Contents

1	Introduction							
	1.1	Arbitration and Mandatory Substantive EU Law						
		1.1.1	Example: EU Competition Law	3				
		1.1.2	Arbitral Tribunals Confronted with EU Law	5				
	1.2	Scope	of the Inquiry	9				
		1.2.1	International Commercial Arbitration	9				
		1.2.2	Substantive Mandatory Law and Overriding Mandatory					
			Provisions	10				
		1.2.3	Substantive Mandatory EU Law and Focus on Arts					
			17 to 19 Commercial Agents Directive	11				
		1.2.4	Questions Addressed in This Inquiry	13				
	1.3	Metho	dology	13				
		1.3.1	Comparative Legal Analysis	13				
		1.3.2	Law and Economics	14				
	References							
2	Balancing Party Autonomy and EU Law in the Member States'							
	Syst	em of R	Review	19				
	2.1	System	n of Review and Substantive Mandatory Law	20				
		2.1.1	Pre-award Review	20				
		2.1.2	Post-award Review	39				
	2.2	The Specific Influence of EU Law on the System of Review 5						
		2.2.1	The Status of International Commercial Arbitration					
			in EU Law	57				
		2.2.2	EU and Its Member States' Substantive Legal Orders	60				
		2.2.3	EU Law Constraints on the Procedure of Reviewing					
			Arbitration Agreements and Arbitral Awards	63				

		2.2.4	EU Law Constraints on the System of Review Through Conflict of Laws Rules	77					
	2.3	Summa		87					
				87					
3	Assessment of Arts 17 to 19 Commercial Agents Directive and Their								
	•		Cross-Border Commercial Agency	95					
	3.1		tory Regime for Indemnity and Compensation in the						
			ercial Agents Directive	96					
		3.1.1	Indemnity Under Art. 17 (2) Commercial Agents	07					
			Directive	97					
		3.1.2	Compensation Under Art. 17 (3) Commercial Agents	077					
			Directive	97					
		3.1.3	Further Conditions for the Payment of Indemnity or	00					
		-	Compensation.	98					
	3.2	Purposes and Effects of the Mandatory Regime for Termination							
		Fees.		99					
		3.2.1	Termination Fees and the Purposes Underlying the	99					
		2 2 2	Commercial Agents Directive	77					
		3.2.2	Impact of Termination Fees on the Market for	105					
		2 2 2	Commercial Agency	105					
		3.2.3	Impact of Attaining Protection on the Interests	110					
		3.2.4	of Principals Justification of the Regime's Mandatory Nature	116					
	3.3			121					
	3.3 3.4								
	5.4	3.4.1	ECJ Decision in <i>Ingmar</i>	122 123					
		3.4.2	Ingmar as a Realisation of the Directive's Purposes?	125					
		3.4.2	Ingmar as a Response to a Failure of the Market for	125					
		5.4.5	Cross-Border Commercial Agency?	128					
		3.4.4	Ingmar and Its Effect on the Conclusion of Arbitration	120					
		5.4.4	Agreements	133					
	3.5	Summ	ary	136					
			· · · · · · · · · · · · · · · · · · ·	137					
				10,					
4			ibunals and the Application of Arts 17 to 19 Commercial						
			ective After Ingmar	141					
	4.1		al Practice Regarding Arts 17 to 19 Commercial Agents						
			ive	142					
	4.2	Theoretical Analysis of the Application of Art. 17							
		Commercial Agents Directive by Arbitral Tribunals Within the							
		•	n of Review	145					
		4.2.1	Short Description of the Model	146					
		4.2.2	Payoffs	148					
		4.2.3	The Order of Play	151					

		4.2.4	Equilibria	154				
		4.2.5	Practical Implications for the Member States'					
			Systems of Review	163				
		4.2.6	Review Proceedings in Member State Courts Involving					
			Arts 17 to 19 Commercial Agents Directive	164				
		4.2.7	Germany	166				
		4.2.8	France	173				
		4.2.9	Belgium	180				
		4.2.10	England	187				
		4.2.11	Conclusion	193				
	4.3	Summa	ry	193				
		194						
5	Preferable System of Review Regarding Adherence to Arts 17 to 19							
-			Agents Directive	199				
	5.1		es of Review Proceedings in Light of Arts 17 to 19					
		Commercial Agents Directive						
		5.1.1	Respecting Party Autonomy	200				
		5.1.2	Facilitating Cost-Efficient Dispute Resolution	200				
		5.1.3	Standard of Protection To Be Safeguarded					
			in Pre- and Post-Award Review	201				
			ble System of Pre-Award Review of Disputes Implicating					
		Arts 17	to 19 Commercial Agents Directive	208				
		5.2.1	Preferable Measure of Pre-Award Review	209				
		5.2.2	Preferable Level of Pre-Award Scrutiny	228				
	5.3	Post-Av	vard Review of Disputes Implicating Arts 17 to 19					
		Comme	rcial Agents Directive	240				
		5.3.1	Preferable Measure of Post-Award Review	241				
		5.3.2	Preferable Level of Post-Award Scrutiny	242				
	5.4	Summa	ry	247				
	Refe	rences.	- 	248				
Ov	Overall Summary							