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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 Slovenian law ("Slovenian 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 Slovenian 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 in chapter XIX Slovenian Obligations Code (hereinafter: OC) (Official Gazette of the RS, No. 83/01, as amended).

b. Link(s) to official publication:

Slovenian Obligations Code is accessible via this link.

c. Link(s) to English translation:

An unofficial English translation is available here.

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 Slovenian Agency Law the same?

Yes. A commercial agent may be a legal or natural party that performs agency activities as a registered activity (Art. 807, paragraph 2 OC). The agent undertakes to continuously ensure that third parties conclude contracts with the principal, and in this sense to mediate between such third parties and the principal. After acquiring a special authorisation, the agent may also conclude agreements with third parties in the name of and for the account of the principal (Art. 807, paragraph 1 OC). The agent may not demand or accept the fulfilment of the principal’s claims, unless specially authorised to do so (Art. 810 OC).

Q3. Do other intermediaries fall within the scope of the Slovenian 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 Slovenia 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 Slovenian Agency Law provide for such obligation?

Yes. See, Art. 808., paragraph 1 OC.

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

Yes.

The parties to the agency agreement may agree that the agency agreement needs to be concluded in writing in order to be valid (Art. 808, paragraph 2 OC).

Further, the agent shall only be liable to the principal for the performance of obligations deriving from an

agreement negotiated by the agent or concluded by the agent in the name of the principal *(del credere)* if the agent gives a special written guarantee (Art. 819, paragraph 1 OC). The same rule applies for a prohibition on competition after termination of the agency agreement (Art. 836, paragraph 2 OC).

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 Slovenian Agency Law?

Yes. See, Art. 814 – 816 OC.

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

Yes.

- Without the principal's consent the agent may not take on any obligations to work for another principal in the same area and for the same types of transaction or for the same circle of clients (Art. 807, paragraph 5 OC).
- The agent shall be obliged to safeguard the principal's business secrets which the agent obtains in connection with the transactions entrusted to him. In case of misuse, the agent shall be held liable (Art. 817 OC).
- Upon termination of the agency agreement, the agent shall return to the principal all the things which the principal delivered to the agent (Art. 818 OC).
- The agent shall be liable to the principal for the performance of obligations deriving from an agreement negotiated by the agent or concluded by the agent in the name of the principal *(del credere)* if the agent gives a special written guarantee (Art. 819, paragraph 1 OC).
- The costs of translating and printing advertising material in Slovene shall be borne by the agent (Art. 820, paragraph 2 OC).
- The agent is held liable for damages if he fails to act with due care, however the agent shall not be responsible for successful completion of the negotiated agreements (*obligation de resultat*), unless he has explicitly

warranted for the performance of the agreement (see *del credere* above).

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

Yes.

According to legal theory, the provisions of the mandate agreement shall also apply to the agency agreements when the OC does not explicitly regulate a certain issue in respect of agency agreements. Art. 770, first and second paragraph OC provide that the recipient (agent) must execute the mandate in party. The agent may only entrust execution of the mandate to another upon an approval by the principal or if the circumstances require such transfer. Therefore, sub-agents are allowed based on the provisions of the mandate agreement, but only with approval of the principal or if the circumstances require it.

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 Slovenian Agency Law?

Yes. See, Art. 820 – 821 OC.

It should be noted that the time frame in respect of the last two indents shall be “without delay” instead of “reasonable period”.

Q11. Does the Slovenian Agency Law explicitly impose any other obligations on the principal that go beyond the aforesaid minimum?

Yes. The principal shall be obliged to pay a commission to the agent, for details please see below.

B.2 - LEVEL AND CALCULATION BASIS OF REMUNERATION

Q12. Are there mandatory rules under the Slovenian Agency Law that limit the freedom of the parties to fix the level of the remuneration of the commercial agent?

Yes.

Generally, the parties are free to fix the level of the commission of the commercial agent, whereby they should

always take into account the principle of fairness and good faith, good business practices and the characteristics of the agent's position, especially its independence. However, art. 824, paragraph 3 OC provides that if in a particular case the determined commission would be disproportionately large in comparison to the provided services, the court may, at the request of the principal, reduce the amount of the remuneration to a fair amount.

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 Slovenian Agency Law?

Yes. See, Art. 824, paragraphs 1 and 2 OC.

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 Slovenian Agency Law?

Yes. The Slovenian Agency Law does not explicitly state the mentioned regime. However, it stems from Art. 824, paragraph 1 OC that the amount of commission can be determined in a tariff. Also, the principal undertakes to provide a payment (commission) for each agreement (Art. 807 paragraph 1 OC), however the parties may agree to regulate the payment differently.

