

Q&A DOCUMENT | 20 January 2021

Q&A on Agency Agreements

Part 1: Introduction

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

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

In order to facilitate the use of this Q&A, for each relevant issue the position under the Directive is compared with the position under the relevant implementing rules of Lithuanian Law (“Lithuanian 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 Lithuanian 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 Civil Code of the Republic of Lithuania (the “Civil Code”).

b. Link(s) to official publication

The Civil Code of the Republic of Lithuania is accessible via [this link](#) (please note that the English translation provided is not of the version of the law currently in force):

c. Link(s) to English translation

The English translation of Civil Code of the Republic of Lithuania is accessible via [this link](#) (please note that the English translation provided is not of the version of the law currently in force):

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 Lithuanian Agency Law the same?

Yes, in addition, Art. 2.152 paragraph 1 Civil Code states that the commercial agent has the authority to negotiate and conclude agreements at the expense of the principal.

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

Yes, intermediaries under the following laws fall within the scope of Lithuanian Agency Law:

- Merchant shipping agent under Law on Merchant Shipping of the Republic of Lithuania;
- Insurance agent under Law on Insurance of the Republic of Lithuania;
- Financial intermediary under Law Financial Institutions of the Republic of Lithuania;

Travel agent under Law on Tourism of the Republic of Lithuania.

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 Lithuania 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 Lithuanian Agency Law provide for such obligation?

Yes. See, Art. 2.154 paragraph 2 Civil Code. A waiver of the right to conclude the agreement in writing shall be null and void.

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

Yes. According to Art. 2.154 paragraph 3 Civil Code, the following conditions are valid only if they are agreed upon in writing:

- restrictions on the civil liability of an agent or a principal or a complete exemption from civil liability;
- prohibition of competition after the agreement has been terminated;
- conditions for the termination of an agreement;
- exclusive rights of a commercial agent;

dependence of the commercial agent's right to remuneration to the performance of an agreement.

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 Lithuanian Agency Law?

Yes. See, Art. 2.156 Civil Code.

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

Yes. According to Art. 2.156 of the Civil Code, in addition to the obligations stated above, the commercial agent shall (i) keep the principal's commercial secrets during the term of validity of a contract and upon its expiry, where such condition has been set in the contract, (ii) avoid competition with the principal, (iii) compensate the losses damages incurred on the principal, and (iv) upon the expiry of an agreement, return to the principal all documents, property and other things which were handed over by the principal.

Q9. Does the Lithuanian 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 Lithuanian Agency Law?

Yes. See, Art. 2.157 Civil Code.

Q11. Does the Lithuanian 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 Lithuanian 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 Lithuanian Agency Law?

Yes. See, Art. 2.158 paragraph 4 Civil Code.

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 Lithuanian Agency Law?

No. According to Paragraphs 8 and 9 Art. 2.160 Civil Code, where a commercial agent has been granted an exclusive right to conclude agreements on a certain territory or with certain consumers, a commercial agent shall be entitled to payment by commission, which shall be calculated by taking into account the agreements concluded within the period of validity of the agency agreement with the persons from the said territory or the said consumers. Also, a commercial agent shall, too, be entitled to payment by commission in the cases where the order of the third party has reached the principal prior to the expiry of the agency agreement or within a reasonable period of time after the expiry of the agency agreement and the agreement is related to the agency agreement.

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

Yes. According to Art. 2.159 paragraph 1 Civil Code, the commercial agent's remuneration shall be set in the agency agreement in the form of a specific amount or a percentage of the agreement value.

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

Yes. According to Art. 2.159 paragraph 2 Civil Code, all expenses borne by a commercial agent shall be refunded by the principal if the third party failed to reimburse them (transportation of goods, storage, insurance, packaging expenses, customs duties paid, as well as other dues and fees). Such expenses cannot be included into the expenses of commercial agent's independent activities.

According to Art. 2.158 paragraph 2 Civil Code, an agency agreement may provide that the commercial agent's remuneration shall depend on how successfully the principal's instructions have been carried out or that the commercial agent is offered remuneration only in the cases where the third party has performed the agreement. A commercial agent shall also be offered a remuneration for the amounts recovered for the principal from a third party.

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 Lithuanian Agency Law?

No.

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 Lithuanian Agency Law?

Option 2. See, Art. 2.160 paragraph 8 Civil Code, where a commercial agent has been granted an exclusive right to conclude agreements on a certain territory or with certain consumers, a commercial agent shall be entitled to payment by commission, which shall be calculated by taking into account the agreements concluded within the period of validity of the agency agreement with the persons from the said territory or the said consumers.

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 Lithuanian Agency Law?

Yes. Art. 2.160 paragraph 9 Civil Code states that a commercial agent shall, too, be entitled to payment by commission in the cases where the order of the third party has reached the principal prior to the expiry of the agency agreement or within a reasonable period of time after the expiry of the agency agreement and the agreement is related to the agency agreement.

