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**EVALUATION OF THE COUNCIL DIRECTIVE ON THE COORDINATION OF
THE LAWS OF THE MEMBER STATES RELATING TO SELF-EMPLOYED
COMMERCIAL AGENTS (Directive 86/653/EEC) / REFIT EVALUATION**

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1. EXECUTIVE SUMMARY

Background

The Commission Communication "REFIT – results and next steps"¹ identified the Commercial Agents Directive ('the Directive') as legislation that should be assessed given that it had never been evaluated since it entered into force in 1986 and there was an interest to know whether the Directive was still relevant to stakeholders and had EU added value. This evaluation therefore assesses performance of the Directive and examines whether it remains fit-for-purpose, delivers on its objectives at reasonable costs, is relevant, coherent and has EU added value.

The Directive affects a large and steadily growing market across a wide range of industrial sectors. It is estimated that in 2012 there were some 590 000 commercial agents in the EU, practically all SMEs, generating a combined turnover of EUR 260 billion (about 3 % of total commercial turnover) and providing employment to over 1 million people. On the other side of the commercial representation market, there are an estimated 1.7 million principals, 88 % of which are SMEs.

Historically, EU Member States had different rules regarding the rights and obligations of commercial agents and their principals. This created legal uncertainty and made it difficult in practice for market operators to use commercial representation across different Member States. Against this backdrop, the general objectives of the Directive, adopted in 1986, were to create a single market for commercial representation and eliminate barriers to the cross-border activities of commercial agents and their principals. More specifically, the Directive harmonises rules on: the rights and obligations of commercial agents and their principals; the remuneration of commercial agents; and the conclusion and termination of agency contracts, in particular any indemnity or compensation due to commercial agents when a contract ends.

Methodology

This evaluation assesses the functioning of the Directive, i.e. whether it has achieved its objectives and whether it is still fit-for-purpose today. The evaluation criteria are the Directive's: (1) effectiveness; (2) efficiency; (3) relevance; (4) EU added value; and (5) coherence with other policies.

Hard economic data to support the assessment has been difficult to find. Statistics and other quantitative data on the commercial agents market covering the period before and after the Directive's adoption do not exist.² Therefore, a counterfactual or comparative analysis is practically impossible to perform, at least in quantitative terms. This is particularly the case for the quantitative data needed for a comprehensive cost/benefit analysis of the Directive. To corroborate the findings of the evaluation, the evaluation process has built on a public consultation focused on stakeholders and a separate consultation of Member States. The consultation process aimed to collect evidence on the Directive's functioning and added value and to make it possible to assess the Directive's possible future. Other sources of information included data from Eurostat and information and data provided by representative associations and academics.

¹ COM(2013)685.

² Eurostat data for commercial representation is only available as from 2008.

Findings

Effectiveness: The Directive meets its objective of facilitating cross-border activities. Long-term economic data supporting this conclusion is only available for two countries (Germany and Austria). However, stakeholder feedback received during the public consultation corroborates the finding with a large degree of consensus. Most Member States having responded to the consultation also state that the Directive functions well.

Efficiency: Due to the lack of quantitative data from the period preceding and following the adoption of the Directive, the efficiency analysis relies mostly on qualitative data and information. On this basis, the costs arising from the Directive are limited and affordable. While the Directive does not create administrative burden, it does possibly entail incremental operational costs for principals in those countries where commercial representation has not previously been regulated (e.g. UK, Ireland and Sweden). The Directive creates significant operational and commercial benefits by facilitating cross-border activities. An analysis of the costs and benefits at the level of individual businesses, based on responses to the stakeholder consultation, shows that the benefits of the Directive generally outweigh its costs.

Relevance: The Directive's objectives and its importance in establishing and maintaining a single market for commercial representation remain relevant today. The market for commercial representation is still growing and the attractiveness of the business model, especially for SMEs aiming to operate across borders, has not suffered from the emergence of other alternative sales channels, such as e-commerce. Feedback from stakeholders and Member States confirms the Directive's relevance.

EU added value: The Directive still adds value to the single market, because of the level of harmonisation it ensures. The benefits generated through the Directive remain valid, in particular for SMEs. Consumers also benefit from an EU-wide framework for commercial representation as it makes it possible for them to access products and goods that would otherwise not be available in their country.

These views were confirmed by stakeholders. Most operators were concerned about the possible risks related to the possible withdrawal of the Directive and believed that the benefits of the internal market for commercial representation were only secure if the Directive continued to ensure the current level of harmonisation throughout the EU. Specifically, both agents and most principals feared the risk that, without harmonised European legislation, future regulatory adjustments in some Member States may lead to increasing fragmentation, which would cause problems for SMEs (agents and principals) that provide and use commercial representation services across borders.

Coherence with other policies: The Directive's objective to increase the cross-border activities of commercial representation is in line with the wider objective of the single market. Due to the nature of commercial agents and their principals, a Directive that facilitates commercial representation also supports the Commission's SME policy. The evaluation has not found any possible conflicts with other policy fields.

The conclusion of the evaluation is that the Directive meets its objectives and functions well. The Directive's benefits outweigh its costs, it remains relevant and continues to have EU added value. Based on these findings, it is recommended that the Directive is maintained in its current form.

2. INTRODUCTION

In December 2012, the Commission launched a regulatory fitness and performance programme (REFIT).³ The purpose of the REFIT programme is to identify opportunities to reduce regulatory costs and cut red tape, simplify regulation in order to meet policy goals, and achieve the benefits of EU regulation at the lowest possible cost. Fitness checks and evaluations of existing legislation are among the tools used by the REFIT programme to achieve these objectives.

The Commission's 'REFIT – results and next steps' communication⁴ identified the Commercial Agents Directive as legislation that should be assessed given that it had never been evaluated since it entered into force in 1986 and there was an interest to know whether the Directive was still relevant to stakeholders and had EU added value.

In June 2014, then DG Internal Market and Services (now DG Internal Market, Industry, Entrepreneurship and SMEs) launched an evaluation of the Commercial Agents Directive (hereinafter the 'Directive').⁵ The purpose of the evaluation is to assess the functioning of the Directive and whether it remains fit-for-purpose in terms of effectiveness, efficiency, relevance, coherence and EU added value. This is the first time the Directive is evaluated since its entry into force. The Commission has previously submitted a report on the application of a specific article of the Directive⁶ in 1996 (see 4.5).

3. BACKGROUND TO THE INITIATIVE

3.1. Objectives of the initiative

Commercial agents are self-employed intermediaries permanently authorised to negotiate the sale or purchase of goods in the name and on behalf of another person (the principal). Commercial agents may conclude transactions with another business (business-to-business or 'B2B') or directly with a final consumer (business-to-consumer or 'B2C'). Historically, EU Member States had different rules regarding the rights and obligations of commercial agents and their principals. This created legal uncertainty and made it difficult in practice for market operators to use commercial representation across different Member States.

Against this backdrop, the general objectives of the Directive are to:

- create a single market for commercial representation and
- eliminate barriers to the cross-border activities of commercial agents and their principals.

The Directive only applies to commercial representation in the sale and purchase of goods (as opposed to services). The focus area of the harmonisation envisaged by the Directive is the protection of commercial agents vis-à-vis their principals. Notwithstanding the focus on protection of agents, some provisions of the Directive can be considered as a protection of the principal, for example the clause on restraint of trade after the termination of the contract in Article 20.

³ COM(2012) 746.

⁴ COM(2013) 685 final.

⁵ Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (OJ L 382 of 31.12.1986, p. 17).

⁶ COM(1996) 364.

As explained in the second recital of the Directive, coordination was necessary because the differences in national laws on commercial representation substantially affected the conditions of competition and how the activity could be carried out within the internal market. Such differences were detrimental to the protection available to commercial agents vis-à-vis their principals and to the security of commercial transactions, in particular when principal and commercial agents were established in different Member States. According to the third recital of the Directive, the existing rules concerning conflicting laws in the area of commercial representation were not sufficient to ensure the proper functioning of the internal market.

Against this backdrop, the key specific objectives of the Directive are to create harmonised rules on:

- the rights and obligations of commercial agents and their principals;
- the remuneration of commercial agents, and
- the conclusion and termination of agency contracts, in particular the indemnity or compensation due to commercial agents in case of a contract termination.

The rules established by the Directive on the compensation or indemnity due to commercial agents in the case of a contract termination built on existing legislation in Germany and France and its settled case law. When the Directive was adopted, only two Member States did not have rules on protecting agents in cases of contract termination: UK and Ireland.

Note that the Directive does not aim to fully harmonise the rules for self-employed agents, as it does not regulate all aspects of the relationship between principals and self-employed commercial agents. Instead, it offers options to Member States. Member States may go beyond the minimum protection requirements laid down by the Directive and offer greater protection to commercial agents.⁷

⁷ Judgment of the Court of 17 October 2013 in Case C-184/12, Unamar, p. 50.

In summary, the Directive’s intervention logic can be described as follows:

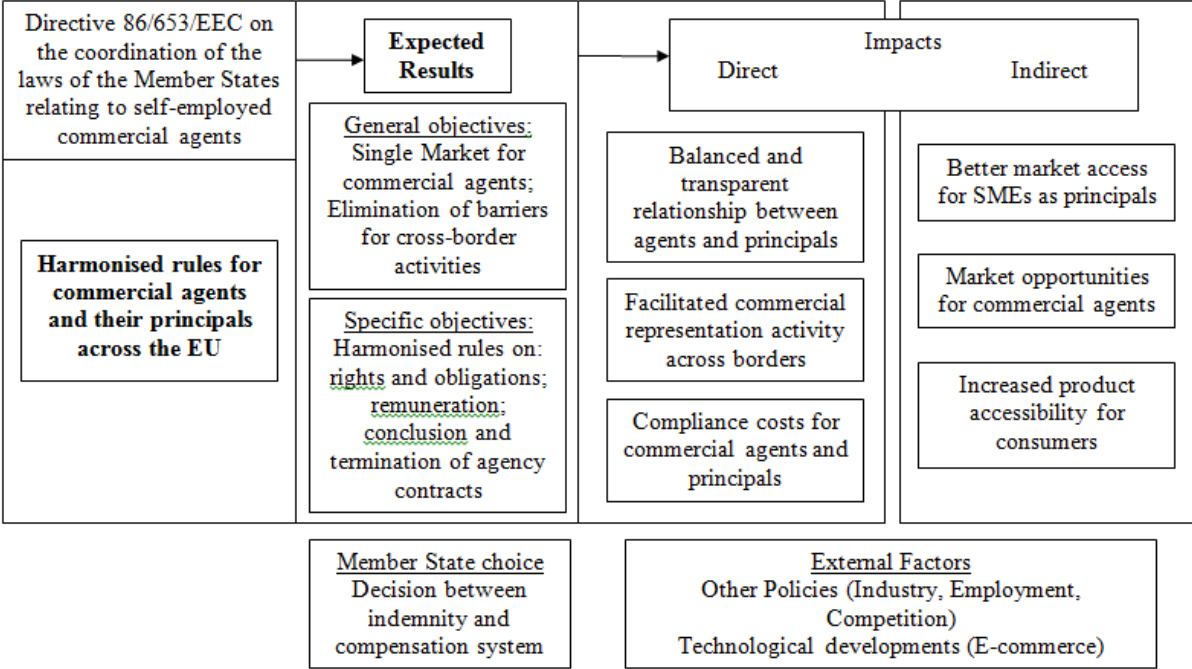


Figure 1 — The Directive’s intervention logic

3.2. Description of the initiative

3.2.1. *Scope*

Chapter I of the Directive (Articles 1 and 2) defines the commercial agents who fall under the Directive’s scope. Under Article 1(2), the Directive applies to self-employed intermediaries who have continued authority to negotiate the sale or purchase of goods on behalf of another person (the ‘principal’) or to negotiate and conclude such transactions on behalf of and in the name of that principal. It follows from this definition that the Directive excludes from its scope the commercial agents who:

- are not self-employed;
- do not have continued authority;

According to the case law of the Court of Justice, the number of transactions is normally an indicator of the continuing authority but it is not the sole determining factor.

