Distribution Law Center
DRIVEN BY CONTRAST

CEDERQUIST

Q&A DOCUMENT | 4 October 2021

Q&A on Agency Agreements

Part 1: Introduction

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

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

In order to facilitate the use of this Q&A, for each relevant issue the position under the Directive is compared with the position under the relevant implementing rules of Swedish 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 Swedish 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 Commercial Agents Act (SFS 1991:351) (the "CAA").

b. Link(s) to official publication:

The Swedish version of the Swedish Commercial Agents Act is accessible via this link.

c. Link(s) to English translation:

There is no official English translation 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 Swedish Agency Law the same?

Yes. See, Art. 1 CAA.

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

No. Based on the definition in the CAA, the CAA is not applicable to other types of intermediaries such as, for example, a commissioner agent. However, according to the preparatory works (Prop. 1990/91:63, p. 50), the CAA may be applicable by analogy to other forms of similar agency-principal conditions as those defined in the CAA. Further, there have been cases in Swedish courts regarding the analogous applicability of the CAA (for example the Swedish Supreme Court's decision of 4 January 2008, NJA 2008 s. 24), where the courts have found that certain provisions of the CAA (e.g. the right for the commercial agent to receive indemnification) may be applicable to other forms of similar agency-principal conditions. However, the circumstances in these cases have been quite specific and it can be assumed that the application of the CAA by analogy is limited, especially given that the CAA is intended to be a protective legislation for the commercial agent, not for other intermediaries.

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 Sweden 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 Swedish Agency Law provide for such obligation?

Yes. See, Art. 4 CAA.

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

Yes. See, Art. 5 CAA.

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

Yes. According to Art. 6 CAA, in cases where the commercial agent has possession of property that belongs to the principal, the commercial agent has a responsibility to properly care for the principal's property. The commercial agent is also responsible for maintaining necessary property insurance, which, according to the preparatory work (Prop. 2008/09:88, p. 99), depends on the custom in the industry. In general, the commercial agent's responsibility is to maintain general insurance (typically, a fire insurance), the minimum level of insurance will however depend on the industry in question.

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

No. The CAA does not explicitly provide the commercial agent with the possibility to appoint a sub-agent. However, while the relation between the commercial agent and the sub-agent does not fall under the scope of the CAA, there are legal precedents indicating that the CAA may be applicable by analogy (see, e.g. case NJA 2008 s. 24).

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 Swedish Agency Law?

Yes. See, Art. 7 CAA.

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

Yes. According to Art. 6 CAA, a commercial agent who is entitled to collect payment for goods sold on behalf of the principal, is obliged to keep payments received separated from other funds and to provide the principal with accounting for such payments.

B.2 - LEVEL AND CALCULATION BASIS OF REMUNERATION

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

No. The commercial agent and the principal are free to agree on the level of remuneration.

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 Swedish Agency Law?

Yes. See, Art. 8 CAA.

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 Swedish Agency Law?

No.

Q15. Does the Swedish 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 Swedish 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 Swedish Agency Law?

Yes. See, Art. 9 CAA.

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 Swedish Agency Law?

Option 1. See, Art. 9 CAA.

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 Swedish Agency Law?

Yes. See, Art. 10 CAA.

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

Yes. See, Art. 10, paragraph 2 CAA.

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 Swedish Agency Law?

Yes. See, Art. 11, paragraph 2 CAA.

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

No. See, Art. 1, paragraph 2 CAA. The commission shall be due at the latest when (i) the principal has fulfilled the agreement with the third party, (ii) the principal should have fulfilled the agreement according to the agreement, or (iii) the third party has fulfilled the agreement.

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 Swedish Agency Law apply the same deadline?

Yes. See, Art. 11, paragraph 1 CAA.

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 Swedish Agency Law impose the same restriction on the parties?

Yes. According to Art. 11, paragraph 3 CAA, the commercial agent is not bound by contractual terms that violate the requirements in Art. 11, paragraph 1 CAA.

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 Swedish Agency Law impose these cumulative conditions?

Yes. See, Art. 12 CAA.

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

extinguished?

Yes. According to Art. 12, paragraph 3 CAA, if the third party has only fulfilled the agreement partly, the agent is entitled to commission of an amount corresponding to the part that has been fulfilled.

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

Yes. See, Art. 12, paragraph 4 CAA.

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 Swedish Agency Law?

Yes. See, Art. 13 CAA.

