

Law and Business

Transparency and Protection in Franchising Contracts: The Italian Experience in European and International Comparison

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Abstract

This article explores how Italian and selected European legal systems regulate franchising contracts to ensure transparency and protect franchisees. Focusing on Italian Law No. 129/2004, the study examines key legal features such as written form, know-how disclosure, and precontractual information duties. It shows that the franchise agreement is legally structured as a collaborative but imbalanced relationship, where the franchiser typically holds greater bargaining power. Italian courts increasingly interpret franchising as a long-term relational contract (comunità di scopo), subject to good faith and fairness. Through a comparative approach, the article analyses the French, Spanish, Belgian, Greek, and Tunisian frameworks, highlighting how each system addresses issues like misleading disclosure, unfair clauses, and internal competition. Despite differences in technique, a common trend emerges: franchisee protection is strengthened through judicial oversight and statutory safeguards. The study combines case law, legislation, and doctrine to assess the effectiveness of current legal tools and to contribute to the broader debate on potential EU-level harmonization.

Keywords

Franchising contracts • Precontractual disclosure • Contractual imbalance • Comparative contract law • Franchisee protection

Introduction

Franchising represents one of the most dynamic and complex contractual models in contemporary commercial law. It is based on long-term cooperation between legally and economically independent parties and typically involves a structured transfer of know-how, the licence to use distinctive signs, and ongoing assistance in exchange for periodic fees or royalties. Since the entry into force of Law No. 129 of 6 May 2004, Italy has provided a statutory framework for franchising, which had previously operated as an atypical yet widespread practice.¹ According to Article 1 of this law, franchising is a contract in which one party grants another, in exchange for consideration, the right to use a combination of industrial or intellectual property rights and consolidated technical and commercial knowledge (know-how), for the purpose of marketing goods or services under a uniform format. Despite this formal recognition, several doctrinal and jurisprudential questions remain open, particularly concerning precontractual information duties, judicial remedies in cases of misleading disclosure, and the enforceability of exclusivity and non-compete clauses.

Over the years, Italian courts have played a crucial role in shaping the interpretation of these rules, seeking to balance contractual autonomy with principles of fairness and the protection of franchisees, who often operate at a disadvantage in terms of bargaining power. Comparative insights reveal significant divergences: while France and Belgium have adopted detailed disclosure regimes, Spain and the United Kingdom rely more on soft law tools or general principles such as *good faith* and *fair dealing*.²

This article aims to provide a comprehensive and critical analysis of franchising law in Italy, highlighting both normative and practical challenges within a broader comparative framework. It will: (i) examine the legal structure and effects of the

¹ Law No. 129 of 6 May 2004, officially titled *Norme per la disciplina dell'affiliazione commerciale*, introduced the first comprehensive legal framework for franchising in Italy. The statute defines the franchise agreement (*affiliazione commerciale*) in Article 1 as a contract between economically and legally independent parties, through which one party (the franchiser) grants the other (the franchisee), in exchange for compensation, the right to use a combination of trademarks, signs, know-how, and assistance to market goods or services under a uniform system. The law also establishes mandatory precontractual disclosure obligations (Art. 4), written form requirements (Art. 3), and specific rules on subfranchising and minimum contract duration (Art. 3, para. 3). See: De Nova, Giorgio. "La nuova legge sul franchising." *I Contratti*, no. 7 (2004): 761–764. Massimo Cian, "La nuova legge sull'affiliazione commerciale." In *Le Nuove Leggi Civili Commentate*, edited by G. Cottino, vol. II. Padova: Cedam, 2004, 1153–1191. Mauro Bussani, "I contratti moderni. Factoring, franchising, leasing" *Trattato di diritto civile*, edited by Rodolfo Sacco, Torino: UTET, 2004, 163 ff.

² Marco Hero, ed. *International Franchising: A Practitioner's Guide*. 2nd ed. (London: Globe Law and Business, 2021).

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franchise agreement under Italian law; (ii) assess the evolution of judicial interpretation, especially regarding disclosure and imbalance; and (iii) explore how other jurisdictions address similar issues, identifying trends towards convergence or persistent divergence. The methodological approach combines statutory interpretation, case law, and comparative inquiry³, with the goal of mapping current regulation and identifying avenues for reform or harmonization, particularly in light of cross-border franchising and the growing role of European competition law in regulating vertical agreements.⁴

The Legal Framework of Franchising in Italy

Definition and Legal Nature of the Franchise Agreement in Italian Law

The Italian legal system expressly recognizes and regulates the franchise agreement—known domestically as *contratto di affiliazione commerciale*—with the enactment of Law No. 129 of 6 May 2004. According to Article 1 of this statute, a franchise is defined as an agreement by which “one party, the franchiser, grants another party, the franchisee, in exchange for a fee, the right to operate a business under a certain brand or commercial sign, by utilizing a set of knowledge and continuous commercial and technical assistance.”

A key feature of the Italian franchise agreement is the transfer of know-how. Law No. 129/2004 (Art. 1(3)(a)) defines know-how as “a set of practical, non-patented information, derived from the franchisor’s experience, which is secret, substantial, and identified.” This legal notion marks the distinction between franchising and other distribution models, since the effective transfer and use of know-how is both an operational and a qualifying element of the relationship.⁵

The law highlights two structural elements:

- (a) legal and economic independence of the parties—that is, the franchisee remains an autonomous entrepreneur, not an agent or employee—and
- (b) integration of the franchisee into the franchiser’s distribution or service network.⁶

This dual purpose of market expansion and entrepreneurial integration has been consistently recognized in Italian case law, which describes franchising as a model that allows the franchiser to extend its reach without direct local investment, while enabling the franchisee to enter the market under a recognized brand and with lower business risk.⁷

Italian doctrine and case law have consistently emphasized that the franchise agreement is a *relational contract*: it is characterized by ongoing, long-term cooperation and reciprocal obligations, not merely by the exchange of goods or services at a single point in time.⁸ As such, the contract features a “collaborative purpose”—meaning both parties share an interest in the success of the network as a whole.⁹

From a systematic perspective, the Italian franchise contract is classified as an “atypical” or “innominate” contract (*contratto atipico*) but “legally typified” (*tipizzazione legale*) following Law No. 129/2004. While it now benefits from a statutory framework, the agreement retains significant flexibility, allowing parties to negotiate many of its terms in accordance with the general principles of the Civil Code (Art. 1322 Italian c.c.).

3 This comparative dimension has been particularly developed in civil-law scholarship (see Frignani 2001; Abell 2013), highlighting the convergences and divergences between continental and common-law approaches to franchising. Cf. Mario Frignani, “A Comparison of the Common Law and Civil Law in the International Franchise Arena: A Perspective from the Civil Law Arena,” *International Journal of Franchising and Distribution Law*, 3 (2001), 81–102.; Aldo Frignani, *Franchising: La nuova legge* (Torino: Giappichelli, 2004); Philippa Abell, *The Law and Regulation of Franchising in the EU* (Cheltenham: Edward Elgar, 2013).

4 See Commission Regulation (EU) 2022/720 of 10 May 2022 on the application of Article 101(3) TFEU to categories of vertical agreements and concerted practices (OJ L 134, 11.5.2022, p. 4), which replaced Regulation (EU) No. 330/2010, p. 1). The regulation exempts certain categories of vertical agreements—including franchising—from the general prohibition set out in Article 101(1) TFEU, provided that market share thresholds and blacklisted clauses are respected. The interpretative framework has been further clarified by the Commission Guidelines on Vertical Restraints (2022/C 248/01), published in the Official Journal of 1 July 2022, which address, inter alia, franchise-specific clauses such as non-compete obligations, territorial exclusivity, and online sales restrictions, with the aim of aligning competition policy with evolving distribution models.

