



university of
 groningen

European, Italian and Dutch Regulations and Principles about Franchising: A Comparison

By

Carlotta Peverada

University of Groningen

Faculty of Economics and Business

Bsc International Business

Supervisor: Prof. Hein Vrolijk

January 2021, Groningen
Student number: 3721744

ABSTRACT

Today, franchising is a major business form in the economic landscape of the European Union, however, not many European countries have specific franchising regulations. Italy and the Netherlands are in fact two of the very few countries which have adopted laws clearly regulating such business form. The aim of this thesis is to operate a multiple comparison in order to determine the main differences and similarities between European, Italian and Dutch franchising regulations. Such analysis was conducted by comparing a number of national and supranational laws, regulations, acts and principles. From this comparison it emerges that both at a national (Italy and the Netherlands) and supranational (European Union) level a great legal heterogeneity exists, when it comes to franchising.

TABLE OF CONTENTS

1. Introduction	4
2. Literature Review	4
2.1 Definition of franchising	4
2.2 Overview about franchising in Italy and in the Netherlands	4
2.3 Body of literature regarding franchising	5
3. Methodology	6
4. Results	8
4.1 European Regulations and guidelines regarding franchising	8
4.2 Dutch franchise Act, Old Dutch Franchise Code and Italian Franchise Law - A Comparison	10
4.3 National Regulations and European Regulations and Principles – A Comparison	15
5. Discussion and Recommendations	18
Appendix A	20
Appendix B	21
Appendix C	23
Appendix D	26
Appendix E	29
Bibliography	30

1. Introduction

Nowadays franchising is a very visible part of the economic landscape within the European common market. Franchising looks like one of the most efficient and effective ways to provide the end consumer with services and goods and it is one of the most used market entry modes to internationalise. When companies decide to internationalise, one of the main obstacles is the difference between national regulations (the so-called “institutional distance”), as it is necessary to adapt the chosen entry strategy to the legal system of the host country. To facilitate such adaptation, comparative studies analysing the differences between national legal systems are extremely useful, however, not many comparative studies of this kind have been conducted so far. Therefore, in this thesis the choice has been made to operate a multiple comparison: firstly, a comparison between the national franchising laws of two European countries (Italy and the Netherlands) and secondly a comparison between the aforementioned country-level regulations and European-level regulations and principles regarding franchising. The research question that will be answered is the following: What are the main differences and similarities between European, Italian and Dutch franchising regulations?

The choice has been made to focus on Italy and the Netherlands because, unlike most European countries, these two countries have introduced a comprehensive regulation about franchising.

This research will be interesting for any company approaching the European market through franchising, as it provides them with an overview of the European general principles and specific laws that regulate franchising at the European level. This thesis will be even more relevant to the Italian companies which want to expand their franchising network to the Netherlands and, vice versa, Dutch companies expanding their franchising network to the Italian market. In fact, Italian and Dutch laws regarding franchising will be analysed, commented and compared, to help reduce the institutional distance that foreign investors face when approaching a new market.

2. Literature review

2.1 Definition of franchising

Franchising is a business agreement in which a firm (the franchisor) obtains a series of initial and periodic payments in exchange for allowing other firms (the franchisees) to offer their products and services under the same brand name and using their procedures (Combs, Ketchen, Shook & Short, 2011).

2.2 Overview about franchising in Italy and in the Netherlands

In comparison with many other European countries, franchising arrived relatively late in Italy. However, it has been constantly growing in the Italian market in the last 30 years and, according to the 2020 survey made by Assofranchising (the main Italian franchising association), it has become

one of the most profitable sectors of the Italian Economy, with an average yearly increase of 5%. In 2019 the franchising business in Italy generated a total turnover of 26 billion euros, with 217,150 workers employed by 980 brands (Pandolfini, 2020). As for the foreign investments in this sector Italy ranked 21st in the world in terms of attractiveness in the 2019 International Franchise Attractiveness Index Country Ranking (Hachemi Aliouche, 2020) and only 10% of franchise networks operating in the country were not born in Italy (Pandolfini, 2020).

In the Netherlands franchising is a growing sector too, with the total number of franchise formulas increasing by more than 10% in 2019 and a total turnover of 38.1 billion euros (NFV, 2020). While in Italy food & beverage and fashion are the leading sectors in the field of franchising (Pandolfini, 2020), in the Netherlands franchising has a relevant role in every economic sector (NFV, 2020). As for the country's attractiveness in terms of foreign investments, the Netherlands ranked 12th in the world in the 2019 International Franchise Attractiveness Index Country Ranking, a notable result considering the limited size of the Dutch market (Hachemi Aliouche, 2020).

2.3 Body of literature regarding franchising

The body of literature concerning franchising is substantial and the topic has been explored through empirical and descriptive research. As for the theoretical foundation of franchising, usually two key theories are used to explain this phenomenon: resource scarcity (Castrogiovanni, Combs, & Justis, 2006) and agency theory (Lafontaine, 1992). According to the first theory, franchising is a way of obtaining capital, as the franchisee is required to make a financial investment to enter the contract. According to the second theory, franchising is seen as a means of addressing the issue of monitoring managers.

When it comes to literature regarding comparative studies about franchising's legal frameworks, in the last decade a few studies have been conducted with the objective of making a comparison between the franchising regulations of European countries. In fact, even within the European common market, franchising regulations can vary consistently, therefore increasing the so-called "institutional distance" (Rosado-Serrano, Paul, & Dikova, 2018)

Bueno Diaz (2008) makes a comparison between the legal framework of obligations regarding franchising of three different legal systems: PEL CAFDC (Principles of European Law: Commercial Agency, Franchise, and Distribution Contracts) Spanish law and French law. The main objective of her study is analysing to what extent Spanish and French laws regarding franchising follow the principles of the PEL CAFDC. The study concludes that the main obligations of contracting parties in franchising under the PEL CAFDC resemble those under French and Spanish law. However, according to the study, some differences arise between the Spanish and the French system when national courts are called to weigh the interests of the parties in specific cases. This due to the fact that neither Spain nor France have specific legislations regulating the content of franchise agreements, leading to national courts applying general contract laws (which differ from country to country) to franchise cases.

