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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 Italian Law ("Italian 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 Italian 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*

Art. 1742 to 1753 Italian Civil Code, as amended by Legislative Decree No. 303/1991, Legislative Decree No. 65/1999, and Art. 23 Law No. 422/2000, constitute the transposition of the Directive into Italian Law.

The legislative framework regarding commercial agents and sales representatives is also completed by Law No. 204/1985, as amended by Art. 74 Legislative Decree No. 59/2010.

b. Link(s) to official publication

The Italian Civil Code is accessible via this link.

Legislative Decree No. 303/1991 is accessible via this link.

Legislative Decree No. 65/1999 is accessible via this link.

Law No. 422/2000 is accessible via this link.

Law No. 204/1985 is accessible via this link.

Legislative Decree No. 59/2010 is accessible via this link.

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 Italian Agency Law the same?

Yes. Italian Law distinguishes between a commercial agents and a sales representatives:

- The commercial agent has the continuing authority to promote the conclusion of contracts in a given area on behalf of the principal; in particular, a commercial agent looks for potential customers for the principal and promotes the conclusion of contracts in exchange for an economic consideration. In practice, a commercial agent merely refers potential customers to the company he works for, without signing contracts directly.
- The sales representative has the continuing authority to enter into contracts in a given area on behalf of and in the name of the principal (therefore being an "*agent with power of representation*"). The sales representative autonomously concludes contracts on behalf of the principal, being the latter's representative for commercial issues, and is therefore able to conclude agreements and directly sign contracts.

This smooth distinction often appears in the commercial practice, and it fully covers the definition set out in the Directive (Art. 1(2)).

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

Yes. Art. 1753 Italian Civil Code provides that the provisions on agency agreements also apply to insurance agents, insofar as they are compatible with the nature of the insurance business and local customs.

In addition to the provisions of the Italian Civil Code, Art. 290 Italian Naval Code (regulating the role of the ship's agent), and several special laws (e.g. Law no. 135/1977, also on the ship's agent and Law no. 48/1979, on insurance agents) and collective economic agreements are also applicable.

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 Italy 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 Italian Agency Law provide for such obligation?

Yes. See, Art. 1243 (2) Italian Civil Code.

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

Yes. According to Art. 1742(2) Italian Civil Code, agency agreements must be concluded in writing.

Under Art. 74 Legislative Decree No. 59/2010, agents are required to have themselves registered in the relevant register, i.e. the Italian Companies' Register or the Italian Administrative and Economic Repertoire, by a start-up notification given to the Chamber of Commerce, Industry, Craft Trades and Agriculture.

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 Italian Agency Law?

Yes. See, Art. 1746 Italian Civil Code.

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

Yes. According to Art. 1746(2) Italian Civil Code, commercial agents must comply with the duties incumbent upon commission agents, unless such duties are excluded by the nature of the agency agreement.

More specifically, the commission agent has an obligation towards the principal arising from the specific

transaction that he carries out in the name and on behalf of the principal (for example, the obligation to transfer the right acquired in his own name, but in the interest of the principal; the obligation to act taken due care; the obligation to inform the principal of all the relevant aspects of the transaction).The commercial agent who is unable to perform his duties must immediately notify the principal of his condition. If he fails to do so, he shall be liable for damages.

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

No. Although Italian Law does not specifically regulate the activity of sub-agents, according to Italian case law (See, Italian Court of Cassation, No. 9489/2020; Italian Court of Cassation, No. 15645/2017), a commercial agent may appoint sub-agents for the exercise of his duties, unless this is explicitly excluded by the principal in the agency agreement.

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 Italian Agency Law?

Yes. See, Art. 1749 Italian Civil Code.

Q11. Does the Italian 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 Italian 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 Italian Agency Law?

Yes. Commercial agent's remuneration is generally represented by a commission proportional to the number or value of the transactions concluded by the agent. Therefore, the general principle of proportionality of the commission to the value of the transaction concluded applies.

Moreover, Art. 1748 (1) Italian Civil Code provides that the agent's right to commission arises at the very moment of the conclusion of the transaction.

In order to determine the amount of the commission, if the parties fail to determine it directly in the agency agreement, reference shall be made to professional fees, failing or to local usages and finally to equity, using the criteria set out in Art. 1374 Italian Civil Code.