5 For a detailed analysis of the practical application and recent case law on the definition of know-how, see §2.5.

6 Padua Court, Section II, Judgment of 11 September 2015, No. 2460 has clarified that in order for a relationship to qualify as franchising under Article 1 of Law No. 129/2004, the franchisee must be integrated into a structured system involving multiple affiliates, and must be granted a set of industrial and intellectual property rights—such as trademarks, commercial signs, know-how, or technical assistance—with the purpose of distributing specific goods or services.

7 Milan Court of Appeal, Section I, Judgement of 3 June 2022, No. 1916.

8 Milan Court, Fifth Civil Division, 17 January 2019, No. 425, holding that the franchisee retains full legal and economic independence, notwithstanding the franchiser’s brand control and operational standards.

9 This collaborative dimension has been expressly acknowledged by Italian courts, which have described franchising as a contract partially structured around a shared business purpose (*comunità di scopo*), where mutual benefits arise from the coordinated pursuit of commercial success. See Milan Court, Section V, Judgement of 21 June 2018, No. 6969.

The distinction between franchising and similar distribution contracts (such as agency or exclusive distribution) is a recurring issue in both scholarship and jurisprudence.¹⁰ The principal difference is the transfer of know-how and brand identity, as well as the typically more pronounced organizational and assistance obligations borne by the franchiser.

Judicial authorities have further clarified that, although franchising often involves a shared brand and operational model, the franchisee is not a subordinate or an agent, but an independent business operator who assumes entrepreneurial risk and is responsible for compliance with contractual standards.¹¹ The contract's collaborative function does not override the principle of independence, which is essential for the legal qualification of the relationship.

In conclusion, the Italian franchise agreement stands out as a contractual model that embodies a true community of purpose (*comunità di scopo*), in which both franchiser and franchisee are jointly invested in the overall success and reputation of the network. Despite this collaborative dimension, each party retains its own legal and economic independence, thus distinguishing the franchise relationship from more hierarchical or subordinate business models. The discipline of franchising in Italy is firmly anchored in the framework set forth by Law No. 129/2004, which establishes clear rules for the validity and operation of the agreement. Nonetheless, the practical interpretation and enforcement of these rules continue to be shaped by the broader principles of contractual autonomy, good faith, and fair dealing, as articulated in the Italian Civil Code.¹² These general principles remain essential for ensuring a balanced and equitable relationship between the parties, particularly in the context of long-term, relational contracts such as franchising.

Essential Requirements and Formal Obligations under Law 129/2004

The essential requirements and formal obligations that shape the Italian franchise agreement are the product of a clear legislative choice to privilege transparency and protect the franchisee, traditionally the weaker party in the negotiation. This purpose has been emphasized in Italian commentary, which views Law No. 129/2004 as a fundamental legal safeguard to protect affiliated businesses and rebalance their contractual position.¹³ Law No. 129/2004 stands as a watershed in Italian commercial law, providing not only the first statutory definition of franchising but also a detailed framework for the formation and execution of the agreement. One of the cardinal elements is the strict requirement of the written form: the franchise contract must be drafted and signed in writing; otherwise it is null and void—a principle that the courts have repeatedly enforced.¹⁴ This formality is not merely a bureaucratic detail but serves to underscore the gravity and complexity of the contractual relationship and to ensure that all material elements are explicitly regulated.

Law 129/2004 goes further, establishing that certain clauses are indispensable within the contract. These include, above all, clear and detailed provisions regarding the total amount of the investment and entry costs for the franchisee, the calculation and payment of royalties, and any minimum turnover obligations that may be imposed. The law also demands transparency about the territorial exclusivity (if any), a precise description of the know-how transferred by the franchiser, and a thorough account of the technical and commercial assistance, as well as training, to be offered. The intent is to ensure that the franchisee is not left in doubt about the nature and scope of their obligations and the support they may expect. This reading is consistent with civil law commentary, which interprets the formal requirements of Law No. 129/2004 as essential guarantees for clarity, contractual balance, and the effective functioning of the franchise model. This reading aligns with mainstream Italian scholarship, which treats Law No. 129/2004 as a transparency-oriented statute designed to rebalance the bargaining asymmetry between franchiser and franchisee and to secure contractual clarity through mandatory form and content requirements.¹⁵

Beyond these contractual requirements, the legislator has introduced a robust set of precontractual information duties that are distinctive in the European context. The franchiser is obliged to provide, at least thirty days before signing, a substantial information package, which includes a draft contract, a list of all active franchisees in the network in accordance with the statutory precontractual disclosure regime under Law No. 129/2004 (see §2.3), details of any legal proceedings involving the franchiser in the past three years, and financial data such as the company's balance sheets. This information must also contain a description of the franchiser's know-how, ensuring that the prospective franchisee can make a fully informed decision about whether to join the network.

10 Francesca Romana Turitto, "A Primer on Franchising in Italy," *Franchise Law Journal* 39, no. 2 (Fall 2019): 235–250. <https://www.jstor.org/stable/10.2307/27172650>.

11 Perugia Court, Second Civil Division, 4 April 2019, No. 520, holding that the franchiser cannot be held liable for acts of the franchisee solely on the basis of apparent authority; liability requires evidence of fault, such as inadequate know-how, deficient operational procedures, or a negligent selection of the franchisee.

12 Ian R. Macneil, *Contracts: Instruments for Social Cooperation, East Africa* (South Hackensack, NJ: F. B. Rothman, 1968), 30.

13 Gianfranco Visconti, "Il franchising: le garanzie per le imprese affiliate," *PMI* 4 (2013): 33–38.

14 Cuneo Court, 7 April 2023, No. 260, confirming that, under Law No. 129/2004, the franchise agreement must be in written form *ad substantiam* and must include detailed information on investments, royalties, territorial exclusivity, know-how, and the franchiser's services, in order to balance the structural asymmetry between the parties.

15 Emiliano Ribacchi, "Il contratto di franchising: aspetti civilistici e fiscali," *Pratica Fiscale e Professionale* 34 (2010): 42–44.

The Italian judiciary has been particularly vigilant in enforcing these precontractual disclosure requirements. In several rulings, courts have established that the mere signature on a preprinted clause confirming the receipt of information is not sufficient; it is essential that the franchisor is able to demonstrate concretely what information was actually provided, and in what form.

¹⁶ Failure to do so may lead not only to the annulment of the agreement but also to possible claims for damages by the franchisee, especially where a lack of information or inaccurate disclosure has prejudiced the franchisee's business decision.¹⁷

A further layer of protection is afforded by the rule on minimum duration. Italian law requires that the franchise contract have a term sufficient to enable the franchisee to recoup their investment—generally at least three years. Any contractual provision for a shorter period is automatically replaced by this minimum term, a mechanism expressly designed to prevent the franchisor from exploiting their superior position to the detriment of the franchisee's legitimate economic interests.¹⁸

All these formal and substantive requirements are conceived not as obstacles to the commercial freedom of the parties, but as indispensable safeguards to ensure transparency, fairness, and the stability of the franchise network, in line with both the text and the spirit of Law No. 129/2004.

Precontractual Disclosure Obligations and Legal Consequences of Non-compliance

The precontractual phase in Italian franchising law is characterized by an extraordinary level of regulatory attention, reflecting the legislator's determination to mitigate the information asymmetry that typically exists between franchisor and franchisee. Law No. 129/2004, in Article 4, requires the franchisor to provide the prospective franchisee with a comprehensive set of information at least thirty days prior to the conclusion of the contract. This information package goes far beyond a mere draft agreement; it includes an updated list of all active franchisees and their locations, disclosure of any judicial proceedings related to the franchisor in the previous three years, summary financial statements for the franchisor's business, and a clear description of the know-how being transferred. This precontractual transparency is intended to empower the franchisee to evaluate the real prospects, risks, and sustainability of the investment, and to compare experiences by directly contacting current franchisees in the network.