Wiewiòrowska-Domagalska (2016) makes a comparative analysis of franchising regulations within the European Union, with the objective of assessing the impact of existing EU-legislation on the functioning of the EU franchising market. In particular, the report shows the evolution of the approach

to franchising in the European Union and how this approach impacts the functioning of franchising in the EU market. At the level of EU law, the report takes into account not only all EU regulations that apply to franchising, but also the cases decided by the Court of Justice of the European Union and decisions of the European Commission. At a national level, the research was conducted through questionnaires filled in by national researchers. The data was then analysed through a traditional comparative law method. The study drew the conclusion that the existing EU regulations were not effective and up-to-date with the evolution of the franchising sector and even contributed to the malfunctioning of the European franchising market.

Abell (2011) studies the regulation of Business Format Franchising in the European Union by making a comparison between the three member states with the highest franchising turnover (the UK, Germany and France) and the US and Australia. The central hypothesis of this study is that franchising failed to fulfil its potential in the EU, in part because of the regulatory environment. To test this hypothesis the author uses different sources of data: Legislative statutes and reported judicial decisions, legal literature, legislative reports, consultation documents and also empirical research. Through an applied comparative law methodology Abell confirms the initial hypothesis and suggests to improve the EU's Regulatory environment.

These are only three of the many existing studies regarding franchising regulations in Europe. However, so far no study has been conducted with the objective of comparing the franchising legal framework of two European countries with specific laws regarding franchising. In fact, even when the research focused on two specific countries, like the aforementioned research by Bueno Diaz, the countries taken into consideration did not have specific laws concerning franchising, but rather a set of general laws regulating contracts. Therefore, the aim of this thesis is to expand the existing literature regarding franchising, first by comparing the regulations of two countries (Italy and the Netherlands) in which the relationship between franchisor and franchisee is determined by specific laws and then by operating a second comparison between the Italian and Dutch national regulations and the European-level laws.

3. Methodology

This thesis focuses on the legislative systems regulating franchising, rather than on its economic foundations. Accordingly, in order to analyse the existing national (Italy and the Netherlands) and international (European) laws, the research is based on the following sources:

- Law n. 129/2004 of the Italian legal system, also known as “Italian Franchise Law”, which came into force on May 6, 2004.
- An informal English translation of the Amendment Book 7 of the Dutch Civil Code in connection with the introduction of rules regarding the Franchise, also known as Dutch Franchise Act, which will likely come into force on January 1, 2021.

- The Dutch Franchise Code (a self-regulating code of conduct, that Dutch franchisors and franchisee were strongly advised to follow before the creation of the Dutch Franchise Act)
- European regulation 330/2010
- European Guidelines on Vertical Restraints
- PEL CAFDC (Principles of European Law: Commercial Agency, Franchise, and Distribution Contracts)

All these texts have been collected through an online research. The informal English translation of the “Dutch Franchise Act” is available on the official website of the global law firm DLA Piper, where national and international laws are translated and commented, while the original Italian text of the “Italian Franchise Law” is available on the official website of the Italian Parliament, where all Italian laws are published.

The original text of the Dutch Franchise Code is available on the official website of VAKCentrum, an independent Dutch Association. The text of the PEL CAFDC was found in the online version of the book “Principles of European Law - Principles of European Law. Study Group on a European Civil Code. Commercial Agency, Franchise and Distribution Contracts (PEL CAFDC)”, a European Study in which PEL CAFDC are translated in multiple European languages and analysed. With regards to the PEL CAFDC, in addition to the original Articles, a paper by Cashin Ritaine commenting on the Principles of European Law on Commercial Agency, Franchise and Distribution Contracts was also used (Cashin Ritaine, 2007). As for the European guidelines regarding vertical agreements, the original text was provided by the European Commission itself in the form of a Commission Notice, also available online. With regards to the European regulation 330/2010, the original Articles were published in the online archives of the Official Journal of the European Union and an analytical comment of the articles related to franchising was given by Wiewirowska-Domagalska in her “Franchising study for the IMCO committee” (a more extensive explanation can be found in the “Previous Research” section).

In developing the arguments set out in this thesis, which can be classified as a descriptive literature review, a comparative legal study methodology was applied. That is, the descriptive research employs a comparison method aimed at determining differences and similarities of the chosen legal systems.

In order to conduct a literature review comparing the aforementioned legal codes, the texts have been subdivided into sections and subsequently named based on their contents. Then, the choice has been made to create 5 subsections, namely definition of franchise agreements, precontractual obligations, content and form of the franchise agreement, duties of the franchisor and duties of the franchisee, to critically analyse the similarities and differences in how the different legal systems regulated such areas.

4. Results

Before analysing in depth European and national regulations, it is necessary to make a few remarks.

First of all, when doing a comparative legal study, one always has to acknowledge the main differences between legal systems. Nowadays many legal systems exist, however, comparative lawyers agree on recognizing two main families: the common law system and the civil law systems. The main difference between these two families is that, while Civil law is based on the codification of the law, Common law is based on the principle of judicial precedent. This means that in Civil law cases are judged based on principles originated in written documents known as ‘Codes’, while in Common law there are general written codes, but the judge’s decision is mostly based on previous judgements of similar cases (August, 2004). Both Italy and the Netherlands belong to the first family, which implies that they heavily rely on written codes that are frequently updated and are the primary source of law when it comes to court cases.

Secondly, as previously mentioned, the new Dutch Franchise Act came into force starting January 1st 2021. Before such Act was introduced, some attempts were made to regulate the Dutch franchise sector in an informal way. The Dutch Franchise Code, also known as “the Code” is a code of conduct based on self-regulation, which, however, is not legally binding as the parties can decide not to apply its provisions. As many franchisors decided to not follow such provisions, the Dutch Government decided to introduce a legally binding regulation: The Dutch Franchise Act. It is worth mentioning that the Dutch franchise Act was aimed at levelling the playing field by strengthening the position of the franchisee and the act was subjected to criticism, as franchisors felt that their interests were not taken into account (Dadi and Christiaans, 2019). To make this thesis even more complete, the choice has been made to also include “The Code” in the comparison.