- are not active in the sale or purchase of goods (for example those providing services, e.g. insurance brokers);

Note that a number of Member States have extended the rules of the Directive to self-employed commercial agents selling services. Generally, where there might be a problem of protection of self-employed commercial agents in the sector of services, Member States may take the measures they consider necessary. The Directive does not constitute an obstacle to adopting such measures, as self-employed commercial agents in the area of services do not fall under the Directive’s scope.

- do not conclude the sale or purchase of goods on behalf and in the name of the principal (e.g. independent car dealers).

The Court of Justice ruled that commercial agents who act on behalf of a principal but in their own name do not fall under the scope of Directive 86/653/EEC.⁸

3.2.2. *Rights and obligations of the parties*

Chapter II (Articles 3 to 5) sets the rights and obligations of the parties (commercial agents and principals) from which they cannot derogate. According to the Directive, both parties must act dutifully and in good faith.

There are three particular obligations for commercial agents from which no derogation is possible: to make proper efforts to negotiate and, where appropriate, conclude the transactions he is instructed to take care of, to communicate to the principal all the necessary information available to the agent, and to comply with reasonable instructions given by the principal.

The Directive also imposes similar obligations on the principal who has to provide the commercial agent with the necessary documentation and other information, including in particular information within a reasonable period about a significantly lower future volume of transactions and information about the acceptance or refusal of transactions procured by the commercial agent. These two particular information obligations do not generally entail any costs for the principal and are necessary for the commercial agent in order to avoid useless efforts and costs and be able to correctly calculate his remuneration.

3.2.3. *Remuneration of the commercial agent*

Chapter III (Articles 6 to 12) deals with the remuneration of the commercial agent. The Directive does not bring prejudice to Member States' compulsory provisions concerning the level of remuneration of commercial agents. It follows that Member States may set the level of remuneration of commercial agents, if they estimate that there is a need to protect the principal or customers from excessive levels of commercial agents' remuneration.

The Directive deals in particular with the commission, the most usual form of remuneration of the commercial agent which varies with the number or the value of business transactions.

Under Article 7(1), the commercial agent is entitled to a commission during the period of validity of the contract not only when the transaction was concluded as a result of the agent's action, but also when the transaction was concluded with a third party previously acquired by the commercial agent as a customer for transactions of the same kind. Moreover, under Article 7(2) of the Directive, if the commercial agent was entrusted with or has an exclusive right to a specific geographical area or group of customers, the agent is entitled to a commission for transactions concluded with a customer belonging to that area or group.

Article 12 of the Directive gives commercial agents the possible means to be clearly informed about the commissions they are entitled to. It provides mandatory rules (without possibility of derogation by the parties to the detriment of the commercial agent) imposing on the principal the obligation to supply the commercial agent with a statement of the commission due. It also gives the commercial agent the right to demand all information, in particular an extract from the principal's books if this is provided for in national legislation.

⁸ Order of the Court of 10 February 2004 in Case C-85/03, Mavrona.

3.2.4. *Conclusion of the contract*

Article 13(1) of the Directive gives every party the right to receive from the other one, on request, a signed written document setting out the terms of the agency contract. Waiver of this right is not permitted. Article 13(2) of the Directive gives Member States the possibility to provide that an agency contract is not valid unless there is written evidence.

It follows that the Directive imposes neither the written form⁹ of the contract nor its registration. Therefore, it does not entail any costs or administrative burden for either party. It is up to the parties to request a signed written document and up to Member States to require a written document as a condition for its validity. It follows that the parties will only incur the cost of drafting a written document if they or the Member States make use of the possibilities offered under Article 13 of the Directive. In any case, the cost would be rather insignificant.

3.2.5. *Termination of the contract*

3.2.5.1. The prior notice obligation of the principal

Under Article 15 of the Directive, if an agency contract is concluded for an indefinite period,¹⁰ either party may terminate it by giving prior notice. Prior notice is a classic obligation for terminating contracts concluded for an indefinite period. Both the principal and the commercial agent must respect this obligation, so both parties are treated equally, without particular protection for the commercial agent; violating the obligation entails responsibility for any damages.

However, the Directive does not affect national legislation that provides for the immediate termination of a contract because of one party's failure to carry out all or part of its obligations or if there are exceptional circumstances (Article 16 of the Directive).

3.2.5.2. Choice between indemnity and compensation system

Articles 17-19 of the Directive regulate the protection of the commercial agent after the termination of the contract. Article 17 is the Directive's central provision.

As the Court has already held, the system established under Article 17 of the Directive is mandatory.¹¹ Articles 17-19 of the Directive guarantee minimum protection for all commercial agents established in the EU. A principal cannot circumvent these provisions by using a choice-of-law clause without considering whether that choice could be detrimental to the commercial agent.¹² The Court of Justice held that Articles 17 and 18 of the Directive must be applied if the commercial agent carries out its activity in an EU Member State, even if 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 third country.¹³

Article 17(1) of the Directive sets up a system that enables Member States to choose between two approaches. Member States must take the measures necessary to guarantee that, if the contract is terminated, the commercial agent will receive either an indemnity determined

⁹ According to a survey carried out in the UK by Dr Saintier, 67.5 % of commercial agents in the UK still do not have a written contract with their principal.

¹⁰ As such is considered also an agency contract for a fixed period which continues to be performed by both parties after that period expired (Article 14 of the Directive).

¹¹ Case C-381/98 Ingmar [2000] ECR I-9305, paragraph 21.

¹² Case C-381/98 Ingmar [2000] ECR I-9305, paragraph 25.

¹³ Judgment of the Court of 9 November 2000 in Case C-381/98, Ingmar. .

according to the criteria set out in Article 17(2) or compensation according to the criteria set out in Article 17(3).¹⁴

Articles 17 and 18 of the Directive prescribe a precise framework within which the Member States may exercise their discretion as to the choice of methods for calculating the indemnity or compensation to be granted. Although the system established by Article 17 of the Directive is mandatory and prescribes a framework,¹⁵ it does not give any detailed indications as regards the method for calculating the indemnity for terminating the contract.¹⁶

Under the indemnity system [Article 17(2)], the commercial agent is entitled to an indemnity if and to the extent to which s/he brought new customers to the principal or had significantly increased the volume of business with existing customers¹⁷ after termination of the contract. The indemnity represents the continuing benefits (goodwill) to the principal after termination of the contract as a result of the agent's work. The agent receives a commission while the contract is valid, but this does not reflect the value of the goodwill generated for the principal; this is why payment of the goodwill indemnity is commercially justified. If no goodwill has been generated, the principal should not pay an indemnity. The Directive sets an indemnity level ceiling equal to one year of the agent's average annual remuneration over the preceding five years (or the average for the period in question if the contract lasted less than five years).

Under Article 17(2) (c), receiving an indemnity does not prevent the commercial agent from seeking damages. This provision governs situations where, in addition to the indemnity under Article 17(2) of the Directive, under national law the agent is entitled to seek damages, e.g. for the principal breaching the contract or failing to respect the notice period provided for in the Directive.¹⁸

Under the compensation system [Article 17(3)], the agent is entitled to compensation for the damage suffered as a result of the termination of the contract. The main differences compared with the indemnity system are that:

- the agent has to prove the actual loss suffered;
- there is no maximum level of compensation;
- there is no distinction between new and existing customers.

The Commission has submitted to the Council a report on the application of Article 17 of the Directive, as this was required under Article 17(6) of the Directive. The report provides detailed information on the actual calculation of the indemnity and is intended to facilitate a more uniform interpretation of Article 17.¹⁹

4. EVALUATION CRITERIA AND EVALUATION QUESTIONS

The evaluation of the Directive has been carried out with particular attention to the following evaluation criteria and questions in order to guide the analysis of the Directive's functioning:

¹⁴ Judgment of the Court of 23 March 2006 in Case C-465/04, *Honyvem*, p. 20.

¹⁵ Judgment of the Court of 9 November 2000 in Case C-381/98, *Ingmar*, p. 21.

¹⁶ Judgment of the Court of 23 March 2006 in Case C-465/04, *Honyvem*, p. 34.

¹⁷ The German *Bundesgerichtshof* submitted a preliminary question to the Court of Justice of the EU relating to the definition of 'new customers' (Case C-315/14).

¹⁸ See the Commission's report on the implementation of Article 17 of the Directive, COM(96)364 final, p. 5.

¹⁹ *Ibidem*, p. 35.

- Effectiveness: Has the Directive been effective in meeting, or moving towards, the defined objectives? Did the legislation help to facilitate the cross-border activities of commercial representations? What effects did the Directive have on SMEs (i) as commercial agents and (ii) as principals?
- Efficiency: Has the Directive delivered its results efficiently in terms of the resources used? Does it create administrative burden? What are the main costs and benefits of the Directive for (i) commercial agents and (ii) principals? At overall market level, did the benefits of the Directive outweigh its costs?
- Relevance: Are the objectives of the Directive still relevant today?
- EU added value: What is the ongoing added value of EU legislation in this field? Is the Directive still fit for purpose in meeting its objectives in the future? What would be the effects if the Directive were to be withdrawn and Member States were free to adjust their national regulatory frameworks?
- Coherence with other policies: To what extent is the Directive consistent with other policy objectives (i.e. other than the objective of a single market) at EU and national level?

