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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 the Luxembourg law ("Luxembourg 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 Luxembourg 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:*

Commercial agency is regulated by the Law of 3 June 1994 on the organisation of the relationship between self-employed commercial agents and their principals and transposing Council Directive 86/653/EEC of 18 December 1986 ("Law of 3 June 1994").

b. Link(s) to official publication:

The ?????official website is accessible via this link.

c. Link(s) to English translation:

The English translation is 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 Luxembourg Agency Law the same?

Yes. See, Art. 1 Law of 3 June 1994. In addition, the definition provides that a commercial agent may have such authority "on a permanent, main or accessory basis and against remuneration".

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

No.

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 Luxembourg made use of this possibility?

No. On the contrary, the definition included in Art. 1 Law of 3 June 1994 specifies expressly that a commercial agent may act "on a permanent, main or secondary basis".

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 Luxembourg Agency Law provide for such obligation?

Yes. See, Art. 15, paragraph 1 Law of 3 June 1994.

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

Yes. The requirement of a writing is only useful to serve as evidence of the content of the agreement (Art. 15, paragraph 2 Law of 3 June 1994).

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 Luxembourg Agency Law?

Yes. See, Art. 3 paragraphs 1 and 2 Law of 3 June 1994.

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

No.

Q9. Does the Luxembourg 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 Luxembourg Agency Law?

Yes. See, Art. 4 Law of 3 June 1994. However, it is worth noting that Art. 4 (2) (a) Law of 3 June 1994 requires to make the necessary documentation available relating to the goods or services concerned.

Q11. Does the Luxembourg 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 Luxembourg Agency Law that limit the freedom of the parties to fix the

level of the remuneration of the commercial agent?

No. The remuneration of the commercial agent is specified under Title III Law of 3 June 1994. Art. 6 clarifies that the agent receives either a fixed sum, or commissions, or partly a fixed sum and partly commissions as provided in the agreement of the parties. This is freely determined (if not, it is determined by commercial practice; if not, an equitable remuneration has to be granted to the agent (by the judge)). The determination of the commissions due is described in Art. 7 and following of the Law of 3 June 1994.

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 Luxembourg Agency Law?

Yes. See, Art. 6 Law of 3 June 1994.

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 Luxembourg Agency Law?

Yes. See, Art. 7 Law of 3 June 1994.

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

No. Art. 6 Law of 3 June 1994 provides that the remuneration of the commercial agent shall consist either of a fixed sum, or of commissions, or partly of a fixed sum and partly of commissions as agreed between the parties.

Q16. Does the Luxembourg 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 Luxembourg Agency Law?

Yes. See, Art. 8 Law of 3 June 1994.

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 Luxembourg Agency Law?

Option 2: Art. 8 (c) Law of 3 June 1994 provides for option 2 in the following terms (putting it in the negative): "*where the transaction has been concluded with a person belonging to a specific geographical area or group of persons for which the commercial agent is responsible unless it has been expressly agreed that the commercial agent would not have exclusivity for that area or group of persons*".

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 Luxembourg Agency Law?

Yes. See, Art. 9 Law of 3 June 1994.

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

Yes. See, Art. 10 Law of 3 June 1994.

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 Luxembourg Agency Law?

Yes. See, Art. 11 (1) Law of 3 June 1994.

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

Yes. See, Art. 11 (2) Law of 3 June 1994.

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 Luxembourg Agency Law apply the same deadline?

Yes. See, Art. 12 Law of 3 June 1994.

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 Luxembourg Agency Law impose the same restriction on the parties?

Yes. See, Art. 11 (3) and 12 paragraph 2 Law of 3 June 1994.

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 Luxembourg Agency Law impose these cumulative conditions?

Yes. See, Art. 13 (1) Law of 3 June 1994.

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

No.

Q29. According to the Directive (Art. 11 (2)) any commission which the commercial agent has already received must be refunded in case the right to it is extinguished. Does the Luxembourg Agency Law also provide for such an obligation of restitution?

Yes. See, Art. 13 (2) Law of 3 June 1994.

Q30. The Directive (Art. 12 (1)) provides that the principal must supply his commercial agent with a statement of the commission due. This statement must be supplied no later than the last day of the month following the quarter in which the commission has become due, and shall set out the main components used in calculating the amount of the commission. Do these principles also represent the default regime under the Luxembourg Agency Law?

Yes. See, Art. 14 (1) Law of 3 June 1994. He/she can at least generally verify the accuracy of the commission calculation

Q31. Does the Luxembourg 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) Law of 3 June 1994.