Thirdly, Italy and the Netherlands are member states of the European Union, therefore their legislative systems are subjected to the so-called ‘precedence principle’, which guarantees the superiority of European laws over national ones. Therefore, the choice has been made to analyse in depth all the European regulations and principles that might influence national laws regarding franchising.

In this section I will give an overview of the European regulations and guidelines governing franchising. Finally, I will analyse and make a comparison between the Italian Franchise Law, the Dutch old and new franchise regulations and the European rules and regulations regarding franchising.

4.1 European Regulations and guidelines regarding franchising

At present a European common legal framework on franchising does not exist, however, some European rules and regulations touch the topic of franchising. In the following paragraphs I will give an overview of such documents:

1) European regulation 330/2010 governs vertical agreements, such as franchising. This regulation deals with franchising with respect to competition law and refers back to Article 101 TFEU, which

prohibits agreements aimed at restricting or distorting competition, exceptions made for those agreements whose benefits outweigh the anti-competitive effects. With regards to franchising, regulation 330/2010 specifically allows the existence of vertical agreements, provided that the contract benefits the consumer by improving economic efficiency within the distribution chain. (European Commission, 2010)

2) Franchising is also mentioned in the European guidelines, which are not legally binding on member states. The guidelines deal with franchising in Section VI “Enforcement Policy in Individual Cases”, specifically in paragraph 189/191 (Wiewiòrowska-Domagalska, 2016). The paragraphs are structured as follows:

- Paragraph 189: gives a definition of franchising agreements.
- Paragraph 190 outlines to what extent the Block Exemption Regulation (vertical restraints on the purchase, sale and resale of services and goods) applies within a franchising arrangement.

The Block Exemption Regulation aims at creating competition by not allowing some organisations to perform specific business activities within a determined market share. In the case of franchising, the guidelines state that the Block Exemption Regulation applies to up to the 30 % market share. Such market share is computed by the franchisor on the market in which his/her business method is used by the franchisee.
- Paragraph 191 describes some examples of franchising. (European Commission, 2010)

It is important to underline that European Regulations have a different legal status compared to European Guidelines. While Regulations are a “a binding legislative act”, which “must be applied in its entirety across the EU” (Official Website of the European Union, 2020), guidelines are non-binding texts which are created with the objective of facilitating the implementation of European Directives (European Agency for Safety and Health at Work, 2020).

3) The PEL CAFDC (Principles of European Law: Commercial Agency, Franchise, and Distribution Contracts), a set of Principles created by a European study Group, with the objective of advancing the process of Europeanisation of private law. The Sections specifically regarding franchising are structured as follows:

- Section 1: General
- Section 2: Obligations of the franchisor
- Section 3: Obligations of the franchisee

With regards to the legal status of these Principles, it has to be underlined that they were developed as part of an academic project and are therefore not legally binding on Member States (Hesslink, 2006).

In the following section I will analyse the content of national and European Franchise Regulations considering 5 main subsections:

1. Definition of franchise agreements
2. Precontractual obligations
3. Content and form of the franchise agreement
4. Duties of the franchisor
5. Duties of the franchisee

The comparison is structured as follows: first I will make a comparison between national regulations (Dutch franchise Act, Old Dutch Franchise Code and Italian Franchise Law) and then I will make a second comparison between National and European regulations and principles (European Guidelines and PEL CAFDC)

4.2 Dutch franchise Act, Old Dutch Franchise Code and Italian Franchise Law - A Comparison

1. Definition of franchise agreements (Article 911 of the Dutch franchise Act, Article 1 of the Italian Franchise Law)

Both the Dutch franchise Act and the Italian franchise law specify that franchising is an agreement in which the franchisor allows the franchisee to operate a franchise formula and the franchisee will pay a fee in return. Although the term ‘franchise formula’ is not explicitly stated in the Italian text, all the elements of the franchise formula (trademark, trade name, knowhow, image, design, commercial and technical assistance) are included in the definition of the franchise agreement.

The only notable difference between the two texts is that Italian law specifies that the franchisor and the franchisee have to be juridically and economically independent from each other.

2. Precontractual obligations (Article 913 and 915 of the Dutch franchise Act and Article 4, 6, 8 of the Italian Franchise Law)

Necessary documents and data

Both the Dutch and the Italian franchise law list the documents and the kind of data that have to be provided before signing a franchise agreement.

With regards to the precontractual obligations of the franchisee, the Italian franchise law states in Article 6 that the franchisee has to provide the franchisor with any information that could be useful for the conclusion of the franchise agreement. This statement undoubtedly leaves room for interpretation: such documents might include financial statements, but also where applicable, a description of legal proceedings brought against the franchisee within the field of franchising in the

past, as it is the case for the franchisee (see next paragraph). By contrast, the Dutch franchising Act, Article 913 clearly indicates which kind of document has to be provided by the franchisee: information about his/her financial position which could be relevant for the conclusion of the agreement.

Precontractual obligations of the franchisor

With regards to the precontractual obligations of the *franchisor*, the Dutch franchise Act and the Italian franchise law give a detailed list of the documents and data which have to be provided to the franchisee.

Please refer to Appendix A for the complete description of the documents and data that have to be provided from the franchisor to the franchisee according to the Dutch franchise Act and Italian franchise law.

Time (Article 914 of the Dutch franchise Act and Article 4 of the Italian Franchise Law)

Both the Italian and the Dutch regulation indicate that all the documents mentioned in Appendix A have to be provided at least four weeks before the signing of the contract (precisely 30 days for the Italian and 28 for the Dutch one).

Furthermore, the Dutch regulation states that during this period the franchisor is not allowed to:

- Amend the draft of the franchise agreement, unless the change favours the franchisee
- Conclude any franchise agreement with the franchisee, or any agreement considered inseparable therefrom, with the only exception of confidentiality agreements.
- Persuade the franchisee to make any investment associated with the franchise agreement

(Dadi & Christiaans, 2020)

Comparison

The comparison between the Dutch and the Italian precontractual obligations shows that both regulations tend to especially safeguard the rights of the future franchisee, by ensuring that he will be provided with extensive documentation regarding the franchisor. However, there are some differences. The main one is that, while the Dutch franchise Act focuses on clearly regulating the future relationship between the parties, the Italian franchise law focuses on providing the franchisee with extensive information regarding the present and the past of the franchisor.