5. METHOD

The evaluation assesses the functioning of the Directive, i.e. whether the Directive has achieved its objectives, whether it is efficient, coherent and to which degree it is relevant today and still has an added value at the EU level.

Hard economic data to support the assessment has been difficult to find. Eurostat data for commercial representation is only available as of 2008. Other statistics and quantitative data on the commercial agents market covering the period before and after the Directive's adoption do not exist. This applies, in particular, to quantitative data for a comprehensive cost / benefit analysis of the Directive. There is limited academic literature. Therefore, the evaluation criteria and questions are assessed mostly qualitatively.

To gather information for the evaluation, the aforementioned evaluation questions were incorporated in a public consultation targeting interested stakeholders and a separate consultation of Member States. The objective of the consultation process was to collect concrete evidence on the functioning of the Directive and to enable an assessment of the Directive's possible future.

The consultation process was conducted between August and November 2014 and involved Member States, competent authorities, commercial agents and their principals, representative associations, academics, lawyers, consumers and citizens.

15 Member States contributed to the evaluation: Austria, Croatia, Cyprus, Czech Republic, Denmark, France, Germany, Hungary, Ireland, Luxembourg, Malta, Poland, Slovakia, Spain and Sweden. There are no Member State expert groups or permanent committees dealing with legislation on commercial representation and the responsible ministries for such legislation vary between Member States. This implied that consultation enquiries had to be transmitted to the Permanent Representatives (ambassadors) of each Member State making direct follow-up enquiries difficult. This explains the limited response rate in the Member State consultation.

The public stakeholder consultation yielded 276 stakeholders responses, the vast majority of which came from commercial agents or their representatives (212 responses). There were also replies from 42 principals and 22 other stakeholders (industry federations representing both commercial agents and principals, as well as lawyers and academics).

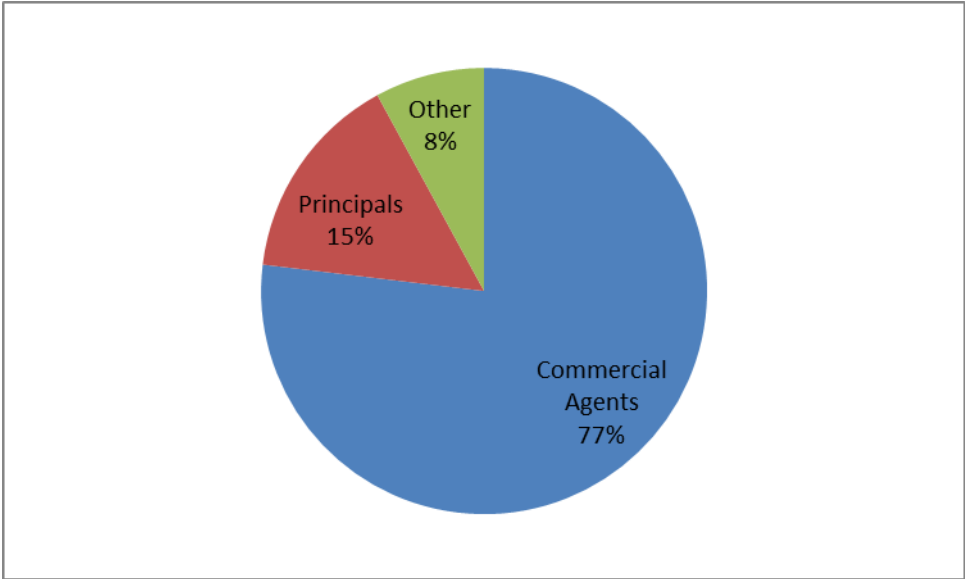


Figure 2 — Public consultation responses by stakeholder category

A large majority of stakeholder replies (more than 90 %) came from four Member States: France, Germany, Austria and the UK. The remaining responses came from stakeholders in nine Member States (Italy, Netherlands, Belgium, Finland, Denmark, Greece, Spain, Luxembourg and Sweden) and one non-EU country (Norway). Finally, there were seven responses from EU-wide associations or federations²⁰.

Overall, the diversity of respondents to the stakeholder consultation was relatively low.

Firstly, significantly more agents than principals contributed to the stakeholder consultation. This could result from the fact that commercial agents are organised in EU-wide and national associations which may have helped create awareness of the public consultation. Similar associations do not exist for principals of commercial agents. However, as shown by the results below, there was a significant level of consensus between agents and principals, which limits the risk of misinterpreting the consultation data due to a bias towards agents.

Secondly, as mentioned above, a high proportion of stakeholder responses originated from four Member States (France, Germany, Austria and the UK). Notably, the number of responses of individual agents from Italy was low in relation to the large proportion of Italian commercial agents in the European market. However, the national association representing Italian agents did reply to the consultation. Furthermore, 15 countries contributed to the separate Member State consultation — presumably on the basis of national stakeholder feedback including the views of principals. Again, the relatively strong level of consensus

²⁰ EDL (Association of European Distribution Lawyers), EuroCommerce (Association of European retailers and wholesalers), FECC (European Association of Chemical Distributors), UPEI (Union of European Petroleum Independents), DSE (Direct Selling Europe), ECFD (European Confederation of Fuel Distributors), CECRA (European Council for Motor Trades and Repairers).

between Member States reduces the risk that a bias towards a small group of countries would distort the interpretation of the stakeholder responses.

Other sources of information included data from Eurostat (available only as of 2008) as well as information and data provided by representative associations and academics. As mentioned earlier, due to the fact that the Directive was adopted a long time ago, hard economic data for assessing the effects of the Directive is very limited. Therefore, the public stakeholder consultation and the Member State consultation were the main sources of information for assessing the Directive's effects.

6. IMPLEMENTATION STATE OF PLAY

The Directive was adopted in December 1986 and was fully transposed in all then-Member States in 1995. It is now fully transposed in all 28 Member States (see the national measures transposing the Directive in Annex 3). The Commission only received one complaint since the Directive's adoption. The complaint referred to a private conflict and was therefore re-assigned to the competent national jurisdictions. European case law related to the Directive is provided in Annex 4 and is also referred to in the legal analysis in the following section.

Commercial agents in the EU are currently active in a wide range of industry sectors, such as:

- agricultural materials,
- textiles and footwear,
- fuels and chemicals,
- timber and building material,
- machinery and industrial equipment,
- furniture and household equipment,
- food and beverages, and
- medical industries.

Practically all commercial agents (between 90 % and 100 % depending on the Member State) are SMEs or micro-enterprises.

Producing businesses often use commercial representation to enter a new market in a different country, especially if they lack the resources to establish their own presence abroad. Therefore, the companies using cross-border commercial representation (principals) are also mostly SMEs (between 50 % and 90 % of all principals depending on the Member State).

It is estimated that in 2012 there were some 590 000 commercial agents in the EU-28, generating a combined turnover of EUR 260 billion (about 3 % of total commerce turnover) and providing employment to over 1 million people.²¹

²¹ Source: EuroCommerce based on Eurostat data. According to further estimates based on data provided by EuroCommerce members, the data is conservative and tends to underestimate the total number of commercial agents in the EU as it excludes the B2C segment. The total number of commercial agents is therefore around 740 000.

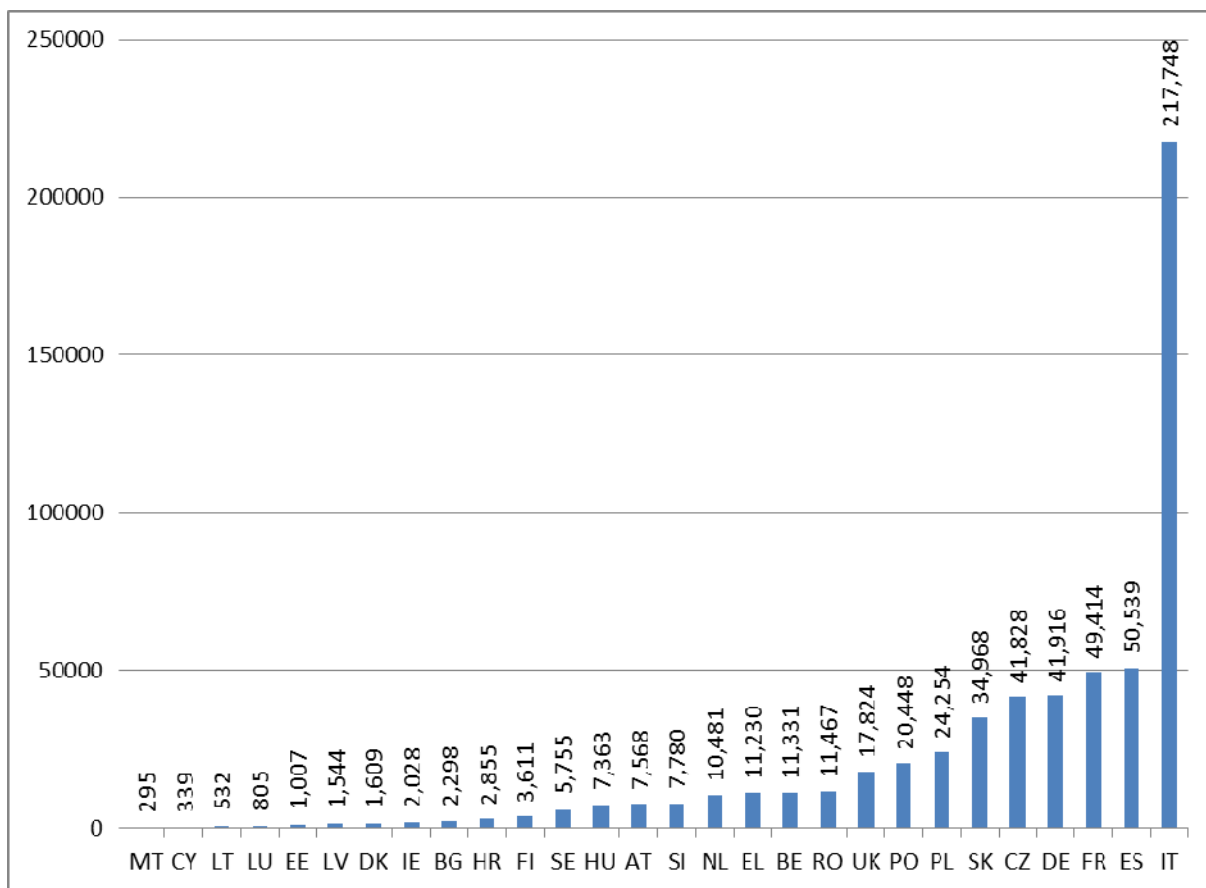


Figure 3 — Number of commercial agents by Member State (2012)²²

Eurostat data shows that the number of contractual agents and people employed and the amount of turnover generated have increased between 2008 and 2012. On the other side of the commercial representation market, there are an estimated 1.7 million principals, 88 % of which are SMEs.²³

Notably, the commercial representation market is growing, which implies that, despite the success of alternative sales channels such as e-commerce, commercial representation remains an attractive commercial proposition and is by no means a declining business model.

