligations on the franchisee, too?

In certain jurisdictions, franchise legislation or general contract law provisions also impose disclosure obligations on the franchisee. In Albania, for instance, the parties are subject to a mutual obligation to provide each other with necessary information during the pre-contractual phase.[94] In Italy, a reciprocal duty of good faith and loyalty applies, requiring both parties to act fairly and to furnish the other party with such information as may be necessary.[95] As described above, a similar approach is taken in Germany where such reciprocal obligation is derived from the legal principle of good faith which is also applicable in the phase of contract negotiations.

(iv) The potential risk of providing too much information

Less can be more – at least in Europe: compared to a US-FDD, a disclosure document prepared under the legal regime of any jurisdiction in Europe is significantly shorter and contains far fewer details: in general, the idea is to disclose (only) what is necessary and to refrain from providing superfluous information in order to protect the franchisor from risks associated genuinely with any information provided, such as possible misinterpretations, old data, incorrect descriptions, and the like. In Germany, there is an additional risk that arises from the fact that special legal provisions apply to so-called standard terms and conditions (Sections 305 et seq. of the German Civil Code (BGB)). A disclosure document (as well as the franchise agreement), being a frequently used and unilaterally drafted document that is not individually negotiated, is subject to these provisions. Any shortcomings regarding clarity, comprehensibility, completeness, and unambiguous interpretation of the meaning of standard terms are to the detriment of the user, i.e., the franchisor. If, for example, a franchisee argues in a legal dispute that essential information is found only (hidden) on page 134 of the disclosure document, or that he relied on the accuracy of an amount that was incorrect due to a number transpositions, he could successfully argue that he was not properly informed and request, for this reason, that it is annulled with the resulting legal consequences, such as repayment claims, damages, etc..

2.2. The "EFDD" – is it possible (and advisable) to come up with a "model" European Franchise Disclosure Document?

The short answer is: Yes, it is possible to prepare and to use a single "European Franchise Disclosure Document" (EFDD) as a base document. However, it cannot on its own replace country-specific disclosures in jurisdictions that have mandatory franchise disclosure laws.

In other words, an EFDD can be used as a core disclosure pack, but it almost always needs local annexes or carve-outs for certain countries as Europe/the EU does not recognise a single, harmonised disclosure regime comparable to the US FDD. Disclosure obligations are fragmented and, in some states, mandatory and prescriptive. And as described above, even (or especially) in non-regulated countries such

[94] The Albanian Civil Code, chapter XX, articles 1056–1064.
[95] Franchising Act, Act no. 129 of 6 May 2004.

as Germany, the obligations on a franchisor to inform may extend to various aspects which are usually not covered in a US FDD.

As Europe/the EU has no unified franchise disclosure legislation, each country, or member state in the case of the EU, regulates franchising differently, if at all, some through dedicated statutes, others via general contract, civil code or good-faith obligations. Consequently, no individual jurisdiction mandates a "European" format, but likewise, no jurisdiction expressly forbids a pan-European disclosure document. It is this lack of express prohibition that allows the EFDD to exist in practice.

Although there is no European jurisdiction that expressly prohibits the use of a pan-European disclosure document, several do require specific pre-contract disclosure, often with:

- fixed content requirements,
- strict timing rules, and
- formal language obligations.

An EFDD that does not meet those mandatory local standards will not cure non-compliance simply by existing. In the contrary: preparing an EFDD in the "style" of a US FDD, namely with a core text and then country-specific annexes to it, may lead the franchisor to feel secure, because it is often not just a matter of providing "more" information, but also a different kind of information. Here are a few thoughts on the pros and cons of preparing an EFDD:

(i) Pros

- ***Consistency and governance control***

An EFDD:

- ensures one authoritative version of franchise information,
- reduces internal inconsistency across countries,
- supports brand integrity and system coherence across borders.

This is particularly valued when a franchisor operates in many European jurisdictions.

