

JUDGMENT OF THE COURT (Fifth Chamber)

9 November 2000 *

In Case C-381/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Court of Appeal of England and Wales (Civil Division), United Kingdom, for a preliminary ruling in the proceedings pending before that court between

Ingmar GB Ltd

and

Eaton Leonard Technologies Inc.,

on the interpretation of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (OJ 1986 L 382, p. 17),

* Language of the case: English.

THE COURT (Fifth Chamber),

composed of: M. Wathelet, President of the First Chamber, acting as President of the Fifth Chamber, D.A.O. Edward and P. Jann (Rapporteur), Judges,

Advocate General: P. Léger,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Ingmar GB Ltd, by F. Randolph and R. O'Donoghue, Barristers, instructed by Fladgate Fielder, Solicitors,
- Eaton Leonard Technologies Inc., by M. Pooles, Barrister, instructed by Clifford Chance, Solicitors,
- the United Kingdom Government, by J.E. Collins, Assistant Treasury Solicitor, acting as Agent, assisted by S. Moore, Barrister,
- the German Government, by W.-D. Plessing, Ministerialrat in the Federal Ministry of Finance, and A. Dittrich, Ministerialrat in the Federal Ministry of Justice, acting as Agents,
- the Commission of the European Communities, by M. Patakia and K. Banks, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Ingmar GB Ltd, Eaton Leonard Technologies Inc., the United Kingdom Government and the Commission at the hearing on 26 January 2000,

after hearing the Opinion of the Advocate General at the sitting on 11 May 2000,

gives the following

Judgment

- 1 By order of 31 July 1998, received at the Court on 26 October 1998, the Court of Appeal of England and Wales (Civil Division) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (OJ 1986 L 382, p. 17; 'the Directive').
- 2 That question has been raised in proceedings between Ingmar GB Ltd ('Ingmar'), a company established in the United Kingdom, and Eaton Leonard Technologies Inc. ('Eaton'), a company established in California, concerning the payment of sums claimed to be due on account, in particular, of the termination of an agency contract.

Legal framework

Community legislation

3 In the second recital in its preamble it is stated that the Directive was adopted in the light of the fact that ‘the differences in national laws concerning commercial representation substantially affect the conditions of competition and the carrying-on of that activity within the Community and are detrimental both to the protection available to commercial agents *vis-à-vis* their principals and to the security of commercial transactions’.

4 Articles 17 and 18 of the Directive specify the circumstances in which the commercial agent is entitled, on termination of the contract, to an indemnity or to compensation for the damage he suffers as a result of the termination of his relations with the principal.

5 Article 17(1) of the Directive provides:

‘[M]ember States shall take the measures necessary to ensure that the commercial agent is, after termination of the agency contract, indemnified in accordance with paragraph 2 or compensated for damage in accordance with paragraph 3.’

6 Article 19 of the Directive provides:

‘[T]he parties may not derogate from Articles 17 and 18 to the detriment of the commercial agent before the agency contract expires.’

- 7 Under Article 22(1) and (3) thereof, the Directive was to be implemented before 1 January 1990 and, with regard to the United Kingdom, before 1 January 1994. Under Article 22(1), the national provisions implementing the Directive must apply at least to contracts concluded after their entry into force and, in any event, to contracts in operation by 1 January 1994 at the latest.

National legislation

- 8 In the United Kingdom, the Directive was implemented by the Commercial Agents (Council Directive) Regulations 1993, which entered into force on 1 January 1994 ('the Regulations').

- 9 Regulation 1(2) and (3) provides:

'2. These Regulations govern the relations between commercial agents and their principals and, subject to paragraph 3, apply in relation to the activities of commercial agents in Great Britain.

3. Regulations 3 to 22 do not apply where the parties have agreed that the agency contract is to be governed by the law of another Member State.'

The main proceedings

- 10 In 1989, Ingmar and Eaton concluded a contract under which Ingmar was appointed as Eaton's commercial agent in the United Kingdom. A clause of the contract stipulated that the contract was governed by the law of the State of California.
- 11 The contract was terminated in 1996. Ingmar instituted proceedings before the High Court of Justice of England and Wales, Queen's Bench Division, seeking payment of commission and, pursuant to Regulation 17, compensation for damage suffered as a result of the termination of its relations with Eaton.
- 12 By judgment of 23 October 1997, the High Court held that the Regulations did not apply, since the contract was governed by the law of the State of California.
- 13 Ingmar appealed against that judgment to the Court of Appeal of England and Wales (Civil Division), which decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Under English law, effect will be given to the applicable law as chosen by the parties, unless there is a public policy reason, such as an overriding provision, for

not so doing. In such circumstances, are the provisions of Council Directive 86/653/EEC, as implemented in the laws of the Member States, and in particular those provisions relating to the payment of compensation to agents on termination of their agreements with their principals, applicable when:

- (a) a principal appoints an exclusive agent in the United Kingdom and the Republic of Ireland for the sale of its products therein; and
- (b) in so far as sales of the products in the United Kingdom are concerned, the agent carries out its activities in the United Kingdom; and
- (c) the principal is a company incorporated in a non-EU State, and in particular in the State of California, USA, and situated there; and

- (d) the express applicable law of the contract between the parties is that of the State of California, USA?’