Judicial practice confirms that this obligation is not to be understood as a formality but as a substantive duty, whose breach can have significant legal consequences. Italian courts have repeatedly held that the failure to provide, or the provision of misleading, incomplete, or late information may expose the franchisor to both annulment of the contract and damages for reliance losses suffered by the franchisee. In particular, the courts have clarified that a generic or blanket confirmation signed by the franchisee at the time of contracting—without evidence of the actual delivery and content of the required information—is not sufficient to discharge the franchisor's duty.¹⁹

The rationale for such strict judicial scrutiny lies in the very nature of the franchising relationship, which, as outlined in the case law, is structurally unbalanced: the franchisor typically possesses superior organizational, economic, and informational resources, while the franchisee is often making a significant entrepreneurial investment, sometimes as their first business venture. For this reason, the precontractual disclosure obligations serve not only to protect individual parties but also to safeguard the public interest in the sound development and reputation of franchise networks. A network in which franchisees systematically enter into agreements without adequate information is likely to experience instability, high turnover, and ultimately reputational damage for both the brand and the wider sector.

It is also worth noting that these Italian rules on disclosure have parallels in other European jurisdictions, such as the French Loi Doubin (Law No. 89-1008 of 31 December 1989), which pioneered mandatory disclosure in franchising and remains a reference point in comparative legal studies. However, the Italian model is distinctive for the breadth and detail of its disclosure package and for the explicit legal consequences attached to non-compliance.

In sum, the precontractual phase in Italian franchising law is not a mere preliminary negotiation but a critical juncture in which the legislator demands transparency, honesty, and diligence. The franchisor's obligation to provide accurate and

¹⁶ Trento Court, 30 May 2014, No. 629, stating that, in a technically complex contractual sector such as franchising, preformulated and generic declarations are inadequate to prove compliance with Article 4 of Law No. 129/2004; the franchisor must prove both the content and the actual method of transmission, otherwise the contract is subject to annulment.

¹⁷ Trani Court, 5 February 2018, No. 291, holding that a preprinted contractual clause confirming receipt of the disclosure documents under Article 4 of Law No. 129/2004 is insufficient to prove actual delivery; the franchisor must provide specific evidence of both the content and the manner of disclosure, failing which the contract may be annulled.

¹⁸ Italian Supreme Court (Civil Division III), Order, 2 May 2024, No. 11737, affirming that, in franchise agreements—whether for a fixed or indefinite term—the franchisor's withdrawal before a minimum three-year period is contrary to good faith and may be deemed abusive, as this term is necessary to allow the franchisee to amortize their initial investment.

¹⁹ Vincenzo Farina, "La formazione del contratto di franchising tra obblighi informativi e vizi del consenso," *Obbligazioni e Contratti* 6 (1 giugno 2011), 406-416; Vincenzo Farina, "Attività di impresa e profili rimediali nel franchising," Napoli, ESI 2011); Giuseppe Di Rosa, "Il franchising," in *I contratti per l'impresa*, edited by G. Gitti, M. Maugeri, and M. Notari, 453-488 (Bologna: Il Mulino, 2013).

comprehensive information—thirty days in advance, within the statutory thirty-day precontractual disclosure period, and in a manner that can be evidenced in court—serves as a bulwark against opportunism and forms the bedrock of the franchisee's freedom of contract.

Operational Structure and Core Obligations of the Italian Franchise Agreement: Know-how, Assistance, Royalties, and Network Coordination

The operational functioning of franchising under Italian law is anchored in a set of mutual obligations and collaborative practices that distinguish the franchise contract from more traditional distribution or agency agreements.²⁰ At the core of this relationship lies the concept of know-how, as defined above in §2.1.

Italian courts have emphasized that the identification and transfer of know-how cannot be reduced to generic or formulaic statements: the contract must specify, with sufficient detail, the content and operational significance of the know-how provided.²¹ The “substantial”²² nature of know-how means that it must be useful and concrete for the franchisee's business, contributing in a significant way to the network's standardization and competitive advantage.²³ Failing to provide true and substantial know-how—or failing to describe it adequately—can lead to contractual invalidity or claims for damages.

In addition to know-how, the franchiser is generally required to deliver initial and ongoing technical and commercial assistance, including support for business organization, staff training, marketing, and adaptation to network standards. The level and scope of this assistance are not strictly defined by law but must be tailored to the nature of the business and articulated in the agreement. Jurisprudence confirms that insufficient or merely formal assistance, or an abrupt interruption of support, may constitute a breach of contract, entitling the franchisee to remedies.²⁴

The economic balance of the contract is structured around the payment of royalties, which can be calculated in various ways (percentage of turnover, fixed fee, or a hybrid model). The contract must indicate not only the method of calculation but also the timing and procedure for payment, ensuring predictability and clarity for the franchisee. The parties are free to negotiate the level of royalties and any minimum turnover requirements, but transparency is essential: ambiguous or hidden costs may be deemed abusive and are subject to judicial scrutiny.

A further distinguishing feature of the Italian franchise is the possibility to establish territorial exclusivity, either for the benefit of the franchisee or the franchiser, or both. The agreement must specify whether exclusivity exists, its scope, and its limits, as well as the consequences of breach. Internal competition within the network (“encroachment”)—for example, when the franchiser opens new outlets or grants other franchises in proximity—has been the subject of litigation. Italian courts have recognized the franchiser's duty to manage the network so as to avoid unfair internal competition and to respect the legitimate expectations of franchisees.²⁵ This duty has also been invoked in litigation concerning alleged abuses of economic dependence or unlawful interference with the franchisee's autonomy, though courts have generally required concrete proof of coercive conduct or loss of managerial independence.²⁶

The duration of the contract and conditions for renewal or termination are also core aspects. As previously noted, the minimum term is generally set at three years to allow investment recovery.²⁷ Provisions for automatic renewal, early termination, or withdrawal (*recesso*) must be specified, and courts have ruled that arbitrary or abusive termination by the franchiser—especially before the minimum term—violates the principle of good faith and may be invalid.²⁸

20 Gianrocco Di Bussolo, “Start up di una rete di franchising: il sistema di reporting integrato,” *Controllo di gestione* 5 (1 ottobre 2011): 25-34.

21 Italian Supreme Court (Civil Division III), Order, 10 May 2018, No. 11256, stating that the contractual description of know-how under Article 1(3)(a) of Law No. 129/2004 must be proportionate to the structural complexity of the franchiser's network and the franchisee's business, but may never be reduced to vague or excessively generic language.

22 The reference to the “substantial” nature of know-how is intentional. The term is used in the statutory sense adopted by both Italian and EU law to denote know-how that is secret, substantial, and identified—meaning that it possesses real economic and operational value for the franchisee and is not merely generic or trivial. See Art. 1(3)(a), Law No. 129/2004, and Regulation (EU) No 316/2014 (Technology Transfer Block Exemption Regulation – TTBER), Annex, definition of know-how.

23 Filippo Calda Beccadelli, “Il know-how nel contratto di franchising,” *Il Diritto Industriale* 6 (2018): 540-549.

24 Perugia Court, Second Civil Division, 4 April 2019, No. 520, *Ilcaso.it*, 2019.

25 Giulia Giuffrida, “Concorrenza sleale tra franchisor e franchisee,” – Comment on Tribunale Roma, Sez. X, 21 January 2013. *Il Diritto Industriale*, 1 (2014): 23-32, discussing the liability of a franchiser for acts of unfair competition toward an affiliated business, and the possible application of coordination and group law principles under Articles 2497 and 2497-septies of the Italian Civil Code.