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

No. Based on Slovenian Agency Law the agent is entitled to different types of payment during the validity of the agency agreement:

- Commission for agreements concluded with the agent’s mediation, concluded by the agent if so authorised and for agreements concluded directly by the principal with parties found by the agent (Art. 823, paragraphs 1 and 2 OC).
- According to Art. 827 OC the agent shall be entitled to a special payment when the agent collects claims of the principal upon the principal’s approval.
- The agent shall also not have the right to the reimbursement of costs originating from the ordinary performance of agency transactions, unless agreed otherwise or is otherwise customary, except when those costs are incurred in favour of the principal or are paid under his mandate (Art. 828 OC).

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

Yes.

According to Art. 824, paragraph 2 OC, when the amount of the commission cannot be determined according to the customary payments in the relevant area or the type of transaction and needs to be determined according to all circumstances of the transaction (see, Q13), such determination shall in particular consider the number and value of transactions between the principal and third parties, as well as the scope and level of difficulty of the agent's efforts.

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 Slovenian Agency Law?

Yes.

Both cases are reflected in Slovenian national Agency Law (Art. 823, paragraphs 1 and 2 OC). Art. 823, paragraph 2 OC stipulates that the agent has the right to payment for agreements concluded directly by the principal with parties found by the agent, which is to be considered as falling under the second case as the transaction is concluded with a party previously acquired as a customer by the agent.

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 Slovenian Agency Law?

Option 1. See, Art. 823, paragraph 3 OC.

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 Slovenian Agency Law?

Yes. See, Art. 823, paragraph 4 OC. However, OC stipulates that an agent is entitled to a commission if the agreement "is the result" of the agent's efforts and not just "mainly attributable".

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

Yes. See, Art. 823, paragraph 4 and 5 OC.

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 Slovenian Agency Law?

Yes. See, Art. 825, paragraph 1 OC.

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

Yes. If the agreement between the principal and the third party is carried out for a longer period of time, the agent shall have the right to an appropriate advance on the commission (Art. 825, paragraph 4 OC).

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 Slovenian Agency Law apply the same deadline?

Yes. See, Art. 825, paragraph 3 OC.

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 Slovenian Agency Law apply the same deadline?

Yes. See, Art. 826, paragraph 2 OC.

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 Slovenian Agency Law impose the same restriction on the parties?

Yes. See, Art. 826, paragraph 5 OC.

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 Slovenian Agency Law impose these cumulative conditions?

Yes. See, Art. 825, paragraph 2 OC.

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

Yes. See, Art. 825, paragraph 2 OC.

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 Slovenian Agency Law?

Art. 826, paragraph 1 OC stipulates that the principal must prepare an invoice of the commission due every three months.

Q31. Does the Slovenian 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. 826, paragraph 5 OC.

Q32. Does the Slovenian Agency Law impose any additional requirements with regard to the statement of the

commission due?

Yes. Art. 826, paragraph 1 OC stipulates that the quarterly statement of commission shall be provided separately for each month and must contain all the essential components on the basis of which it was prepared.

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

Yes. See, Art. 826, paragraph 3 OC.

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

Yes. If the principal refuses the agent's request or if the agent has doubts over the accuracy of the extract, the agent may request that a certified auditor inspects the principal's books and documents in respect of the figures that are significant for the calculation of the commission and report them to the agent (Art. 826, paragraph 4 OC). The same rights apply in case of indemnification (Art. 835, paragraph 4 OC).

Q35. Does the Slovenian 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?

Specific rules apply to specific sectors. Special rules apply within the insurance (for more information see: Insurance Act,Official Gazette of the RS, no. 93/15 as amended and an unofficial and not updated English version) and maritime sectors (for more information see: Maritime Code, Official Gazette of the RS, no. 26/01 as amended and an unofficial and not updated English version).

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 Slovenian Agency Law impose these cumulative criteria?

Yes. See, Art. 836, paragraph 2 OC.

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

No. See, Art. 863, paragraph 3 OC. If the agency agreement terminates due to reasons attributable to the principal a non-compete clause shall bind the agent only if:

- upon the termination of the agency agreement the principal has paid an appropriate severance pay to the agent; and
- if during the validity of the non-compete obligation the principal pays the agent an appropriate monthly compensation in an amount equal to the average monthly commission applicable over the last five years of the validity of the agency agreement or for the duration of the agency agreement if the agreement was in force for less than five years.