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

No.

Q33. The Directive (Ar.t 12 (2)) entitles the commercial agent to demand to be provided with all the information, and in particular an extract from the books, which he needs to check the amount of the commission due to him. Does the Luxembourg Agency Law grant the commercial agent the same right?

Yes. See, Art. 14 (2) Law of 3 June 1994.

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

No.

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

No.

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

- non-solicitation clauses;
- minimum sales quota;
- specific sectors?

No.

B.5 - NON-COMPETE CLAUSE

Q37. The Directive (Art. 20 (2)) provides that a non-compete clause shall only be valid if and to the extent that:

- it is concluded in writing; and
- it relates to the geographical area or the group of customers and the geographical area entrusted to the commercial agent and to the kind of goods covered by the agency agreement.

Does the Luxembourg Agency Law impose these cumulative criteria?

Yes. See, Art. 26 (2) Law of 3 June 1994. It is worth noting that according to Art. 26 (2) Law of 3 June 1994 refers to both the kind of goods and services covered by the agency agreement.

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

Yes. Art. 26 (2) Law of 3 June 1994 imposes the following additional criteria: "*It must relate to a specific professional sector and similar activities to those carried out under the agreement*".

Q39. The Directive (Art. 20 (3)) provides that a non-compete clause shall be valid for not more than 2 years after termination of the agency agreement. Does the same maximum period apply under the Luxembourg Agency Law?

No. Art. 26 (3) Law of 3 June 1994 provides for a maximum duration of 12 months, starting on the day the agreement ended.

Q40. The Directive (Art 20(4)) provides that national law may impose other restrictions:

- on the validity or enforceability of non-compete clauses, or
- which enable the courts to reduce the obligations on the principal or the commercial agent.

Does the Luxembourg Agency Law impose any such restrictions?

Yes, both. Art. 27 Law of 3 June 1994 states those restrictions:

"*(1) The principal cannot rely on such a clause if the agreement has been terminated:*

a. *because the principal, without the consent of the commercial agent, has terminated the agreement without observing the legal or contractual time limit and without serious grounds being communicated to the commercial agent without delay;*
b. *because the commercial agent has terminated the agreement for a serious reason which constitutes a fault on the part of the principal and which he has communicated to the principal without delay;*
c. *by a court decision based on circumstances of which the commercial agent is entitled to complain to the*

principal.

(2) The court may, at the request of the commercial agent, annul this clause or limit its effects when, having regard to legitimate interests of the principal, the harmful consequences for the agent are contrary to equity.

(3) If the principal has stipulated a specific fine or indemnity for the commercial agent's breach of that clause, the court may, at the commercial agent's request, reduce that fine or indemnity if it appears to the court to be excessive."

Q41. Does the Luxembourg Agency Law provide any criteria with regard to the calculation method of the indemnification in case of a violation of the non-compete clause?

No.

B.6 - LIABILITY

Q42. Under the Luxembourg 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. Since the Law of 3 June 1994 does not provide anything concerning delcredere clauses, contractual freedom prevails in this respect.

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

No.

Q44. Are there liability-related clauses that must be mandatorily included in agency agreements?

No.

C. Term and termination

C.1 - TERM

Q45. According to the Directive (Art. 14) an agency agreement for a fixed period which continues to be performed by both parties after that period has expired shall be deemed to be converted into an agency agreement for an indefinite period. Does this principle also represent the default regime under the Luxembourg Agency Law?

Yes. See, Art. 16 Law of 3 June 1994.

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

No.

C.2 - TERMINATION BY NOTICE

Q47. According to the Directive (Art. 15 (1)) an agency agreement that is concluded for an indefinite period may by either party be terminated by notice. Does this principle also represent the regime under the Luxembourg Agency Law?

Yes. See, Art. 17 (1) Law of 3 June 1994. This also applies to agency agreements having a fixed term and including the possibility to terminate by notice.

Q48. According to the Directive (Art. 15 (2)) the notice period is 1 month for the first year, 2 months for the second year commenced, and 3 months for the third year commenced and subsequent years. Do these notice periods also represent the regime under the Luxembourg Agency Law?

Yes. See, Art. 17 (2) Law of 3 June 1994.

Q49. According to the Directive (Art. 15 (3)) the notice period for the fourth, fifth and sixth year and subsequent years may be respectively 4, 5 and 6 months. Do these notice periods also represent the regime under the Luxembourg Agency Law?