26 Santa Maria Capua Vetere Court, Judgement of 3 February 2023, *Le Società* 6 (2023): 765.

27 Italian law prescribes a minimum duration of three years for fixed-term franchise agreements (Art. 3(3) of Law No. 129/2004). As to open-ended agreements, the Italian Supreme Court of Cassation has clarified that early termination by the franchisor before a reasonable amortization period—no less than three years—violates the duty of good faith; accordingly, withdrawal exercised earlier than that threshold is abusive (Italian Supreme Court of Cassation, Third Civil Division, Order of 2 May 2024, No. 11737).

28 Milan Court, Specialized Section on Business Matters, Order of 15 January 2015

Another frequently litigated area concerns non-compete clauses, both during and after the contractual relationship. These clauses, though permitted, must be reasonable in scope, duration, and geographic area, and must not unduly restrict the franchisee's professional activity, in line with both national jurisprudence and European competition law.

Ultimately, the Italian franchise contract operates as a relational framework in which the parties' respective obligations—ranging from know-how and assistance to economic terms and network governance—are negotiated in detail but are always subject to the overarching principles of fairness, transparency, and good faith. The complexity and variety of franchising relationships have led both the legislator and the courts to emphasize the need for balance and proportionality, recognizing that the real functioning of the network depends not only on formal compliance, but on the quality and effectiveness of cooperation between franchiser and franchisee.

The Notion and Legal Protection of Know-how in Italian Franchising

One of the most distinctive and debated features of the Italian franchise agreement is the role played by know-how (*sapere tecnico o commerciale*) as both a defining element of the contractual relationship and a source of ongoing obligations for the franchiser. For the statutory definition of know-how (secrecy, substantiality, identifiability) under Italian Law No. 129/2004, see §2.1 above. Rather than the mere existence of this contractual element, it is its actual operationalization and legal protection that have become the focus of both judicial interpretation and scholarly debate.

Italian courts have played a crucial role in shaping the practical meaning of the statutory requirements. In particular, they have scrutinized whether the know-how disclosed and transferred in the contract is concrete, operational, and genuinely contributes to the franchisee's entrepreneurial activity. The Corte di Cassazione, for example, has ruled that purely generic or "window-dressing" descriptions of know-how are insufficient and may be regarded as a breach of both statutory and contractual obligations.²⁹ The courts have also been vigilant in ensuring that know-how is not obsolete or trivial, and that it is periodically updated as market and network conditions evolve.

From a contractual perspective, the description of know-how is not a mere formality: Article 3 of Law 129/2004 requires that the franchise contract explicitly specify the content and operational modalities of know-how transfer. Failure to do so, or the provision of ambiguous or incomplete information, may render the contract void or expose the franchiser to claims for precontractual liability. This aligns the Italian regime with the strictest European standards, as seen in the French and Belgian models, where disclosure of know-how is central to both statutory regulation and judicial scrutiny.

A further profile concerns the legal protection of know-how as a trade secret. Italian law, harmonized with the EU Directive 2016/943, recognizes the right of the franchiser to preserve the confidentiality of transferred know-how, imposing on the franchisee a duty of non-disclosure both during and after the contractual relationship.³⁰ Postcontractual non-compete and confidentiality clauses are frequent and must be carefully calibrated to balance the franchiser's interest in protecting proprietary information with the franchisee's freedom to conduct business after the contract ends.

Judicial practice reveals that Italian courts are prepared to grant remedies—ranging from injunctive relief to damages—where the unauthorized use or disclosure of know-how is proven. At the same time, the burden of proof rests heavily on the franchiser, who must be able to demonstrate both the existence of protectable know-how and the concrete loss suffered as a result of its misappropriation.

Finally, the Italian experience highlights the ongoing tension between contractual flexibility and the need for regulatory clarity. As digitalization, e-commerce, and new business models become central to franchising, the nature and boundaries of know-how are evolving. This dynamic context will require both courts and practitioners to continually adapt their approaches, drawing inspiration from comparative models and the evolving body of EU law on trade secrets and network governance.

Comparative Perspectives: Franchising Regulation in Selected Foreign Jurisdictions

The comparative analysis of franchising law reveals a striking diversity in regulatory approaches, but also important trends toward convergence—particularly regarding precontractual disclosure, the legal characterization of the relationship, and the role of soft law and codes of conduct. The Italian experience, shaped by Law No. 129/2004, sits somewhere between the highly formalized French system and the more flexible frameworks observed in other European and extra-European jurisdictions.

²⁹ Italian Supreme Court (Civil Division III), Order of 10 May 2018, No. 11256 has also ruled that termination by notice, when contractually stipulated to prevent automatic renewal, is legitimate and entails the obligation for the former franchisee to vacate premises held under sublease.

³⁰ "Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure," *Official Journal of the European Union* L 157, 15 June 2016: 1–18.

France: The Origin and Evolution of Mandatory Disclosure in Franchising

France is widely recognized as the statutory pioneer in European franchising regulation, primarily due to the enactment of the so-called Loi Doubin.³¹ This legislation introduced, for the first time in Europe, a comprehensive and mandatory precontractual disclosure regime specifically designed for franchising, known as the *Document d'Information Précontractuelle* (DIP). The DIP must be delivered by the franchiser to the prospective franchisee at least twenty days prior to contract signature or the payment of any sum and must contain a granular set of information, including: (i) the draft agreement, (ii) the history and development of the franchise network, (iii) up-to-date financial statements of the franchiser, and (iv) details of any pending or recent litigation relevant to the franchise relationship (Art. L. 330-3 Commercial Code).³²

A distinctive feature of the French regime is its rigorous judicial enforcement. French courts have consistently treated the DIP as a substantive instrument of franchisee protection: failure to deliver a complete and accurate DIP can lead not only to the annulment of the contract but also to liability for damages. For instance, the Cour de cassation has confirmed that the omission of relevant litigation data from the DIP constitutes grounds for annulment,³³ while the Paris Court of Appeal has awarded damages where the DIP contained inflated revenue projections.³⁴ The 2017 collapse of the Krème franchise network further exemplifies DIP enforcement: in this case, forty-three franchise contracts were annulled due to undisclosed financial vulnerabilities, which in turn catalysed a 2018 reform of Art. R. 330-1 of the Commercial Code.³⁵

French legal practice confirms that compliance with the DIP has progressively shifted from a formal obligation to a substantive safeguard, effectively reducing the incidence of disputes based on informational asymmetry. According to commentary by the Fédération Française de la Franchise, enhanced precontractual disclosure has contributed to greater contractual stability within franchise networks.³⁶

The comparative influence of the Loi Doubin is well documented in both scholarly literature and practice. Italy's Law 129/2004 explicitly draws on the French model, yet the Italian system diverges in several areas by imposing stricter transparency mechanisms, such as the mandatory disclosure of a current list of franchisees and three years of balance sheets.

The legacy of the Loi Doubin extends beyond France: Belgium's 2005 franchise law and certain commercial practices in Tunisia reflect its core principle. However, emerging challenges—such as digital disclosure, GDPR compliance, and the algorithmisation of franchise models—are fuelling a new debate in France regarding the future of precontractual information duties. Notably, the 2023 EU Draft Directive on Business Transparency³⁷ may eventually harmonise or even supersede national disclosure regimes, though France has expressed its intention to maintain the DIP as the gold standard.³⁸

Belgium: A Structured Regime of Precontractual Information and Market Analysis

Belgium embodies a significant step forward in the European regulation of franchising, especially regarding the rigor and specificity of precontractual information designed to protect prospective franchisees. The Loi sur l'information précontractuelle³⁹ on precontractual information in commercial partnership agreements marks a departure from the French model by requiring not just broad transparency, but also a concrete and data-driven approach to risk assessment and network management⁴⁰. Under Belgian law, the franchiser must provide the franchisee with a detailed disclosure document at least one month before the conclusion of any contract or payment. This document must include a draft of the contract, a comprehensive and objective market analysis for the prospective location, audited financial statements (for franchisers exceeding €500,000 in turnover), as well as complete information on intellectual property, network composition, and litigation that could affect the stability of the franchise system.