3. Content and form of the franchise agreement (Article 920 of the Dutch franchise Act, Article 3 of the Italian Franchise Law and Chapter 4 of the Dutch franchise Code)

Please refer to Appendix B for the complete description of the articles of the Dutch franchise Act, Italian franchise law and Dutch Franchise Code which regulate content and form of the franchise agreement.

Comparison

The comparison makes it clear that the Dutch Franchise Act aims at protecting the interest of the franchisee. In fact, by comparing the Italian and the Dutch regulations, one can see that in the Dutch one a particular focus is placed on the safeguard of the franchisee's rights upon the termination of the franchise agreement. On the other hand, when it comes to contractual terms, the Italian law underlines the necessity of clearly defining the terms and the scope of the contribution and interaction between franchisor and franchisee.

As for the comparison between the two legally binding regulations (Italian and Dutch) and the Dutch "Code", the "Code" gives more general provisions, and refers back to European and national contract law, while the Dutch franchise Act and the Italian franchise Law give specific indications regarding the content and form of the franchise agreement. However, unlike the other two regulations, the "Code" is quite specific when it comes to IPRs. For later considerations, it is important to note that this signals a cohesion with the European regulations, which tend to place a particular emphasis on IPRs.

4. Duties of the franchisor (Article 916 and 919 of the Dutch Franchise Act, Article 2.3 of the Dutch franchise Code and Article 6 of the Italian Franchise Law)

Please refer to Appendix C for the complete description of the duties of the franchisor according to the Dutch franchise Act, the Dutch franchise Code and appendix A for Article 6 of the Italian Franchise Law.

Comparison

Unlike the old and new Dutch regulations, in Italy the franchisor's duties are only limited to the obligation of providing specific information to the franchisee before signing the contract and to the duties mentioned in the franchise agreement (see sections "Precontractual obligations" and "Content and form of the franchise agreement"). Thus, one can say that Dutch regulations tend to especially safeguard the position of the franchisee by clearly regulating the duties of the franchisor throughout the whole franchise relationship, while the Italian Law only assigns duties to the franchisor in the pre contractual and contractual phase.

As for the comparison between the Dutch franchise Act and the Dutch franchise Code, it is clear that the amount and scope of obligations of the franchisor have been reduced notably in the Dutch Franchise Act. In fact, the Code regulates topics such as required training from the franchisor, the franchisor's influence on the franchisee's relationship with third parties, what is required from the

franchisor in case of transfer of the franchisor’s business etc. Such topics are not even mentioned in the new Dutch franchise Act.

5. Duties of the Franchisee (Article 4 of the Italian franchise Law, Section 2.4 of the Dutch franchise Code)

While the new Dutch franchise Act does not prescribe any specific duty for the franchisee, the Dutch franchise Code and the Italian franchise Law clearly describe the obligations of the franchisee towards the franchisor.

Please refer to Appendix D for the complete description of the duties of the franchisee according to the Dutch franchise Code and the Italian franchise law.

Comparison

Once more, from the comparison of the Dutch and Italian regulations, it emerges that in Dutch law there is a greater attention towards the rights of the franchisee. In fact, the duties of the franchisor are clearly stated, while there are only general indications regarding the ones of the franchisee. This is in contrast with the Italian approach, where the duties of both parties are clearly stated, creating a more balanced distribution of rights and obligations.

As for the similarities between the Dutch franchise Code and the Italian franchise law, even though the topic is addressed with different expressions (confidentiality, know-how), in both texts a special attention is given to the safeguard of the franchisor’s IPRs, which should not be shared with unauthorized third parties.

In Table 1 you will find a summary of the main similarities and differences between Dutch and Italian franchise Regulations.

Table 1

	Similarities	Differences
1. Definition of Franchise Agreements	<ul style="list-style-type: none"> ● Definition of franchising ● Main elements of the franchise formula 	<ul style="list-style-type: none"> ● Italian law explicitly requires juridical and economic independence between parties

2.Precontractual Obligations	<ul style="list-style-type: none"> ● Special safeguard of the rights of the future franchisee, by ensuring that he/she will be provided with extensive documentation 	<ul style="list-style-type: none"> ● The Dutch franchise Act focuses on regulating the future franchise relationship while the Italian franchise law focuses on providing the franchisee with information regarding the present and the past of the franchisor.
3.Content and form of the franchise agreement	No similarities found	<ul style="list-style-type: none"> ● The Dutch Franchise Act particularly protects the interest of the franchisee ● The Italian law focuses on the necessity of defining the interaction between franchisor and franchisee. ● The “Code” gives more general provisions, and refers back to European and national contract law ● The “Code” is specific when it comes to IPRs
4.Duties of the Franchisor	No similarities found	<ul style="list-style-type: none"> ● The Italian Law only assigns duties to the franchisor in the pre contractual and contractual phase ● Dutch regulations tend to safeguard the position of the franchisee ● The obligations of the franchisor have been reduced in the Dutch Franchise Act compared to the Code
5.Duties of the Franchisee	<ul style="list-style-type: none"> ● safeguard of the franchisor’s IPRs 	<ul style="list-style-type: none"> ● In Dutch law there is a greater attention

	(Dutch franchise Code and the Italian franchise law)	towards the rights of the franchisee <ul style="list-style-type: none"> ● The Italian franchise law creates a more balanced distribution of rights and obligations.
--	--	--

4.3 National Regulations and European Regulations and Principles - A Comparison

1. Definition of franchise agreements (Article 911 of the Dutch franchise Act, Article 1 of the Italian Franchise Law, Paragraph 189 - Section VI of the European Guidelines and Section 1 of PEL CAFDC)

In general, also the definitions of franchise agreements presented in the European regulations regarding franchising (European Guidelines and PEL CAFDC), are in line with the national ones, which indicates a European legal homogeneity within this topic. However, two notable differences have to be mentioned. With regards to the PEL CAFDC, the definition only mentions product franchising, while the other definitions also include service franchising. As for the European Guidelines, a peculiar, particular focus is placed on intellectual property rights (IPRs) which are provided by the franchisor to the franchisee in the form of trademarks and know-how.