Furthermore, the case law (see, Italian Court of Cassation No. 10588/1991; Italian Court of Cassation No. 58/1985; Italian Court of Cassation No. 1346/1975; Italian Court of Cassation No. 873/1983; Italian Court of Cassation No. 3507/1986) indicates different criteria for determining whether the agent's remuneration is proportional (holding it admissible e.g. if the guaranteed minimum, i.e. a sum to which the agent is entitled irrespective of the business concluded, to which are added the commissions accrued for the contracts actually procured for the principal or a lump sum and even the determination of a fixed minimum commission, even for unsuccessful business or a flat minimum).

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 Italian Agency Law?

Yes.

Q15. Does the Italian 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 Italian 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 Italian Agency Law?

Yes. See, Art. 1748 (1 and 2) Italian Civil Code.

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 Italian Agency Law?

Option 2. See, Art. 1748 (2) Italian Civil Code.

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 Italian Agency Law?

Yes. See, Art. 1748 (3) Italian Civil Code.

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

Yes. See, Art. 1748 (5) Italian Civil Code. If the principal and the third party agree not to perform, in whole or in part, their commercial agreement, the agent shall be entitled to a reduced commission to be determined under local usages or, in the absence thereof, by the court on an equitable basis in relation to the portion of the contract not performed.

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 Italian Agency Law?

Yes. See, Art. 1748 (3) Italian Civil Code.

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 Italian Agency Law?

Yes. See, Art. 1748 (4) Italian Civil Code.

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

Yes. See Art. 1748 (4) Italian Civil Code.

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 Italian Agency Law apply the same deadline?

Yes. See Art. 1749 (2) Italian Civil Code.

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 Italian Agency Law impose the same restriction on the parties?

Yes. See, Art. 1749 (4) Italian Civil Code.

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 Italian Agency Law impose these cumulative conditions?

No. In this case, Art. 1748 (6) Italian Civil Code does not provide for the extinction of the right to commission but only for an obligation to refund the commission already received by the agent.

Specifically referring to situations where a contract between the third party and the principal will not be executed after agreement (lawful conduct), the agent is always entitled to receive a reduced commission, the purpose of which is to compensate him for the expenses incurred in connection with the transaction he actually promoted. The reduced commission is calculated on the basis of the full commission in the case of a wholly unperformed transaction, or on the unperformed part in the case of a partial non-performance.

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

Yes. The right to the commission is subject to a 5-year limitation period. pursuant to the principle established by Art. 2948 Italian Civil Code. The starting date of the limitation period is the last day of the month following the quarter during which the commissions accrued.

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 Italian Agency Law also provide for such an obligation of restitution?

Yes. See, Art. 1749 (6) Italian Civil Code.

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 Italian Agency Law?

Yes. See, Art. 1749 (2) Italian Civil Code.

Q31. Does Italian 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. 1749 (4) Italian Civil Code.

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

No. According to Art. 1749 (2) Italian Civil Code, the principal shall deliver a commission statement to the agent no later than the last day of the month following the quarter in which commissions accrued. By the same deadline, commissions must actually be paid to the agent.

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 Italian Agency Law grant the commercial agent the same right?

See, Art. 1749 (3) Italian Civil Code. Upon request of the agent, the principal shall provide the commercial agent with all information which he needs to check the amount of the commission due and an extract from books and

records.

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

No.

Q35. Does Italian 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 Italian Agency Law impose these cumulative criteria?

Yes. See, Art. 1751-bis (1) Italian Civil Code.

Q38. Does Italian 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 Italian Agency Law?

Yes. See, Art. 1751-bis (1) Italian Civil Code.

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 Italian Agency Law impose any such restrictions?

No.

Q41. Does Italian 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 Italian 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?

No. According to Art. 1746 (3) Italian Civil Code, the principal and the agent may exceptionally agree that – subject to a specific remuneration - the commercial agent shall undertake a guarantee obligation for a specific and well-defined transaction, provided that such guarantee does not exceed the commission that the agent would be entitled to receive for such transaction.

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

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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 Italian Agency Law?

Yes. See, Art. 1750 (1) Italian Civil Code.

Q46. Does Italian 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 Italian Agency Law?

Yes. See, Art. 1750 (2) Italian 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 Italian Agency Law?

