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**Q&A DOCUMENT | 4 October 2021**

# Q&A on Agency Agreements

## Part 1: Introduction

Council Directive 86/653 (EEC) on the coordination of the laws of the Member States relating to self-employed commercial agents (the "Directive") harmonizes the laws, regulations and administrative provisions of Member States governing the relations between the parties to commercial agency agreements.

As the Directive constitutes a minimum harmonization, the Member States are free to set higher standards applicable to agency agreements. In addition, on various aspects the Directive leaves room for further elaboration in national law.

In order to facilitate the use of this Q&A, for each relevant issue the position under the Directive is compared with the position under the relevant implementing rules of Bulgarian law ("Bulgarian Agency Law"). The starting point is always the minimum harmonisation reflected in the Directive. The Q&A then aims to identify any deviations or additions from the regime reflected in the Directive.

## Part 2: Legislative framework

Q1. Which rules constitute the transposition of the Directive into Bulgarian Agency Law (a)? Where available, please also include a link to the official publication of the applicable rules (e.g., relevant link to the Official Gazette) (b) and to the English translation of the regulatory framework (c).

a. *Legislative framework:*

Commercial agency is regulated by Art. 32 – 48 Bulgarian Commercial Act ("CA").

*b. Link(s) to official publication:*

Not available.

*c. Link(s) to English translation:*

There is no official English translation available.

## Part 3: Scope

Q2. The Directive (Art. 1(2)) defines a commercial agent as a self-employed intermediary who has continuing authority to negotiate the sale or the purchase of goods on behalf of another party (the "principal"), or to negotiate

and conclude such transactions on behalf of and in the name of that principal. Is the definition in the Bulgarian Agency Law the same?

No.

The definition under the Bulgarian Agency Law is contained in Art. 32 CA: “The commercial agent is a party which in a self-employed capacity and as a regular occupation co-operates with another trader in the conduct of the trader’s business activity. He may be empowered to conclude transactions in the trader’s name or in his own name on the trader’s behalf.”

It is worth noting that Bulgarian case law makes an express differentiation between the legal notions of a ‘distribution agreement’ and a ‘commercial agency agreement’ for commercial law purposes. The legal notion of a ‘distribution agreement’ excludes the legal notion of a ‘commercial agency agreement’ and *vice-versa*. The commercial agent is a party always acting on behalf of the principal (either in the commercial agent’s own name or in the name of the principal). The distributor is understood as a party always acting in its own name, on its own behalf and at its own risk and therefore no compensation is available upon termination of the distribution agreement as opposed to the commercial agent

Q3. Do other intermediaries fall within the scope of the Bulgarian Agency Law?

Yes.

Under the Bulgarian Agency Law the commercial agent may act not only in the name and on behalf of the principal (direct agency), but also in his own name and on behalf of the principal (indirect agency).

The definition under the Bulgarian Agency Law is not limited to “goods” only, i.e. services are included.

The Directive uses the terms “to negotiate” and “to negotiate and conclude” transactions. The Bulgarian Agency Law uses the term “to co-operate”. The correspondence between “to co-operate” and “to negotiate” as a minimum threshold is not entirely clear, i.e. whether an intermediary which co-operates without negotiating may still be considered as a commercial agent.

Q4. The Directive (Art. 2(2)) entitles the Member States to exclude from the scope of application parties whose activities as commercial agents are considered secondary in nature. Has Bulgaria made use of this possibility?

No.

# Part 4: Agreementual phase

## A. Form of agency agreements

Q5. The Directive (Art. 13) provides that, as a minimum, each party shall be entitled to receive from the other on

request a signed written document setting out the terms of the agency agreement including any terms subsequently agreed. Does the Bulgarian Agency Law provide for such obligation?

No. Art. 32(2) CA expressly provides that the agreement between the principal and the commercial agent must be concluded in writing.

Q6. Are there any (other) requirements under the Bulgarian Agency Law as to the form of the agency agreement in order for it to be valid and enforceable?

See, Q5. Art. 32(2) CA expressly provides that the agreement between the principal and the commercial agent must be concluded in writing.

