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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 Belgian law ("Belgian 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 Hungarian 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:*

Act V of 2013 on the Civil Code ("Hungarian Civil Code") Part 3, Title XVI, Chapter XLI on Agency Agreements.

Government Decree 65/2014. (III. 13.) on the commission payable to the agent under the permanent agency agreements ("Government Decree")

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

Hungarian Civil Code

Government Decree

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

Hungarian Civil Code

Government Decree: no official 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 Hungarian Agency Law the same?

Yes. See, Art. 6:293 Hungarian Civil Code.

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

Yes. See Art. 6:288-6:292 Hungarian Civil Code. They contain general provisions on agency agreements in general, which regulates intermediaries' rights and obligations in respect of facilitating the conclusion of a (single) agreement between his principal and a third party. Compared to the general provisions on agency agreements (i.e. the conclusion of a single agreement) the provisions on long-term and independent agents are special.

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 Hungary 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 Hungarian Agency Law provide for such obligation?

Yes. See, Art. 6:293 (4) Hungarian Civil Code.

Q6. Are there any (other) requirements under the Hungarian 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 Hungarian Agency Law?

No. See, Chapter XLI on Agency Agreements Hungarian Civil Code. It does not provide for minimum obligations of the commercial agent, but Art. 6:292 refers back to the provisions relating to engagement contracts as it provides that "Unless otherwise provided for by this Chapter, the regulations governing engagement contracts shall apply to agency contract mutatis mutandis."

The Hungarian Civil Code's general provisions on engagement contracts govern the obligations of the agents as follows:

See, Art. 6:273

- (1) The agent shall follow the instructions of the principal.
- (2) The agent may disobey the principal's instruction if it is essential for the principal's interest, and the principal cannot be notified in advance. In such a case the principal shall be notified without delay.
- (3) If the principal gives unreasonable or impracticable instructions, the agent shall be obliged to warn him thereof. If the principal insists on his instruction in spite of the warning, the agent shall be entitled to withdraw from or to terminate the contract, or may carry out the assignment according to the principal's instructions, at the principal's risk. The agent shall refuse to comply with such instruction if compliance would constitute an infringement of the law or any administrative decision, or it would jeopardize the safety or property of others.
- (4) All costs of the agent incurred in connection with the fulfilment of the instructions shall be reimbursed by the principal. The agent may demand adequate safeguards for carrying out the assignment. If the principal fails to provide adequate safeguards, the agent may refuse to carry out the assignment.

See, Art. 6:275

- (1) The agent shall inform his principal of his activities and the status of the assignment upon request, or without a request when deemed necessary. The agent shall inform his principal if employment of another

person has become necessary or if the instructions need to be changed due to the emergence of new circumstances.

- (2) The agent shall notify the principal as soon as he fulfils the assignment.

Furthermore, as a general principle of contract law, the "principle of good faith and fair dealing" also applies in relation to agency agreements:

See, Art. 1:3

- (1) In exercising rights and in fulfilling obligations the requirements of good faith and fair dealing shall be observed.
- (2) The requirements of good faith and fair dealing shall be considered breached where a party's exercise of rights is contradictory to his previous actions which the other party had reason to rely on.

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

No.

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

No.

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 Hungarian Agency Law?

Yes. The obligation to act in good faith is contained explicitly in the Agency Law, it may be derived from the general provision of Art. 1:3 Hungarian Civil Code (see above).

Q11. Does the Hungarian 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 Hungarian 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 Hungarian Agency Law?

No. There is no applicable rule on the level of remuneration and commission.

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 Hungarian Agency Law?

Yes. See, Art. 1 (2) Government Decree.

Q15. Does the Hungarian 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 Hungarian Agency Law impose any criteria with regard to the calculation of the agent's remuneration?

No. There is no applicable rule on the calculation of the remuneration or the commission.

## 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 Hungarian Agency Law?

Yes. See, Art. 5 (1) Government Decree.

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 Hungarian Agency Law?

Option 2. See, Art. 5 (2) Government Decree.

## 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 Hungarian Agency Law?

Yes. See, Art. 6 (2) Government Decree.

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

Yes. With the following supplementary provisions:

- See, Art. 6 (1) of the Government Decree: the commission is only payable to the previous commercial agent if the principal informed the commercial agent of the previous commercial agency agreement at the time the agreement was concluded; and
- See, Art. 6 (3) Government Decree: the commission is shared between the commercial agents if the transaction is the joint result of the activities of both (successive) commercial agents.