2. Precontractual obligations (Article 913 and 915 of the Dutch franchise Act and Article 4, 6, 8 of the Italian Franchise Law and Section 1 of the PEL CAFDC)

Precontractual obligations of the franchisor

Please refer to Appendix A for the complete description of the documents, which the franchisor has to provide to the franchisee according to the Dutch franchise Act, Italian franchise law and PEL CAFDC.

Comparison

When it comes to the comparison between national laws and the PEL CAFDC, some differences arise. Firstly, no precontractual obligations of the franchisee are mentioned in the Principles.

Secondly, no indication of the timeframe in which the documents have to be provided is mentioned. Thirdly, unlike the national franchise laws taken into consideration, a particular focus is placed on IRPs and know-how.

3. Content and form of the Franchise Agreement

Unlike national laws, European regulations do not have a section describing the content and form of the franchise agreement.

4. Duties of the franchisor (Article 916 and 919 of the Dutch Franchise Act, Article 2.3 of the Dutch franchise Code, Section 2 of the PEL CAFDC)

Please refer to Appendix C for the complete description of the duties of the franchisor according to the Dutch franchise Act, the Dutch franchise Code, Italian franchise law and PEL CAFDC.

Comparison

Once again, the IPRs and know-how are given a much more prominent role in the PEL CAFDC, compared to national laws. Furthermore, it is interesting to note how much more is required from the franchisor in the Principles, compared to the national regulations. In fact, topics such as supply and advertising are not even mentioned in the Dutch and Italian laws regarding franchise, while they are clearly regulated in the Principles.

5. Duties of the Franchisee (Article 4 of the Italian franchise Law, Section 2.4 of the Dutch franchise Code and the PEL CAFDC)

While the new Dutch franchise Act does not prescribe any specific duty for the franchisee, the Dutch franchise Code, the Italian franchise Law and the PEL CAFDC clearly describe the obligations of the franchisee towards the franchisor.

Please refer to Appendix D for the complete description of the duties of the franchisee according to the Dutch franchise Code, the Italian franchise law and the PEL CAFDC.

Comparison

With regards to the general comparison between the national legally-binding laws and the PEL CAFDC, the relationship between franchisor and franchisee outlined in the Principles seems to be more balanced compared to the one outlined in national franchise laws, especially compared to the Dutch Franchise Act, where the duties of the franchisor are clearly outlined, while the duties of the franchisee are not even mentioned.

As for the similarities among the Dutch franchise Code, the Italian franchise law and the PEL CAFDC, even though the topic is addressed with different expressions (confidentiality, know-how, IPRs), in all three texts a special attention is given to the safeguard of the franchisor's IPRs, which should not be shared with unauthorized third parties. Also, both the PEL CAFDC and the Dutch franchise Code establish that the franchisor is allowed to require an inspection of the accounts of the franchisee.

In table 2 you will find a summary of the main similarities and differences between National Regulations and European Regulations and Principles.

Table 2

	Similarities	Differences
1. Definition of Franchise Agreements	<ul style="list-style-type: none"> • General definition of franchise agreements 	<ul style="list-style-type: none"> • The PEL CAFDC only mention product franchising • In European Guidelines a particular focus is placed on IPRs
2. Precontractual obligations	No similarities found	<ul style="list-style-type: none"> • No precontractual obligations of the franchisee are mentioned in the PEL CAFDC • No indication of the timeframe in which the documents have to be provided is mentioned in the PEL CAFDC • In the PEL CAFDC a particular focus is placed on IRPs and know-how.
3. Content and form of the franchise agreement	N/A	<ul style="list-style-type: none"> • European regulations do not have a section describing the content and form of the franchise agreement.
4. Duties of the Franchisor	No similarities found	<ul style="list-style-type: none"> • The IPRs and know-how are given a more

		<p>prominent role in the PEL CAFDC.</p> <ul style="list-style-type: none"> ● In the PEL CAFDC much more is required from the franchisor
5.Duties of the franchisee	<ul style="list-style-type: none"> ● The franchisor is allowed to require an inspection of the accounts of the franchisee. (PEL CAFDC and Dutch franchise Code) ● A special attention is given to the safeguard of the franchisor's IPRs 	<ul style="list-style-type: none"> ● The relationship between franchisor and franchisee outlined in the Principles seems to be more balanced compared to the one outlined in national franchise laws

5. Discussion and Recommendations

What emerges from this analysis is that there is a great heterogeneity among the European, Italian and Dutch regulations regarding franchising. In fact, exception made for the general definition of the franchise agreement, the European, Dutch and Italian laws and principles differ under many points of view.

Even though when it comes to national laws there is a shared tendency to safeguard the rights of the franchisee, the Italian and the Dutch laws protect such rights in different ways. For instance, when it comes to content and form of the franchise agreement, the Dutch systems particularly protects the rights of the franchisee upon the termination of the franchise agreement, while the Italian system protects the rights of the franchisee by clearly defining the terms and the scope of the contribution and interaction between franchisor and franchisee. Furthermore, even though both the Dutch and the Italian systems privilege the protection of the franchisee's rights, the Italian franchise law tends to create a more balanced legal relationship between the two parties, while the Dutch franchise Act barely takes into consideration the interests of the franchisor. A clear evidence of this is the fact that, while the Italian franchise Law clearly establishes the rights and obligations of both the franchisor and the franchisee, the Dutch franchise Act only defines the duties of the franchisor. A great heterogeneity has also emerged from the comparison between national and European laws. The most notable difference in this case is the great focus placed by European regulations on the protection of IPRs, an issue which is barely taken into consideration by national laws. Under this point of view, the old Dutch Franchise Code was more in line with the European Principles, as it paid more attention to this topic.

Such conclusions could pave the way for further research. In fact, considering that the Dutch franchise Act became valid in January 2021, it would be interesting to evaluate what kind of impact this regulation will have on the Dutch franchising market, and, in particular, if such attention towards the rights of the franchisees helps franchise networks grow.

It would also be useful to replicate this study, but based on different sets of European countries, in order to test if legal heterogeneity is a common issue in the field of franchising.

