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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 Danish law ("Danish 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 Danish 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:

The Danish Trade Agent Act (Act number 272 of 2 May 1990) ("DTAA").

b. Link(s) to official publication:

The Danish version of the DTAA is available here.

c. Link(s) to English translation:

Not 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 Danish Agency Law the same?

Yes.

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

Yes. Commercial travellers are also considered commercial agents under the DTAA. According to Art. 31 DTAA, a commercial traveller shall mean a person who, as part of a service relationship, has undertaken to canvass for customers, including promoting sales and purchasing goods. However, the commercial travellers' tasks do not include concluding agreements or obtaining offers.

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 Denmark made use of this possibility?

No.

Part 4: Contractual 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 Danish Agency Law provide for such obligation?

Yes. See, Art. 3 DTAA.

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

No.

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 Danish Agency Law?

Yes. See, Art. 4 DTAA.

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

No.

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

No. The DTAA does not contain rules about sub-agents. In the Danish Report on Commercial Agents and Commercial Travellers No. 1151 from 1998, it is listed that sub-agents only can be appointed if the principal has accepted it. However, the question is not clarified in case law.

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 Danish Agency Law?

Yes. See, Art. 5 DTAA.

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

No.

B.2 - LEVEL AND CALCULATION BASIS OF REMUNERATION

Q12. Are there mandatory rules under the Danish 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 Danish Agency Law?

Yes. See, Art. 8 DTAA.

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 Danish Agency Law?

No. The term "remuneration" is not defined in the DTAA. It is assumed that the term "remuneration" in Art. 8 DTAA also includes fixed remuneration.

Q15. Does the Danish 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 Danish 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 Danish Agency Law?

Yes. See, Art. 9(1) and (2) DTAA.

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 Danish Agency Law?

Option 1. See, Art. 9(3) DTAA.

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 Danish Agency Law?

No. Art. 10(3) DTAA does not specify that "the conditions applicable to entitlement during the term of the agency are met". The rest of (a) and (b) are reflected in the DTAA.

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

Yes. See, Art. 10(3) DTAA.

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 Danish Agency Law?

Yes. See, Art. 11 DTAA.

Q23. Are there any additional circumstances provided for in the Danish 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 Danish Agency Law apply the same deadline?

Yes. See, Art. 11 DTAA.

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 Danish Agency Law apply the same deadline?

Yes. See, Art. 12 DTAA.

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 Danish Agency Law impose the same restriction on the parties?

No. The parties cannot by agreement derogate from the principles included in Art. 10(3) Directive to the detriment of the commercial agent. The parties cannot derogate from the principle in Art. 10(2) Directive at all.

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 Danish Agency Law impose these cumulative conditions?

Yes. See, Art. 14 of the DTAA.

Q28. Does the Danish 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 Danish Agency Law also provide for such an obligation of restitution?

Yes. See, Art. 14(3) DTAA.

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 Danish Agency Law?

Yes. See, Art. 13(1) DTAA

Q31. Does the Danish 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?

Yes. See, Art. 13(2) DTAA.

Q32. Does the Danish 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 Danish Agency Law grant the commercial agent the same right?

Yes. However, there is an exception to the duty to provide information in Art. 15(3) DTAA, which covers the situation where the principal would be exempt from testifying as a witness.

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

No.

Q35. Does the Danish 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.

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 Danish Agency Law impose these cumulative criteria?

Yes. See, Art. 30(1) of the DTAA

Q38. Does the Danish 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 Danish Agency Law?

Yes. See, Art. 30(2) DTAA.

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 Danish Agency Law impose any such restrictions?

Yes. Danish Agency Law enables the courts to reduce the obligations on the principal or the commercial agent. See, Art. 30(3) DTAA which refer to the Danish Contracts Act.

A non-compete clause can be invalid due to provisions in the Danish Contracts Act. . The Danish case law on this topic is very limited. In a case from the Danish Supreme Court dating back to 1915, a non-compete clause between an agent and a principal has been found invalid. The Court emphasized that the principal had been guilty of essential non-fulfillment of the agreement by terminating the agreement without observing the agreed notice even though the agent had not violated his obligations under the agreement. However, the amount of case law in this area is very limited.