Q31. Does the Swedish 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. 13, paragraph 3 CAA.

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

No.

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

Yes. See, Art. 14 CAA.

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

Yes. If the principal does not provide the commercial agent the demanded information in reasonable time or if the commercial agent has reasons to believe that the provided information is incorrect, the commercial agent has a further right to review the principal's bookkeeping. Note that, as stipulated in Art. 14, paragraph 2 CAA, the commercial agent's right to review only includes the review of the bookkeeping and does not include other information. The commercial agent has the right to execute the review by himself or by an accountant.

Q35. Does the Swedish 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 Swedish Agency Law impose these cumulative criteria?

Yes. See, Art. 35 CAA. The CAA states that the application of the Swedish Contracts Act (1915:218) shall remain applicable to a non-compete clause.

Q38. Does the Swedish 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 the Swedish Agency Law?

Yes. See, Art. 35, paragraph 2 CAA.

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 Swedish Agency Law impose any such restrictions?

Yes. It is stipulated in Art. 35 CAA that the application of the Swedish Contracts Act (1915:218) shall remain applicable to a non-compete clause. The Swedish Contracts Act regulates situations of excessive non-compete clauses, which could be declared invalid . There is limited case law regarding invalid non-compete clauses in relation to the CAA. An example explored in legal doctrine is if the principal does not continue in the current market in which the commercial agent worked, the principal should have no interest in maintaining a non-compete clause and the clause could be considered as invalid.

Q41. Does the Swedish 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 Swedish 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. There are no obstacles under Swedish law to agree on such liability.

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

Yes. See, Art. 36 Swedish Contract Act. A contract term or condition may be adjusted or set aside if such term or condition is unfair regarding (i) the contents of the agreement, (ii) the circumstances prevailing at the time the agreement was entered, (iii) subsequent circumstances, and (iv) circumstances in general. The article is intended to enable amendments to agreements in which one or several terms or conditions are extraordinarily unfair for one of the parties to the agreement. Should there be a considerate power imbalance between the parties to the agreement, the threshold for the courts admitting amendments to the agreement is somewhat lowered. However, the main rule is that the agreement shall be honoured and courts are very restrictive in using this article to modify or set aside terms or conditions included in agreements between two commercial parties.

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 Swedish Agency Law?

Yes. See, Art. 25 CAA.

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

No. The CAA does not contain any particular provision on the term of an agency agreement. According to the preparatory work (Prop. 1990/91:63, p. 101), the purpose of Art. 25 CAA, which includes a provision similar to Art. 14 of the Directive, is to prevent the parties from circumventing the provision regarding the termination of

agreements by agreeing to repeated fixed-term agreements.

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 Swedish Agency Law?

Yes. See, Art. 24, paragraph 1 CAA.

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 Swedish Agency Law?

Yes. See, Art. 24, paragraph 2 CAA. The notice period is 1 month during the first year and then extended by 1 month for each commenced year of the contract period until the notice period amounts to 6 months.

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 Swedish Agency Law?

Yes. See, Art. 24, paragraph 2 CAA. The parties are free to agree on a longer notice period.

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

Yes. The main rule is that the parties may not agree, in advance, on a shorter notice period than set forth in Art. 24, paragraph 2 CAA, which includes a provision similar to Art. 15(3) of the Directive. However, the parties may agree that the commercial agent may terminate the agency agreement with three months' notice, even though the assignment according to the agency agreement has lasted longer than three years. Note that the principal is always bound to the minimum notice period according to the CAA.

Q51. According to the Swedish 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. According to Art. 24, paragraph 2 CAA, the minimum notice period is 1 month during the first year and then extended by 1 month for each commenced year of the contract period until the notice period amounts to 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 the Swedish Agency Law?

Yes. See, Art. 24, paragraph 4 CAA.

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 Swedish Agency Law?

Yes. See, Art. 24, paragraph 5 CAA.

Q54. Does the Swedish 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 Swedish Agency Law?

Yes. See, Art. 25, paragraph 2 CAA.

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 Swedish Agency Law?

Yes. See, Art. 26 CAA.

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

Yes. According to Art. 27 CAA, the agency agreement is terminated if the commercial agent or the principal is put into bankruptcy. The commercial agent may, however, continue to perform the assignment according to the agency agreement until the bankruptcy has been proclaimed, unless he or she knows or ought to have known about the bankruptcy.

