Distribution Law Center
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ARNTZEN GRETTE

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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 Norwegian Law ("Norwegian 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 Norwegian 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 relating to Commercial Agents and Commercial Travellers [The Norwegian Agency Act] (LOV-1992-06-19-56).

b. Link(s) to official publication

https://lovdata.no/dokument/NL/lov/1992-06-19-56?q=agenturlov

c. Link(s) to English translation

At this moment there is no official English translation available of the Norwegian Agency Act.

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 Norwegian Agency Law the same?

Yes. See, Art. 1 (1) Norwegian Agency Act. Pursuant to the preparatory work of the Norwegian Agency Act (Ot.prp.nr.49 (1991-1992) any agent that meets the definition in Art. 1 (2) Directive also falls within the Norwegian definition of a commercial agent.

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

No. In exceptional circumstances, Art. 28 of the Norwegian Agency Act (indemnity) may apply by way of analogy to distribution agreements, provided the nature of the distribution, considering its characteristics, is similar to an agency agreement.

The distributor's right to a termination payment, in the form of an indemnity in sole distribution agreements, is not regulated by statutory provisions under Norwegian law, unlike Art. 28 Norwegian Agency Act which provides commercial agents with a statutory right to indemnification in certain circumstances. In order for Art. 28 to apply by way of analogy to a sole distribution agreement, the distribution relationship in question should generally be largely similar to that of an agency agreement, taking into consideration all facts of the case. In its 2014 "Webasto-judgment" (Rt-2014-118), the Norwegian Supreme Court confirmed previous case law and stated that Art. 28 Norwegian Agency Act does not apply to sole distributors except in "exceptional cases" where the outcome would otherwise be "highly unreasonable".

The Court of Appeal's decision in LH-2020-64762, which concerned a long-term sole distribution relationship (28 years) may serve as an example of the high threshold for applying Art. 28 Norwegian Agency Act by way of analogy and how the courts will rely on a case-by-case assessment, considering all relevant facts of the case. In short, the Court of Appeal found that (i) the tasks performed by the distributor, although largely similar, did not fall within the Norwegian Agency Act's definition of 'commercial agent', (ii) that the parties had not agreed to the application of the provisions of the Agency Act, and (iii) that the characteristics of the distribution relationship, all things considered, were not sufficiently similar to invoke application of Art. 28 (importantly, the increase in sales during the last year of the contract was largely attributable to the supplier and not the distributor). Note: the decision is currently on appeal to the Norwegian Supreme Court. The appeal concerns, inter alia, the definition and scope of Art. 1 Norwegian Agency Act.

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 Norway 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 Norwegian Agency Law provide for such obligation?

Yes. See, Art. 4 (1) Norwegian Agency Act.

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

Yes. See, Art. 5 Norwegian Agency Act.

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

Yes. Pursuant to Art. 6 Norwegian Agency Act, certain additional obligations are imposed on the commercial agent:

- Pursuant to Art. 6 (1), a commercial agent shall take proper care of goods and other items belonging to the principal which the agent has in its possession. In addition, the agent shall have such insurance as is customary in the circumstances. Furthermore, the principal's goods shall be kept separate from other goods.

- Pursuant to Art. 6 (2), where a commercial agent is entitled to receive payment for goods sold, the commercial agent shall keep the amounts received separate from other funds. The agent shall give his principal an account of all amounts received.

Q9. Does the Norwegian 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 Norwegian Agency Law?

Yes. See, Art. 7 Norwegian Agency Act.

Q11. Does the Norwegian 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 Norwegian 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 Norwegian Agency Law?

Yes. See, Art. 9 Norwegian Agency Act.

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 Norwegian Agency Law?

No. The principle referenced in Art 6 (2) Directive, has not been implemented in the Norwegian Agency Act and there is no corresponding definition of commission. The Agency Act's provisions on remuneration are primarily laid down in Art. 9 – Art. 13.

Q15. Does the Norwegian 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 Norwegian 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 Norwegian Agency Law?

Yes. See, Art. 10 (1) Norwegian Agency Act.

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 Norwegian Agency Law?

Option 1. See, Art. 10 (1) Norwegian Agency Act.

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 Norwegian Agency Law?

Yes. See, Art. 11 Norwegian Agency Act, which specifies that alternative b) is dependent on the transaction also satisfying the conditions stated in Art. 10.