According to the preparatory legislative works, a non-compete clause may be considered invalid, if the agent has not adduced any reasonable occasion for the termination of the agreement – a reasonable cause for termination is failing earnings, or the principal's desire to replace the agent or to take on the agency himself. Yet, this generally depends on balancing the parties' legitimate interests in terminating and maintaining the agreement.

Additionally, a non-compete clause can be invalid in pursuance to Art. 36 Danish Contracts Act. The Danish case law is more extensive on this topic. For instance, the Maritime and Commercial High Court of Denmark found a non-compete clause invalid because it was unreasonable pursuant to Art. 36 Danish Contracts Act in a case from 2009. The Court emphasized that the agreement had been terminated without observing the agreed notice, that the agent had not executed any disloyal competition, that the clause was exceptionally long, that the clause did not entail any geographical limitation, and that the extent of the contract penalty was disproportionate.

Q41. Does the Danish 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 Danish 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. It is not regulated in the D. Generally, the parties have freedom of contract and can include a *del credere* clause in the agent agreement.

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

No.

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 Danish Agency Law?

No. The principle is not directly a part of the DTAA, but it appears from the preparatory works that the courts may conclude that an agreement for a fixed period, which repeatedly has been extended, may be conceived as a "permanent" agreement (i.e., for an indefinite period). This follows from Art. 23 DTAA, providing that an agency agreement for a fixed period which continues to be performed after that period is regulated by Art. 22(1) DTAA regarding termination and the calculation of the notice period. As a result, such agency agreements (as other agency agreements) may be terminated in accordance with Art. 22(1) DTAA, providing that, if the agency agreement has not been concluded for a fixed period, the parties may terminate the agreement with a notice of one month during the first year of the period of the agency agreement, whereby the notice period is extended by one month for each year or fraction of the agency agreement. The notice period cannot exceed six months, unless agreed otherwise.

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

No.

C.2 - TERMATION 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 Danish Agency Law?

Yes. See, Art. 22 DTAA.

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 Danish Agency Law?

Yes. See, Art. 22(1) DTAA

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 Danish Agency Law?

Yes.

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

Yes. The parties may agree that the agent may terminate the agreement with a 3 months' notice, even if the duration of the agreement has exceeded 3 years or more. On the contrary, according to Art. 22 DTAA, the notice period may not exceed 6 months, unless otherwise agreed.

Q51. According to the Danish 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?

Yes. If no notice period has been agreed, Art. 22 DTAA applies (see Q48) and may not be derogated from to the detriment of the agent. Thus, the notice period depends on the duration of the agency agreement.

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 Danish Agency Law?

Yes. See, Art. 22(3) DTAA.

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 Danish Agency Law?

Yes. See, Art. 22(4) DTAA.

Q54. Does the Danish 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 Danish Agency Law?

Yes. See, Art. 23 DTAA.

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 Danish Agency Law?

No. According to Art. 24 DTAA, the parties may terminate an agency agreement immediately, if one of the parties has substantially failed to meet its obligations under the agreement or law. Immediate termination where exceptional circumstances arise is not part of the DTAA.

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

No.

Q58. Does the Danish 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. This is not part of the DTAA.

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

Yes. According to Art. 24 DTAA, the parties may terminate an agency agreement immediately, if one of the parties has substantially failed to meet its obligations under the agreement or law (see, Q56). The parties may agree on these specific circumstances in the agency agreement, e.g. that change of control constitutes a material breach which fall within Art. 24 DTAA.

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 Danish Agency Law provide for this criterion?

Yes. See, Art. 25(1)(1) DTAA.

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 Danish Agency Law provide for this criterion?

Yes. See, Art. 25(1)(2) DTAA.

Q64. Is under the Danish 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)?