- ***Efficiency and cost control***

Compared with drafting fully bespoke disclosures for each country, an EFDD has the advantages that:

- legal drafting time may be reduced,
- updates (e.g. litigation, financials) are centralised,
- internal compliance processes are easier to manage.

- ***Commercial sophistication***

Providing a detailed EFDD:

- signals transparency and professionalism,
- can build franchisee confidence even in countries without mandatory disclosure laws,
- aligns with European Code of Ethics principles, where followed voluntarily.

(ii) Cons

- ***Risk of non-compliance with mandatory regimes***

In countries with strict disclosure laws requiring individual obligations to inform on:

- format,
- sequencing,
- timing,
- jurisdiction-specific content,

these obligations must be complied with precisely.

If an EFDD does not strictly meet local requirements, courts may:

- suspend enforceability,
- award damages,
- allow rescission of the franchise agreement.

- ***Over-disclosure risk***

An EFDD often contains broader disclosures than are required in “lighter-touch” jurisdictions and this can:

- create unnecessary representations,
- expand liability exposure,
- complicate later enforcement if statements prove inaccurate.

European courts often scrutinise pre-contract representations carefully.

- ***Translation and localisation issues***

Certain disclosure laws require documents:

- to be in the local language,
- or at least provided with an official translation.

Using a single EFDD increases the risk that:

- translations conflict with the governing language clause,
- local nuances are lost,
- translations do not match the legal system or legal context,
- updates lag behind translated versions.

- ***False sense of compliance***

A major practical risk is organisational, not legal. A franchisor may believe that simply issuing an EFDD means they are compliant.

(iii) Reality check

What this means in practice is that if a franchisor decides that an EFDD shall be used for European roll-outs of a franchise network, it is advisable to structure it as follows:

Part A – Core (General) Disclosure

This first Part should contain material information about the franchise that is so fundamental that its disclosure is mandatory in all European jurisdictions that have pre-contractual disclosure requirements or, for those jurisdictions without specific disclosure laws, would be considered material for any franchisee to consider when making a decision whether or not to enter into a franchise. This information would typically include as a minimum:

- franchisor identity and group structure,
- business concept and know-how,
- IP rights,
- fees and financial commitments,
- training, support and system obligations,
- litigation and insolvency disclosures,
- standard franchise agreement(s).

Part B – Country-Specific Annexes

This Part would then contain information that is only required to be disclosed or informed on in specific European jurisdictions and the information is not considered sufficiently material or generally applicable to be included in Part A. This information might include among others:

- mandatory statutory disclosures,
- locally required wording,
- cooling-off / waiting periods,
- franchisee contact lists where required,
- translations and formalities.

(iv) When an EFDD can make sense

An EFDD is most defensible where:

- the franchisor operates in many European countries,
- it is paired with robust country annexes,
- local counsel signs off each annex,
- the EFDD is expressly stated to be supplemented (not substituted) by local disclosures,
- the franchisor wishes to have a document in place which is, to the greatest extent possible, comparable with a disclosure document the franchisor uses in his own jurisdiction and is most familiar with.

(v) When bespoke country documents are safer

Purely bespoke local disclosures are usually preferable where:

- France, Italy, Spain, Germany, Sweden or Belgium are involved,
- the franchise system is early-stage,
- regulatory risk tolerance is low,
- courts have already ruled in favor of a franchisee who claimed to not have been properly informed beforehand,
- franchisees are unsophisticated retail operators.

(vi) Bottom line

Yes, preparing an EFDD is possible and it may be used as a base document, but it cannot replace country-specific disclosure obligations in regulated jurisdictions or jurisdictions with extensive case law on pre-contractual information obligations and should never be used without country-specific adaptations and/or annexes.

3. The practical approach – typical situations

The following scenarios are typical for local counsel in practically all European jurisdictions:

3.1. "Here is my FDD, all relevant information is in there. Just customize it to the requirements in your jurisdiction" – is it a good idea?