Annex 2 includes aggregated data and information provided by individual agents and principals during the public stakeholder consultation.

At national level, market characteristics (proportion of SMEs and micro-enterprises, proportion of cross-border relationships, etc.) vary between countries. The Commission received estimates related to these characteristics from six Member States (Germany, France, Spain, Sweden, Malta, and Cyprus). These numbers consistently confirm the importance of the commercial representation model for micro- and small enterprises.

In Germany, France, Spain and Cyprus, almost all commercial agents (between 99 % and 100 %) are SMEs or sole proprietors. In Sweden and Malta the percentage of SMEs and micro-enterprises is around 90 %, hence 10 % of commercial agents represent larger companies in these two countries.

²² Source: Eurostat. Data for Malta dates from 2010.

²³ Source: EuroCommerce based on Eurostat data.

As concerns principals, there is also a strong bias towards small companies. In the larger countries providing data (Germany, France, Spain), the vast majority of all principals (80 % or more) are SMEs. In the smaller countries, the percentage of SMEs among principals is lower but never below 50 % (80 % in Cyprus, 75 % in Malta and 50 % in Sweden).

The degree to which commercial agents operate across borders is correlated with the size of the domestic market. In smaller economies, i.e. Sweden, Malta and Cyprus, cross-border relationships dominate (more than 90 % of all relationships). For these countries, intra-EU commercial representation accounts for 70 % to 80 % of all relationships, with the exception of Malta where it accounts for only 20 %. Cross-border activities are less important but still significant for agents in larger countries and constitute 3 % in Spain, 25 % in Germany and 40 % in France.

7. ANSWERS TO THE EVALUATION QUESTIONS

7.1. Effectiveness: Impact of the Directive on facilitating cross-border activities

Although it is difficult to assess the impact of a Directive that was adopted almost 30 years ago in quantitative terms, there are strong qualitative indications that the Directive has had a significant impact on facilitating cross-border activities and creating a single market for commercial representation, and thus meeting its objectives.

A significant increase in the number of commercial representation relationships made across borders over the last 20-30 years is a good indicator for the Directive's actual market impact. Long-term data is available for Germany and Austria. The proportion of German agents representing principals from other EU Member States went from 26.5 % in 1984 to 68 % in 2014. A study from Austria shows that the proportion of Austrian commercial agents operating in at least one foreign country increased from 12 % in 2000 to 39 % in 2014, while the proportion of foreign principals using Austrian commercial agents increased from 30 % to 64 % in the same period.

Based on feedback from the relevant national associations, the developments described above could be attributed to a large extent to the Directive's impact. In qualitative terms, these effects can be explained by a number of different reasons and observations:

- The Directive ensures legal certainty for agents and principals due to a common transparent framework across the EU.
- The Directive enables simplified and accelerated contract negotiations between agents and principals across borders.
- The Directive's harmonised definition of the rights and obligations of trading partners is particularly important for SMEs planning cross-border activities.
- The Directive's legal interpretation by the European Court of Justice makes it impossible for its provisions to be circumvented through choice-of-law outside the EU (see 4.5.2).

A number of Member States confirm these findings. Of the 15 Member States having responded to the consultation, eight specifically mentioned the Directive's effect on facilitating cross-border operations²⁴. Six of these eight Member States saw a significant

²⁴ Germany, France, Spain, Poland, Czech Republic, Sweden, Cyprus and Malta.

effect on facilitating cross-border operations and two saw a partial effect. The remaining seven Member States had not analysed the cross-border effect of the Directive and could not comment on the question.

The public stakeholder consultation underlined the Directive’s importance for enabling cross-border activities, with a very large majority of responding stakeholders (85 %) attributing a significant impact to the Directive.

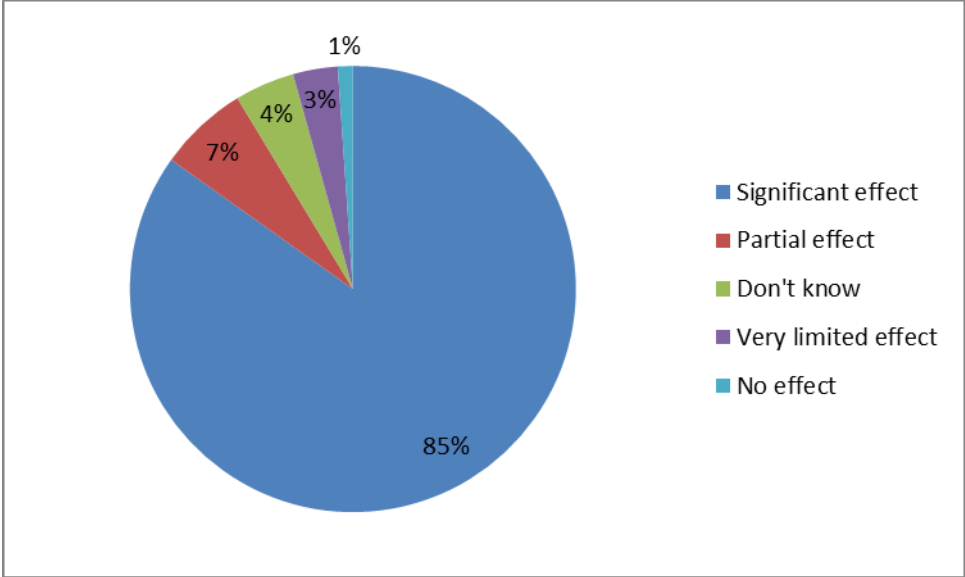


Figure 4 — Stakeholder responses on the Directive’s effect on facilitating cross-border activities (N=276)

This view was even stronger among the commercial agents and their representatives who responded. More than 92 % of respondents in this group said that the Directive’s effect was significant. The views of principals were more nuanced. Almost 60 % said that the Directive’s effect was significant, while 21 % saw a partial effect and 10 % saw a very limited effect or no effect at all. The remaining 9 % stated that they were not in a position to assess the effect. The stakeholders who only saw a limited effect or no effect at all said that the framework provided by the Directive was too general and still allowed for inconsistent specific rules at national level. These respondents thought that a stronger degree of harmonisation would be desirable.

Conclusion

The Directive meets its objective of facilitating cross-border activities. Long-term economic data supporting this conclusion is available for two countries (Germany and Austria). Stakeholder feedback in the public consultation corroborates this finding with a large degree of consensus. Furthermore, eight of the 15 Member States having responded to the consultation state that the Directive had an effect in facilitating cross-border operations while the other seven Member States did not analyse this aspect. Specific suggestions by three Member States on the provisions of the Directive are discussed in section 6.4.

7.2. Efficiency: the Directive's costs and benefits for commercial agents and principals

As already mentioned earlier in the report, quantitative data for a cost/benefit analysis does not exist due to the amount of time that has passed since the Directive was adopted. Therefore, the identified costs and benefits are described in qualitative terms.

Benefits

The following main benefits can be attributed to the Directive:

- The Directive sets out minimum standards for compensation and indemnity measures for commercial agents in situations where a principal terminates an agency contract. Although this is a benefit for agents, it is a cost for principals, at least in the Member States where similar compensation systems did not exist previously (e.g. UK). Nevertheless, the legal certainty and harmonisation achieved through the Directive in the areas of compensation and indemnity is a benefit for principals, especially SMEs, as well as facilitating cross-border commercial representation.
- The Directive eliminates or substantially reduces the need for in-depth research and analysis of the regulatory framework for commercial representation in other Member States. This makes it possible to avoid costs, to reduce administrative burden and to use contract templates across the EU. The Directive also helps avoid legal consulting and translation costs. These benefits apply to both agents and principals seeking to operate outside their country of origin.
- The Directive helps commercial agents from different countries to develop European cooperation networks, increasing the possible commercial reach for the benefit of principals.

Costs

Qualitative stakeholder feedback shows that the Directive does not cause administrative burden. Nevertheless, it could entail additional operational costs for principals as it ensures a minimum standard for the protection of commercial agents — at least in those Member States where a similar degree of protection was previously not granted to agents. This applies to the UK, Ireland and Sweden. The main element of this protection is that principals must pay indemnity or compensation after termination of the contract. Nevertheless, these potential costs incurred by principals are a compensation for the investments and efforts of commercial agents to increase the sales of the principals. Therefore, the Directive strikes a balance between the interests of the agents and principals.

Conclusion

The costs of the Directive are limited and affordable. Although the Directive does not create administrative burden it could possibly entail incremental operational costs for principals in those countries where commercial representation has not been regulated previously (UK, IE, SE). At the same time, the Directive creates significant benefits in operational and commercial terms by facilitating cross-border activities. A comparison between the costs and benefits at the level of individual operators follows in the next section.

7.3. Effectiveness and efficiency: Overall effect on individual market participants

The Directive’s effect on individual market participants can best be assessed based on the stakeholder consultations carried out during the evaluation process.

An overwhelming majority of responding stakeholders (87 %) saw only positive effects for individual market players, especially better opportunities to participate in and benefit from the internal market.