Q58. Does the Swedish 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. 26 CAA.

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

No. According to Art. 26, paragraph 3 CAA, it is not possible for the parties to agree to provisions in the agency

agreement that are less favourable for the agent than the provisions in Art. 26 CAA.

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

See, Q59.

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 CAA does not stipulate any other particular rules and/or restrictions as regards the termination of the agency agreement. However, the Swedish Contracts Act (SFS 1915:218) is applicable, for example with regard to an “unreasonably” long contract periods as a result of which unreasonably long contract periods can be adjusted (See, Q43.)

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 Swedish Agency Law provide for this criterion?

Yes. See, Art. 28 CAA.

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 Swedish Agency Law provide for this criterion?

Yes. See, Art. 28 CAA.

Q64. Is under the Swedish 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.

The commercial agent is presumed to be entitled to a higher indemnification if the agreement contains a non-compete clause, which is applicable during a period of time after the termination of the agreement.

According to the preparatory work to the CAA (Prop. 1990/91:63, p. 115) and the European Commission's Report on the application of Art. 17 of the Directive, the non-compete clause may be considered in the calculation of the indemnification.

If the non-compete clause prohibits the commercial agent, after the termination of the agreement and during a certain period of time after the termination, from marketing the relevant products, the non-compete clause constitutes a reason to take a further generous approach to the amount of the indemnification.

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

No.

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 Swedish Agency Law?

Yes. See, Art. 28, paragraph 3 CAA. However, the parties may agree on a higher severance compensation than what is stipulated in Art. 17(2)(a) of the Directive and Art. 28 CAA.

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 Swedish Agency Law?

Yes. See, Art. 29 CAA.

In addition, according to the CAA, indemnification or compensation for damage is not payable where the agreement is terminated as a consequence of the agent's bankruptcy.

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 Swedish Agency Law?

No.

The one-year time bar applies to indemnification, see Art. 31 CAA.

As for compensation for damage, the notification period is set forth in Art. 34 CAA, which stipulates that the notification should be made without undue delay. An initial notification could be accompanied by a more precise claim when the circumstances have been clarified. Such claim is subject to the general rules of limitations, which means that the claim becomes time-barred after ten years.

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 Swedish Agency Law?

Yes. The commercial agent is entitled to seek damages, e.g., for breach of contract, according to the specific rules of damages in the CAA.

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. See Art. 34 CAA. If the commercial agent or the principal fails to fulfil his/her obligations under the agency agreement or the law, he/she is obliged to compensate the other for the damage arising therefrom, unless he/she shows that the failure is not due to his/her negligence.

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 Swedish Agency Law?

Yes.

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 Swedish Agency Law take the same circumstances into account?

No. Neither the CAA nor the preparatory work explicitly take these circumstances into account. General principles of tort law are applicable.

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. General principles of tort law are applicable. It is the actual net loss that is to be compensated, e.g. the agent cannot expect compensation for loss of commissions without settlement of saved costs, for example in the event of an unjustified termination, without application of the applicable notice period. The damage may consist of both direct costs and other indirect loss caused by the breach of contract.

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 Swedish Agency Law?

No. See, Art. 28, paragraph 2 CAA. A commercial agent is entitled to indemnification where the agency agreement is terminated as a result of the commercial agent's death if and to the extent that the requirements in Art. 28, paragraph 1 CAA are fulfilled.

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 Swedish Agency Law impose the same restriction on the parties?

Yes. See, Art. 28 and 29 CAA.

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

No. Different rules apply to indemnification and compensation for damage. Indemnification is regulated in Art. 28 to Art. 31 CAA. Compensation for damage is regulated in Art. 34 CAA.

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

Yes. The notification period for compensation for damage is stipulated in Art. 34, paragraph 3 CAA, which states that the notification should be made without unreasonable delay. A generally held notification could be accompanied by a more precise claim when the circumstances have been clarified. Such claim is subject to general rules of limitations, which means that the claim becomes time-barred after 10 years. According to Art. 31 CAA, 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 Swedish 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 Swedish Agency Law provide for a statute of limitations that is applicable to claims regarding the performance of agency agreements?

No.

The CAA does not provide for a specific statute of limitations that is applicable to claims regarding the performance of agency agreements. However, the general limitation period is 10 years which is applicable if nothing else is provided. Claims in tort have a general limitation of 10 years, with shorter limitation periods for claims relating to strict liability.