Where the franchisor operates in the United States and has prepared a Franchise Disclosure Document (FDD) in accordance with the FTC Rule, this generally constitutes the most appropriate point of departure for local counsel in Europe. Given that a U.S. FDD contains 23 items, all material information should, in principle, be available therein. This does not, however, imply that a European attorney will utilize all or even most of such information, as the applicable legal requirements differ across jurisdictions. By way of illustration, the Swedish Franchise Disclosure Act mandates disclosure of eight specified items, while also requiring that any other material information be disclosed.

European counsel will nevertheless exercise restraint and avoid the inclusion of information beyond what is required under applicable local law. Any additional, non-mandatory disclosures may subsequently be construed against the franchisor as representations or warranties at a later stage of the franchise relationship. A (US) franchisor should therefore not be surprised if local counsel advises to delete large portions of the information contained in the FDD.

A significant advantage of using the franchisor's original FDD as the foundation for continued expansion is that it promotes consistency in the franchise system's profile and standards across jurisdictions.

3.2. Does it matter (and if yes, why?) which industry is concerned?

In general, the applicable approach is not contingent upon the industry in question. The overarching purpose of disclosure is to enable the prospective franchisee to make an informed decision as to whether to enter into a franchise agreement. The items prescribed by specific franchise disclosure laws do not vary based on the nature of the business sector. Any differentiation instead arises in the training and operational aspects provided to the franchisee. However, in situations where certain industry-related obligations arise which may or may not be regulated by statutory law (e.g. laws and standards pertaining to hygiene or health), a franchisor may be well advised to inform on such specific requirements applicable only e.g. in the food industry, or health care industry.

3.3. What are the risks of non-compliance? Do the math!

The consequences of non-compliance with franchise legislation vary among jurisdictions. In France, available remedies include nullification of the agreement, damages, and price reduction.[96] In Italy, the agreement may be rendered void under statutory provisions governing fraud.[97] In Belgium, the franchisee may seek nullification of the franchise agreement within two years from the date of execution.[98] And in Germany, the lack of proper information on the right to withdraw or insufficient, outdated, non-transparent or false information may lead to early termination and damages.

Irrespective of the particular remedies applicable, deliberate non-compliance with disclosure requirements is ill-advised. From a practical standpoint, franchisors risk significant reputational harm and may encounter substantial difficulty in attracting new franchisees once it becomes known that they have failed to adhere to applicable local laws.

4. Conclusive Strategies and Practical Advice

An international expansion of a franchise system necessitates careful preparation, including a thorough assessment of the legal landscape of the target jurisdiction. The obvious question of whether specific franchise legislation exists is not the only inquiry that should be undertaken. Consideration must also be given to laws governing the particular industry to which the system pertains. For example, one should determine whether there are restrictions on the importation of raw materials, or customs duties and tariffs applicable to necessary equipment. It is likewise advisable to ascertain whether agreements and operational manuals may be used in a language other than the official language of the jurisdiction. Rules governing choice of law and dispute resolution should also be examined.

With respect to the jurisdiction's disclosure regime, it is essential to determine what information must be included, how it is to be presented, and when disclosure must be made. A sound starting point for preparing an FDD in a new jurisdiction is often the FDD already utilized by the franchisor in its home country. Also, the 23-item framework established under the FTC Rule provides a robust baseline, encompassing sufficient information to satisfy the requirements of most jurisdictions. A comparable framework may also be developed using the UNIDROIT Model Franchise Disclosure Law as a point of reference.

Responsibility for adapting and preparing the FDD for the target jurisdiction should be entrusted to local counsel - and only to local counsel. Local attorneys specialized in franchising will possess familiarity with the applicable legal framework and can advise the franchisor on ancillary or overlapping laws that may affect market entry. In the event of a dispute, local representation will in any case be required. Local

[96] Loi Doubin.
[97] Article 1439 in the Italian Civil Code.
[98] Book X, Title 2, Article 26.

counsel will also be able to determine whether the FDD is treated as a "snapshot" in the jurisdiction in question and whether periodic or annual updates are required. It should be noted that no European jurisdiction requires prior registration of an FDD.