# B. Content of agency agreements

## B.1 - RIGHTS AND OBLIGATIONS OF PRINCIPAL AND COMMERCIAL AGENT

Q7. The Directive (Art. 3) provides that a commercial agent has the following minimum obligations:

- to look after his principal's interests and to act dutifully and in good faith;
- to make proper efforts to negotiate and, where appropriate, conclude the transactions he is instructed to take care of;
- to communicate to his principal all the necessary information available to him;
- to comply with reasonable instructions.

Are these minimum obligations provided for in the Bulgarian Agency Law?

Yes. See, Art. 33 CA.

Q8. Does the Bulgarian Agency Law explicitly impose any other obligations on the commercial agent that go beyond the aforesaid minimum?

Yes. Art. 44 CA provides that the commercial agent may represent different principals provided that they are not competitors. This implies that the commercial agent is under the obligation not to represent competing principals, although there is no available case law on this question, including on the question whether the provision is imperative or the parties may agree otherwise.

Q9. Does the Bulgarian Agency Law provide that a commercial agent may appoint sub-agents?

No. It is worth noting that CA does not prohibit the appointment of sub-agents either. CA is silent on this matter and there is no available case law dealing with this question.

Q10. The Directive (Art. 4) provides that a principal has the following minimum obligations:

- to act dutifully and in good faith;

- to provide his commercial agent with the necessary documentation relating to the goods concerned;
- to obtain the information necessary for the performance of the agency agreement;
- to notify the commercial agent within a reasonable period once he anticipates that the volume of commercial transactions will be significantly lower than that which the commercial agent could normally have expected;
- to inform the commercial agent within a reasonable period of his acceptance, refusal, and of any non-execution of a commercial transaction which the commercial agent has procured for the principal.

Are these minimum obligations provided for in the Bulgarian Agency Law?

Yes. See, Art. 34 CA.

Q11. Does the Bulgarian Agency Law explicitly impose any other obligations on the principal that go beyond the aforesaid minimum?

Yes.

Art. 46(2) CA provides in a somewhat unclear manner (i.e. with respect to wording and reference) that commercial agency may not also be assigned by the principal to another party, i.e. another agent, for the same area. The provision seems to imply some form of legally provided exclusivity for the agent. However, no case law exists in this relation, including how this provision should be interpreted and whether or not it is mandatory.

## B.2 - LEVEL AND CALCULATION BASIS OF REMUNERATION

Q12. Are there mandatory rules under the Bulgarian Agency Law that limit the freedom of the parties to fix the level of the remuneration of the commercial agent?

No.

Q13. The Directive (Art. 6(1)) provides that, in the absence of an agreement on the level of the remuneration, the commercial agent is entitled to the remuneration that is customarily allowed in the place where he carries on his activities and, in the absence of such customary practice, to a reasonable remuneration taking into account all the aspects of the transaction. Do these principles also represent the default regime under the Bulgarian Agency Law?

Yes. See, Art. 37 CA, which also provides that if such customary remuneration may not be ascertained, the remuneration shall be determined by the court in a just and equitable amount.

Q14. The Directive (Art. 6(2)) provides that any part of the remuneration which varies with the number or value of business transactions shall be deemed to be commission. Does this principle also represent the regime under the Bulgarian Agency Law?

Yes. This principle represents the regime under CA without being expressly provided for in the provision dealing

with commercial agency.

Q15. Does the Bulgarian Agency Law impose any criteria with regard to the type of the agent's remuneration (i.e. fixed amount or commission)?

No.

Q16. Does the Bulgarian Agency Law impose any criteria with regard to the calculation of the agent's remuneration?

No.

## B.3 - REMUNERATION BY MEANS OF A COMMISSION (DURING)

Q17. According to the Directive (Art. 7(1)) a commercial agent is entitled to a commission during the period covered by the agency agreement:

- where the transaction has been concluded as a result of his action; or
- where the transaction is concluded with a third party whom he has previously acquired as a customer for transactions of the same kind.

Are both cases reflected in the Bulgarian Agency Law?

Yes. See, Art. 36(1) CA. It needs to be noted, however, that CA does not expressly refer to "a commission" but rather to "remuneration".