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

Yes. See, the answer to Q21.

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 Lithuanian Agency Law?

Yes. See, Art. 2.160 paragraph 10 Civil Code specifies that where a commercial agent is paid by commission after the expiry of the agreement, the new agent shall not be entitled to payment by commission except in the cases where division of payment by commission under certain circumstances may be considered to be fair.

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 Lithuanian Agency Law?

Yes. See, Art. 2.160 paragraph 1 of the Civil Code.

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

Yes. See, Art. 2.160 paragraph 1 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 Lithuanian Agency Law apply the same deadline?

No. According to Art. 2.160 paragraph 4 Civil Code, a principal shall have to remunerate a commercial agent on a monthly basis and no later than on the last day of the month following the accounting period.

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 Lithuanian Agency Law impose the same restriction on the parties?

No. According to Art. 2.160 paragraph 4 Civil Code, the parties may, by written agreement, extend the term of payment, but for no longer than three months from the last day of the accounting period.

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 Lithuanian Agency Law impose these cumulative conditions?

Yes. See, Art. 2.160 paragraph 3 Civil Code.

Q28. Does the Lithuanian 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 Lithuanian Agency Law also provide for such an

obligation of restitution?

Yes. See, Art. 2.160 paragraph 3 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 Lithuanian Agency Law?

No. According to Art. 2.160 paragraph 5 Civil Code, every month, unless agreed in writing every three months, a principal shall have to submit to a commercial agent accounting documents which allow to calculate the remuneration, and which justify the cessation or reduction of payments to the commercial agent.

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

No. Art. 2.160 paragraph 5 Civil Code gives the parties the choice between supplying the statement of commission due monthly or every three months. It does not however specify anything regarding including another option than these two, including a derogation to the detriment of the commercial agent.

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

Yes.

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

Yes. According to Art. 2.160 paragraph 6 Civil Code, in the event of disputes relating to the remuneration, a commercial agent has the right to request an audit to establish the exact amount due. Waiver of this right is not valid. When a principal refuses to carry out an audit or in the event of disagreement about the auditor, the agent has the right to file a request with the court for the mandatory appointment of an auditor.

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

No. General principle as explained in Q16 apply.

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

- non-solicitation clauses;

- minimum sales quota;
- specific sectors?

Specific sectors. Specific rules apply within the insurance sector.

According to the Art. 2 paragraph 1¹ Law on Insurance of the Republic of Lithuania, remuneration for the distribution of insurance products is considered as commissions, payments or other remuneration offered or paid for the distribution of insurance products, including any kind of economic benefit or other financial or non-financial advantage or incentive.

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 Lithuanian Agency Law impose these cumulative criteria?

Yes. See, Art. 2.164 paragraphs 1 and 2 Civil Code.

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

Yes. According to Art. 2.164 paragraph 8 Civil Code, agreements, which contradict with the provisions of the given Art. and aggravate the situation of the commercial agent, shall be null and void e.g. if the agency agreement will establish that the non-compete period is longer than 2 years from the termination of the agency agreement, such part of the agency agreement will be null and void.

According to Art. 2.152 paragraph 2 Civil Code, a principal and an agent may only agree on competition-restricting conditions that are not prohibited by the applicable competition laws.

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 Lithuanian Agency Law?

Yes. According to the Art. 2.164 paragraph 1 Civil Code, the non-compete clause shall be valid not more than 2 years after the termination of the agreement.

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 Lithuanian Agency Law impose any such restrictions?

Yes, both. With regard to the first category, according to Art. 2.164 paragraph 7 Civil Code, the courts are entitled, at the commercial agent's request, to declare a non-compete clause fully or partially invalid where, taking into consideration the commercial agent's legitimate interests, the said clause causes him serious harm.

With regard to the second category, according to Art. 2.164 paragraph 8 Civil Code, agency agreements, that are contrary to the provisions of Art. 2.164 Civil Code and aggravate the situation of the commercial agent, shall be null and void e.g. if the agency agreement will establish that the non-compete period is longer than 2 years from the termination of the agency agreement, such part of the agency agreement will be null and void.

Q41. Does Lithuanian 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 Lithuanian 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. According to Art. 2.158 paragraph 3 Civil Code, where a commercial agent guarantees a principal that the third party will properly perform the contract, the commercial agent shall be entitled to an additional remuneration (del credere). Any agreement between the parties to preclude this right shall be null and void. The additional remuneration (del credere) shall be due upon the successful performance of the 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 Lithuanian Agency Law?

Yes, See, Art. 2.155 paragraph 2 Civil Code.