Yes. See, Art. 17 (2) Law of 3 June 1994.

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

No. See, Art. 17 (2) Law of 3 June 1994.

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

No.

Q52. According to the Directive (Art. 15 (4)), if a principal and commercial agent agree on longer notice periods than those laid down in Art. 15 (2) and (3) of the Directive, the notice period to be respected by the principal must not be shorter than that to be observed by the commercial agent. Does the same default regime apply under the Luxembourg Agency Law?

Yes. See, Art. 17 (3) Law of 3 June 1994.

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

Yes. See, Art. 17 (4) Law of 3 June 1994.

Q54. Does the Luxembourg Agency Law provide how the termination notice must be notified to the other party?

No.

Q55. According to the Directive (Art. 15 (6)), the answers to questions 47 to 53 also apply to agency agreements having a fixed term if they are converted to agency agreements having an indefinite term due to the continuation of the agreement beyond the fixed term, provided that the earlier fixed period must be taken into account in the calculation of the notice period. Does the same default regime apply to agency agreements having a fixed term under the Luxembourg Agency Law?

Yes. See, Art. 17(5) Law of 3 June 1994.

C.3 - TERMINATION FOR CAUSE

Q56. According to the Directive (Art. 16) an agency agreement may immediately be terminated:

- because of the failure of one party to carry out all or part of his obligations; or
- where exceptional circumstances arise.

Are both termination grounds reflected in the Luxembourg Agency Law?

Yes. See, Art. 18 Law of 3 June 1994. However, Luxembourg agency law is somewhat more stringent requiring that a) a serious breach is established, or b) the exceptional circumstances render any further professional cooperation between the principal and the agent definitely impossible.

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

No.

Q58. Does the Luxembourg 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. The Law of 3 June 1994 does not contain such general prohibition. However, according to Art. 23 (3) of the Law of 3 June 1994 a clause allowing one of the parties to determine whether there is serious breach shall be declared null and void.

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

Yes. It should be noted that under the terms of Art. 17 Law of 3 June 1994, when an agency agreement is concluded for an indefinite period, or for a fixed period with the option of early termination, either party may terminate it by giving notice (Luxembourg Court of Appeal, 14 March 2001, roll number 23156).

Luxembourg case law has recognised a breach of agency agreement based on the violation of a non-solicitation clause during the application of the agreement (Luxembourg Court of Appeal, 4 February 2015, roll number 39011).

If the principal terminates the agreement without proving gross negligence on the part of the agent, the latter shall

be entitled to compensation for eviction under Article 19.

In addition to the above, the law does not provide for the award of damages in the event of termination of the commercial agency agreement for lack of just cause.

Q60. If yes, is prior judicial intervention required in order for the termination of the agreement to take effect?

No. The notice period as regulated in the above-mentioned Art. 17 does not need to be motivated, as such motivation is not required by Luxembourg Agency Law (Luxembourg Court of Appeal, 14 March 2001, roll number 23156).

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

No. The compensation for damages is granted to the prejudiced party in case the contract duration or the legal or conventional notice periods have not been respected (Art. 23 (1)).

C.4 - INDEMNIFICATION

Q62. The Directive (Art. 17 (2) (a)) provides that the commercial agent is entitled to an indemnification if and to the extent that he has brought the principal new customers or has significantly increased the volume of business with existing customers and the principal continues to derive substantial benefits from the business with such customers. Does the Luxembourg Agency Law provide for this criterion?

Yes. See, Art. 19 (1) Law of 3 June 1994.

Q63. The Directive (Art. 17 (2)(a)) also provides that the commercial agent is entitled to an indemnification if and to the extent that the payment of this indemnification is equitable having regard to all circumstances and, in particular, the commission lost by the commercial agent on the business transacted with such customers. Does the Luxembourg Agency Law provide for this criterion?

Yes. See, Art. 19 (1) Law of 3 June 1994.

Q64. Is under the Luxembourg 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. See, Art. 19 (1), second indent Law of 3 June 1994.

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

No. Compensation is most often determined *ex aequo* et bono by case law.

Q66. The Directive (Art. 17 (2) (b)) provides that the amount of the indemnification may not exceed a figure

equivalent to an indemnification for 1 year calculated from the commercial agent's average annual remuneration over the preceding 5 years, and if the agreement goes back less than 5 years the indemnification shall be calculated on the average for the period in question. Does the same regime apply under the Luxembourg Agency Law?

Yes. See, Art. 19 (2) Law of 3 June 1994.