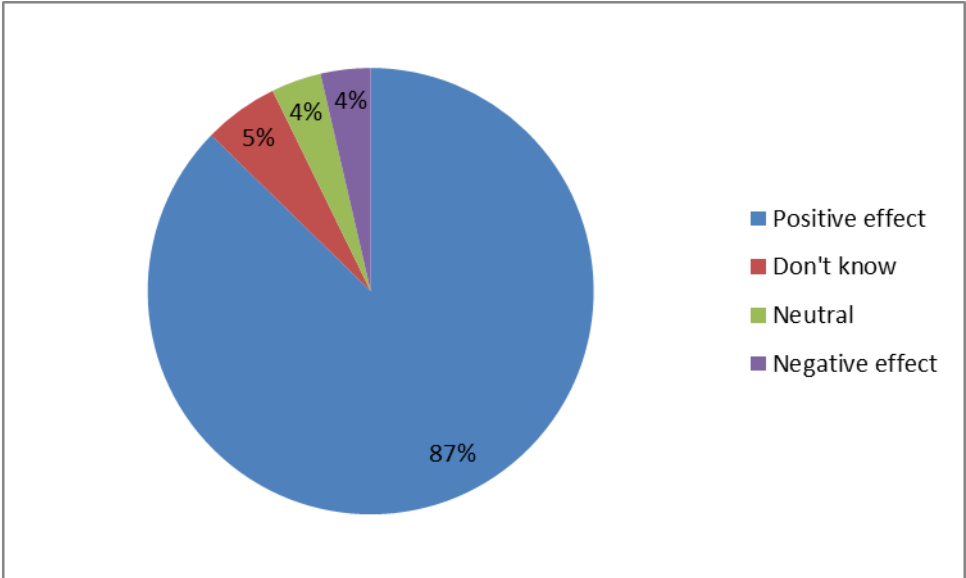


Figure 5 — The Directive’s effect on market participants (N=276)

Those who saw a positive effect of the Directive said that by facilitating cross-border activities the Directive has helped commercial agents and principals, in particular SMEs, to grow their business outside their country of origin. In many cases, this had a direct and often significant impact on agents’ revenue; it also clearly benefited the principals who would not have considered expanding their business abroad without the possibility for commercial representation.

A number of respondents to the consultation provided feedback on how much the number of their cross-border contracts increased due to the Directive.

Specific examples:

One commercial agent who responded to the public consultation said that their number of cross-border activities had tripled due to the Directive’s adoption and its effects.

A commercial agent from Germany said that he was able to engage with five principals in Austria and Italy as a direct consequence of the Directive.

Figure 2 provides an overview of how agents and principals perceived the Directive's effects.

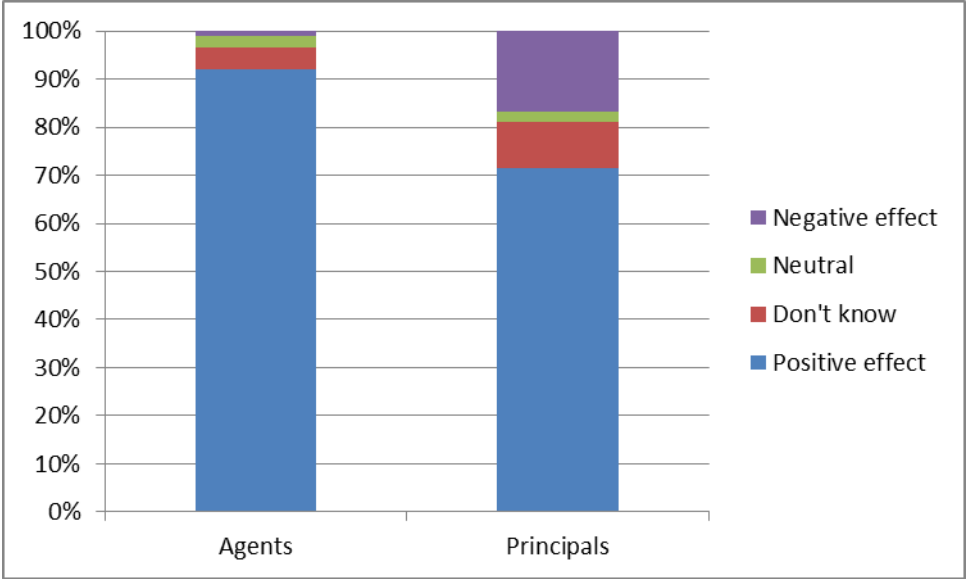


Figure 6 — The Directive's effects as perceived by agents (N=212) and principals (N=42)

All seven principals who saw a negative effect for market players were from the UK. Nevertheless, among all principals who responded, the number of those who saw a positive effect (30 respondents) clearly exceeded the number of those who saw a negative effect (seven respondents).

When asked how the Directive's benefits compared with its costs, stakeholders' responses had a strong tendency towards benefits outweighing costs, with 81 % of stakeholders saying that the benefits were much higher than the costs and 4 % saying that they were slightly higher.

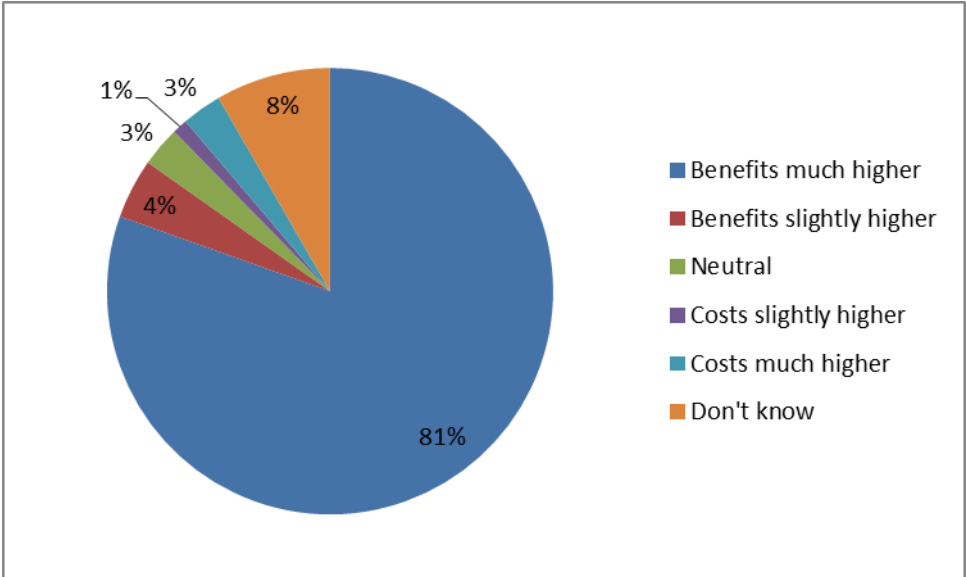


Figure 7 — The Directive's benefits vs costs (N=276)

A breakdown of the numbers based on the two main stakeholder categories shows that 87 % of commercial agents perceive the benefits as much higher than the costs, and 2 % as slightly higher.

For principals, these percentages are 55 % and 14 %, respectively. 14 % of responding principals said that the costs were much higher than the benefits, while 7 % said that the benefits and costs were comparable (10 % said they did not know whether the benefits or costs were higher).

The views of Member States were consistent with the ones received in the public stakeholder consultation. Around half of Member States stated that the Directive had a positive effect for commercial agents (8 out of 15 Member States) and for principals (7 Member States). One Member State responded that the general effect was neutral, and the remaining six Member States stated that they had not analysed the effect of the Directive on market participants.

7.4. The Directive's relevance and EU added value

Relevance

The Directive's objectives and its importance in establishing and maintaining a single market for commercial representation remain relevant today. As described in section 2 of the report, the market for commercial representation is still growing and the attractiveness of the business model, especially for SMEs aiming to operate across borders, has not suffered from the emergence of other alternative sales channels, such as e-commerce. The feedback of stakeholders and Member States confirms the Directive's relevance.

Most market participants were very concerned about the risks related to the possible withdrawal of the Directive and believed that the benefits of the internal market for commercial representation were only secure if the Directive continued to ensure the current level of harmonisation throughout the EU. Specifically, both agents and most principals feared the risk that, without harmonised European legislation, future regulatory adjustments in some Member States may lead to increasing fragmentation, which would cause problems for SMEs (agents and principals) that provide and use commercial representation services across borders.

Added value

It can be assumed that, through the level of harmonisation it ensures, the Directive still adds value to the internal market today. The benefits generated through the Directive (described in the previous sections) remain valid, in particular for SMEs. Consumers also benefit from an EU-wide framework for commercial representation as it makes it possible for them to access products and goods that would otherwise not be available in their country.

Member States' views

Most Member States who contributed to the evaluation held a positive view of the Directive. Specifically, 11 Member States saw that the Directive had added value. The main advantages mentioned by these Member States were that the Directive ensured legal certainty and a predictable framework for cross-border contracts, thereby stimulating the internal market for commercial representation. The four remaining Member States who contributed to the evaluation said that they had not analysed the Directive's impact in detail and therefore did not have a view on whether it still added value or not. Only two of the 15 responding Member States had general doubts on whether the Directive was still required.

Stakeholder views

The positive views on the Directive's added value were confirmed in the stakeholder consultation. As many as 196 out of 276 respondents considered the Directive as 'perfectly fit

for purpose', giving it a maximum rating of 10 on a 10-point scale. As should be expected due to the overall population of respondents, a significant majority of maximum ratings came from commercial agents. Nevertheless, 29 respondents from other categories, most of them principals, had the same view.

Only 14 respondents gave the Directive a rating of 5 or below. Most of these were principals based in the UK, so the low rating was presumably driven by the increase in operational costs described in the previous section (the Directive introduced measures to protect commercial agents where previously none existed).

The overall distribution of ratings from 1 (not at all fit-for-purpose) to 10 (perfectly fit-for-purpose) is shown in the figure below.

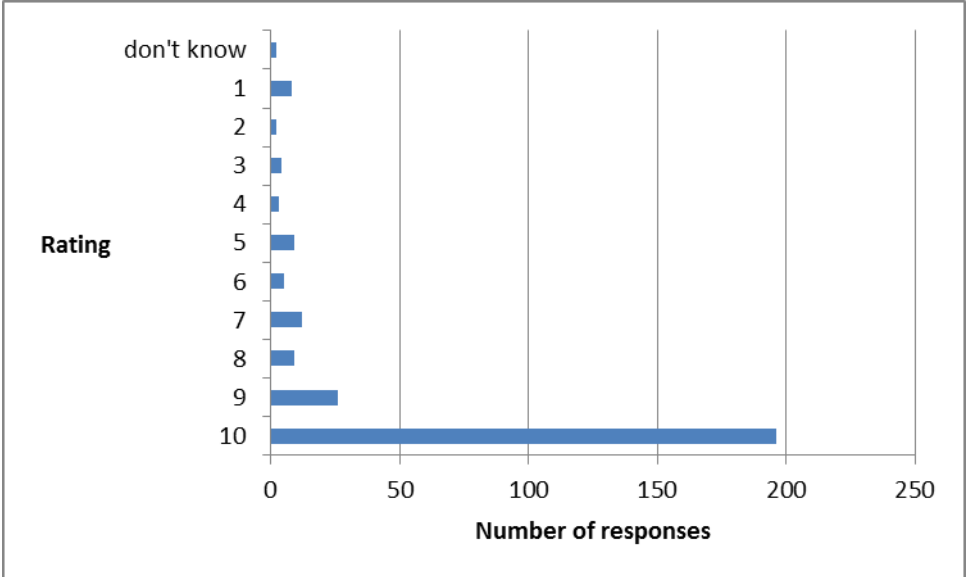


Figure 8 — Distribution of fit-for-purpose ratings across all respondents (N=276)

Although the distribution of ratings differs between commercial agents and principals, in both cases there is a clear tendency in favour of considering the Directive fit-for-purpose. The following two figures show the distributions for commercial agents and principals.

