

# ANALYSIS

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Corporate & Commercial

## Can a framework agreement lacking an exclusivity or minimum orders clause be discharged by breach?

All cases decided by the Supreme Court and their specific details are discussed. There is no single solution to the problem of terminating a framework supply of services agreement without an exclusivity clause or a minimum purchases obligation.

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## 1. The case

Educa brought an action for termination and damages against GesNext, claiming that the latter had breached a binding framework agreement for the supply of language training services by deciding, in December 2016, to dispense with the claimant's services; cancelling ongoing orders and placing no further ones, thereby stripping the agreement's central obligation of any content and, de facto, terminating the agreement. The defendant rejected the claim, arguing that the framework agreement did not contain an engagement or turnover undertaking or a minimum orders or exclusivity clause, and that the absence of orders since January 2017 had been due exclusively to the unilateral decision of the end client, the Telefónica Group, which on 22 December 2016 modified the language training delivery system, switching from an in-person and telephone model to an online one (via Skype). The Provincial Court did not uphold the claim. It reasoned that the disputed agreement was tacitly extended until 28 February 2018, and that it was not unilaterally terminated by the defendant in December 2016; therefore, there was no failure to give notice. Given that said agreement did not impose on the defendant any obligation to perform specific transactions, nor a minimum number thereof, nor exclusivity, the Provincial Court concluded that the absence of orders between January 2017 and February 2018 and the termination of specific contracts with third parties did not constitute a repudiatory breach of the framework agreement under Article 1124 of the Civil Code (CC).

The 'cassation' appeal, of interest for the formation of case law, is founded on the al-

leged violation of Articles 1256 and 1258 in relation to Article 1124, all of the Civil Code, as well as on the conflict between the appealed judgment and the established legal doctrine, according to which "completely ceasing to commission services from the other party during the term of the agreement, thereby rendering it void of content, constitutes a material breach that may give rise to termination, even if there is no exclusivity clause or minimum purchases obligation in the agreement" (in support of the interest for the formation of case law, the following Supreme Court judgments are cited: no. 763/2010 of 30 November; no. 656/2012 of 8 November; no. 671/2016 of 16 November, and no. 237/2014 of 23 May).

The Supreme Court, in judgment no. 378/2026, rejects the appeal. The framework agreement for the supply of training services did not contain an exclusivity clause or a minimum orders obligation on the part of the respondent. In other judgments of the same court, the existence of a breach of contract had been recognized, but the circumstances were different.

## 2. The Supreme Court's judgments

§1. In the case of judgment no. 763/2010, dated 30 November, the court accepted as reasonable the interpretation of an agreement as a framework for future travel assistance services (structured as an in-nominate blanket agreement) under which the provider took on structural obligations of permanent availability, including the corresponding resource management and fixed cost coverage. The court considered that this structure — reinforced by uncontested performance for more than fifteen years and successive renewals — had

generated legitimate expectations of continuity in the assignment of services, despite the absence of an express exclusivity clause or guaranteed minimum volume; and, from this perspective, it held that the obligation to request services could not be denied merely because of contractual silence, as it was implicit in the nature of the relationship and should be incorporated pursuant to Articles 1258 and 1289 CC, since the contrary would have meant leaving the validity of the agreement to the exclusive discretion of one of the parties (Art. 1256 CC), especially when the other party was obligated to maintain virtually absolute availability. It was also decisive that the insurer used the cessation of service requests as a means of forcing the labelling of vehicles and, in the face of the claimant's refusal, rendered the agreement void of content without resorting to the formal termination with prior notice provided for in the agreement. It was concluded that, in that context, the cessation of service requests constituted a material breach (Art. 1124 CC).

§2. In the case of judgment no. 656/2012, of 8 November, it is also not assumed that the mere suspension of supplies, considered in isolation, constitutes a material breach in the absence of exclusivity or minimum purchases. In the case at issue in that judgment, the appellant did not formally terminate the agreement nor exercise any right of termination, but rather cut off supplies and disconnected the car dealer from the computer system, preventing it from operating, while formally maintaining the relationship. The true causal reason for the ruling was the consummation of a *de facto* termination through *fait accompli*. The total suspension of supplies was not unlawful in itself,

but rather because of its function as a substitute for contractual termination, allowing the manufacturer to achieve its effects without assuming its legal consequences. Added to this were specific circumstances: the manufacturer's position of objective advantage (with another car dealer in the area) and the ambiguous stance adopted for months. Hence, the court classified the conduct as the most serious breach imaginable, subsuming it under Articles 1256 and 1258 CC.

§3. In the case of judgment no. 671/2016, of 16 November, the material breach stemmed from the principal's failure to maintain the minimum commercial relationship during the term of the agreement, thereby defeating its business purpose. The manufacturer had assumed costly obligations to manufacture and make available the product, which would lack logic without a prior and ongoing purchasing relationship. The court held that, even though there was no express minimum purchases clause, the principal had implicitly assumed (due to the structure of the agreement) the obligation to maintain the commercial relationship and to place some orders. The breach did not lie in the mere reduction of orders, but in the collapse of the business purpose that justified the investments undertaken.

§4. In the case of judgment no. 237/2014, of 23 May, the material breach occurred when the appellant unilaterally ceased placing orders before the investments made had been recouped, thereby directly affecting the business purpose of the agreement and arbitrarily exercising a discretionary right. The ruling links the breach to the disruption of the contractual

balance in a long-term agreement tied to significant initial investments.

§ 5. Supreme Court judgment no. 378/2026 of 10 March: it is clear that the legal doctrine contained in the above-mentioned rulings is not applicable

*In previous rulings, the repudiatory breach was based on specific circumstances that altered the business purpose of the agreement or concealed a de facto termination contrary to good faith*

to the present case. In those cases, breach of contract is not equated with the mere absence or reduction of orders in agreements lacking exclusivity or guaranteed minimums, but rather with specific circumstances that altered the business purpose of the agreement or concealed a de facto termination contrary to good faith: the existence of a contractual structure that generated legitimate expectations of continuity after years of uncontested performance; the discontinuance of supplies as a means to impose terms that had not been agreed; the formal maintenance of the contractual relationship while performance became impossible; or the disruption of the recoupment of investments made in anticipation of the relationship's continuity. None of these factors are present in the current dispute, in which the cancellation of the concrete agreements resulted from

the end customer's decision to modify the training model, a circumstance external to the relationship between the parties. There is no evidence that the defendant used the lack of orders as a means of pressure or that it unlawfully substituted a formal termination for a de facto termination; nor is there evidence of the existence of structural investments whose recoupment depended on the continuity of orders until the end of the term of the agreement, or of the assumption—whether express or implied, derived from the agreement's terms or established practice—of a minimum business activity obligation. On the contrary, this is a framework agreement without an exclusivity clause or a minimum volume undertaking, the internal structure of which does not allow for the inclusion of an order obligation that the parties did not establish.

### 3. Conclusion

Unless there are special circumstances — such as a situation where the supplier has incurred significant costs, has been required to make investments that have not yet been recouped, or the withdrawal is intended to seize an opportunity that should have been shared — there can be no repudiatory breach where a party to the supply of services ceases to place orders under an agreement that does not contain exclusivity or minimum orders clauses.