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Bill BOOK X "Commercial agency agreements, commercial cooperation agreements and sales concessions" in the Economic Law Code.

On 9 January 2014, the bill inserting Book X ("Commercial agency agreements, commercial cooperation agreements and sales concessions") of the Economic Law Code was submitted to the Chamber. This Book X will replace the Commercial Agency Act of 13 April 1995, the Precontractual Information Act of 19 December 2005 and the Sole Distribution Act of 27 July 1961. The present bill takes over the provisions of the Commercial Agency Act and of the Sole Distribution Act without change. As appears from the Explanatory Memorandum, however, the Government deemed it advisable "after years of application, to change the Precontractual Information Act in order to make it more legally effective and at the same time to try to adapt it to the reality of economic life and simplify its application as much as possible". The proposed changes accord with the activities and recommendations of the so-called Arbitration Committee. This committee was set up by the King and is composed of an equal representation of organisations defending the interests of each of the two parties. The most important changes are intended to expand the scope of application of the Precontractual Information Act. This does not amount to a real Franchise Act, which would also substantively regulate the relationship between franchisor and franchisee. The law applies to "commercial cooperation agreements" concluded between persons, "each of whom works in his own name and for his own account". On this basis, a part of the (predominantly Dutch-language) legal doctrine excludes commercial agency. Other legal doctrine, however, believes that it suffices that the parties, at the time the contract is concluded, are independent of one another. The Government is now opting for the broadest interpretation. The condition that the acquirer of the commercial formula "directly or indirectly pays a compensation of whatever nature for this" or the suggestion that only an agreement "between two persons" can fall within the scope of application are also deleted. Against this stands the fact that bank and insurance agency agreements are expressly excluded from the scope of application. Time will tell what the Constitutional Court thinks of this distinction. Furthermore, and contrary to the basic prohibition on demanding any obligation or compensation prior to expiry of the period for reflection, the conclusion of a secrecy agreement coupled with a fine is made explicitly possible. A further exception is provided for the case where parties already have a business relationship that they wish to renew or modify. More generally, greater clarity is created about the hypothesis of renewal. The

question was whether the heavy and formalistic information obligations should apply once again. The Government is opting for an interim solution in the form of a simplified precontractual document, whose streamlined content contains only the important contractual provisions and data that were modified.

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