Furthermore, it must be said that this study also has a major limitation. In fact, this research only takes into account national laws specifically regulating franchising. However, both Italy and the Netherlands have very articulated legal systems and, because of its own nature, franchising is influenced by contract law, which was not taken into consideration in this study. Therefore, in order to have a more complete outlook on the Italian and Dutch franchising regulations, a study should be conducted also taking into account contract law.

Appendix A: documents and data that have to be provided from the franchisor to the franchisee (Dutch franchise Act and Italian franchise law).

Introduction: In this appendix you will find a description of the documents and data that have to be provided from the franchisor to the franchisee according to the Dutch franchise Act and Italian franchise law. These texts have been attached to show the sources used to operate the comparison.

According to Article 913 of the Dutch franchise Act, the franchisor has to provide the franchisee with:

- A draft of the franchise agreement
- A statement regarding financial contributions to be paid by the franchisee
- information about manner and frequency of consultation between the franchisor and the franchisees
- Information about the extent to which there can be competition between the franchisor and the franchisee
- Information about the way in which the franchisee will have access to turnover data relevant to his operations
- Information about his financial position
- Financial information about the location of the franchise enterprise or of an enterprise that can be considered comparable.
- Any information that could be relevant for the conclusion of the franchise agreement

Furthermore, according to article 915 of the Dutch franchise Act, the franchisee has a right to take all the necessary measures to avoid concluding the agreement under the influence of false assumptions.

(Dadi & Christiaans, 2020)

According to Article 4 and 6 of the Italian franchise Law Articles, the franchisor has to provide the franchisee with:

- A draft of the franchise agreement
- Financial information such as financial statements of the previous three years, business name and registered capital
- A list of the trademarks used by the franchising system
- A list of the other franchisee and of the outlets owned directly by the franchisor
- Information regarding the variation in the number of franchisees over the years
- Where applicable, a description of legal proceedings brought against the franchisor within the field of franchising in the previous three years

- any information that the franchisee considers useful for the conclusion of the franchise agreement, unless this information is highly reserved.

Article 8 of the Italian Franchise Law also states that, if one of the parties provided false information, the other party can require the cancellation of the contract and, when applicable, claim damages.

(Italian Parliament, 2004)

According to Section 1 of the PEL CAFDC, the franchisor has to provide the franchisee with:

- “the franchisor’s company and experience
- the relevant intellectual property rights
- the characteristics of the relevant know-how
- the commercial sector and the market conditions
- the particular franchise method and its operations
- the structure and extent of the franchise network
- the fees, royalties or any other periodical payment”

(Hesselink et al., 2006)

Appendix B: Content and form of the franchise Agreement (Dutch franchise Act, Italian franchise law and Dutch Franchise Code)

Introduction: In this appendix you will find a complete description of the articles of the Dutch franchise Act, Italian franchise law and Dutch Franchise Code which regulate content and form of the franchise agreement. These texts have been attached to show the sources used to operate the comparison.

B1 Content and form of the franchise agreement: The Italian franchise Law

According to the Italian franchise Law, a franchise contract has to stipulate:

- the amount of investments and entrance fees that the franchisee has to pay to start his activity
- The method used to compute royalties
- When applicable, the area and scope of territorial exclusiveness
- A description of the know-how that will be provided by the franchisor
- When applicable, the way in which the franchisee’s contribution to the know-how will be determined
- A description of the services that the franchisor will provide to the franchisee
- The terms of renewal, termination and release of the contract

Moreover, it is specified that this kind of contract is only valid when written down.

(Italian Parliament, 2004)

B.2 Content and form of the franchise agreement: the Dutch Franchise Act

According to the Dutch Franchise Act, Article 920, a franchise contract has to stipulate:

- If there is any goodwill in the franchisee's enterprise, is so, the extent of this goodwill and the extent to which this goodwill is attributable to the franchisor
- In case the franchisor takes over the franchisee's enterprise, in which way the goodwill attributable to the franchisee will be reimbursed

In addition to this, Article 920 indicates that a provision restricting the franchisee's power to operate in a certain way upon the end of the agreement is only valid when

- It is written down
- The restriction concerns products mentioned in the franchise agreement
- The restriction is strictly necessary in order to protect the know-how transferred by the franchisor
- It does not exceed 12 months after the termination of the agreement
- It refers to a geographic area that is not wider than the one in which the franchisee has operated the franchise formula mentioned in the franchise agreement

Furthermore, article 917 states that the information mentioned in Article 913 (see the section 'precontractual obligations') has to be provided in a way that makes the information "unaltered for future consultation during a period of time commensurate with the purpose for which the information was provided". Therefore, even though the Dutch Franchising Act does not explicitly include rules regarding financial contributions in the contractual terms, one can say that this information has to be provided in a contractual form.

Moreover, a section regarding the services (in terms of assistance and commercial and technical support) that the franchisor has to guarantee is present in Article 919 (see section "duties of the franchisor")

(Dadi & Christiaans, 2020)

B.3 Content and form of the franchise agreement: the Dutch Franchise Code

- "The franchise agreement shall accord with Dutch and European legislation and the NFC.
- The agreement shall reflect the franchisor's and franchisee's interests in protecting their industrial or intellectual property rights and the interests of maintaining the shared identity and reputation of the franchise formula.

- All agreements and contractual arrangements between the franchisor and the franchisee shall be written in the official language of the country where the franchisee's business is registered or translated by a sworn translator. Signed agreements shall be provided to the franchisee immediately.
- The franchise agreement shall clearly state what the franchisor's and franchisee's rights, duties and responsibilities are, as well as any other important conditions for the partnership. The franchise agreement shall include rules on the consequences of any failure to meet the obligations under it.”

(Vakcentrum, 2016)

Appendix C: duties of the franchisor (Dutch franchise Act, the Dutch franchise Code, Italian franchise law and PEL CAFDC)

Introduction: In this appendix you will find a description of the duties of the franchisor according to the Dutch franchise Act, Dutch franchise Code, Italian franchise law and PEL CAFDC. These texts have been attached to show the sources used to operate the comparison.