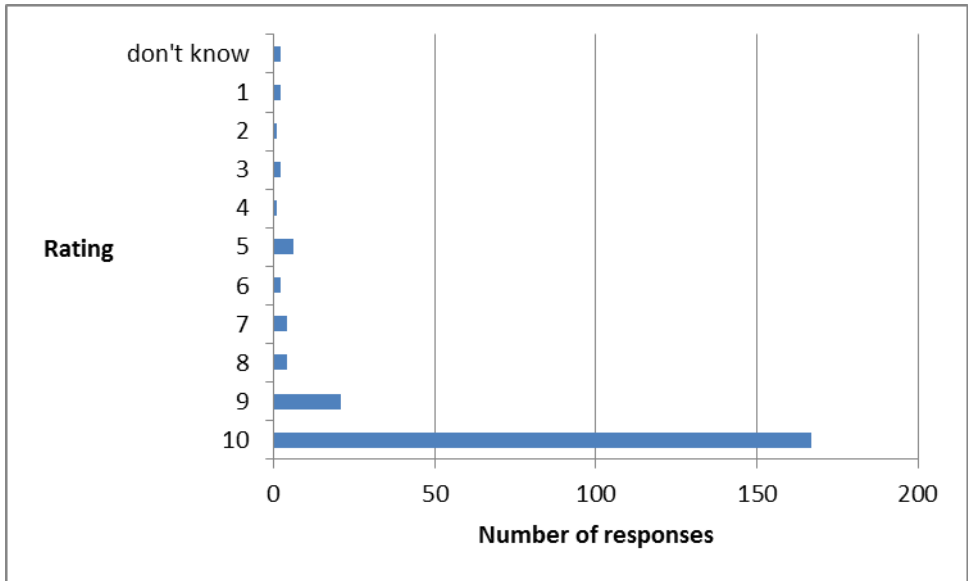


Figure 9 — Distribution of fit-for purpose ratings across agents (N=212)

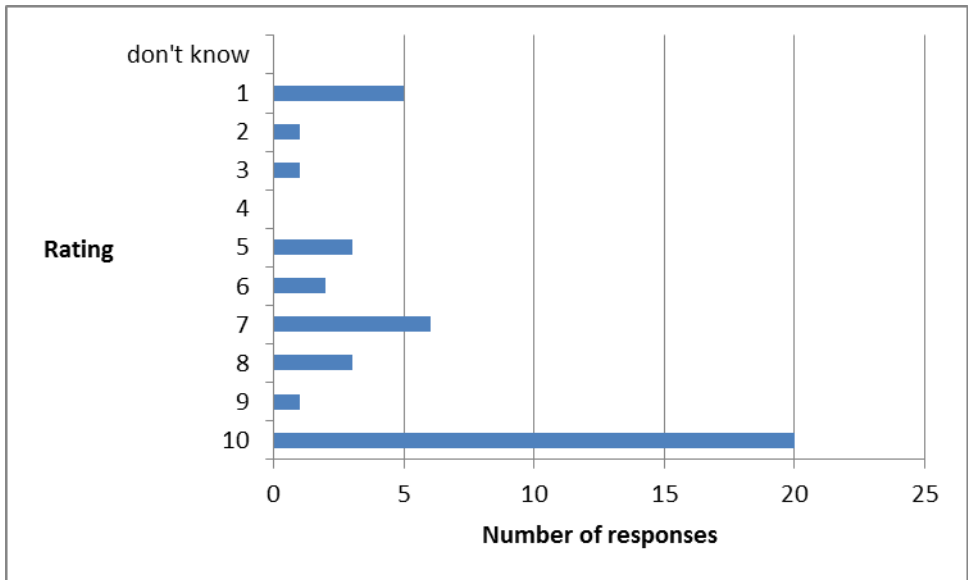


Figure 10 — Distribution of fit-for-purpose ratings across principals (N=42)

Based on the described benefits of the Directive and its importance in establishing and maintaining a single market for commercial representation, there is a risk of less harmonisation and, hence, possible fragmentation if the Directive were to be repealed.

The stakeholder consultation confirmed this. Most respondents were very concerned about the risks related to the Directive’s possible withdrawal and believed that the benefits described previously were only secure if the Directive continued to ensure the current level of harmonisation throughout the EU. Specifically, both agents and most principals feared that, without harmonised European legislation, future regulatory adjustments in some Member States may lead to increasing fragmentation and cause problems for SMEs (agents and principals) in providing and using commercial representation services across borders.

Member States’ suggestions for the Directive’s provisions

Member States generally considered the Directive fit-for-purpose and did not identify any future national level requirements that would conflict with the Directive. Nevertheless, three Member States (Spain, Poland and Slovakia) suggested a number of specific modifications to the Directive. The proposed modifications and a brief analysis of their justification and feasibility follow below.

Slovakia

The Slovakian authorities suggested deleting the word ‘self-employed’ from the definition of ‘commercial agent’ under Article 1(2) of the Directive. This suggestion is based on the idea that because the commercial agent negotiates and concludes agreements on behalf and in the name of the principal, the agent should not be considered as being self-employed.

Analysis: The suggested modification would cause a problem. A commercial agent who is not self-employed is already protected under national social laws applicable to salaried workers, so further protection under the Directive would not be justified.

Poland

The Polish authorities are in favour of more detailed provisions on calculating the indemnity due after a contract is terminated and of extending the Directive to actors other than commercial agents.

Analysis: Detailed provisions on calculating the indemnity or compensation due after a contract is terminated (Article 17 of the Directive) would mean less discretionary power and less flexibility for national authorities and jurisdictions. As regards extending the Directive’s provisions to other categories of beneficiaries, the Directive does not exclude national legislation that has this purpose.

Spain

The Spanish authorities suggested changes to six provisions of the Directive:

1. Amendment of Article 7(2) of the Directive in order to add a presumption of exclusivity in favour of the commercial agent.

Analysis: Note that such a provision reinforces the protection of the commercial agent and imposes a significant burden on principals who do not mention in the contract that the agency is not exclusive. Such a provision may create problems in some Member States, for example the UK, where commercial agency contracts may not exist in written form, and could be a source of litigation with high legal costs.

2. Amendment of Article 20(3) of the Directive to add that the clause on ‘restraint of trade’ for a maximum period of two years after the contract is terminated is valid only if the contract is in writing and to provide for compensation in addition to what is already provided for in the Directive.

Analysis: Such an amendment would entail additional costs for the principal after termination of the contract and would further reinforce the protection of commercial agents. Therefore, it would put at risk the balance of interests achieved by the Directive in all Member States by adding costs for the principal and benefits in favour of commercial agents.

3. Amendment of Article 15 of the Directive to add a provision stating that the non-respect of the notice period entails the obligation of compensation based on past commissions.

Analysis: The obligation of prior notice before terminating a contract (Article 15(1) of the Directive) is an obligation for both parties and not only for the principal. However, as Spain proposes to calculate the amount of compensation based on past commissions, the suggested amendment would exclusively favour the commercial agent.

Moreover, an amendment of the Directive does not seem necessary as, according to the general rules on torts under national legislation, the lack of prior notice opens the possibility for both parties to claim damages. The Directive does not exclude this possibility for the commercial agent even if the agent was granted an indemnity for termination of the agency contract.

4. Amendment of Article 17 of the Directive to add a paragraph stating that agreements excluding an indemnity for the agent or containing criteria for its calculation which result in an indemnity lower than that under Article 17(2) are void before the contract is terminated.

Analysis: Article 19 of the Directive states that ‘the parties may not derogate from Articles 17 and 18 to the detriment of the commercial agent before the agency contract expires’ and on this basis the Court of Justice ruled in Case C-465/04, Honyvem, that the indemnity for termination of the contract which results from the application of Article 17(2) of the Directive cannot be replaced by an indemnity determined in accordance with other criteria, unless the commercial agent is guaranteed in every case an indemnity equal to or greater than that which results from the application of Article 17.

Therefore, the suggested amendment of the Directive does not seem necessary.

5. Clarification of Article 17(3) by adding that lost commissions are calculated based on the average commissions received the year before the unilateral termination of the contract by the principal.

Analysis: Such a clarification would limit the margin of discretion granted by the Directive to Member States.

6. Amendment of Article 18 (b) of the Directive to clarify that the indemnity or compensation referred to under Article 17 of the Directive is not payable if the agent has reached the age of retirement provided for in the general national system of social security.

Analysis: Such a provision could be considered as discrimination on grounds of age as it would entail that commercial agents at the legal age of retirement would never be entitled to an indemnity or compensation, and would be automatically excluded from these rights, although in reality self-employed commercial agents are able to continue to work beyond retirement age.

7.5. Coherence with other policies

The Directive’s objective of increasing cross-border activities of commercial representation is in line with the wider objective of the single market. Due to the nature of commercial agents and their principals, a Directive facilitating commercial representation also supports the Commission’s SME policy. The analysis and consultation carried out during this report’s preparation have not shown any possible conflicts with other policy fields.

8. CONCLUSIONS

The findings of this report allow for a relatively clear assessment of the key evaluation criteria and questions despite the limited availability of quantitative data and certain limitations regarding the representativeness of responses to the stakeholder and Member State consultations.

The Directive seems to have been effective in achieving its objective to facilitate cross-border operations in commercial representation. The costs of the Directive are limited and affordable and the Directive does not create administrative burden. At the same time, the Directive creates benefits in operational and commercial terms through facilitating cross-border activities. Thus, the Directive is efficient in terms of costs and benefits.

The Directive's objectives and its importance in maintaining a single market for commercial representation remain relevant today. On the basis of the available data, the commercial representation market has steadily grown in terms of turnover and employed people. Therefore, the Directive has an ongoing added value, remains fit-for-purpose in fulfilling its objective, and is coherent with other policies. If the Directive were to be withdrawn, there would be a risk of fragmentation and ensuing impediments to the single market for commercial representation.

On this basis, it is recommended that the Directive is maintained in its current form.