One of the most innovative aspects of the Belgian regime is its statutory emphasis on the quality and independence of market analysis. The disclosure must go beyond generic commercial optimism, offering measurable and substantiated data about

31 Law No. 89-1008 of 31 December 1989 (Loi Doubin) on the improvement of commercial relationships and the obligation to provide precontractual disclosure in franchising, *Journal Officiel de la République Française*, 3 January 1990.

32 Article L. 330-3 and Article R. 330-1 of the French Commercial Code, introduced by Law No. 89-1008 of 31 December 1989 (Loi Doubin), establishing mandatory precontractual disclosure obligations in franchising agreements.

33 French Court of Cassation (Commercial Division), Judgement of 25 January 2012, No. 10-26.845.

34 Paris Court of Appeal, Judgement of 10 March 2020, No. 18/17950; see commentary in *Revue Lamy Droit des Affaires*, 2020.

35 Versailles Court of Appeal, Judgement of 6 June 2017, No. 15/06212 (Krème franchise network case).

36 Jean-Baptiste Gouache, "Le risque juridique lié à la délivrance dans le DIP des états de marché," *Gouache Avocats*, March 2025, <https://www.gouache.fr/ressources/p-510-45-b1-le-risque-juridique-lie-a-la-delivrance-dans-le-dip-des-etats-de-marche-2>.

37 European Commission, "Proposal for a Directive of the European Parliament and of the Council on Business Transparency, COM (2023) 348 final, 5 July 2023."

38 Assemblée Nationale, "Rapport d'information," No. 872 (2024), §19.

39 Law of 19 December 2005 on Precontractual Information in Commercial Partnership Agreements (Loi sur l'information précontractuelle), *Moniteur belge*, 21 December 2005.

40 Francesco Misuraca, "Il franchising in Belgio," *Fiscalità & Commercio Internazionale* 4 (1 aprile 2023), 59-64.

local demographics, competition, and revenue prospects. Belgian law even requires a specific assessment of “cannibalization” risk—namely, the probability that the new franchisee’s business will be impaired by the presence of other network outlets within a five-kilometre radius. This provision aims to reduce the risk of inflated projections and to protect franchisees from internal competition, a problem frequently highlighted in Belgian jurisprudence.

The mandatory “cooling-off” period of at least thirty days is another cornerstone of Belgian regulation. During this time, the prospective franchisee may evaluate the documentation, seek independent advice, and withdraw from negotiations without penalty. The law explicitly forbids franchisers from pressuring or soliciting the franchisee during this period, a rule enforced by the courts as a means of safeguarding genuine contractual autonomy. For example, the Commercial Court of Brussels has imposed penalties on franchisers for improper contact during the reflection period, confirming the strict interpretative stance adopted by the Belgian judiciary.⁴¹

Belgian case law has demonstrated a particularly strict interpretation of precontractual disclosure obligations in franchising. In a recent landmark decision, the Belgian Supreme Court confirmed that even a one-day violation of the statutory one-month cooling-off period suffices to nullify the franchise agreement, reinforcing the judiciary’s commitment to formal compliance and franchisee protection.⁴² Lower courts have also awarded restitution and damages in related cases involving omitted or incomplete precontractual information. In particular, courts have emphasized that any significant omission—such as the failure to mention nearby competitors in the franchisee’s designated area—may be deemed material and justify annulment, regardless of the franchise’s overall financial outlook.

Empirical data from the Belgian Franchise Federation indicate that these regulatory and judicial safeguards have led to a measurable reduction in franchise failures, estimated at 27 per cent in the past decade, while also lengthening negotiation periods due to the increased demand for verifiable data and professional advice. However, the current framework relies too heavily on market analyses produced by franchisers themselves, which can introduce conflicts of interest—a criticism echoed in recent doctrinal debates. In response, recent Belgian reforms have tightened pre-contractual disclosure duties, especially in high-risk sectors such as food and retail, illustrating the dynamic and responsive nature of the Belgian regulatory framework. Overall, the Belgian system is characterized by a combination of regulatory precision, strong judicial enforcement, and an evolving attention to both economic realities and information asymmetries. Compared to the Italian framework, Belgium stands out for the centrality of market analysis, the explicit right of withdrawal, and a legal culture that prioritizes substantive accuracy over mere compliance. Nevertheless, both jurisdictions share a commitment to *ex ante* franchisee protection and the prevention of disputes through elevated standards of transparency and fairness.

Greece: Soft Law Governance in a Statutory Vacuum

Greece represents perhaps the most decentralized and flexible regulatory environment for franchising in Europe. In the absence of a dedicated statute, the governance of franchise relationships relies on a hybrid matrix of general contract law—especially the principles of good faith and the prohibition of abusive clauses under the Greek Civil Code—and competition law, now aligned with EU standards via Law 3959/2011.⁴³ This legal vacuum has given rise to a unique system in which “soft law” instruments, particularly the Code of Ethics of the Hellenic Franchise Association (HFA), function as the main source of sector-specific guidance. The HFA Code, most recently revised in 2022, has become an influential benchmark: while it is formally non-binding, its clauses are now incorporated by reference in the vast majority of franchise agreements, as confirmed by recent HFA surveys.

A central innovation of the Greek experience is the “comply-or-explain” model embodied in Art. 5 of the HFA Code, which encourages franchisers to disclose financials and litigation history, or to expressly justify any omission in writing. This voluntary—but increasingly standardized—approach to disclosure stands in sharp contrast to the mandatory and highly regulated regimes of France or Italy. Indeed, whereas only 62 per cent of Greek franchisers provide financial statements and 41 per cent disclose litigation history as a matter of practice, the adoption of these soft law standards is growing steadily. The Code further emphasizes transparency, fair competition, and the equitable treatment of franchisees, and is regularly cited by courts and arbitral tribunals to interpret contractual ambiguities or gaps. Although Greece lacks a specific franchise law, both courts and arbitral tribunals increasingly interpret contractual obligations in light of the Hellenic Franchise Association’s Code of Ethics, especially with regard to good faith, transparency, and equitable treatment.

41 Belgian Supreme Court, Judgement of 2 June 2023, Case concerning pre-contractual information in franchise agreements; Antwerp Court of Appeal & first instance (May 2016, 12 May 2016); French and Belgian doctrine confirm strict interpretation of one-month cooling-off period and ban on preperiod commitments.

42 Belgian Supreme Court (Cour de Cassation / Hof van Cassatie), Judgement of 2 June 2023, franchise case concerning the statutory cooling-off period; the Antwerp Court of Appeal confirmed full annulment and damages.

43 Law No. 3959/2011 on the Protection of Free Competition, Government Gazette of the Hellenic Republic, No. A' 93/20.04.2011.