No. According to Art. 1750 (3) Italian Civil Code, 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. The period of notice is fixed at 4 months for the fourth year of the contract, 5 months for the fifth year and 6 months for the sixth and subsequent.

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 Italian Agency Law?

Yes. See, Art. 1750 (3) Italian Civil Code.

Q50. Can the parties agree to a shorter notice period?

No.

Q51. According to Italian 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 Italian Agency Law?

Yes. See, Art. 1750 (4) Italian 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 Italian Agency Law?

Yes. See, Art. 1750 (5) Italian Civil Code.

Q54. Does Italian 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 Italian Agency Law?

No. Such a default regime is also applicable to agency agreements having a fixed term if they are converted into an agency agreement for an indefinite period, but the Italian Law does not expressly provide that the earlier fixed

period must be taken into account into the calculation of the notice period.

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 Italian Agency Law?

Yes. Please note that under Italian general contract law - which also applies to agency agreements - the contract may be terminated (a) upon default of one party (Art. 1453 Italian Civil Code) and (b) when exceptional circumstances arise that make it impossible for one party to perform his contractual obligations (Art. 1463 Italian Civil Code).

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

No.

Q58. Does Italian 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. Italian Law does not provide specific regulations for this case.

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

Yes. Please note that under Italian general contract law - which also applies to agency agreements - the parties may expressly agree that the agency agreement will be terminated if one party fails to perform a specific contractual obligation in accordance with the terms set out therein. (Art. 1456 Italian Civil Code) or they may also make the termination of the agreement to the occurrence of a specific, future and uncertain event (contract subject to a resolutive condition) (Art. 1353 Italian Civil Code).

Q60. 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 Italian Agency Law provide for this criterion?

Yes. See, Art. 1751 (1) Italian Civil Code.

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 Italian Agency Law provide for this criterion?

Yes. See, Art. 1751 (1) Italian Civil Code.

Q64. Is under Italian 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. Italian Law does not provided for such a regime.

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

Yes. The Collective Economic Agreements are agreements entered into between Italian business associations and agents' unions to regulate certain aspects of the agency relationship on a contractual basis and are only mandatory if the principal is a member of one of the associations that entered into the agreements. Such agreements provide for a method of calculating and conditions for the applicability of the indemnification that differs from that provided by law. In fact, according to the Collective Economic Agreements, the indemnification is composed by:

1. A termination Indemnity (Firr): it is calculated as a percentage of the commissions accrued up to the time of termination of the contract;
2. A supplementary client indemnity: if the contract is terminated for reasons not attributable to the agent, it will be paid by the principal in addition to the termination indemnity and is calculated as a percentage of the total amount of the commissions for which the right to payment arose;
3. A meritocratic indemnity: it is recognized and paid only if the agent's activity has led to an increase in turnover with existing and/or newly acquired clients and, in any case, if the total amount of the termination indemnity and the supplementary client indemnity is lower than the maximum value provided for by Art. 1751 (3) Italian Civil Code.

Pursuant to Art. 1751 (3) Italian Civil Code, the amount of the indemnification shall not exceed a figure equivalent

to an annual allowance calculated on the basis of the annual average of the salaries collected by the agent over the last five years and, if the contract is less than five years old, on the average for that period.

According to Italian case law (see, Italian Court of Cassation, No. 8483/2008; Italian Court of Cassation, No. 16347/2007; Italian Court of Cassation, No. 9538/2007), the indemnification calculated in accordance with the rules laid down in the Collective Economic Agreements constitutes a "*minimum guaranteed treatment*". The agent who disputes the quantification of the indemnity in the measure provided for by the Collective Economic Agreements has the right to appeal to the judge to request that the indemnity be calculated in accordance with Art. 1751(3) Italian Civil Code

- The indemnification provided for in the event of acceptance of a non-compete clause is calculated on the basis of the duration (not more than 2 years from the termination of the contract), the nature of the agency agreement, and the end-of-contract indemnification. In the absence of an agreement between the parties, the amount of such indemnification shall be determined by the court on an equitable basis and in compliance with the conditions provided by Art. 1751-*bis* Italian Civil Code (i.e. the average fees collected by the agent during the term of the agreement and their incidence on the total turnover calculated in the same period; the causes of termination of the agency agreement; the extent of the area assigned to the agent; the existence or otherwise of exclusive rights for a single principal).
- A further indemnification is provided when a third party and the principal agree not to perform the contract, either in whole or in part (lawful conduct). In this case, the agent is entitled to a reduced commission, the purpose of which is to compensate him for the expenses incurred in connection with the transaction he has promoted. The reduced commission is calculated on the basis of the full commission in the case of a wholly unperformed transaction, or on the unperformed part in the case of a partial non-performance.