C1 Duties of the Franchisor: Dutch Franchise Act

According to Article 916 of the Dutch franchise Act, the franchisor has to provide the franchisee in timely manner with:

- Information about possible amendments to the original franchise agreement
- Information about required investments
- A notification whenever he decides to use a derived formula, together with information regarding content and scope of the formula
- Any information that could be relevant for the performance of the franchise agreement
- An annual report regarding the extent to which the franchisee's financial contributions cover the costs or investments of the franchisor

Also, a consultation between the two parties will have to take place at least once a year.

According to Article 919 of the Dutch franchise Act, the franchisor has to provide the franchisee with assistance in terms of technical and commercial support that can be reasonably expected for the operation of the franchise formula.

(Dadi & Christiaans, 2020)

C2 Duties of the Franchisor: the Dutch franchise Code

According to Article 2.3 of the Dutch franchise Code, “The franchisor should:

- a. have demonstrably used the formula successfully for a reasonable time before launching the franchise formula;
- b. be the owner of, or be entitled to use or permit the re-use of, the intellectual property rights to be used within the franchise formula, including a trade name, trademark or other distinguishing features;
- c. make every effort to develop, maintain and improve the strength and advantages of the franchise formula, monitor the uniform image of the franchise formula, and ensure that the franchise agreement is complied with;
- d. provide commercial, operational and logistical support for the franchise formula
- e. give individual franchisees specialised initial training and appropriate guidance during the term of the franchise agreement;
- f. on specific written request by a franchisee make substantiated written recommendations if the franchisee’s turnover and profit do not come up to expectations structurally and substantially, so as to improve the situation;
- g. solely require the franchisee to enter into agreements with third parties insofar as they are directly related to the implementation of the franchise formula;
- h. not stand in the way of a request by the franchisee to close down or transfer the business on unreasonable grounds;
- i. not refuse to enter into a second or subsequent franchise agreement with an existing franchisee on unreasonable grounds;
- j. not refuse to enter into a franchise agreement with an existing franchisee’s successor in law on unreasonable grounds;
- k. in the event of the transfer of the franchisor’s business (or part thereof) or the purchase of a new component, make efforts to minimise any negative effects on the franchisees;
- l. not require and retain any more sureties from the franchisee than is reasonably necessary;

m. on request hand over market data on the franchise formula that provides information on its performance, insofar as this is necessary to the franchisee's operation;

n. provide the relevant data to franchisees in good time to verify that the conditions in force between the parties are being complied with."

(Vakcentrum, 2016)

C3 Duties of the Franchisor: the Italian Franchise Law

In the Italian Franchise Law, the duties of the franchisor are limited to his precontractual obligations and to the duties mentioned in the franchise agreement (see sections "Precontractual obligations" and "Content and form of the franchise agreement")

(Italian Parliament, 2004)

C4 Duties of the Franchisor: the PEL CAFDC

When it comes to the PEL CAFDC, the section regarding the duties of the franchisor is quite extensive. A summary of the most important points follows:

- Intellectual Property Rights and Know-How:

The franchisor must grant the franchisee a right to use the IPRs to the extent necessary to operate the franchise business. The franchisor must also make efforts in order to enable the franchisee to use such rights.

The franchisor must provide the franchisee with know-how which is necessary to operate the franchise business.

- Assistance

The franchisor must provide free assistance to the franchisee to the extent that is necessary for the operation of the franchise business. In case further assistance is requested by the franchisee, it must be provided at a reasonable cost.

- Supply

If the franchisee is obliged to purchase the products exclusively from the franchisor, or a supplier chosen by the franchisor, the franchisor has the responsibility to ensure that the products are supplied within a reasonable time.

In case the franchisor foresees that the supply capacity will be significantly less than the franchisee had reason to expect, he must warn the franchisee within a reasonable time.

- Information during the Performance

The franchisor must provide the franchisee with information regarding:

- (a) the relevant market conditions,
- (b) the commercial results of the franchise network,
- (c) the characteristics of the products,
- (d) the prices and terms for the sale of products,
- (e) any recommended prices and terms for the resale of products,
- (f) any relevant communication between the franchisor and customers in the territory,
- (g) advertising campaigns relevant to the operation of the franchise.

- Reputation of Network and Advertising

The franchisor must promote and maintain the reputation of the franchise network through advertising campaigns. This without additional charge to the franchisee.

(Hesselink et al., 2006)

Appendix D: duties of the franchisee (Italian franchise Law, Dutch franchise Code and PEL CAFDC)

Introduction: In this appendix you will find a description of the duties of the franchisee according to the Italian franchise law, Dutch franchise Code and PEL CAFDC. These texts have been attached to show the sources used to operate the comparison.

D1 Duties of the Franchisee: Italian franchise Law

Franchisee's duties are described in Article 4. Here it is stated that:

- The franchisee cannot move its location without obtaining prior authorisation from the franchisor, exception made for cases of force majeure.
- The franchisee and his employees have a duty of confidentiality with regards to the franchising activity, even upon termination of the franchise agreement

(Italian Parliament, 2004)

D2 Duties of the Franchisee: Dutch franchise Code

“The franchisee should:

- a. make efforts as an independent entrepreneur to achieve the financially healthy development of his franchise business;
- b. maintain the shared identity and reputation of the franchise formula;
- c. inform the franchisor in good time of any substantial and structural shortfall in earnings;
- d. not pass on to third parties know-how provided by the franchisor without the franchisor's prior consent;
- e. recognise the importance of updating the formula regularly and cooperate with this within reason;
- f. on request hand over verifiable relevant business data to the franchisor enabling the development of the franchisee's operation and the financial reporting to be assessed;
- g. allow the franchisor on request to inspect the franchisee's business and examine the accounts, insofar as this is necessary to verify the operation of the franchise formula.”

(Vakcentrum, 2016)

D3 Duties of the Franchisee: PEL CAFDC

A summary of the most relevant points follows:

Fees, Royalties and other periodical payments

- Any periodical payment must be unilaterally determined by the franchisor and paid by the franchisee

Information during performance

- The franchisee must provide the franchisor with information regarding claims of infringements of the franchisor's IPRs by third parties.