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

Yes. According to Art. 2.155 paragraph 1 Civil Code, an agreement between a commercial agent and a principal may be for a fixed period or for an indefinite period. According to the Art. 2.155 paragraph 2 Civil Code, if the agreement has been concluded for a fixed term and after the expiry of this term the parties continue to perform their rights and obligations, it is considered that the agreement is renewed for an indefinite period under the same conditions.

The Art. 2.165 paragraph 5 Civil Code states that where the term of an agency agreement has expired and the fixed period agreement became an agreement for an indefinite period, the term of notification laid down in Art. 2.165 paragraph 1 Civil Code, which includes the time limit of validity of a fixed period agreement, shall be applied to its termination.

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 Lithuanian Agency Law?

Yes. See, Art. 2.165 paragraph 1 Civil Code, which sets out notification periods in case of termination of agreement.

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 Lithuanian Agency Law?

Yes. See, Art. 2.165 paragraph 1 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 Lithuanian Agency Law?

No. According to Art. 2.165 paragraph 1 Civil Code, the notice period is 4 months in case the duration of the agreement is longer than 3 years.

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

No. See, Art. 2.165 paragraph 2 Civil Code.

Q51. According to Lithuanian 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

Lithuanian Agency Law?

Yes. According to Art. 2.165 paragraph 2 Civil Code, the parties may establish a longer notice period but such longer notice period must be the same for both parties.

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

Yes. See, Art. 2.165 paragraph 4 Civil Code, which states that except as otherwise agreed upon by the parties, the last day of notification and the day of the termination of a contract shall have to coincide with the end of the calendar month.

Q54. Does Lithuanian 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 Lithuanian Agency Law?

Yes. See, Art. 2.165 paragraph 5 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 Lithuanian Agency Law?

No. The Lithuanian Agency Law does not specify the termination grounds described above, therefore general principles on termination of the agreement shall apply. According to Art. 6.217 paragraph 1 Civil Code, a party may terminate the agreement where the non-performance or the improper performance by the other party is considered to be a material breach of the agreement. Art. 6.217 paragraph 2 Civil Code sets out the circumstances which are assessed in order to determine whether the breach of the agreement is to be considered to be material:

- whether the aggrieved party is substantially deprived of what it was entitled to expect under the agreement, except in cases where the other party did not foresee or could not have reasonably foreseen such result;

- whether, taking into consideration the nature of the agreement, strict compliance with the obligations is of essential importance (according to Lithuanian case law, in deciding whether, taking into consideration the nature of the agreement, strict compliance with the obligations is of essential importance, it must be assessed whether the non-performance of a particular obligation of the agreement will lead to the loss of the other parties' interest in the obligation) e.g. under certain agreements the term to fulfill the obligation under the agreement could be of essential importance;
- whether the non-performance is intentional or due to gross negligence;
- whether the non-performance gives the aggrieved party a reason to believe that it cannot rely on the future performance of the agreement;
- whether the defaulting party would suffer very significant losses if the agreement were terminated.

However the Art. 16 (b) Directive is reflected under the Lithuanian Agency Law:

- according to Art. 2.166 paragraph 1 Civil Code, each party shall have the right to terminate a fixed term contract before the expiry of its term where there are important reasons to do so. A waiver of the given right shall be null and void e.g. if the parties include in the agreement the provision that the party shall not have a right to terminate a fixed term contract before the expiry of its term in case there are important reasons to do so, such provision of the agreement will be null and void, and the party will still have such right;

according to Art. 2.165 paragraph 3 Civil Code, the party, which has terminated an agreement without the other party's consent and has violated the term of prior notification, must compensate the other party for the losses incurred by its actions, except in the cases, where the agreement has been terminated for important reasons, which have to be notified, without delay, to the other party.

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

No.

Q58. Does Lithuanian 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.

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

Yes. The Lithuanian Agency Law does not stipulate that the agency agreement may be terminated based on certain grounds for termination (breach or other) included in the agency agreement. However, Art. 6.217 paragraph 5 Civil Code establishes the general principle that a contract may be terminated unilaterally in the cases provided for in the agreement.

Q60. Is prior judicial intervention required in order for the termination of the agreement to take effect?

No. However on any other grounds not established in Art. 6.217 Civil Code the agreement may be terminated only within the judicial proceedings resulting from an action of the interested party. The previous mentioned requirement is not applicable in case of special provisions under Lithuanian Agency Law, such as Art. 2.166 paragraph 1 Civil Code, Art. 2.165 paragraphs 1, 2, 5 Civil Code.

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

Yes.

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 Lithuanian Agency Law provide for this criterion?

Yes. See, Art. 2.167 paragraph 2 (1) 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 Lithuanian Agency Law provide for this criterion?

Yes. See Art. 2.167 paragraph 2 (2) Civil Code and Art. 2.167 paragraph 6 Civil Code.