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 Italian Agency Law?

Yes. See, Art. 1751 (3) Italian 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 Italian Agency Law?

Yes. See, Art. 1751 (2) Italian Civil Code.

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 Italian Agency Law?

Yes. See, Art. 1751 (5) Italian 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 Italian Agency Law?

Yes. See, Art. 1751 (4) Italian Civil Code.

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 Italian Agency Law?

No. Italian Law does not provide specific regulations for this case.

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 Italian Agency Law take the same circumstances into account?

No. Italian Law does not provide specific regulations for this case.

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. Italian Law does not provide specific regulations for this case.

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 Italian Agency Law?

Yes. Art. 1751 (7) Italian Civil Code provides for such a regulation only in the case of indemnification.

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 Italian Agency Law impose the same restriction on the parties?

Yes. See, Art. 1751 (6) Italian Civil Code.

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

Yes. Art.1751 (4) Italian Civil Code provides that the granting of indemnification does not deprive the agent of the right to compensation, when applicable.

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

Yes. Pursuant to Art. 1751 (5), the commercial agent's right to indemnification is subject to a term of 1 year from the termination of the agency agreement, by which the agent must expressly request the principal to pay such indemnification.

However, the granting of the indemnity shall not deprive the agent of the right to claim any further damages, claimable within 10 years regardless of the agent's timely request to pay the indemnification. In other words, if the agent has failed to claim indemnification, he is still entitled to claim for damages provided that 10 years have not elapsed

The agent's claim for payment of commissions is normally time-barred after five years from the date on which the payment was due, pursuant to Art. 2948(4) Italian Civil Code. The starting point for the limitation period is, pursuant to Art. 1749(2) Italian Civil Code, the last day of the month following the quarter during which the commissions accrued. National case law has ruled out that for the agent the limitation periods set out above may start to run from the moment when the relationship comes to an end. (see, Italian Constitutional Court, judgement of June 10, 1966, no. 63: the principle of the suspension of the limitation period during the term of the agreement

is an exclusive prerogative of subordinate employment; see also Italian Court of Cassation No. 894/2013; Italian Court of Cassation, No. 34/1980; Italian Court of Cassation, No. 1452/1969).

For so-called "indirect" commissions, which accrue to the agent in respect of business concluded directly by the principal in the areas for which the agent is actually responsible, given their merely episodic nature, the ordinary limitation period of 10 years applies. (See, Italian Court of Cassation, No. 15069/2008).

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 Italian Agency Law?

Yes. According to Art. 409 Italian Civil Procedure Code, proceedings relating to agency agreements are subject to the rules of procedural labour law and the jurisdiction is assigned to the court of the place where the agent has his domicile.

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?

Yes. In compliance with the rule established by Art. 806 (2) Italian Civil Procedure Code, disputes concerning agency agreements may be decided through arbitration only if provided for by the Collective Economic Agreement or the agency agreement itself. Furthermore, according to the Italian case law (See, Italian Court of Cassation, No. 28533/2018; Italian Court of Cassation, No. 3464/2015), the arbitration clause in an agency agreement is valid and enforceable only when the dispute concerns a right that is not provided for by a mandatory rule and it is available to the parties (for example, when the dispute concerns the calculation of the amount of the commission but not when it is disputed whether the agent is entitled to the commission). This is consistent with a general principle under the Italian legal system which provides that not all disputes can be decided through arbitration but only those relating to the so-called "available rights", i.e. those rights that can be transferred or be subject to waiver by their owner, and provided that the parties are not prevented to opt for arbitration by the law.

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

Yes.

- The right to commission is subject to a 5-year limitation period.
- The right to indemnification is subject to a 10-year limitation period, provided that the agent has expressly requested the principal to pay such indemnification within 1 year of the end of the agency agreement.