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

Yes. See, Art. 10 (2) Norwegian Agency Act.

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 Norwegian Agency Law?

Yes. See, Art. 12 (1), alternatives 1-3 Norwegian Agency Act.

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

Yes. See, Art. 12 (1), alternative 4 Norwegian Agency Act.

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 Norwegian Agency Law apply the same deadline?

Yes. See, Art. 12 (2) Norwegian Agency Act.

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 Norwegian Agency Law impose the same restriction on the parties?

Yes. See, Art. 12 (3) Norwegian Agency Act. In addition, the Norwegian Agency Act stipulates that the parties cannot by agreement derogate from the alternative referenced in Q22 c) (i.e. “the third party has executed the transaction.”).

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 Norwegian Agency Law impose these cumulative conditions?

Yes. See, Art. 13 (1) Norwegian Agency Act. If the reason for non-execution by the third party is that the principal has granted a respite or terminated the transaction, the commercial agent’s right to commission shall not be affected. However, this shall not apply where the agent has given his consent.

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

Yes. Pursuant to Art. 13 (3) Norwegian Agency Act, if the third party only executes part of the transaction, the commercial agent’s right to commission relating to the part which is not executed shall be extinguished if the first and second paragraph in Art. 13 so provide.

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

Yes. See, Art. 13 (4) Norwegian Agency Act.

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 Norwegian Agency Law?

Yes. See, Art. 14 (1) Norwegian Agency Act.

Q31. Does Norwegian 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. 14 (3) Norwegian Agency Act.

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

Yes. Pursuant to Art. 14 (2) Norwegian Agency Act, if a commercial agent's right to commission on a transaction has been entirely or partly extinguished, information thereon shall be set out in the statement of commission for the quarter in which the right was extinguished. The grounds for extinction of the right to commission shall be provided in the statement.

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 Norwegian Agency Law grant the commercial agent the same right?

Yes. See, Art. 15 (1) Norwegian Agency Act.

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

Yes. Pursuant to Art. 15 (2) Norwegian Agency Act, if the principal refuses to supply the information mentioned in Art. 15 (1), or it does not arrive without undue delay, the commercial agent shall be entitled to scrutinise the principal's registered accounting information and accounting material himself. The principal may decide that a state authorised or registered auditor shall undertake such scrutiny instead of the agent. The auditor shall be chosen at the agent's discretion. The agent shall have the same rights if there is reason to assume that information set out in the statement of commission or provided pursuant to Art. 15 (1) is incorrect.

The parties may not derogate from this provision to the detriment of the commercial agent.

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

Yes. See, Art. 34 (1) Norwegian Agency Act.

Q38. Does Norwegian 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 Norwegian Agency Law?

Yes. See, Art. 34 (2)-(3) Norwegian Agency Act.

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 Norwegian Agency Law impose any such restrictions?

Yes. Pursuant to Art. 34 (3) Norwegian Agency Act, the courts can declare a non-compete clause, either fully or partly, null and void with reference to Art. 36 or Art. 38 Act on Conclusion of Agreements, if the courts find that a non-compete clause unreasonably restricts a party's ability to engage in economic activity. In which case, the courts may decide that the non-compete obligation shall not extend beyond what is considered 'reasonable', taking into account the competitive situation and the effect on the other party.

Q41. Does Norwegian 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 Norwegian 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 Norwegian Agency Act does not prevent the parties from agreeing on allocation of liability, including entering into *del credere* clauses.

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

Yes. The general rules of the Act on Conclusion of Agreements, including Art. 36 and 38, will apply. This means that as an example, a *del credere* clause may be set aside fully or partly with reference to Art. 36 if it is considered as unfair. According to established case law by the Norwegian Supreme Court, the threshold for applying Art. 36 is high, especially between professional parties.

Art. 36 is a legal standard, and opens for an overall assessment of the contractual relationship, within which the conditions prior to the entry into force of the agreement are relevant, including whether the agreement, in whole or in part, is deemed unconscionable or contrary to good business practice. Elements that are relevant for the assessment are *inter alia* whether one of the parties are superior with regards to bargaining power or relative size and has abused his superior position to impose unreasonable conditions or deprived the other party of certain rights etc.

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 Norwegian Agency Law?

Yes. See, Art. 26 (2) Norwegian Agency Act.

Q46. Does Norwegian 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 Norwegian Agency Law?