Q67. According to the Directive (Art. 18), indemnification or compensation for damage is not payable where

- the principal has terminated the agency agreement because of default attributable to the commercial agent which would justify immediate termination of the agency agreement;
- the commercial agent has terminated the agency agreement, unless such termination is justified by circumstances attributable to the principal or on grounds of age, infirmity or illness of the commercial agent in consequence of which he/she cannot reasonably be required to continue his/her activities; and/or
- with the agreement of the principal, the commercial agent assigns his rights and obligations under the agency agreement to another parties.

Do these principles also represent the default regime under the Luxembourg Agency Law?

Yes. See, Art. 20 Law of 3 June 1994.

Q68. According to the Directive (Art. 17 (5)), a commercial agent may lose his/her entitlement to the indemnification or compensation for damage if within 1 year following termination of the agency agreement he/she has not notified the principal of his/her intention to pursue the entitlement. Does this principle also represent the default regime under the Luxembourg Agency Law?

Yes. See, Art. 21 Law of 3 June 1994.

C.5 - ADDITIONAL COMPENSATION

Q69. The Directive (Art. 17 (2) (c)) provides that the commercial agent, in addition to the indemnification, is entitled to seek damages for breach of agreement, failing to respect the notice period, etc. Does the same regime apply under the Luxembourg Agency Law?

Yes. See, Art. 19 (3), 23 and 24 (1 or 3) Law of 3 June 1994.

Q70. If yes, do specific rules and/or restrictions apply to the damage that can be compensated in addition to the indemnification under Art. 17(2) of the Directive?

Yes. The injured party may, instead of claiming the sum provided for in Art. 24, paragraph 1 Law of 3 June 1994 (i.e. a lump sum corresponding to the remuneration to which he/she would still have been entitled during the period between the date of termination and the normal expiry date of the contract on the basis of previous

commissions and any other relevant elements), claim full compensation for his loss, on condition that he/she proves this.

Compensation for the damage suffered, subject to proof (see, Art. 24 (3) Law of 3 June 1994).The commercial agent must prove the damage actually incurred.

Q71. The Directive (Art. 17 (3)) provides that the commercial agent is entitled to compensation for damage suffered as a result of the termination of the agency agreement. Does the same default regime apply under the Luxembourg Agency Law?

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

Q72. According to the Directive (Art 17. (3)) such damages shall be deemed to occur particularly when the termination takes place in circumstances:

- depriving the commercial agent of the commission which proper performance of the agency agreement would have procured him whilst providing the principal with substantial benefits linked to the commercial agent's activities; and/or
- which have not enabled the commercial agent to amortize the costs and expenses that he had incurred for the performance of the agency agreement on the principal's advice.

Does the Luxembourg Agency Law take the same circumstances into account?

Yes. The Law of 3 June 1994 does not explicitly take circumstances into account in order to calculate the compensation for such damages. However, the granting of this indemnity does not deprive the commercial agent of the right to claim damages according to Art. 19 (3) Law of 3 June 1994. These damages may relate and include the loss described in Art. 17 (3) of the Directive.

Q73. Are there any other specific rules or precedents, than the criteria set forth in Art. 17 (3) of the Directive, derived from case law on the basis of which the compensation is calculated?

No.

Q74. The Directive (Art 17(4)) provides that a commercial agent is entitled to indemnification or compensation for damage where the agency agreement is terminated as a result of the commercial agent’s death. Is this default entitlement available under the Luxembourg Agency Law?

Yes. Art. 19 (4) Law of 3 June 1994.

Q75. The Directive (Art. 19) stipulates that the parties may not derogate from Art. 17 and 18 to the detriment of the commercial agent before the agency expires. Does the Luxembourg Agency Law impose the same restriction on the parties?

Yes. Art. 22 Law of 3 June 1994.

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

No.

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

Yes. According to Art. 21 Law of 3 June 1994, 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.

Q78. Are there other specific rules with respect to compensation or indemnification following the termination of the agency agreement?

No.

Part 5: Dispute resolution

Q79. Do any specific rules and/or restrictions apply as regards the choice of forum and/or jurisdiction under the Luxembourg Agency Law?

No.

Q80. Can the parties opt for arbitration?

Yes.

Q81. If yes, are there any rules and/or restrictions as regards the enforceability of arbitration clauses in agency agreements?

No.

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

No. Obligations arising in the course of trade between traders or between traders and non-traders are subject to a 10 year statute of limitations if they are not subject to special shorter statutes of limitations (see, Art. 189 Luxembourg Commercial Code).