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 Slovenian Agency Law?

Yes. See Art. 836, paragraph 4 OC.

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 Slovenian Agency Law impose any such restrictions?

Yes. National law may impose restrictions on the validity or enforceability of non-compete clauses.

Where the agency agreement is terminated due to reasons attributable to the principal, a non-compete clause shall only bind the agent if the principal pays the agent an appropriate severance pay and if during the prohibition on competing activities the principal continues to pay an appropriate monthly compensation (Art. 836, paragraph 3 OC).

If the agent terminated the agreement due to the principal's culpable behaviour and the agency agreement includes a non-compete clause, the agent may, within one month of termination, make a written declaration to the principal that the agent will not observe the non-compete clause (Art. 836, paragraph 5 OC).

Q41. Does the Slovenian 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 Slovenian 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. See, Art. 819 OC.

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

Such guarantee must be concluded in writing (Art. 819, paragraph 1 OC) and shall only be possible for specific transactions or transactions with a specific party (Art. 819, paragraph 2 OC). The agent that gives a guarantee to the principal for the performance of the obligations deriving from an agreement negotiated by the agent shall also have the right to a special payment (*del-credere* commission) (Art. 819, paragraph 3 OC).

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 Slovenian Agency Law?

Yes. Art. 831, paragraph 2 OC. According to legal theory, such transformation is possible even if the previous agency agreement was concluded in written form, but the parties continue the agency relationship without a written agreement.

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

Yes. An agency agreement shall be deemed to have been concluded for an indefinite period unless the parties agree otherwise (Art. 830, paragraph 1 OC).

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 Slovenian Agency Law?

Yes. See, Art. 830, paragraph 2 OC. Additionally, notwithstanding the statutory and contractual rules on the

conditions for termination of the agreement, the parties may decide by mutual agreement (consensually) to terminate the agreement on different terms.

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 Slovenian Agency Law?

No. The notice period shall depend on the duration of the agency agreement and shall amount to one month for each year begun during the agreement. However, the maximum notification period is not limited to 3 months as under the Directive, but rather to six months if the duration of the agreement exceeds five years (Art. 830, paragraph 3 OC).

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 Slovenian Agency Law?

Yes. Please see the previous question.

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

No. See, Art. 830, paragraph 4 OC.

Q51. According to the Slovenian 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 Slovenian Agency Law?

Yes. See, Art. 830, paragraph 5 OC.

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 Slovenian Agency Law?

Yes. See, Art. 830, paragraph 6 OC. In addition, the period notice shall, unless otherwise stipulated in the agreement, begin on the first day of the next calendar month.

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

No. In practice, it is determined in the agency agreement.

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 Slovenian Agency Law?

Yes. See, Art. 831, paragraph 2 OC.

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 Slovenian Agency Law?

Yes. This right may not be limited or excluded by the agency agreement (Art. 832, paragraph 1 OC).

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

Yes. Either party may also terminate the agency agreement for other serious reasons (Art. 832, paragraph 1 OC). These other serious grounds must be cited and such right to termination may not be limited or excluded by way of agreement between the parties.

Q58. Does the Slovenian 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. The Slovenian Agency Law does not explicitly prohibit different regulation of termination regime for cause in the agency agreement.

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

Yes. In the agency agreement the parties often specify the details of an extraordinary termination and what is considered a serious breach (exceptional circumstance). Although the parties have specified the grounds, termination may also be based on other grounds not mentioned in the agreement, but permissible by law (Art. 832, paragraph 1 OC).

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

No.

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

Yes.

- If the termination notice does not cite the relevant serious reasons for termination for cause, such termination shall be deemed to have been made with the ordinary notice period (Art. 832, paragraph 2 OC).
- Each party shall have the right to compensation if no serious reasons were cited for termination for cause (Art. 832, paragraph 3 OC).
- An unjustified termination shall give the other party the right to withdraw from the agency agreement without a termination notice (Art. 832, paragraph 4 OC). In this case, the counterparty must make a declaration of withdrawal, citing the unjustified termination as a serious breach.

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 Slovenian Agency Law provide for this criterion?

Yes. See, Art. 833, paragraph 1 OC.

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 Slovenian Agency Law provide for this criterion?

Yes. See, Art. 833, paragraph 1 OC.

Q64. Is under the Slovenian 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)?

Where an agency agreement is terminated due to reasons attributable to the principal, a non-compete obligation shall only bind the agent if the principal paid appropriate indemnification to the agent and continues to pay appropriate monthly compensation during the validity of the non-compete obligation (Art. 836, paragraph 3 OC).