Yes. See, Art. 25 (1) Norwegian Agency Act.

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 Norwegian Agency Law?

Yes. See, Art. 25 (2) Norwegian Agency Act.

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 Norwegian Agency Law?

Yes. See Art. 25 (2) Norwegian Agency Act. Note that this default system of 1 month's extension per year applies for a maximum of 6 months.

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

Yes. Pursuant to Art. 25 (3) Norwegian Agency Act, the parties may not agree upfront on a notice period which is shorter than the notice period specified in Art. 25 (2). However, the parties may agree that the commercial agent shall be free to terminate the agency agreement subject to a notice period of 3 months even if the agreement has lasted more than 3 years.

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

Yes. See, Art. 25 (2) Norwegian Agency Act. If no notice period has been agreed, 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, and subsequent years may be respectively 4, 5 and 6 months.

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 Norwegian Agency Law?

Yes. See, Art. 25 (4) Norwegian Agency Act.

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 Norwegian Agency Law?

Yes. See, Art. 25 (5) Norwegian Agency Act.

Q54. Does Norwegian 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 Norwegian Agency Law?

Yes. See, Art. 26 (2) with reference to Art. 25 Norwegian Agency Act.

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 Norwegian Agency Law?

No. See, Art. 27 (1) Norwegian Agency Act. The termination ground referenced in alternative (b) is not explicitly reflected in the Norwegian Agency Act. Pursuant to Art. 27 (1), an agency agreement may be subject to immediate termination if one party has failed to carry out his obligations, and this entails a material breach of contract.

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

Yes. According to the preparatory works of the Norwegian Agency Act, Art. 25, 26 and 27 do not regulate extraordinary grounds for termination, such as bankruptcy, death and subsequently failed contractual assumptions. However, according to the general principles of contract law, extraordinary circumstances may give grounds for termination providing such grounds amount to/result in a material breach of contract.

Q58. Does Norwegian 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?

Yes. See, Art. 27 (3) Norwegian Agency Act.

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

Yes. It is technically possible to include termination for cause regulations in the agency agreement, but only providing that such clauses do not derogate from Art. 27(1)-(2) to the detriment of the commercial agent.

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 Norwegian Agency Law provide for this criterion?

Yes. See, Art. 28 (1), alternative 1 Norwegian Agency Act.

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 Norwegian Agency Law provide for this criterion?

Yes. See, Art. 28 (1) Norwegian Agency Act.

Q64. Is under Norwegian 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 preparatory works of the Norwegian Agency Act relating to Art. 34, there is a presumed correlation between the size of the indemnification and the possibility of imposing a non-compete clause on the commercial agent.

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

Yes. Regarding the method of calculation, it follows from Norwegian case law that the calculation of the indemnification may be separated into three stages: (i) calculation of commission from new and old customers, (ii) reasonable/equitable assessment considering all circumstances (including the factor of goodwill), and (iii) the application of the upper limit of one year, cf. Art. 28 (3) Norwegian Agency Act.

The Norwegian Supreme Court has previously stated (in HR-2000-1503) that since Art. 17 (2) Directive largely is based on German law, German case law may be relevant for the interpretation of Art. 28 where Norwegian/EU/case law does not provide particular guidance.

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 Norwegian Agency Law?

Yes. See, Art. 28 (3) of the Norwegian Agency Act. The parties may not derogate from this regime to the detriment of the commercial agent.

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 Norwegian Agency Law?

No. Art. 30 (1), alternative 1 Norwegian Agency Act has a different wording than Art. 18 (a) Directive:

"*Where the agent terminates the agency agreement, unless such termination is justified by circumstances attributable to the principal*." (non-official translation)

The parties may not derogate from the provisions of Art. 30 to the detriment of the commercial agent until after the agency agreement has expired.

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 Norwegian Agency Law?

Yes. See, Art. 31 (1) Norwegian Agency Act.

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 Norwegian Agency Law?

Yes. See, Art. 8 (1) Norwegian Agency Act.

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. Pursuant to Art. 8 Norwegian Agency Act, should the commercial agent or the principal fail to fulfil their obligations under the agency agreement or the Norwegian Agency Act, the other party should be entitled to claim

compensation for any consequential losses incurred, unless the other party can prove that such failure is not due to error or negligence on his part. Consequential loss encompasses e.g. loss of income as a consequence of the other party's breach of contract, and the objective of Art. 8 is to place the aggrieved party in a situation as if the breach did not occur.

