



Recommendation 1182 (1992)¹

Franchising

Parliamentary Assembly

1. Franchising – by which is meant the right to sell, against payment, goods or services under a certain name or designation supplied by someone else – is becoming increasingly common in Council of Europe member states, and is already spreading rapidly in Central and Eastern Europe and in the developing world.
2. Although such an agreement will often benefit both the franchisor (the brand name's owner) and the franchisee (the person or company using the brand name), sometimes it may also be unfair to the latter by submitting him or her to excessive financial and other obligations vis-à-vis the franchisor, or by not providing for sufficient legal and social protection.
3. While legislation is already extensive in countries where the phenomenon is of long standing, such as in the United States, in many Council of Europe member countries – and in particular in the reforming countries of Central and Eastern Europe – it is either non-existent or at an embryonic stage.
4. Among the issues that need to be settled to ensure fair and equitable franchising agreements are, for instance, whether the franchisee should be considered as an employee (with the resulting labour legislation safeguards) or as self-employed or something in between the two; to what extent ordinary contract laws should extend also to franchising agreements, for instance as regards clauses restricting sources of supply, the freedom to sell (including possible consequences for consumers), or the cancellation of contract; and the right of franchisees to negotiate with the franchisor, independently or jointly.
5. The International Institute for the Unification of Private Law (UNIDROIT) in Rome has been studying the franchising contract since 1985. Its work may lead to the adoption of a guide to franchise agreements but does not rule out the possibility of preparing a convention or uniform law.
6. The Assembly, considering the above, recommends that the Committee of Ministers study the legal, social and economic aspects of franchising in Europe in co-operation with the International Institute for the Unification of Private Law (UNIDROIT) and that it thereby pay particular attention to the special situation prevailing in Central and Eastern Europe.
7. It also invites the governments of member states to draw up, and harmonise at European level, legislation on franchising, in the interest of all parties concerned, as well as that of the general public.
8. Finally, in the meantime, the Assembly recommends that the governments of member states work in favour of the voluntary adoption of appropriate codes of conduct by professional associations, at national and international level.

1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 11 March 1992. See Doc. 6560, report of the Committee on Legal Affairs and Human Rights, Rapporteur: Mr Stig Gustafsson; and Doc. 6578, opinion of the Committee on Economic Affairs and Development, Rapporteur: Mr Rowe.*