Q18. The Directive (Art. 7(2)) provides for an additional case of entitlement to a commission and has left it to the Member States to choose between two options:

- Option 1: the transaction is entered into with a customer belonging to a specific geographic area or group of customers entrusted to the commercial agent; or
- Option 2: the transaction is entered into with a customer belonging to a specific geographical area or group of customers in respect of which the commercial agent enjoys exclusive rights.

Which option has been retained in the Bulgarian Agency Law?

Option 1. See, Art. 36(2) CA. Again, CA does not expressly refer to "a commission" but rather to "remuneration".

## B.4 - REMUNERATION BY MEANS OF COMMISSION (AFTER TERMINATION)

Q19. According to the Directive (Art. 8) a commercial agent is entitled to a commission after the agency agreement has terminated if:

- the transaction is mainly attributable to the commercial agent's efforts during the period covered by the agency

agreement and if the transaction was entered into within a reasonable period after that agreement terminated; or

- the order of the third party reached the principal or the commercial agent before the agency terminated and the conditions applicable to entitlement during the term of the agency are met.

Are both cases reflected in the Bulgarian Agency Law?

No. The above cases have not been expressly reflected in the Bulgarian Agency Law. Art. 40(4) CA simply provides that upon termination of the agreement the commercial agent may claim remuneration for already concluded agreements or for agreements the commercial agent prepared for conclusion.

Q20. Are there any additional cases provided for in the Bulgarian Agency Law?

No.

Q21. According to the Directive (Art. 9) a commercial agent is not entitled to the commission, if that commission is payable, to the previous commercial agent, unless it is equitable because of the circumstances for the commission to be shared between the commercial agents. Do these principles also represent the regime under the Bulgarian Agency Law?

Yes. See, Art. 40(5) CA. Again, CA does not expressly refer to “a commission” but rather to “remuneration”.

Q22. According to the Directive (Art. 10(1)) the commission shall become due as soon as and to the extent that one of the following circumstances obtains:

- the principal has executed the transaction; or
- the principal should, according to his agreement with the third party, have executed the transaction; or
- the third party has executed the transaction.

Are these circumstances reflected in the Bulgarian Agency Law?

No.

Q23. Are there any additional circumstances provided for in the Bulgarian Agency Law?

No.

Q24. The Directive (Art. 10(2)) provides that the commission shall be due at the latest when the third party has executed his part of the transaction or should have done so if the principal had executed his part of the transaction, as he should have. Does the Bulgarian Agency Law apply the same deadline?

No deadline whatsoever is provided for under Bulgarian Agency Law as to when the commission shall be due.

Q25. The Directive (Art. 10(3)) provides that the commission needs to be paid no later than on the last day of the

month following the quarter in which it became due. Does the Bulgarian Agency Law apply the same deadline?

No. The rule under the Bulgarian Agency Law contained in Art. 38 CA is that the remuneration shall be paid no later than the end of the month following the quarter in which the respective transaction is concluded or should have been concluded. The emphasis is on the conclusion of the respective transaction rather than on when the commission became due.

Q26. The Directive (Art. 10(4)) stipulates that parties cannot by agreement derogate from the principles included in Art. 10(2) and 10(3) to the detriment of the commercial agent. Does the Bulgarian Agency Law impose the same restriction on the parties?

No.

Q27. According to the Directive (Art. 11(1)) the right to commission can be extinguished only if and to the extent that:

- it is established that the agreement between the third party and the principal will not be executed; and
- that fact is due to a reason for which the principal is not to blame.

Does the Bulgarian Agency Law impose these cumulative conditions?

No. To the extent that “execute” in Art. 11(1) of the Directive is to be understood as “perform”/”fulfil” rather than “conclude” then the Bulgarian Agency Law does not reflect the above rule. The closest rule in the Bulgarian Agency Law is contained in Art. 36(1) CA providing that remuneration shall also be paid for transactions which have been prepared but have not been concluded unless that is due to a reason for which the trader is not to blame. The Bulgarian Agency Law puts the emphasis on the conclusion of the agreement between the principal and the third party rather than on the performance of an already concluded contract. That raises a number of questions on which no Bulgarian case law exists (e.g. why should the principal pay remuneration for the non-conclusion of a transaction prepared by the agent where the principal alone, i.e. in the absence of the agent, would not, for whatever reason, wish to conclude that transaction, etc.).