ANNEX 1 — PROCEDURAL INFORMATION

In June 2014, then DG Internal Market and Services (now DG Internal Market, Industry, Entrepreneurship and SMEs) launched an evaluation of the Commercial Agents Directive. The evaluation of the Directive is part of the Commission's Agenda Planning (2015/GROW/042) and Work Programme (COM(2014) 910 final – Annex 3).

An inter-service group steering group was set up at the launch of the evaluation. The Secretariat-General, the Legal Service, DG Employment, Social Affairs & Inclusion and then DG Enterprise and Industry (now DG Internal Market, Industry, Entrepreneurship and SMEs) participated in the group. The group met twice during the evaluation process (11 June 2014 and 24 April 2015).

The evaluation was performed internally. Hard economic data to support the assessment has been difficult to find. Eurostat data for commercial representation is only available as of 2008. Other statistics and quantitative data on the commercial agents market covering the period before and after the Directive's adoption do not exist. This applies, in particular, to quantitative data for a comprehensive cost / benefit analysis of the Directive. There is limited academic literature. Therefore, the evaluation criteria and questions were assessed mostly qualitatively.

ANNEX 2 — INFORMATION ON THE RESPONDENTS TO THE STAKEHOLDER CONSULTATION

The feedback to the stakeholder consultation has been summarised in the main text of this document. The following provides more information on the respondents to the public consultation. It analyses the respondents' answers to questions regarding the size of commercial agents and principal undertakings, what sector they are involved in, and the cross-border relationships of the relevant market actors. The first part presents the results for commercial agents and organisations representing commercial agents; the second part presents the results for the principals and organisations representing principals.

Information provided by commercial agents during the consultation

All commercial agents responding to the public consultation were SMEs, and 65 % of these were sole proprietors. 32 % of the responding SMEs had between two and nine employees and only 3 % had more than 10 people on staff.

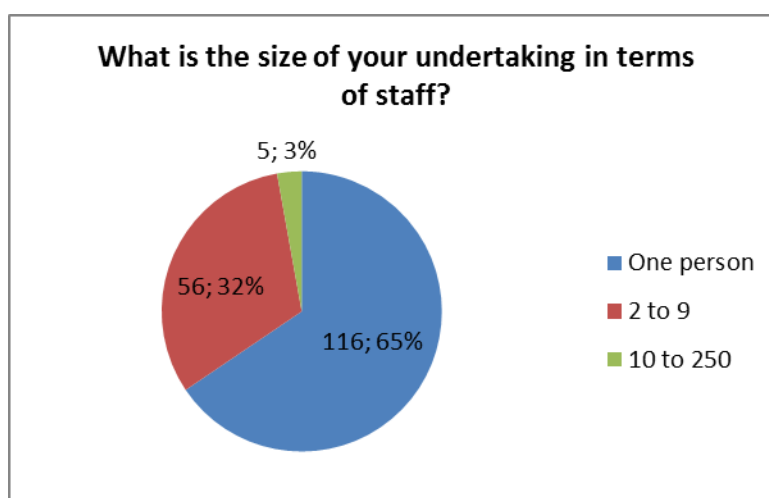


Figure 11 — Size of responding commercial agents

This picture is also confirmed by responses from organisations representing commercial agents. Austrian and German associations estimate that around 65 % of commercial agents are sole proprietors and the rest are SMEs. Similar estimates are made for France. In the UK, organisations estimate that 80 % are sole proprietors.

Commercial agents are primarily involved in business-to-business (B2B) transactions; only two commercial agents stated that they are primarily involved in business-to-consumer (B2C) transactions. Again, this picture of the market is confirmed by organisations representing commercial agents, with estimates of around 5-15 % of commercial agents being involved in the B2C sector.

83 % of commercial agents reported that they carry out cross-border activities. On average, cross-border business represents about 47 % of their total turnover. It is more common for commercial agents to operate cross-border within the EU than outside the EU. This has been confirmed by associations representing agents, with some variation between sectors.

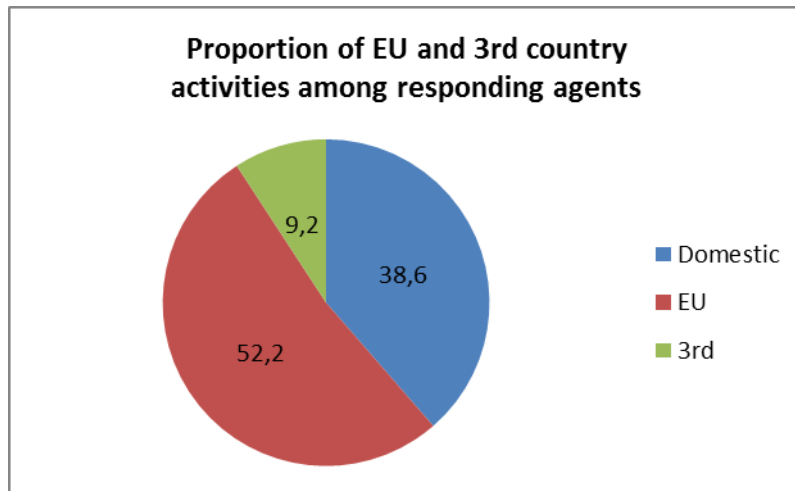


Figure 12 — Domestic vs cross-border activities

More or less all commercial agents and representatives of commercial agents agree that the market has developed positively during the last decades. Only four respondents consider the market to have been standing still or that turnover and the number of undertakings have decreased.

For example, the number of German commercial agents contracted by European manufacturers has doubled from 1984 to 2012, and in France the market increased by 5 000 companies in 15 years, showing more than 14 % growth.

Information provided by principals during the consultation

The principals responding to the consultation are mainly SMEs, with only two companies that have more than 250 staff. Most organisations estimate that about 90 % of the companies that use the services of commercial agents are SMEs. There is however some sectorial variation. In the German petrol station market, for example, two thirds of principals are estimated to be large multinational oil companies.

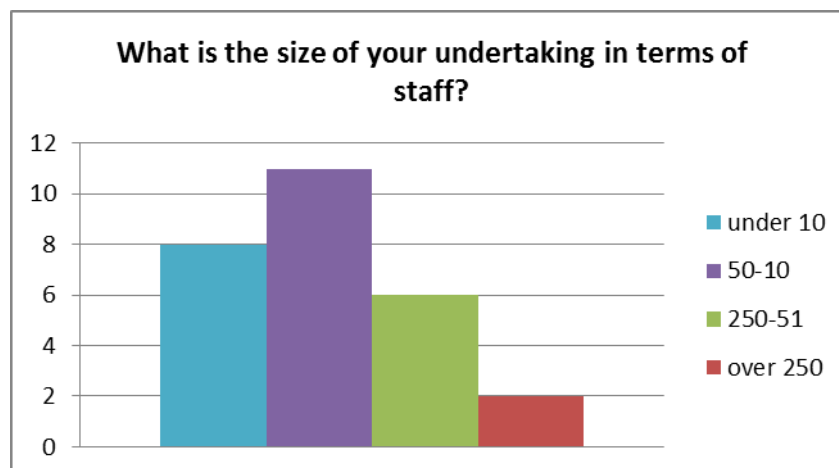


Figure 13 — Size of responding principal enterprises

Principals and organisations representing principals mention sectors such as retail, fashion, gifts, furniture, media companies and publishers, household appliances and merchandise,

cosmetics, cleaning products, food supplements, craft supplies, wine, bags, candles and accessories, jewellery and energy services as areas where commercial agents are used.

Out of 28 principals who provided data, 15 use commercial agents across borders, of which four use commercial agents outside the EU. The main reason for principals to use commercial agents is that commercial agents have local market knowledge and proximity to the customer, which can also make commercial agents an effective way to internationalise and reach other markets. Principals also mention that commercial agents allow them to avoid hiring employees, and therefore related costs such as social security. Finally, using commercial agents is seen as a way of ensuring good customer contacts and they have a stronger incentive to be effective, as their profits depend on it.

ANNEX 3 — NATIONAL MEASURES TRANSPOSING THE DIRECTIVE

Austria

Handelsvertretergesetz (published in Bundesgesetzblatt für die Republik Österreich (BGBl.), Nr. 88/1993).

Belgium

Loi du 13/04/1995

Bulgaria

Търговски закон (published in Bulgarian Official Journal of 21.7.2006)

Cyprus

Νόμος 51(I)/1992 που προνοεί για τη ρύθμιση των σχέσεων μεταξύ εμπορικού αντιπροσώπου και αντιπροσωπευόμενου (Cyprus Gazette of 1992-07-03).

Ο Περί Ρύθμισης των Σχέσεων Εμπορικού Αντιπροσώπου και Αντιπροσωπευόμενου (Τροποποιητικός) Νόμος 149 (I) του 2000 (Cyprus Gazette of 2000-11-17).

Czech Republic

Zákon č. 513/1991 Sb., obchodní zákoník (published in Sbirka Zakonu CR of 18.12.1991).

Zákon č. 370/2000 Sb., kterým se mění zákon č. 513/1991 Sb., obchodní zákoník, ve znění pozdějších předpisů, zákon č. 358/1992 Sb., o notářích a jejich činnosti (notářský řád), ve znění pozdějších předpisů, zákon č. 15/1998 Sb., o Komisi pro cenné papíry a o změně a doplnění dalších zákonů, ve znění zákona č. 30/2000 Sb., zákon č. 200/1990 Sb., o přestupcích, ve znění pozdějších předpisů, zákon č. 99/1963 Sb., občanský soudní řád, ve znění pozdějších předpisů, a zákon č. 328/1991 Sb., o konkursu a vyrovnání, ve znění pozdějších předpisů (published in Sbirka Zakonu CR of 25.10.2000)

Zákon č. 554/2004 Sb., kterým se mění zákon č. 40/1964 Sb., občanský zákoník, ve znění pozdějších předpisů, zákon č. 99/1963 Sb., občanský soudní řád, ve znění pozdějších předpisů, zákon č. 358/1992 Sb., o notářích a jejich činnosti (notářský řád), ve znění pozdějších předpisů, zákon č. 513/1991 Sb., obchodní zákoník, ve znění pozdějších předpisů, a zákon č. 337/1992 Sb., o správě daní a poplatků, ve znění pozdějších předpisů (published in Sbirka Zakonu CR of 9.11.2004).

Zákon č. 89/2012 Sb., občanský zákoník ((published in Sbirka Zakonu CR of 22.3.2012).

Germany

Gesetz zur Durchführung der EG-Richtlinie zur Koordinierung des Rechts der Handelsvertreter vom 23/10/1989 (Bundesgesetzblatt Teil I vom 31/10/1989, Seite 1910).