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

Yes. According to the Art. 2.164 paragraph 4 Civil Code, where an agreement includes a non-compete clause a commercial agent shall have the right to compensation for all the period of the prohibition thereof.

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

Yes. There is no fixed calculation method.

Lithuanian courts follow the Court of Justice jurisprudence (*Quenon K*), which breaks down the calculation of the indemnification into three stages: (i) the quantification of the benefits accruing to the principal as a result of the volume of the business with customers brought by the commercial agent, taking into account criteria including the duration of the contractual relations and the evolution of the customers brought or elaborated on by the

commercial agent to the benefit of the principal; (ii) checking whether the amount established on the basis of the above-mentioned criteria is equitable, having regard to all the circumstances of the case and, in particular, to the commission lost by the commercial agent; and (iii) the application of the upper limit of one year (decision No 3K-7-5-684/2016 of the Lithuanian Supreme Court, dated 12 February 2016).

According to Lithuanian case law the calculation of the indemnification is also based on the commissions lost by the commercial agent from business with the clients (decision No 3K-7-5-684/2016 of the Lithuanian Supreme Court, dated 12 February 2016).

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 Lithuanian Agency Law? Yes. See, Art. 2.167 paragraph 3 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 Lithuanian Agency Law?

Yes. See, Art. 2.167 paragraph 5 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 Lithuanian Agency Law?

Yes. See, Art. 2.167 paragraph 4 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 Lithuanian Agency Law?

Yes. According to Art. 2.165 paragraph 3 Civil Code, the party, which has terminated an agreement without the other party's consent and has violated the term of prior notification, must compensate the other party for the losses incurred by its actions, except in the cases, where the agreement has been terminated for important reasons, which have to be notified, without delay, to the other party.

According to Art. 2.166 paragraph 2 Civil Code, where the agreement is terminated for reasons for which the other party is liable, the latter shall have to compensate for the losses inflicted by the termination of the agreement.

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. According to Art. 2.166 paragraph 2 Civil Code, where the agreement is terminated for reasons, for which the other party is liable, the latter shall have to compensate for the damages inflicted by the termination of the agreement.

According to Art. 2.165 paragraph 3 Civil Code, the party, which has terminated an agreement without the other party's consent and has violated the term of prior notification, must compensate the other party for the losses incurred by its actions, except in the cases, where the agreement has been terminated for important reasons, which have to be notified, without delay, to the other party.

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 Lithuanian Agency Law?

Yes. See Art. 2.167 paragraph 6 Civil Code, according to which a commercial agent is entitled to request compensation for damages, which he/she suffers upon the termination of the agreement with a principal, and especially if he/she fails to receive a commission he/she is entitled to after a successful performance of an agency agreement and a principal profits substantially from the commercial agent's activities or where he/she fails to refund the expenses the commercial agent had to bear in the execution of the principal's instructions

According to Art. 2.165 paragraph 3 Civil Code, the party, which has terminated an agreement without the other party's consent and has violated the term of prior notification, must compensate the other party for the losses incurred by its actions, except in the cases, where the agreement has been terminated for important reasons, which have to be notified, without delay, to the other party.

According to Art. 2.166 paragraph 2 Civil Code, if the agreement is terminated for reasons for which the other party is liable, the latter must compensate for the losses incurred in terminating the agreement.

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 Lithuanian Agency Law take the same circumstances into account?

Yes. See, Art. 2.167 paragraph 6 Civil Code.

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. There is no fixed calculation method.

In order to calculate the compensation, the Lithuanian courts implement the recommendations set by the European Commission, dated 23 July 1996. The courts take into account the sum of commissions received within the last 12 months and amend this amount taking into account the average interest rate applied to respective commercial transactions, and the period during which the principal has benefitted from the agreement (decision No 3K-7-5-684/2016 of the Lithuanian Supreme Court, dated 12 February 2016).

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 Lithuanian Agency Law?

No.

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 Lithuanian Agency Law impose the same restriction on the parties?

Yes. See, Art. 2.167 paragraph 1 Civil Code.

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

No. See, Art. 2.167 paragraph 1 Civil Code.

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

Yes. According to Art. 2.167 paragraph 4 Civil Code, claims for compensation shall be subject to limitation period of one year, from the day following the termination of the agreement.

According to Art. 2.160 paragraph 7 Civil Code, a three-year limitation period shall be applicable to the recovery of the commercial agent's remuneration.

In respect to indemnification, no limitation period is specified in the Lithuanian Agency Law.

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 Lithuanian Agency Law?

No. Except for agency agreements in certain sectors. According to Art. 1.37 paragraph 6 Civil Code, an insurance agreement shall be governed by the law of the state where the domicile or the place of business of the insurer is located; an agreement of insurance in respect to an immovable thing shall be governed by the law of the state in the territory of which the thing is located.

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

No.