Q28. Does the Bulgarian Agency Law allow for other cases where the agent’s entitlement to commission is extinguished?

No.

Q29. According to the Directive (Art. 11(2)) any commission which the commercial agent has already received must be refunded in case the right to it is extinguished. Does the Bulgarian Agency Law also provide for such an obligation of restitution?

No.

Q30. The Directive (Art. 12(1)) provides that the principal must supply his commercial agent with a statement of

the commission due. This statement must be supplied no later than the last day of the month following the quarter in which the commission has become due, and shall set out the main components used in calculating the amount of the commission. Do these principles also represent the default regime under the Bulgarian Agency Law?

No. The closest rule is contained in Art. 36(4) CA providing that the principal shall provide the commercial agent with the information necessary for calculating the due remuneration no later than the term pursuant to Art. 38 CA (i.e. no later than the end of the month following the quarter in which the respective transaction is concluded or should have been concluded).

Q31. Does the Bulgarian Agency Law impose that the parties cannot by agreement derogate from the principles included in Art. 12(1) of the Directive to the detriment of the commercial agent?

No. The closest rule is contained in Art. 32(2) CA providing that the principal may not invoke arrangements against the commercial agent deviating from, *inter alia*, Art. 36(4) CA to the detriment of the commercial agent.

Q32. Does the Bulgarian Agency Law impose any additional requirements with regard to the statement of the commission due?

No.

Q33. The Directive (Art. 12(2)) entitles the commercial agent to demand to be provided with all the information, and in particular an extract from the books, which he needs to check the amount of the commission due to him. Does the Bulgarian Agency Law grant the commercial agent the same right?

Yes. Art. 36(5) CA provides that each party shall be entitled to demand from the other party an extract from the commercial books in relation to the transactions concluded under the commercial agency agreement, including those necessary to verify the agreed remuneration.

Q34. Does the Bulgarian Agency Law broaden this right to information of the commercial agent?

No.

Q35. Does the Bulgarian Agency Law impose any criteria with regard to the calculation of the commission?

No.

Q36. Do specific rules and/or restrictions apply to:

- non-solicitation clauses;
- minimum sales quota;
- specific sectors?

No specific rules apply.

Art. 48 CA only provides that the provisions of Art. 32 – 47 CA shall not apply to parties acting as agents or

intermediaries in exchange operations or as agents of those operating in tenders.

## B.5 - NON-COMPETE CLAUSE

Q37. The Directive (Art. 20(2)) provides that a non-compete clause shall only be valid if and to the extent that:

- it is concluded in writing; and
- it relates to the geographical area or the group of customers and the geographical area entrusted to the commercial agent and to the kind of goods covered by the agency agreement.

Does the Bulgarian Agency Law impose these cumulative criteria?

Yes. See, Art. 41(1)-(2) CA.

Q38. Does the Bulgarian Agency Law impose any additional criteria in order for a non-compete clause to be valid?

No.

Q39. The Directive (Art. 20(3)) provides that a non-compete clause shall be valid for not more than 2 years after termination of the agency agreement. Does the same maximum period apply under the Bulgarian Agency Law?

Yes. See, Art. 41(2) CA.

Q40. The Directive (Art. 20(4)) provides that national law may impose other restrictions:

- on the validity or enforceability of non-compete clauses, or
- which enable the courts to reduce the obligations on the principal or the commercial agent.

Does the Bulgarian Agency Law impose any such restrictions?

Yes. The Bulgarian Agency Law impose restrictions on the validity or enforceability of non-compete clauses.

The principal owes indemnity to the commercial agent for the period of the restriction (Art. 41(2) CA).

If the commercial agent rescinds the agreement due to the principal's fault, the commercial agent may release himself from such a restriction by a written notification up to 1 month as of the rescission (Art. 41(3) CA).

Q41. Does the Bulgarian Agency Law provide any criteria with regard to the calculation method of the indemnification in case of a violation of the non-compete clause?

No.

## B.6 - LIABILITY

Q42. Under the Bulgarian Agency Law, can the parties agree that the commercial agent shall be liable (in whole or in part) for the breach of third party-customers with whom he/she has negotiated and/or concluded an

agreement on behalf of the principal, by including a so-called *del credere* clause?