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 Hungarian Agency Law?

Yes. See, Art. 8 (1) Government Decree.

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

Yes. See, Art. 8 (3) and (4) Government Decree:

- (3) if the parties agree that the commercial agent's right to commission is established by the conclusion of the contract between the principle and a third party or the commercial agent's right to commission is not affected by non-performance of the contract, the commission shall be due at the time of the conclusion of the contract;
- (4) the agent shall also be entitled to commission in the event the contract between the third party and the principal is not performed, unless the non-performance is due to a reason for which the principle is not liable.

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 Hungarian Agency Law apply the same deadline?

Yes. See, Art. 8 (2) Government Decree.

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 Hungarian Agency Law apply the same deadline?

Yes. See, Art. 9 (1) Government Decree.

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 Hungarian Agency Law impose the same restriction on the parties?

No. The Hungarian Agency Law provides for partly different restrictions, as, in accordance with Art. 8 (6), the parties cannot by agreement derogate from Art. 8 (2) and (4) Government Decree:

- (2) the commission shall be due at the latest when the third party has performed his part of the contract or should have done so if the principal had performed his part of the contract, as he should have;
- (4) the agent shall also be entitled to commission in the event the contract between the third party and the

principal is not performed, unless the non-performance is due to a reason for which the principle is not liable.

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 Hungarian Agency Law impose these cumulative conditions?

Yes. See, Art. 8 (4) Government Decree.

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

Yes. See, Art. 8 (5) Government Decree.

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 Hungarian Agency Law?

Yes. See, Art. 9 (1) Government Decree.

Q31. Does the Hungarian 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. 9 (3) Government Decree.

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

Yes. See, Art. 9 (2) Government Decree.

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

No.

Q35. Does the Hungarian 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?

Yes, specific sectors

See, Art. 8 (6) and Art. 9 (3) Government Decree (See, Q26 and Q31). They are not applicable to parties or organisations which fall under the scope of the below acts:

- Act XCVI of 1993 on Voluntary Mutual Insurance Funds.
- Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises.
- Act LXXXII of 1997 on Private Pensions and Private Pension Funds.
- Act LXXXVIII of 2014 on the Business of Insurance.
- Act CXVII of 2007 on Occupational Retirement Pension and Institutions for Occupational Retirement Provision.
- Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities.

## 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 Hungarian Agency Law impose these cumulative criteria?

Yes. See, Art. 6:301 (1) and (3) Hungarian Civil Code.

Q38. Does the Hungarian 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 Hungarian Agency Law?

Yes. See, Art. 6:301 Hungarian Civil Code (2).

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 Hungarian Agency Law impose any such restrictions?

No.

Q41. Does the Hungarian 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 Hungarian 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. The parties have the right to include such clause due to the freedom of contract provided for by Art. 6:59 Hungarian Civil Code:

"(2) The parties are free to determine the contents of the contract. The parties may depart from the provisions relating to their rights and obligations with mutual consent, unless prohibited by this Act."

Including a *del credere* clause in the contract is not prohibited by the Hungarian Civil Code, therefore the parties are free to agree on it.

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 Hungarian Agency Law?

Yes. See, Art. 6:296 Hungarian Civil Code.

Q46. Does the Hungarian 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 Hungarian Agency Law?

Yes. See, Art. 6:297 (1) Hungarian Civil Code.

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 Hungarian Agency Law?

Yes. See, Art. 6:297 (1) Hungarian Civil Code.

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 Hungarian Agency Law?

No. See, Art. 6:297 (1) Hungarian Civil Code. It only provides for notice period of three months during the third and subsequent years of the agreement. Nonetheless, according to Art. 6:297 (2) the parties may stipulate a notice period longer than what is contained in Subsection (1).

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

No. See, Art. 6:297 (1). Any clause for a shorter period shall be null and void.

Q51. According to the Hungarian 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 Hungarian Agency Law?

Yes. See, Art. 6:297 (2) Hungarian Civil Code.

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 Hungarian Agency Law?

Yes. See, Art. 6:297 (1) Hungarian Civil Code

Q54. Does the Hungarian 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 Hungarian Agency Law?

Yes. See, Art. 6:297 (3) Hungarian Civil Code.