It follows from the preparatory work of the Norwegian Agency Act (Ot.prp.nr.49 (1991-1992)), that damages may be claimed in addition to a claim for indemnification.

Moreover, a party which intends to claim compensation shall notify the other party accordingly without undue delay after the party learned or should have learned of the circumstances giving rise to the claim. Otherwise the right to compensation shall be lost, unless the other party has displayed gross negligence or otherwise acted contrary to dutifulness and good faith, cf. Art. 8 (2) Norwegian Agency Act.

The party claiming compensation has a duty to mitigate his losses. If the aggrieved party neglects to do so, he himself must bear the corresponding portion of the damages incurred, cf. Art. 8 (3).

According to Art. 8 (4), the compensation may be reduced if such compensation would appear unreasonable for the liable party, based on the size of the loss in relation to the loss which usually arises in similar cases, and depending on the circumstances of the case.

Derogations from the provisions of Art. 8 to the detriment of the commercial agent is not permitted.

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 Norwegian Agency Law?

Yes. Termination in breach of the provisions of the Norwegian Agency Act or the agency agreement itself may give rise to a claim for damages. Pursuant to Norwegian case law with reference to Art. 8 of the Norwegian Agency Act, unlawful termination may give grounds for compensation for damages.

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 Norwegian Agency Law take the same circumstances into account?

No. Neither the Norwegian Agency Act nor the preparatory work explicitly take these circumstances into account.

General principles of tort law apply.

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?

Yes. Besides the rules referenced in the answer to Q70, general principles of Norwegian tort law applies.

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 Norwegian Agency Law?

No. Pursuant to Art. 28 (2) Norwegian Agency Act, Art. 28 (1) shall apply correspondingly when an agency contract is terminated as a result of the commercial agent's death. Thus, there is no default entitlement, meaning that it is still necessary to assess the conditions set out in Art. 28 (1).

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 Norwegian Agency Law impose the same restriction on the parties?

Yes. See, Art. 28 (4), Art. 29 (2) and Art. 30 (2) of the Norwegian Agency Act.

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

No. Different rules apply to indemnification and compensation. The parties are not free to derogate from the applicable provisions of the Norwegian Agency Act, at least not until after the agency agreement has expired.

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

Yes. See, Art. 31 (1) Norwegian Agency Act. A commercial agent loses his right to indemnification if he has not notified the principal that he intends to assert his rights within 1 year after the termination of the agency agreement. Any claim for compensation (damages) must be notified "without undue delay" (see, Art. 8 (1) Norwegian Agency Act). Further reference is made to the general rules of the Norwegian Statute of Limitations Act.

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

Norwegian Agency Law?

Yes. See, Art. 2 Norwegian Agency Act. The parties can agree upon forum and jurisdiction, but there are several mandatory and invariable provisions in the Norwegian Agency Act. A provision which, pursuant to the Norwegian Agency Act, is invariable may not be set aside to the detriment of a commercial traveller or a commercial agent through an agreement that the agency relationship shall be regulated by foreign law, if in the absences of such agreement the relationship would be subject to Norwegian law (see, Art. 3 Norwegian Agency Act).

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

No. The Norwegian Agency Act does not contain explicit regulations on statute of limitations applicable to claims regarding the performance of agency agreements (apart from the statute of limitations relating to claims for compensation under Art. 31 Norwegian Agency Act – i.e. one year). Thus, statutes of limitations are regulated by the Norwegian Statute of Limitations Act, subject to which the general statute of limitations is 3 years from the day the breach of contract occurred (see, Art. 2).

Art. 10 Statute of Limitations Act regulates extensions. Pursuant to Art. 10 (1), if the claimant has failed to assert a claim due to lack of knowledge regarding the claim or the debtor, the statute of limitations is 1 year after the claimant obtained or should have obtained such knowledge. Pursuant to Art. 10 (4), the absolute stature of limitations cannot be extended by more than 10 years under the relevant provision (see, Art. 10). Consequently, a claim cannot in any event be pursued later than 13 years calculated from the occurrence of the breach.

Link to the Norwegian Statue of Limitations Act (only in Norwegian): https://lovdata.no/dokument/NL/lov/1979-05-18-18?q=foreldelseslov