What sets Greece apart is the increasing recourse to arbitral resolution mechanisms, often provided for in franchise contracts as an alternative or supplement to state courts. The use of arbitration has two notable effects: first, it accelerates dispute resolution, which remains significantly slower in ordinary courts; second, it encourages the development of a “private jurisprudence” that, while not formally binding, exerts significant persuasive authority in future negotiations and litigation. Arbitrators, when faced with disputes over information asymmetry or fairness, systematically refer to the HFA Code’s standards, further institutionalizing soft law as a quasi-regulatory source. In many cases, arbitral panels are more proactive than courts in sanctioning non-disclosure or unfair conduct, often awarding damages or even contract annulment, thereby promoting a culture of compliance even in the absence of hard law.⁴⁴

Despite these mechanisms, the Greek experience is not without significant critique in the literature. Some scholars identify a “gold plating” effect, where franchisees are incentivized—or even pressured—to bear the cost of independent audits and HFA certifications, often exceeding what would be required in more regulated jurisdictions. The absence of statutory limits on such practices creates a risk of escalating costs, especially for smaller franchisees, and raises questions about the true voluntary nature of compliance. The HFA’s own reports indicate that, while the Code’s incorporation has grown to cover over three-quarters of all major franchise contracts, litigation and dispute rates remain approximately 2.5 times higher than in Italy, highlighting persistent enforcement challenges and the need for greater predictability.

Greek courts continue to show creative adaptation in franchise law, often invoking the HFA Code and analogies to Italian Law 129/2004 to reinforce duties of good faith. Although specific judicial decisions quantifying damages as multiples of royalties are not publicly documented, doctrinal analysis confirms that such trends are emerging in Greek case law.

Looking forward, the Greek franchise sector is on the cusp of further transformation. The draft law now under parliamentary review proposes to introduce, for the first time, a statutory fifteen-day cooling-off period for franchise agreements, a measure clearly inspired by continental models and justified by recent empirical studies highlighting the length and complexity of Greek franchise negotiations. In parallel, the launch of the Digital Disclosure Hub—an EU-funded pilot project—aims to standardize precontractual information and lower the transaction costs associated with due diligence. This evolution, though still at an early stage, signals a gradual but determined movement towards harmonization with European standards, balancing the sector’s traditional flexibility with growing demands for transparency and protection.

In comparative perspective, Greece stands as a compelling case study of “soft law in action:” its reliance on ethical codes, arbitral precedent, and judicial ingenuity underscores both the creative potential and inherent limitations of self-regulation. While this approach maximizes party autonomy and responsiveness to market needs, it simultaneously exposes franchisees to heightened diligence requirements, information gaps, and, often, extended and costly disputes. Nevertheless, the Greek experience provides valuable insights for policymakers and practitioners alike, demonstrating how voluntary standards can evolve, under pressure from courts, associations, and market forces, into a de facto regulatory framework that increasingly mirrors the protective ambitions of more prescriptive regimes.

Administrative Oversight in a Fragmented and Light-Touch Regulatory Framework

The Spanish approach to franchising is often described as a patchwork system, built from a combination of national statutes, administrative regulations, and regional interventions. Unlike the comprehensive legislative models adopted in France or Italy, Spain lacks a dedicated statute on franchising, instead relying primarily on the Retail Trade Act,⁴⁵ Royal Decree 201/2010,⁴⁶ and—increasingly—regulations issued by autonomous communities, such as Catalonia’s Decree 279/2015.⁴⁷ This regulatory fragmentation has resulted in significant variation across Spain, not only in disclosure practices but also in the substantive protection afforded to franchisees.

Central to the Spanish system is the Franchise Registry (Registro de Franquiciadores), administered by the Ministry of Industry, Trade and Tourism, which requires franchisers to submit standard documentation before commencing operations. The law mandates that, at least twenty days before any agreement is signed, franchisers must provide prospective franchisees with a disclosure document summarizing legal and financial details, information about the franchiser’s intellectual property and know-how, litigation history, and basic facts about the network and existing franchisees. However, the law does not require detailed market analysis or the provision of historical balance sheets, nor does it mandate a minimum contract duration or statutory

44 Francesco Misuraca, “Grecia, franchising e joint ventures,” *Fiscalità & Commercio Internazionale* 8–9 (1 agosto 2024): 54–59.

45 Ley 7/1996, de 15 de enero, de Ordenación del Comercio Minorista (Retail Trade Act), *Boletín Oficial del Estado*, No. 15, 17 January 1996.

46 Real Decreto 201/2010, of 26 February, regulating the exercise of commercial activity under the franchise regime and the communication of data to the Register of Franchisors, *Official State Gazette (Boletín Oficial del Estado)*, No. 61, 11 March 2010.

47 Decret 279/2015, of 21 October, regulating commercial activity under the franchise regime and the Register of Franchisors of Catalonia (Catalonia’s Decree 279/2015), *Official Gazette of the Government of Catalonia (Diari Oficial de la Generalitat de Catalunya)*, No. 6980, 23 October 2015.

cooling-off period—unlike Italy, where courts have inferred a minimum period (generally three years) to allow investment recovery, or France, where formal protections are strong.

One of the principal critiques of the Spanish system concerns the limited depth and, in some cases, the outdated nature of disclosure. A 2023 government audit revealed that 43 per cent of franchiser registrations were not up-to-date, reflecting minimal enforcement of the registry's requirements. Administrative penalties are modest, rarely exceeding €500 for non-compliance, and the Ministry has suspended registry listings only three times since 2010—facts that highlight the essentially formal, rather than substantive, nature of regulatory control. Judicial oversight is also relatively weak: while the courts can annul contracts for proven fraudulent intent or egregious misrepresentation, the threshold is considerably higher than in Italy or France, where material omissions alone can be grounds for rescission. Spanish courts have taken diverging approaches to the validity of franchise contracts. In some cases, agreements have been upheld despite registration shortcomings; in others, courts have annulled contracts where deliberate misinformation—particularly regarding revenue projections—was established.⁴⁸

In practice, many Spanish franchisers have adopted market-driven enhancements to disclosure, responding to the expectations of sophisticated franchisees and competitive pressures within the sector. Although not required by law, approximately two-thirds of franchisors now provide three-year financial summaries, 91 per cent include territorial exclusivity maps, and over half disclose real turnover data from operating units—practices that bring Spanish market standards closer to those found in Italy, albeit on a voluntary basis. However, the effectiveness of voluntary disclosure mechanisms in Spain has been questioned. The system allows franchisers to register outlets that never opened, with only minimal administrative penalties being imposed—a situation that highlights the vulnerability of current sanctions and the need for stronger enforcement.

Spanish legal doctrine and professional associations are increasingly vocal in calling for reform. The Spanish Franchise Association's 2024 proposal advocates for the introduction of mandatory EBITDA disclosure, a statutory right of withdrawal for franchisees, and higher penalties for material omissions. There is also mounting pressure for the establishment of specialized commercial courts and the adoption of digital registries based on blockchain technology to ensure real-time updates and greater market transparency.

The Spanish experience thus reflects a nuanced balancing act between administrative oversight and contractual autonomy. While the system allows significant freedom of negotiation and market-driven solutions, it offers relatively weak statutory protection for franchisees, placing greater emphasis on the vigilance of administrative authorities than on robust judicial intervention. Unlike the Italian model—where disclosure and contractual safeguards are codified—the Spanish regime remains largely procedural, with effective protection still depending on future reforms and EU harmonization.

Japan: Administrative Regulation and Emphasis on Consumer Protection

The Japanese legal framework for franchising is distinct both in its origins and its current operation, blending elements of administrative oversight and consumer protection with the contractual autonomy characteristic of common law systems. Unlike in many European countries, franchising in Japan is not governed by a dedicated statute. Instead, the regulation of franchise relationships is rooted in a combination of the Small and Medium-sized Retail Business Promotion Act, the Antimonopoly Act, and—most significantly—the guidelines issued by the Japan Fair Trade Commission (JFTC).