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Authors' Biographies

Anders Fernlund is a partner of ASTRA Law in Stockholm, Sweden, where he heads the Franchising and Distribution Law department. He has represented domestic and international franchise systems present in Sweden for the last 40 years. He holds a Ph.D. in private law on a dissertation comparing franchise laws in 36 countries around the world. Beside his practise, Anders is a visiting researcher and senior lecturer at the University of Stockholm. Anders is the Honorary President of the EuroFranchise Lawyers, and Honorary member and General Counsel to the Swedish Franchise Association. He is also a past chair of the SFA and a past senior vice-chair of the International Franchising Committee of the IBA. He is the Swedish member of the Legal Committee of the European Franchise Federation. Anders has written many books and articles on Swedish and European franchising and the chapter on Sweden in many international publications like the *International Franchise Sales Laws and Fundamentals of Franchising Europe*. He has been recognized in the International Who's Who of Franchise Lawyers for many years.

Dagmar Waldzus is a partner in the Hamburg office of BUSE Rechtsanwälte, a full-service law firm with 100+ lawyers in 7 offices in Germany. As the head of the firm's Distribution and Commercial Law Practice Group Dagmar's work focuses on franchise, sales, commercial agency, and distribution law. She has extensive experience in advising franchisors (inbound and outbound) in relation to all legal aspects arising from the internationalization and adaptation of their concepts and documentation. Dagmar currently serves as the Vice-Chair for the IBA's International Franchising Committee and is an associated expert with the German Franchise Association (DFV) where she is a member of its Think Tank on Digitalization. She regularly serves as a speaker and publishes articles on topics related to franchising, e-commerce, digitalization, competition law, and data privacy. Dagmar has been recognized in BestLawyers Germany for Corporate Law and as leading franchise practitioner in the Lexology ranking (formerly "Who's Who Legal") in the category of Thought Leaders Global Elite for franchising for many years.

Olga Sztejnert-Roszak graduated with distinction from the University of Warsaw in the Law and Administration Faculty and has been advocate since 2000. She completed a professional traineeship in Nörenberg, Schröder & Partner in Hamburg and Knarr & Knopp in Darmstadt. Currently Olga is partner at SWKS Sztejnert Winnicka Kowalczuk Sosnowska in Warsaw. Olga has been extensively involved in coordinating comprehensive legal services to companies operating in the Polish market and has gained significant court experience in representing clients in civil and commercial litigations. She is also author of numerous publications in the field of civil law, including distribution law, commercial law and civil procedure. Olga serves as expert for Poland at International Distribution Institute based in Torino in agency and distribution. She has been assisting the clients with establishment and development of franchise system in many sectors of selling the goods and providing services in Poland. Olga has been repeatedly recommended by Who's Who Legal (currently: Lexology Index) in the area of the Franchise (2010-2025, currently: thought leader) and Trade & Customs (2011-2025, currently: thought leader).

David Bond is a partner in the London office of European law firm, Fieldfisher LLP with 24 offices across Europe. As co-head of the firm's Franchise, Distribution and Licensing Group, David draws upon three decades of experience, to support clients structure and implement their international franchise strategies, avoid common pitfalls and maximise commercial returns. A significant part of his work involves navigating complex international regulatory frameworks and diverse local law requirements to ensure successful, scalable franchise expansion. He advises clients across all sectors but has a particular focus on the education, hotels and leisure, entertainment and services sectors. David is very proud that his franchise team is consistently ranked as a leading UK franchise practice by the independent legal directories of Chambers & Partners, Legal 500 and Who's Who Legal. On a personal level, Legal 500 ranks him in their "Hall of Fame" for Franchising and Lexology Index ranks him as a "Global Elite Thought Leader" for Franchising. David is also a consultant editor on the editorial board of LexisNexis' PSL online publication and has been Contributing Editor of Legal 500's Franchise & Licensing Comparative Guide since its inception.