

Directive 86/653

coordination of the law of the Member States relating to self- employed commercial agents

Aim: harmonizing provisions of civil and commercial law on relations between the commercial agent and its principal

I. Scope

- definition of the commercial agent (art.1 § 2)
- not other activities (1 § 3 and 2)

II. Rights and obligations

- commercial agent (art.3)
- principal (art.4)

III. Remuneration

- **i) Fixation** : Agreement, customs or reasonable (taking into account all the aspects of the transaction) Art.6
- **ii) Commission** (i.e. remuneration or part of it which varies with the number or value of business transactions)
:
 - - during the contract (art.7)
 - - after the contract (art.8)
 - - due as soon as and to the extent that (art.10)
 - - extinguished (art.11) if the contract will not be executed, due to a reason for which the principal is not to blame
 - - statement of accounts (art.12)

IV. Contract : conclusion and termination

- *i) written* on request of each party or if provided for by the MS (art.13)
- *ii) converted* for an indefinite period if continued by both parties after the fixed period (Art.14)
- *iii) notice* for termination (15)
- *iv) after termination : indemnity* (17 § 2) with a ceiling or *compensation* without ceiling (17 § 3) + report of the Commission
 - - no indemnity nor compensation where (18):
 - -- default of the agent
 - -- termination by the agent, except if justified by circumstances attributable to the principal or on grounds of age, infirmity or illness of the agent
 - -- assignment to another person (with the agreement of the principal)
- *v) restraint of trade* (20) after termination : in writing, for a geographical area, a group of customers or a kind of goods ; maximum 2 years

No derogation by the parties

- their rights and obligations
- exigibility and extinction of the commission (10,11)
- indemnity and compensation (17,18)
- Statement of account: to the detriment of the agent (12)

Case law

- *Ingmar* (C-381/98): Articles 17 and 18 must be applied where the commercial agent carried on his activity in a Member State *although* the principal is established in a non-member country and a clause of the contract stipulates that the contract is to be governed by the law of that country.
- *Bellone* (C-215/97): the validity of an agency contract cannot be made conditional upon the commercial agent being entered in a register.