Yes.

Q43. If yes, are such clauses subject to certain rules and/or restrictions?

Yes. The commercial agent is entitled to a separate remuneration which must be agreed in writing and the parties may not agree in advance that such remuneration is not due (Art. 35 CA).

Q44. Are there liability-related clauses that must be mandatorily included in agency agreements?

No.

# C. Term and termination

## C.1 - TERM

Q45. According to the Directive (Art. 14) an agency agreement for a fixed period which continues to be performed by both parties after that period has expired shall be deemed to be converted into an agency agreement for an indefinite period. Does this principle also represent the default regime under the Bulgarian Agency Law?

Yes.

Q46. Does the Bulgarian Agency Law contain particular rules and/or restrictions in relation to the term (incl. renewal) of agency agreements?

No.

## C.2 - TERMINATION BY NOTICE

Q47. According to the Directive (Art. 15(1)) an agency agreement that is concluded for an indefinite period may by either party be terminated by notice. Does this principle also represent the regime under the Bulgarian Agency Law?

Yes. See, Art. 47(1) CA.

Q48. According to the Directive (Art. 15(2)) the notice period is 1 month for the first year, 2 months for the second year commenced, and 3 months for the third year commenced and subsequent years. Do these notice periods also represent the regime under the Bulgarian Agency Law?

Yes. See, Art. 47(1) CA.

Q49. According to the Directive (Art. 15(3)) the notice period for the fourth, fifth and sixth year and subsequent years may be respectively 4, 5 and 6 months. Do these notice periods also represent the regime under the Bulgarian Agency Law?

No. Pursuant to Art. 47(1) CA, where the agency agreement is concluded for an indefinite period, either party may

terminate it by a one-month notice during the first year, by a two-month notice during the second year, and by a three-month notice after the second year (i.e. including during the third, fourth, fifth, sixth year, etc.) and the parties may not agree on shorter notice periods.

Q50. If yes, can the parties agree to a shorter notice period?

No. See, Art. 47(1) CA.

Q51. According to the Bulgarian Agency Law, if no notice period has been agreed, is there a notice period that always applies irrespective of the duration of the agency agreement?

No.

Q52. According to the Directive (Art. 15(4)), if a principal and commercial agent agree on longer notice periods than those laid down in Art. 15(2) and (3) of the Directive, the notice period to be respected by the principal must not be shorter than that to be observed by the commercial agent. Does the same default regime apply under the Bulgarian Agency Law?

Yes. Under Art. 47(1) CA where a longer notice period is agreed it shall be the same for both parties.

Q53. According to the Directive (Art. 15(5)), unless otherwise agreed by the parties, the end of the notice period must coincide with the end of a calendar month. Does the same default regime apply under the Bulgarian Agency Law?

Yes. Under Art. 47(1) CA, unless agreed otherwise, the termination of the agreement takes effect as of the end of the calendar month in which the notice period expires.

Q54. Does the Bulgarian Agency Law provide how the termination notice must be notified to the other party?

No.

Q55. According to the Directive (Art. 15(6)), the answers to questions 47 to 53 also apply to agency agreements having a fixed term if they are converted to agency agreements having an indefinite term due to the continuation of the agreement beyond the fixed term, provided that the earlier fixed period must be taken into account in the calculation of the notice period. Does the same default regime apply to agency agreements having a fixed term under the Bulgarian Agency Law?

Yes. See, Art. 47(4) CA.

## C.3 - TERMINATION FOR CAUSE

Q56. According to the Directive (Art. 16) an agency agreement may immediately be terminated:

- because of the failure of one party to carry out all or part of his obligations; or
- where exceptional circumstances arise.

Are both termination grounds reflected in the Bulgarian Agency Law?

No. Both termination grounds may be substantiated by Bulgarian general contractual law.

Q57. Are there additional termination grounds provided in the Bulgarian Agency Law?

Yes. Art. 47(2) CA provides that the agency agreement concluded for a fixed period may be terminated prior to its expiry if the terminating party pays the damages caused to the other party. However, no case law exits on how these damages are determined or calculated, including whether this is mandatory law or whether the parties may simply agree a notice period (not shorter than those for an indefinite period) thus contractually excluding such payment for damages if the notice period is respected.