Denmark

Lov nr. 272 af 02/05/1990 (Lovtidende A af 03/05/1990).

Estonia

Võlaõigusseadus n° 720389 (Elektroniline Riigi Teataj num. RT I 2004, 37, 255).

Greece

Νόμος αριθ. 9219 of 18.5.1991.

Spain

Ley número 12/92 de 27/05/1992, sobre Contrato de Agencia. [Boletín Oficial del Estado número 129 de 29/05/1992 Página 18314 (Marginal 12347)].

Finland

Laki kauppaedustajista ja myyntimiehistä (417/92) 08/05/1992

France

Loi n° 91-593 du 25.6.1991.

Croatia

Zakon o obveznim odnosima (Official Journal num. 35/05 of 17.3.2005).

Zakon o izmjenama i dopunama Zakona o obveznim odnosima (Official Journal num. 41/08 of 9.4.2008).

Hungary

2000. évi CXVII. törvény az önálló kereskedelmi ügynöki szerződésről (Magyar Közlöny of 2000-11-22 pages 7139-7144 num. 2000/113)

1959. évi IV. törvény a Magyar Köztársaság Polgári Törvénykönyvéről (Magyar Közlöny du 1959-08-11)

1952. évi III. törvény a polgári perrendtartásról (Magyar Közlöny of 1952-06-06 pages 00422-00495 num. 48).

Ireland

European Communities (Commercial Agents) Regulations, 1994. Statutory Instruments number 33 of 1994

European Communities (Commercial Agents) Regulations, 1997. Statutory Instruments number 31 of 1997

Italy

Decreto legislativo del 10/09/1991 n. 303, attuazione della direttiva n. 86/653/CEE relativa al coordinamento dei diritti degli Stati membri concernenti gli agenti commerciali indipendenti, a norma dell'art. 15 della legge 29 dicembre 1990, n. 428 (Legge comunitaria 1990),

Supplemento ordinario n. 57 alla Gazzetta Ufficiale — Serie generale — del 20/09/1991 n. 221 pag. 11.

Decreto legislativo of 15.2.1999 (published in GURI of 19.3.1999).

Lithuania

Lietuvos Respublikos civilinio kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo įstatymas Nr. VIII — 1864

Lietuvos Respublikos civilinio kodekso 1.3, 2.55, 2.61, 2.72, 2.79, 2.112, 2.152, 2.160, 2.167, 4.176, 6.292, 6.298, 6.299, 6.747, 6.748.6.751, 6.753 straipsnių pakeitimo ir papildymo įstatymas Nr. IX-2172

Luxemburg

Loi du 03/07/1994 portant organisation des relations entre les agents commerciaux indépendants et leurs commettants et portant transposition de la directive du Conseil 86/653/CEE du 18/12/1986. Mémorial Grand-Ducal A Numéro 58 du 06/07/1994 Page 1088

Loi du 17/06/1992 relative 1) aux comptes annuels et comptes consolidés des établissements de crédit de droit luxembourgeois, 2) aux obligations en matière de publicité des documents comptables des succursales d'établissements de crédit et d'établissements financiers de droit étranger. Mémorial Grand-Ducal A Numéro 39 du 19/06/1992 Page 1184.

Latvia

Komerclikums (Latvijas Vēstnesis du 2000-05-04 pages num. 158/160).

Malta

Act of 5.1.2004

CHAPTER 13 COMMERCIAL CODE Part IV OF PRESCRIPTION AND INADMISSIBILITY OF ACTION IN CERTAIN COMMERCIAL MATTERS, OF THE JURISDICTION OF THE CIVIL COURT, FIRST HALL, AND OF COMMERCIAL FEES (The Malta government gazette of 1933-08-03)

The Netherlands

Wet van 05/07/1989 (PBEG Landbouwschap 382/17) (Herziening van dbepalingen inzake de agentuurovereenkomst), Staatsblad nummer 312 van 1989.

Poland

Ustawa z 23 kwietnia 1964 Kodeks Cywilny (Dziennik Ustaw du 1964-05-18 pages num. 1964/16/93).

Portugal

Decreto-Lei n. 178/86 de 03/07/1986. Regulamenta o contrato de agência ou representação comercial. Diário da Republica I Série n. 150 de 03/07/1986 Página 1575.

Decreto-Lei n. 118/93 de 13/04/1993. Altera o regime jurídico do contrato de agência. Diário da República I Série A n. 86 de 13/04/1993 Página 1818.

Romania

Lege privind agenții comerciali permanente (Official Journal of 2002-08-06 num. 581).

Sweden

Lag om handelsagentur, Svensk författningssamling SFS) 1991:351

Slovenia

Obligacijski zakonik (Uradni list RS du 2001-10-25 pages 08345-08442 num. 83/2001).

Zakon o nepremičninskem posredovanju (Uradni list RS du 2003-05-09 pages 4793-4799 num. 42/2003)

Slovakia

Zákon č. 513/1991 Zb. Obchodný zákonník (Zbierka zákonov SR du 1991-12-18).

Zákon č. 500/2001 Z. z., ktorým sa mení a dopĺňa Obchodný zákonník v znení neskorších predpisov (Zbierka zákonov SR du 2001-12-05 pages 5238-5283 num. 200). Act 500/2001 — Relevant provisions §§652-672a of the Commercial Code.

UK

The Commercial Agents (Council Directive) Regulations 1993. Statutory Instruments number 3053 of 1993

The Commercial Agents Ordinance, Legal Notice No 9 of 1994, First Supplement to the Gibraltar Gazette No 2 801 of 1994.

ANNEX 4 — CASE LAW RELATED TO THE DIRECTIVE

The Court of Justice of the EU replied to preliminary questions of national jurisdictions in the following twelve cases.

Case C-104/95, Kontogeorgas

1. The first indent of Article 7(2) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents must be interpreted as meaning that, where a commercial agent is responsible for a geographical area, he is entitled to commission on transactions concluded with customers belonging to that area, even if they were concluded without any action on his part.

2. Article 7(2) of Directive 86/653 must be interpreted to the effect that the meaning of the term 'customer belonging to that area' must be determined, where the customer is a legal person, by the place where the latter actually carries on its commercial activities. Where a company carries on its commercial activity in various places, or where the agent operates in several areas, other factors may be taken into account to determine the centre of gravity of the transaction effected, in particular the place where negotiations with the agent took place or should, in the normal course of events, have taken place, the place where the goods were delivered and the place where the establishment which placed the order is located.

Case C-215/97, Bellone

Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents precludes a national rule which makes the validity of an agency contract conditional upon the commercial agent being entered in the appropriate register.

Case C-381/98, Ingmar

Articles 17 and 18 of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents, which guarantee certain rights to commercial agents after termination of agency contracts, 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.

Case C-456/98, Centrosteeel

Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents precludes national legislation which makes the validity of an agency contract conditional upon the commercial agent being entered in the appropriate register. The national court is bound, when applying provisions of domestic law predating or postdating the said Directive, to interpret those provisions, so far as possible, in the light of the wording and purpose of the Directive, so that

those provisions are applied in a manner consistent with the result pursued by the Directive.

Case C-485/01, Caprini

The answer to the question submitted must therefore be that, on a proper reading, the Directive does not preclude national legislation from making registration of a commercial agent in the register of undertakings subject to that agent's enrolment in a register provided for that purpose, on condition that non-registration in the register of undertakings does not affect the validity of an agency contract which that agent has concluded with his principal or that the consequences of such non-registration do not adversely affect in any other way the protection which that directive confers on commercial agents in their relations with their principals.

Case C-85/03, Mavrona

Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents must be interpreted as meaning that persons, who act on behalf of a principal, but in their own name, do not come within the scope of that directive.

Case C-3/04, Poseidon

Article 1(2) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents is to be interpreted as meaning that, where a self-employed intermediary had authority to conclude a single contract, subsequently extended over several years, the condition laid down by that provision that the authority be continuing requires that the principal should have conferred continuing authority on that intermediary to negotiate successive extensions to that contract.

Case C-465/04, Honyvem

1. Article 19 of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents must be interpreted as meaning that the indemnity for termination of contract which results from the application of Article 17(2) of the Directive cannot be replaced, pursuant to a collective agreement, by an indemnity determined in accordance with criteria other than those prescribed by Article 17, unless it is established that the application of such an agreement guarantees the commercial agent, in every case, an indemnity equal to or greater than that which results from the application of Article 17.

2. Within the framework prescribed by Article 17(2) of Directive 86/653, the Member States enjoy a margin of discretion which they may exercise, in particular, in relation to the criterion of equity.

Case C-19/07, Chevassus

The first indent of Article 7(2) of Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents must be interpreted as meaning that a commercial agent entrusted with a specific geographical area does not have the right to a commission for transactions

concluded by customers belonging to that area with a third party without any action, direct or indirect, on the part of the principal.

Case C-348/07 Turgay Semen

1. Article 17(2)(a) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents is to be interpreted to the effect that it is not possible automatically to limit the indemnity to which a commercial agent is entitled by the amount of commission lost as a result of the termination of the agency contract, even though the benefits which the principal continues to derive have to be given a higher monetary value.

2. Article 17(2)(a) of Directive 86/653 is to be interpreted to the effect that, where the principal belongs to a group of companies, benefits accruing to other companies of that group are not, in principle, deemed to be benefits accruing to the principal and, consequently, do not necessarily have to be taken into account for the purposes of calculating the amount of indemnity to which a commercial agent is entitled.

Case C-203/09, Volvo

Article 18(a) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents precludes a self-employed commercial agent from being deprived of his goodwill indemnity where the principal establishes a default by that agent which occurred after notice of termination of the contract was given but before the contract expired and which was such as to justify immediate termination of the contract in question.

C-184/12, Unamar — Judgment of 17 October 2013

Articles 3 and 7(2) of the Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980 must be interpreted as meaning that the law of a Member State of the European Union which meets the minimum protection requirements laid down by Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents and which has been chosen by the parties to a commercial agency contract may be rejected by the court of another Member State before which the case has been brought in favour of the law of the forum, owing to the mandatory nature, in the legal order of that Member State, of the rules governing the situation of self-employed commercial agents, only if the court before which the case has been brought finds, on the basis of a detailed assessment, that, in the course of that transposition, the legislature of the State of the forum held it to be crucial, in the legal order concerned, to grant the commercial agent protection going beyond that provided for by that directive, taking account in that regard of the nature and of the objective of such mandatory provisions.

Two other cases (preliminary questions) were introduced in 2014 and they are still pending (Cases C-315/14 and C-338/14).