

2. Questionnaire

2.1 General Questions on the Commercial Agents Directive

Does the legislation help to facilitate cross-border activities of commercial representation?

- ☐ No effect
- ☐ Very limited effect
- ☐ Partial effect
- ☒ Significant effect
- ☐ Don't know

Please explain:

- Agency agreements must be in compliance with the mandatory provisions of the Directive - no matter what EU law has been agreed on → this simplifies the conclusion and operation of commercial agency contracts. Especially SMEs (principals and agents) benefit from this.
- The number of agents as well as the share of agents that cooperate with EU principals has increased over the past years. The same applies for the number of contracts concluded between agents and principals that are established in different Member States.

What are the main costs and benefits of the Directive for (i) commercial agents and (ii) principals?

(i) commercial agents

Costs

- Reduction of consulting and legal costs.
- Reduction of translation costs due to the fact that directive is available in 23 languages and that parties have access to the respective language versions.
- No comprehensive legal consultation required for all EU commercial agency laws.

Benefits

- Huge cost advantages due to minimum harmonization → parties do not have to deal with the respective 27 jurisdictions → acceleration of contract negotiations and operation of agency contracts.
- Minimum protection for commercial agents EU-wide.
- Agents can be sure that under certain conditions after termination of the contract he is entitled to either compensation or damages.
- This applies to contracts with third country manufacturers because they cannot evade mandatory rules like the right to indemnity by a choice-of-law-clause.

What effects does the Directive have on SMEs (i) as commercial agents and (ii) as principals?

- ☐ Negative effect
- ☐ Neutral
- ☒ Positive effect
- ☐ Don't know

Can you describe the effects, if any?

i) Effects on commercial agents

- Any uncertainties in the law affect SMEs in particular because they often lack the resources to compensate such uncertainties.
- Therefore the harmonization of the commercial agency legislation is especially of essential importance for agents. Furthermore it has increased the willingness of agents and manufacturers to cooperate throughout the EU area.
- Benefits of cross-border activities in the internal market can be fully utilized because agents can be assured that the chosen EU-law is within the framework and the limits of the Directive.

Do you know about any existing studies in this context?

At overall market level, do the benefits of the Directive outweigh its costs?

- ☐ Costs much higher
- ☐ Costs slightly higher
- ☐ Neutral
- ☐ Benefits slightly higher
- ☒ Benefits much higher
- ☐ Don't know

Please explain:

- Benefits outweigh its costs because agency agreements - no matter what law has been agreed on in the contract - must comply with mandatory provisions of the Directive → therefore attorney / consulting and translation costs can be reduced for both sides.
- Important legal definitions of agency law are available in 23 EU languages for cross-border contracts.

- Cost reduction by facilitating conclusion and operation of agency contracts.
- General reduction of transaction costs (both i and for ii).
- The willingness of agents to cooperate with European principals has increased.

2.2 Views on the future of the Directive

Is the Directive still fit for purpose in meeting its objectives?

Please rate the Directive on a scale from 1 (not at all fit for purpose) to 10 (perfectly fit for purpose).

	1		2	3	4	5	6	7	8	9	10
	(not at all fit for purpose)										(perfectly fit for purpose)
Please rate the Directive	<input type="radio"/>		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Please explain:

Since 1986 - the implementation of Directive -the unquestionable benefit of the Directive still continues. This is underlined by the fact that since then countless decisions and publications are based on the Directive, and that there has never been a request by either side of the interested parties for an amendment. The Directive prevents by its very existence the possibility of arbitrary differences between the EU Member States. Thus it acts as a legal umbrella for the whole EU, which is agreed to by all the parties concerned.

What is the added value of EU legislation in this field?

- The Directive increases for small and medium-sized manufacturers the opportunity to participate and exist in the European and Intercontinental competition through a proven and cost-effective distribution channel.
- Directive sets out fundamental rights and responsibilities for both sides → this provides greater legal certainty.
- Furthermore, differences in national laws concerning commercial representation were removed, the carrying-on of the activity of agents facilitated, the conclusion and operation of agency contracts where principal and commercial agents are established in different Member States simplified as well as the security of commercial transactions strengthened.
- Securing the optimal functioning of the internal market through instruments such as the Directive provides an indispensable factor for the economic development of the EU Member States and to combat unemployment.

What would be the effects if the Directive were to be withdrawn and Member States were free to adjust their national regulatory frameworks?

- The abolishment of the Directive would be a wrong signal because it would deprive SMEs, which is already a very delicate area, of the stabilizing effect of European harmonization.
- Without the Directive the EU Member States could change their national agency law- e.g. abolish the compensation or damages claim for agents – which would lead to a legal fragmentation within the EU.
- National commercial agency laws of the Member States will move apart and therefore vary widely from one national law to another.
- Legal uncertainty due to different national legislations will increase steadily.
- Contract negotiations will extend significantly - legal uncertainty due to progressing legal fragmentation - which would subsequently complicate the internal EU-trade.
- Due to legal uncertainty parties will have to engage to a lawyer more often. Even small and medium-sized companies could refrain from choosing commercial agents as a distribution channel.
- Also manufacturers will be deterred to appoint commercial agents.
- Legal fragmentation will increase legal disputes before the courts.
- As a result of a repeal of the Directive multinational companies could choose the law, which is most favourable for them and could be able to evade the right to indemnity/compensation in the future if Member States change their national commercial agency legislation (forum shopping).
- EU manufacturers will choose that agency law of a Member State with the least protection to the commercial agent.
- Without the Directive, principals will try to evade agent protection rules. The commercial agency laws of the 28 Member States are not able to protect agents in cases where the agent carries on his activity in a Member State and the principal is established in a non-member country and the contract stipulates that it is to be governed by the law of that country. Jurisdiction and choice-of-law agreements governed by non-European laws will become the rule especially in cases where the principal is established in a non-member country. As a result, the protection for commercial agents would decrease continuously.
- This could lead to a negative impact on the profession of commercial agents.
- Without the Directive the number of international contracts on the part of agents will decrease, which would lead to a reduced commodity flow.

2.3 Information on the market of commercial representation (if available)

Commercial agents or their representatives (associations / federations)

How has the overall market of commercial agents affected by the Directive developed, in particular in terms of number of undertakings and overall turnover?

- We do not have exact numbers, but it is our clear understanding that the market has increased, both in terms of number of undertakings and overall turnover.

In your opinion to what extent has the Commercial Agent Directive affected these developments?

- The harmonization of the commercial agency legislation has increased the willingness of agents to cooperate with European manufacturers and vice versa.

What is the typical size of the commercial agents' undertakings in your country (approx. share of stand-alone / SMEs / large enterprises in the total commercial agent population)?

- We do not have exact numbers, but it is our clear understanding that a high number, perhaps even most agents in Norway are stand-alone or SMEs.

Are commercial agents typically involved in B2B or B2C transactions (approx. share of overall turnover with businesses / consumers in the total turnover of commercial agents)?

- In our experience most agents deal in B2B alone.

To which degree does commercial representation take place across borders (approx. share of domestic / cross-border intra-EU / cross-border outside EU relationships in the total turnover of commercial agents)?

- In our experience most of our agents represent principals in another country, mostly within the EU. To our knowledge there is very little use of Norwegian agents by Norwegian principals.