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 Slovenian case law on the basis of which the indemnification is calculated?

Yes.

The determination of the indemnification shall duly consider the commission obtained by the agent for contracts concluded after the termination of the agency relationship and any non-compete obligations applicable after the

termination of the agency relationship (Art. 833, paragraph 2 OC).

When an agency agreement concluded for a fixed term terminates before the end of such period or when an agency agreement concluded for an indefinite period terminates sooner than five years after its conclusion, the agent shall have the right to appropriate indemnification in the amount of the difference between the costs incurred by the agent in connection with the introduction of the product to the market and all other costs incurred by the agent in connection with the performance of the agency agreement, and the revenues obtained by the agent on the basis of the performance of the agreement and the revenues the agent would in all likelihood have obtained by the end of the duration of the agreement if the agreement was concluded for a fixed period or in a period of five years from the conclusion if the agreement was concluded for an indefinite period (Art. 833, paragraph 4 OC).

According to legal theory, if the agent is entitled to any commission for contracts concluded by the principal after the termination of the agency agreement (please see response to Q19 above), the amount of such commission shall be deducted from the indemnification.

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 Slovenian Agency Law?

Yes. See, Art. 833, paragraph 3 OC.

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 party.

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

Yes. An agreement under paragraph c) shall not be permissible before the termination of the agency relationship (Art. 834 OC).

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 Slovenian Agency Law?

Yes. See, Art. 835, paragraph 2 OC.

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 Slovenian Agency Law?

Yes. See, Art. 833, paragraph 6 and Art. 832, paragraph 3 OC.

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

No.

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

No. Art. 833, paragraph 1 OC provides that an agent shall also be entitled to a compensation when such is required due to special circumstances, in particular loss of commission on transactions with clients obtained by the agent in the course of the agency 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 Slovenian Agency Law take the same circumstances into account?

No.

When an agency agreement concluded for a fixed term terminates before the end of such period or when an agency agreement concluded for an indefinite period terminates sooner than five years after its conclusion, the agent shall have the right to appropriate indemnification in the amount of the difference between the costs

incurred by the agent in connection with the introduction of the product to the market and all other costs incurred by the agent in connection with the performance of the agency agreement, and the revenues obtained by the agent on the basis of the performance of the agreement and the revenues the agent would in all likelihood have obtained by the end of the duration of the agreement if the agreement was concluded for a fixed period or in a period of five years from the conclusion if the agreement was concluded for an indefinite period (Art. 833, paragraph 4 OC).

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 Slovenian Agency Law?

Yes. See, Art. 835, paragraph 1 OC (applies only to indemnification).

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

Yes. See, Art. 835, paragraph 3 OC (applies only to indemnification).

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

No. Art. 833, paragraph 6 OC provides that payment of severance pay (indemnification) shall not exclude the agent's right to compensation. However, according to legal theory, if the agent is entitled to any commission for agreements concluded by the principal after the termination of the agency agreement (please see response to Q19 above), the amount of such commission shall be deducted from the indemnification.

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

Yes. If the agent fails to report to the principal within one year of the termination of the agency agreement a demand for severance pay (indemnification), the agent shall lose its right to indemnification (Art. 835, paragraph 2 OC).

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

Regarding severance pay: If the agent fails to report to the principal within one year of the termination of the agency agreement a demand for severance pay (indemnification), the agent shall lose its right to indemnification (Art. 835, paragraph 2 OC).

Otherwise general rules apply: claims from commercial agreements and claims for the return of expenditure arising in connection with such agreements shall become statute-barred after three years (Art. 349, paragraph 1 OC).

Part 6: Additional comments

Below we mention some of the provisions of the Slovenian Agency Law, which are not captured by the answers provided in Part 1:

Unless agreed otherwise in the agency agreement, the agent may also conclude an agency agreement as a principal and the principal may have several agents in the same area for the same types of transactions (Art. 807, paragraphs 2 and 3 OC).

If an agreement was concluded through the mediation of an agent, the principal's counterparty may make valid declarations to the agent relating to defects in the subject of the agreement and other declarations in connection with it in order to protect and exercise its rights deriving from the agreement (Art. 811 OC).

In order to secure the agent's due claims originating in connection with the agency agreement, the agent shall hold a lien on the sums he collected for the principal under the latter's authorisation, and also on all the principal's

things received in connection with the agency agreement, as long as those are in possession of the agent or a party who holds them in possession for the agent, or as long as a document allowing the disposal thereof is held by the agent (Art. 829 OC).