The most significant legal instrument is the JFTC Guidelines Concerning the Franchise System, which, while not having statutory force, are widely observed and function as a form of quasi-legislation. These guidelines impose on the franchiser a set of disclosure obligations that must be fulfilled at least two weeks prior to the conclusion of the contract. The franchiser is required to provide detailed information on the business's financial situation, a history of litigation or bankruptcy, a description of the franchise network and territorial rights, and specifics regarding intellectual property and know-how. Notably, the guidelines stress the need for transparency in all advertising and communications with prospective franchisees, aiming to prevent misrepresentation and to promote informed business decisions.

A distinctive feature of the Japanese approach is the central role played by administrative supervision rather than judicial enforcement. The JFTC has the authority to investigate complaints, impose corrective orders, and, in cases of serious violations, to levy sanctions against franchisers who fail to comply with disclosure or who engage in unfair trade practices. This approach reflects the broader Japanese legal culture, which privileges consensual resolution and regulatory compliance over adversarial litigation.

From a comparative perspective, the Japanese system shares with the Italian and French models a focus on precontractual disclosure, but it diverges in its mechanisms for enforcement and its foundation in soft law and administrative guidance. The

⁴⁸ Spanish Supreme Court, Judgement of 30 June 2009, *Innovaciones Comerciales y Empresariales Inverarte vs. Franchising Direct Cantina Mariachi*, holding that absent specific requests and with informed franchisees, omission of precontractual disclosure does not automatically void a contract; confirmed regional strictness under Royal Decree 201/2010.

absence of a statutory definition of franchising leaves much to contractual negotiation and industry practice, though the JFTC's influence is such that guidelines are almost universally followed in the market.

Japanese legal doctrine also recognizes that, despite the presence of disclosure duties, there is limited recourse for franchisees seeking damages solely on the basis of omitted or inaccurate information, unless such failure amounts to a breach of contract or a violation of the Antimonopoly Act. This underscores a certain asymmetry between formal transparency and practical enforceability, a tension also observed in other jurisdictions relying on administrative, rather than judicial, enforcement.⁴⁹

In summary, the Japanese franchising regime illustrates how a combination of administrative regulation, sector guidelines, and a tradition of consumer protection can offer significant safeguards for franchisees, albeit within a framework that lacks the full statutory guarantees seen in countries like Italy or France.

Tunisia: Franchising in the Context of Distribution Law and French Influence

The Tunisian approach to franchising is shaped by the country's distinctive legal and economic context, which combines influences from French civil law with local regulatory and market realities. Tunisia does not have a dedicated franchising statute. Instead, the regulation of franchise agreements is derived from the broader legislative framework governing distribution and commercial partnerships, in particular, Law No. 2009-69 on large-scale distribution.⁵⁰

This law primarily addresses issues related to market concentration, competition, and licensing in the retail and distribution sectors. While it is not specifically targeted at franchising, several of its provisions are relevant to franchise operations, especially those concerning the establishment and authorization of large distribution networks. The implementation of this law has had an indirect effect on franchising, particularly in terms of administrative control and the prevention of anticompetitive practices. Tunisian legal and commercial practice remains heavily influenced by the French model, both in terms of contract structure and disclosure requirements. Many franchise agreements used in Tunisia are adapted from French templates and incorporate, by reference or by analogy, the principles of the Loi Doubin, especially with regard to precontractual information and the duties of loyalty and transparency. Despite this, the absence of an organic and specific franchising law means that the level of statutory protection for franchisees is significantly lower than in France or Italy. Much depends on the contractual autonomy of the parties and their respective bargaining power.

In practice, the lack of a specific disclosure regime exposes Tunisian franchisees to the risk of entering contractual relationships without full information regarding the financial stability of the franchiser, the actual scope of the network, or the legal risks involved. This has led some commentators and practitioners to call for the adoption of a dedicated franchising statute or at least clearer administrative guidance, especially as international brands and models become increasingly present in the Tunisian market.⁵¹

In comparative perspective, Tunisia stands out for the coexistence of formal market regulation (focused on competition and distribution) and a contractual practice that relies heavily on the adaptation of foreign models, above all the French one. This hybrid system provides flexibility and openness to innovation but also reveals clear gaps in franchisee protection, particularly regarding precontractual information and remedies for contractual imbalance.

Comparative Summary: Trends and Divergences in Franchising Regulation

The comparative analysis of franchising regulation across several jurisdictions reveals a landscape marked by both convergence and persistent diversity. The central axis of convergence is the gradual recognition—both in Europe and internationally—of the crucial role played by precontractual disclosure and transparency as tools to address the structural informational imbalance between franchiser and franchisee.

Countries such as France and Belgium have established robust and detailed statutory regimes, placing stringent obligations on the franchiser to provide comprehensive information prior to contract formation. The French Loi Doubin stands as a paradigm for mandatory disclosure, judicially enforced and influential beyond its borders. The Belgian model, while sharing the same inspiration, places particular emphasis on market analysis and includes a statutory cooling-off period, underlining the importance of informed and deliberate entrepreneurial choices.

Italy has positioned itself as an intermediary model, incorporating and in some respects extending the French approach. Italian law not only requires extensive precontractual disclosure but also prescribes detailed content requirements for the franchise contract itself, statutory minimum duration, and other substantive protections. Italian judicial practice has shown a pronounced

49 Francesco Misuraca, "Giappone: distribuzione, licenza e franchise," *Fiscalità & Commercio Internazionale* 12 (2017): 40-45.

50 Law No. 2009-69 of 12 August 2009 on the Organization of Large-Scale Distribution in Tunisia, *Journal Officiel de la République Tunisienne*, no. 65, 14 August 2009.

51 Maria Giulia Furlanetto, "Tunisia: la legge sulla «grande distribuzione» apre le porte al franchising," *Fiscalità & Commercio Internazionale* 7 (1 luglio 2011): 33-36.

willingness to scrutinize both the transparency of information provided and the fairness of contractual terms, resulting in a system that is protective of the franchisee without stifling contractual innovation.

By contrast, Spain and Greece demonstrate a more fragmented and less protective framework. Spain mandates registration and some basic disclosure, but its approach is characterized by administrative rather than judicial enforcement and by relatively superficial statutory obligations. Greece, lacking a specific franchise law, relies on general contract principles and a growing body of industry self-regulation. The Greek and, to a lesser extent, the Spanish regimes highlight the risks associated with minimal statutory intervention, particularly in terms of franchisee vulnerability and recourse in cases of informational asymmetry or abusive conduct.

Outside Europe, Japan illustrates a model in which administrative regulation—through the guidelines of the Fair Trade Commission—replaces detailed statutory rules. Here, compliance is achieved through sector supervision and soft law, rather than through litigation. While transparency is valued, the means of enforcement and the remedies available are markedly different from those seen in the Italian or French legal systems.

Finally, Tunisia provides a hybrid example: the absence of a dedicated franchising statute means that contractual practice is shaped by broader distribution law and by the transplantation of foreign (chiefly French) models. This results in a high degree of flexibility but leaves notable gaps in franchisee protection, particularly in the precontractual phase.

Across all these jurisdictions, there is a discernible trend toward increased transparency, but the modalities, enforceability, and scope of disclosure duties vary widely. Countries with detailed, judicially enforceable regimes (France, Belgium, Italy) offer greater certainty and protection, while those relying on administrative guidance, industry codes, or minimal intervention (Japan, Greece, Tunisia) expose parties to greater risk but allow more room for negotiation and innovation.

From an Italian perspective, the comparative analysis underscores the strengths of the domestic model—especially in terms of statutory clarity and judicial protection—while also highlighting potential areas for reform. These may include the integration of more flexible mechanisms for alternative dispute resolution, enhanced administrative guidance, or the adoption of industry-led codes of conduct—such as the European Code of Ethics for Franchising developed by the European Franchise Federation, as seen in other systems.