## 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 Hungarian Agency Law?

No. The provisions on commercial agency agreements in the Hungarian Civil Code do not specifically provide for grounds for immediate termination. According to the general provisions of engagement agreements in Art. 6:278 Hungarian Civil Code, which are directly applicable to commercial agents, the agreement may be unilaterally terminated by either of the parties, but if the agreement has been unilaterally terminated by the principal, he shall compensate the agent for the damage caused by the unilateral termination, except if the agreement has been unilaterally terminated due to the agent's breach.

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

No.

Q58. Does the Hungarian 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. There is no specific regime on termination for cause in the national Agency Law. The general rules of engagement agreements (See, Art. 6:278 (4) Hungarian Civil Code) provide that "Any limitation or exclusion of the right of termination shall be null and void."

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

Yes. See, Art. 6:59 (2) of the common provisions on contracts/agreements Hungarian Civil Code. "The parties are free to determine the contents of the contract. The parties may depart from the provisions relating to their rights and obligations with mutual consent, unless prohibited by this Act."

Hence, the parties may agree on the terms of termination of the agency agreement with respect to the following provision of engagement agreements (See, Art. 6:278 (4) Hungarian Civil Code): "Any limitation or exclusion of the right of termination shall be null and void. In the case of a long-term engagement, the parties may agree on limiting the right of termination and may stipulate that the right of termination by notice cannot be exercised within a specific time frame."

These provisions do not exclude the parties right to stipulate certain grounds for termination in the agreements.

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 Hungarian Agency Law provide for this criterion?

Yes. See, Art. 6:298 (1) a) Hungarian Civil Code. The agent is entitled to indemnification if, as a consequence of the termination of the agreement, the agent loses his entitlement to the commission provided that by establishing business contacts, the agent has attracted new clients for the principal, or improved existing business contacts in a way equivalent to acquiring a new client, and if the principal obtains significant benefits through these contacts even after the termination of the agreement.

Furthermore, see, Art. Section 6:298 (1) b). The agent shall likewise have the right for indemnification in case the agent completed the assignment for setting up a long-term relationship, but he is prone to lose regular income due to the termination of the agency agreement.

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 Hungarian Agency Law provide for this criterion?

Yes. See, Art. 6:298 (1) Hungarian Civil Code.

Q64. Is under the Hungarian 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. The issue of indemnification is independent from the application of a non-compete clause. See, Art. 6:298 (4) Hungarian Civil Code. Indemnification shall not affect the agent's claim for compensation and the fee due on the basis of an agreement containing a restriction imposed upon the agent in exercising economic activities after the time of termination of the agreement.

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 Hungarian 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 Hungarian Agency Law?

Yes. See, Art. 6:298 (2) Hungarian Civil Code.

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 Hungarian Agency Law?

No. The ground specified in Art. 18 (a) (termination by the principal due to the agent's default) is not provided for in the Hungarian Agency Law.

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 Hungarian Agency Law?

Yes. See, Art. 6:298 (3) Hungarian Civil Code.

## 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 Hungarian Agency Law?

Yes. See, Art. 6:59 (2) of the common provisions on contracts Hungarian Civil Code: "The party who causes damage to the other party by breaching the contract shall be liable for such damage. The said party shall be relieved of liability if able to prove that the damage occurred in consequence of unforeseen circumstances beyond his control, and there had been no reasonable cause to take action for preventing or mitigating the damage." The general provision on liability for any loss caused by non-performance is directly applicable to agency agreements.

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 Hungarian Agency Law?

Yes. According to the general rules of engagement agreements (See, Art. 6:278 (2) Hungarian Civil Code), which are applicable to agency agreements, the in the event of termination by the principal, the principal shall pay compensation to the agent for damages resulting from the termination, unless the termination notice is given on account of the agent’s breach of the contract.

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 Hungarian Agency Law take the same circumstances into account?

No. The Hungarian Agency Law does not mention any specific circumstance to be taken into account.

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 Hungarian Agency Law?

No. The Hungarian Agency Law does not provide for the above circumstance.

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 Hungarian Agency Law impose the same restriction on the parties?

Yes. The Hungarian Agency Law is more general: See, Art. 6:300, it provides that a clause that derogates from the provisions relating to indemnification to the detriment of the agent agreed on before the agreement was terminated shall be null and void.

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

No.

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

No.

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

No. General provisions on the statute of limitations shall be applicable (i.e. the statute of limitation is five years according to Art. 6:22 (1) Hungarian Civil Code).