Q58. Does the Bulgarian Agency Law provide that the parties may not derogate from the regime on termination for cause to the detriment of the commercial agent before the agency agreement is terminated?

No. The Bulgarian Agency Law contains no such provisions.

Q59. Is it possible to terminate the agency agreement based on certain grounds for termination (breach or other) included in the agency agreement?

Yes. Under Bulgarian Agency Law there is no legal prohibition or case law to the opposite effect. It follows from Bulgarian general contractual law that the parties may agree/include causes for termination.

Q60. If yes, is prior judicial intervention required in order for the termination of the agreement to take effect?

No.

Q61. Are there any other particular rules and/or restrictions as regards the termination of the agency agreement (e.g. trial period, etc.)?

No.

## C.4 - INDEMNIFICATION

Q62. The Directive (Art. 17(2)(a)) provides that the commercial agent is entitled to an indemnification if and to the extent that he has brought the principal new customers or has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits from the business with such customers. Does the Bulgarian Agency Law provide for this criterion?

Yes. See, Art. 40(1) CA.

Q63. The Directive (Art. 17(2)(a)) also provides that the commercial agent is entitled to an indemnification if and to the extent that the payment of this indemnification is equitable having regard to all circumstances and, in particular, the commission lost by the commercial agent on the business transacted with such customers. Does the Bulgarian Agency Law provide for this criterion?

No. The Bulgarian Agency Law does not expressly refer to the equitability criterion. However, Art. 40(1) CA provides that the entitlement to such an indemnification is considered in view of all circumstances, including the presence or absence of restricting commercial clauses.

Q64. Is under the Bulgarian Agency Law the application of a non-compete clause a circumstance on the basis of which the commercial agent is presumed to be entitled to an indemnification (cfr. Art. 17(2)(a), second indent of the Directive)?

Yes. See, Art. 40(1) CA.

Q65. Other than the criteria set forth in Art. 17(2)(a) of the Directive, are there any specific rules or precedents derived from the Bulgarian case law on the basis of which the indemnification is calculated?

No.

Q66. The Directive (Art. 17(2)(b)) provides that the amount of the indemnification may not exceed a figure equivalent to an indemnification for 1 year calculated from the commercial agent's average annual remuneration over the preceding 5 years, and if the agreement goes back less than 5 years the indemnification shall be calculated on the average for the period in question. Does the same regime apply under the Bulgarian Agency Law?

No. The Bulgarian Agency Law is phrased differently in this respect. Art. 40(2) CA provides that the indemnity is in the amount of the commercial agent's annual remuneration calculated from the average remuneration for the entire period of the contract, but for no longer than the last 5 years. This appears to literally mean that the Bulgarian Agency Law provides that the amount of the indemnity is fixed at the maximum amount provided under Art. 17(2)(b) of the Directive. Such a legal standing would question the applicability of the equitability criterion with regard to the calculation of the amount (i.e. as it is fixed at the maximum). On the other hand, if the equitability criterion implied in Art. 40(1) CA refers not to the calculation of the amount but rather to the very arising of the right to indemnity itself, this would question if such a legal standing would not be in contradiction to the Directive. No Bulgarian case law exists in this regard.

Q67. According to the Directive (Art. 18), indemnification or compensation for damage is not payable where

- the principal has terminated the agency agreement because of default attributable to the commercial agent which would justify immediate termination of the agency agreement;
- the commercial agent has terminated the agency agreement, unless such termination is justified by circumstances attributable to the principal or on grounds of age, infirmity or illness of the commercial agent in consequence of which he/she cannot reasonably be required to continue his/her activities; and/or
- with the agreement of the principal, the commercial agent assigns his rights and obligations under the agency

agreement to another parties.

Do these principles also represent the default regime under the Bulgarian Agency Law?

No. Regarding Art. 18(a) of the Directive, Art. 40(3), indent 1 CA provides that the indemnity shall not be payable where the agreement is rescinded (a form of termination under Bulgarian law) because of default attributable to the commercial agent, i.e. the Bulgarian Agency Law does not specifically refer to “immediate termination” but rather to termination in general.