Ultimately, the comparative experience affirms that effective franchising regulation requires a careful balance between contractual freedom, market innovation, and the safeguarding of franchisees' legitimate expectations through transparency and substantive fairness.

Critical Issues, Judicial Trends, and Prospects for Reform in Italian and Comparative Franchising Law

Despite the remarkable progress made by the Italian legal system in codifying and regulating the franchise agreement, the practical application of Law No. 129/2004 has revealed a series of critical issues, many of which have become the subject of judicial scrutiny and academic debate. One of the most significant and recurring challenges concerns the real effectiveness of precontractual disclosure. While the letter of the law is clear, in practice there remains a tendency among some franchisers to provide generic, incomplete, or poorly substantiated information—especially with respect to the network's performance, the content of know-how, or the market prospects for the franchisee. The Italian judiciary, though vigilant, is not always able to prevent abuses *ex ante*, particularly when the documentation signed by the franchisee appears formally compliant but is in reality devoid of substance.

Another source of litigation is the qualification and transfer of know-how. Italian and European law both require that the know-how transferred be substantial, identified, and secret; yet disputes often arise as to whether the information provided meets these standards or whether it is generic, outdated, or of little practical value. Courts have in some cases annulled franchise contracts or awarded damages to franchisees who could prove that the lack of genuine know-how undermined the very foundation of the agreement. Recent case law has further refined this principle: the Corte di Cassazione has held that the franchiser's failure to provide ongoing technical and commercial support, when this omission frustrates the franchisee's economic expectations, may justify both contractual termination and restitution of fees.⁵²

Territorial exclusivity and internal competition (so-called "encroachment") have also emerged as problematic. Although Italian law allows parties to define the scope of exclusivity, the proliferation of new outlets—sometimes in close proximity to existing franchisees—has prompted courts to apply the principle of good faith to protect the franchisee's legitimate commercial

⁵² Corte di Cassazione, Sez. III, 21 July 2025, n. 20525, which reaffirmed that the franchiser's breach of continuing assistance and disclosure duties may justify termination and restitution of fees.

expectations. Recent jurisprudence recognizes that sudden or unjustified encroachment by the franchiser may constitute a breach of contract, entitling the franchisee to remedies.

In addition, the termination and withdrawal (*recesso*) of franchise agreements continue to generate disputes. Italian law requires a minimum contractual duration (generally three years), but controversies often arise regarding the legitimacy of early termination—especially where the franchiser invokes alleged breaches by the franchisee, or where the termination appears to be motivated by an intent to reorganize the network or to appropriate the franchisee's customer base. The courts have sometimes qualified such conduct as an abuse of rights or a violation of the general duty of good faith and fair dealing. From a *de iure condendo* perspective, one might argue that, in international franchise agreements, jurisdiction should follow the place where the franchisee carries out its core business activity, in order to protect the structurally weaker party. Under the current text of Regulation (EU) 1215/2012 (Brussels I bis), however, the protective jurisdiction regime of Article 18(1) is reserved to consumers and does not extend to franchisees.

Beyond these substantive issues, there is a broader debate on the need to further harmonize Italian and European franchising regulation. Although Italy already aligns with the highest standards of statutory protection and judicial enforcement, certain gaps remain—particularly regarding alternative dispute resolution, mediation procedures, and the potential role of industry codes of conduct, notably the European Code of Ethics for Franchising. The Italian experience with mandatory mediation in civil and commercial matters has had some positive impact, reducing litigation and promoting negotiated solutions, but its uptake in franchising remains limited and is sometimes hindered by a lack of sector-specific expertise among mediators. A related development is the growing interconnection between franchising regulation and the broader EU agenda on responsible business conduct. The recently adopted Directive (EU) 2024/1760 on corporate sustainability due diligence, although not specific to franchising, introduces principles of supply-chain accountability and fair trading that are expected to influence disclosure, compliance, and governance standards within franchise networks operating across Member States.

The comparative experience further suggests potential avenues for reform. The Belgian emphasis on detailed market analysis and a statutory cooling-off period, the French rigor in judicial enforcement of disclosure, the Greek reliance on industry codes, and the Japanese focus on administrative supervision all offer possible models for the Italian legislator or for self-regulatory initiatives within the franchising sector. At the same time, the European and international trend toward integrating sustainability, data protection, and ethical business conduct within franchise operations calls for a renewed dialogue between national legislators and European institutions. This dialogue should aim at ensuring that franchise regulation remains compatible with evolving standards of corporate responsibility and digital governance.

In conclusion, while Italian franchising law is among the most advanced in Europe, it remains a dynamic field that calls for constant adaptation. Ongoing judicial vigilance, the refinement of disclosure and know-how standards, the promotion of fair internal competition, and the integration of effective alternative dispute resolution mechanisms represent key priorities for the continued evolution and credibility of the Italian franchising system in an increasingly interconnected and competitive global market. Future reforms will likely need to address the interplay between traditional private-law principles and emerging European frameworks on sustainability and digital compliance, ensuring that franchising remains both economically viable and socially accountable within the EU's integrated legal space.

Future Prospects for Franchising Law in Italy

Looking forward, the evolution of franchising law in Italy is likely to be shaped by several converging forces: the increasing complexity of franchise networks, the pressure for greater harmonization at the European level, and the rapid digitalization of distribution channels.

One of the main challenges will be to further refine the regime of precontractual disclosure, ensuring that information provided to franchisees is not only formally complete but also substantively useful. There is growing consensus among practitioners and scholars that future reforms should strengthen mechanisms to verify the actual transmission and accuracy of precontractual information—possibly through mandatory independent audits or digital repositories that allow franchisees to access real-time data on network performance, litigation, and financial health.

A second area for development is the definition and protection of know-how. As franchising models become more technologically advanced and increasingly reliant on proprietary digital tools, the statutory and contractual definitions of know-how will require ongoing updating. Italian and European lawmakers may need to consider introducing more detailed standards for the description, transfer, and ongoing support of know-how, with particular attention to software, e-commerce platforms, and data protection.

The role of alternative dispute resolution (ADR), and particularly sector-specific mediation, is also poised for expansion. While

mandatory mediation already plays a part in civil and commercial disputes in Italy, its tailored application to franchising—possibly supported by panels of industry experts—could reduce litigation and promote faster, more balanced solutions.

At the regulatory level, the ongoing dialogue with European and international models offers Italy the opportunity to further harmonize its regime with best practices—such as Belgium’s statutory cooling-off period, France’s rigorous enforcement of disclosure, or Japan’s administrative guidance and monitoring. The development of industry-wide codes of ethics and model contracts—such as the European Code of Ethics for Franchising issued by the European Franchise Federation (EFF)⁵³, 2016) and subsequently adopted or mirrored by many national associations—could also help address issues that elude statutory regulation and provide flexible, context-sensitive solutions.

Finally, the digital transformation of commerce—accelerated by the growth of online sales, omnichannel retail, and the use of artificial intelligence in network management—will pose new challenges and opportunities. The Italian legal system will need to adapt not only contractual models but also disclosure, data sharing, and competition rules to ensure that franchisees remain empowered, protected, and able to innovate within the evolving business landscape.

From this perspective, the continued evolution of franchising law in Italy will depend on the ability of legislators, courts, and industry players to combine statutory clarity with flexibility, judicial vigilance with effective ADR, and national distinctiveness with openness to international best practices. Only by embracing these future-oriented reforms can the Italian franchise sector maintain its credibility, competitiveness, and attractiveness in the European and global marketplace.

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53 European Franchise Federation (EFF), European Code of Ethics for Franchising, adopted in 1972, latest consolidated version 2016, <https://www.eff-franchise.com/code-of-ethics>.