No. Art. 17(2)(a), second indent Directive is not directly part of the DTAA. According to Art. 25(1) DTAA, the agent is entitled to compensation – when the agency agreement ceases – if and to the extent that (i) the agent has brought new customers to the principal or substantially increased trade with the existing clientele, and if the principal will continue to benefit substantially from the relationship with those customers; and (ii) payment of compensation is reasonable in view of all circumstances, in particular the agent's loss of commission on agreements with those customers. Such circumstances may include different factors, including the application of a non-compete clause, although this does not directly appear from Art. 25(1) DTAA. A legal assessment of the agency agreement is required to assess whether and to what extent an agent may be entitled to compensation under Art. 25(1) DTAA.

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 Danish case law on the basis of which the indemnification is calculated?

Yes. There is no fixed calculation method. According to the Danish Report on Commercial Agents and Commercial Travelers No. 1151 from 1998, the calculation of the indemnification is based on an estimate of the future development compared to the circumstances prevailing at the time when the agency agreement was entered into. The calculation must depend on an individual assessment. Therefore, the extent of the indemnification may vary from a commission of a few months to a commission of a few years. The Danish case law in this field varies.

According to Art. 25 DTAA, the commercial agent may also receive an indemnification based on considerations of fairness. In this regard, according to Danish law, the assessment includes factors such as the loss of provision (i.e., the expected reiteration of orders which the agent has obtained), the amount of operation costs saved, the duration of the agreement, the reason for the termination of the agreement, possible special favorable conditions, the amount of sales support, the presence of sub-agents, and the character of the customers. However, this

possibility of indemnification is rarely used in (Danish) legal proceedings.

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 Danish Agency Law?

Yes. See, Art. 26 DTAA.

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 Danish Agency Law?

Yes. See, Art. 27 DTAA.

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 Danish Agency Law?

Yes. See, Art. 28 DTAA.

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 Danish Agency Law?

Yes. See, Art. 6(1) DTAA.

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?

Yes. The party who is entitled to compensation must notify the other party without undue delay after the party in

question became or should have become aware of the negligence and damage. The extent of the term “without undue delay” is based on a concrete assessment of the case, whereby, in general, the party claiming compensation must notify as soon as it knew or should have known that a basis of liability exists. Otherwise, the right to compensation shall be extinguished. See, Art. 6(2) DTAA.

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 Danish Agency Law?

No. Denmark has opted for the solution included in Art. 17(2) 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 Danish Agency Law take the same circumstances into account?

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

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. Denmark has opted for the solution included in Art. 17(2) Directive.

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 Danish Agency Law?

Yes. See, Art. 25(2) DTAA.

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 Danish Agency Law impose the same restriction on the parties?

Yes. See, Art. 29 DTAA.

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

Yes. Denmark has opted for the solution included in Art. 17(2) Directive regarding indemnification in case of

termination. In cases where the commercial agent or the principal fails to fulfil his obligations to the other party, the other party is entitled to compensation for damage caused. See, Art. 6 DTAA.

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

Yes. The commercial agent's claim for compensation pursuant to Art. 25 DTAA (Art. 17(2)(a)) Directive lapses if the commercial agent has not notified the principal that he intends to assert his rights within 1 year after the termination of the agency agreement, . See, Art. 28 DTAA.

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 Danish Agency Law?

Yes. Art. 22 and 25-27 DTAA may not be derogated from by including a choice of law clause to the detriment of the commercial agent, to the extent that the matter would be subject to the DTAA in the absence of such choice of law clause. See, Art. 1(2) DTAA.

Art. 1(3) DTAA regulates the situation, where the commercial agent's duties for the principal shall not be performed in a country, which is an EU or EFTA Member State or one of the Nordic countries. This means that, if the commercial agent’s duties for the principal under the agency agreement are not to be performed in a particular EU or EFTA Member State, or in one of the Nordic countries, the parties may derogate from all the provisions of the DTAA, except with respect to Art. 22 and 25-27 DTAA.

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 Danish Agency Law provide for a statute of limitations that is applicable to claims regarding the performance of agency agreements?

No.