It may be considered that the rule provided in Art. 18(b) of the Directive is reflected in Art. 40(3), indent 2 CA and Bulgarian general contractual law.

Art. 18(c) of the Directive is reflected in Art. 40(3), indent 3 CA.

Q68. According to the Directive (Art. 17(5)), a commercial agent may lose his/her entitlement to the indemnification or compensation for damage if within 1 year following termination of the agency agreement he/she has not notified the principal of his/her intention to pursue the entitlement. Does this principle also represent the default regime under the Bulgarian Agency Law?

Yes. See, Art. 40(3), item 1 CA.

## C.5 - ADDITIONAL COMPENSATION

Q69. The Directive (Art. 17(2)(c)) provides that the commercial agent, in addition to the indemnification, is entitled to seek damages for breach of agreement, failing to respect the notice period, etc. Does the same regime apply under the Bulgarian Agency Law?

No. No such provision is included in the Bulgarian Agency Law.

Q70. If yes, do specific rules and/or restrictions apply to the damage that can be compensated in addition to the indemnification under Art. 17(2) of the Directive?

No.

Q71. The Directive (Art. 17(3)) provides that the commercial agent is entitled to compensation for damage suffered as a result of the termination of the agency agreement. Does the same default regime apply under the Bulgarian Agency Law?

No. Bulgaria has opted for the solution included in Art. 17(2) of the Directive.

Q72. According to the Directive (Art. 17(3)) such damages shall be deemed to occur particularly when the termination takes place in circumstances:

- depriving the commercial agent of the commission which proper performance of the agency agreement would have procured him whilst providing the principal with substantial benefits linked to the commercial agent's

activities; and/or

- which have not enabled the commercial agent to amortize the costs and expenses that he had incurred for the performance of the agency agreement on the principal's advice.

Does the Bulgarian Agency Law take the same circumstances into account?

No.

Q73. Are there any other specific rules or precedents, than the criteria set forth in Art. 17(3) of the Directive, derived from case law on the basis of which the compensation is calculated?

No.

Q74. The Directive (Art. 17(4)) provides that a commercial agent is entitled to indemnification or compensation for damage where the agency agreement is terminated as a result of the commercial agent’s death. Is this default entitlement available under the Bulgarian Agency Law?

Yes. See, Art. 40(1) CA.

Q75. The Directive (Art. 19) stipulates that the parties may not derogate from Art. 17 and 18 to the detriment of the commercial agent before the agency expires. Does the Bulgarian Agency Law impose the same restriction on the parties?

Yes. See, Art. 32(2) CA (to the extent that Art. 17 and 18 of the Directive are reflected in the Bulgarian Agency Law).

Q76. Are the parties under the Bulgarian Agency Law free to opt for either indemnification or compensation?

No.

Q77. Must the commercial agent under the Bulgarian Agency Law claim the indemnification or compensation within a certain period of time after termination of the agency agreement?

Yes. See, Art. 40(3), indent 1 CA pursuant to which the indemnification shall not be payable where more than one year as of the termination of the agreement has elapsed without the commercial agent notifying the principal in writing for his claim of the due indemnity.

Q78. Are there other specific rules with respect to compensation or indemnification following the termination of the agency agreement?

No.

# Part 5: Dispute resolution

Q79. Do any specific rules and/or restrictions apply as regards the choice of forum and/or jurisdiction under the Bulgarian Agency Law?

No.

Q80. Can the parties opt for arbitration?

Yes.

Q81. If yes, are there any rules and/or restrictions as regards the enforceability of arbitration clauses in agency agreements?

No.

Q82. Does the Bulgarian Agency Law provide for a statute of limitations that is applicable to claims regarding the performance of agency agreements?

No.

The general statute of limitations applicable to claims regarding the performance of agency agreements is five years, unless the law provides for otherwise (Art. 110 Bulgarian Obligations and Contracts Act).

The statute of limitations applicable to claims regarding indemnification and liquidated damages for breached contract; and regarding interests is three years (Art. 111 Bulgarian Obligations and Contracts Act).

Any agreement on shorter or longer statute of limitations is void. Also, any waiver of the statute of limitations prior to its elapse is void (Art. 113 Bulgarian Obligations and Contracts Act).