The question referred for preliminary ruling

- 14 By its question, the national court seeks to ascertain, essentially, whether Articles 17 and 18 of the Directive, which guarantee certain rights to commercial agents after termination of agency contracts, must be applied where the commercial agent carried on his activity in a Member State although the principal is established in a non-member country and a clause of the contract stipulates that the contract is to be governed by the law of that country.
- 15 The parties to the main proceedings, the United Kingdom and German Governments and the Commission agree that the freedom of contracting parties to choose the system of law by which they wish their contractual relations to be governed is a basic tenet of private international law and that that freedom is removed only by rules that are mandatory.
- 16 However, their submissions differ as to the conditions which a legal rule must satisfy in order to be classified as a mandatory rule for the purposes of private international law.

- 17 Eaton contends that such mandatory rules can arise only in extremely limited circumstances and that, in the present case, there is no reason to apply the Directive, which is intended to harmonise the domestic laws of the Member States, to parties established outside the European Union.
- 18 Ingmar, the United Kingdom Government and the Commission submit that the question of the territorial scope of the Directive is a question of Community law. In their submission, the objectives pursued by the Directive require that its provisions be applied to all commercial agents established in a Member State, irrespective of the nationality or the place of establishment of their principal.
- 19 According to the German Government, in the absence of any express provision in the Directive as regards its territorial scope, it is for the court of a Member State seised of a dispute concerning a commercial agent's entitlement to indemnity or compensation to examine the question whether the applicable national rules are to be regarded as mandatory rules for the purposes of private international law.
- 20 In that respect, it should be borne in mind, first, that the Directive is designed to protect commercial agents, as defined in the Directive (Case C-215/97 *Bellone v Yokohama* [1998] ECR I-2191, paragraph 13).

- 21 The purpose of Articles 17 to 19 of the Directive, in particular, is to protect the commercial agent after termination of the contract. The regime established by the Directive for that purpose is mandatory in nature. Article 17 requires Member States to put in place a mechanism for providing reparation to the commercial agent after termination of the contract. Admittedly, that article allows the Member States to choose between indemnification and compensation for damage. However, Articles 17 and 18 prescribe a precise framework within which the Member States may exercise their discretion as to the choice of methods for calculating the indemnity or compensation to be granted.
- 22 The mandatory nature of those articles is confirmed by the fact that, under Article 19 of the Directive, the parties may not derogate from them to the detriment of the commercial agent before the contract expires. It is also borne out by the fact that, with regard to the United Kingdom, Article 22 of the Directive provides for the immediate application of the national provisions implementing the Directive to contracts in operation.
- 23 Second, it should be borne in mind that, as is apparent from the second recital in the preamble to the Directive, the harmonising measures laid down by the Directive are intended, *inter alia*, to eliminate restrictions on the carrying-on of the activities of commercial agents, to make the conditions of competition within the Community uniform and to increase the security of commercial transactions (see, to that effect, *Bellone*, paragraph 17).
- 24 The purpose of the regime established in Articles 17 to 19 of the Directive is thus to protect, for all commercial agents, freedom of establishment and the operation

of undistorted competition in the internal market. Those provisions must therefore be observed throughout the Community if those Treaty objectives are to be attained.

- 25 It must therefore be held that it is essential for the Community legal order that a principal established in a non-member country, whose commercial agent carries on his activity within the Community, cannot evade those provisions by the simple expedient of a choice-of-law clause. The purpose served by the provisions in question requires that they be applied where the situation is closely connected with the Community, in particular where the commercial agent carries on his activity in the territory of a Member State, irrespective of the law by which the parties intended the contract to be governed.
- 26 In the light of those considerations, the answer to the question must be that Articles 17 and 18 of the Directive, which guarantee certain rights to commercial agents after termination of agency contracts, must be applied where the commercial agent carried on his activity in a Member State although the principal is established in a non-member country and a clause of the contract stipulates that the contract is to be governed by the law of that country.

Costs

- 27 The costs incurred by the United Kingdom and German Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Court of Appeal of England and Wales (Civil Division) by order of 31 July 1998, hereby rules:

Articles 17 and 18 of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents, which guarantee certain rights to commercial agents after termination of agency contracts, must be applied where the commercial agent carried on his activity in a Member State although the principal is established in a non-member country and a clause of the contract stipulates that the contract is to be governed by the law of that country.

Wathelet

Edward

Jann

Delivered in open court in Luxembourg on 9 November 2000.

R. Grass

A. La Pergola

Registrar

President of the Fifth Chamber