Business method and Instructions

- the franchisee must follow the franchisor's instructions in order to operate the franchise business according to the business method of the franchisor

Inspections

- The franchisee must allow the franchisor to check:
 - his accounting books
 - whether the franchisee is complying with the franchisor's business methods and instructions

(Hesselink et al., 2006)

Appendix E: Learning Process

Writing this thesis has been a very challenging and at the same time rewarding experience for me. I think that one of the very first things that I have learnt when working on this project is that, when it comes to research, it is better to focus on a small segment and really analyse it thoroughly, rather than approaching a wider topic but in a more superficial way. In fact, when I was given the opportunity of choosing the topic for my thesis, I did have some general ideas about topics that I found interesting, but none of them was a good research plan. When I found the right research topic, the second problem that I had to face was how to collect data. Initially, my research was supposed to be based on the comparison of foreign franchising networks operating in the Netherlands and in Italy. However, I highly underestimated how hard it can be to collect financial data and I had to change my research topic once I realized that I would have not been able to obtain such data. This, in my opinion, is the most important lesson I have learnt: before anything else, always make sure you will be able to collect the data you need to develop your research. In addition to this, I have learnt that it is not necessary to strictly follow the order: introduction, literature review... conclusion when writing a paper. In fact, I found it really useful to write the introduction at the end of my research process, so that I could really give a complete overview of the paper's content to the reader.

Writing this dissertation has also taught me how to be more independent. In the last three years most of the assignments I have completed were based on group-work, therefore I was really used to sharing my doubts with my groupmates and to get (and give) help whenever needed. However, writing an individual thesis through an online course was a very different experience. I think that interacting face-to-face with my course mates during class would have helped me, but, at the same time, I think that this experience taught me how to work independently.

This experience also helped me realise that there still are some points that I need to improve. First of all, I would like to improve my Academic English. I have really tried to use the appropriate structure and vocabulary throughout my dissertations, but I feel like there is still room for improvement. Also, I realised how essential a well-organised plan is when it comes to research and that is something I really need to work on. I consider myself a very reliable person, I generally meet all the deadlines and deliver my work on time, but sometimes I underestimate the time that a specific task or topic requires and the quality of my works is affected by this.

In conclusion, I am sure that working on this project made me a better writer and researcher and it also made me understand what my weak points are and how to improve them.

Bibliography

Abell, P. M. 2011. *“The Regulation of Franchising in the European Union”*. thesis.

<https://qmro.qmul.ac.uk/xmlui/bitstream/handle/123456789/2326/ABELLThe%20Regulation2011.pdf?sequence=1&isAllowed=y>

August, R. 2004. *International business law*. Upper Saddle River , New Jersey: Pearson/Prentice Hall.

Cashin Ritaine, E. 2007. The COMMON FRAME OF REFERENCE (CFR) and the Principles of European Law on Commercial Agency, Franchise and Distribution Contracts. In *r “Towards a Common Frame of Reference: Principles of European Law”*.

Castrogiovanni, G.J., Combs, J.G. and Justis, R.T. 2006. Resource Scarcity and Agency Theory Predictions Concerning the Continued Use of Franchising in Multi-outlet Networks. **Journal of Small Business Management**, (44) 27-44. <https://doi.org/10.1111/j.1540-627X.2006.00152.x>

Combs, J.G., Ketchen, Jr., D.J., Shook, C.L., Short, J.C. 2011. Antecedents and consequences of franchising: Past accomplishments and future challenges. **Journal of Management**, 37(1), 99-126.

Dadi, K., & Christiaans, C. 2019. Online consultation open on draft Dutch franchise legislation: Insights: DLA Piper Global Law Firm. **DLA Piper**. DLA Piper.
<https://www.dlapiper.com/en/austria/insights/publications/2019/01/online-consultation-open-on-draft-dutch-franchise-legislation/>.

Díaz Odavia Bueno. 2008. *Franchising in european contract Law: a comparison between the main obligations of the contracting parties in the principles of european Law on Commercial Agency, franchise and distribution contracts (PEL CAFDC), french and spanish Law*. Munich, Germany: Sellier European Law Pub.

European Agency for Safety and Health at Work. 2020. European guidelines. **EU**.
<https://osha.europa.eu/en/safety-and-health-legislation/european-guidelines>.

European Commission, 2010. Regulations. **Official Journal of the European Union**. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:102:0001:0007:EN:PDF>

Hachemi Aliouche, E. 2020. International Franchise Attractiveness Index™. **Rosenberg International Franchise Center**. <https://www.unh.edu/rosenbergcenter/international-franchise-attractiveness-index%E2%84%A2>.

Hesselink, M. W., Rutgers, J., Bueno Diaz, O., Scotton, M., & Veldman, M. 2006. **Commercial agency, franchise and distribution contracts: (PEL CAFDC)**. München, Germany: Sellier Europ. Law Publ.

Italian Parliament. 2004, May 24. "Norme per la disciplina dell'affiliazione commerciale". **L 129/2004**. <https://www.camera.it/parlam/leggi/04129l.htm>.

Lafontaine, F. 1992. Agency Theory and Franchising: Some Empirical Results. **The RAND Journal of Economics**, 23(2), 263-283. <http://www.jstor.org/stable/2555988>

NFV. 2020. Groei franchisesector houdt aan. **Franchise**. <https://www.nfv.nl/nieuws/201/groei-franchisesector-houdt-aan/>.

Official Website of the European Union. 2020. Regulations, Directives and other acts. **European Union**. https://europa.eu/european-union/law/legal-acts_en.

Pandolfini, V. 2020, December. The Italian Environment: an attractive market for international franchise brands. **Franchising in Italy**. <https://franchisinginitaly.com/franchising-in-italy-exporting-franchise/>.

Rosado-Serrano, A., Paul, J., & Dikova, D. 2018. International franchising: A literature review and research agenda. **Journal of Business Research**, 85.

Vakcentrum. 2016. **THE DUTCH FRANCHISE CODE - Vakcentrum**. <https://www.vakcentrum.nl/stream/dutch-franchise-code-juni-2016-def-eng.pdf>.

Wiewiñowska-Domagalska, A. 2016. **Franchising study for the IMCO committee**. Rep. [https://www.europarl.europa.eu/RegData/etudes/STUD/2016/578978/IPOL_STU\(2016\)578978_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/578978/IPOL_STU(2016)578978_EN.pdf).