



Press and Information

Court of Justice of the European Union

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Judgment in Case C-645/16

Comseils et mise en relations (CMR) SARL v Demeures terre et tradition SARL

Commercial agents are entitled to the indemnity and compensation provided for even if termination of the agency contract occurs during the trial period

In 2011, DTT concluded a commercial agency contract with CMR under which CMR was required to sell 25 individual houses per year on behalf of DTT. That contract provided for a 12 month trial period during which each party was allowed to terminate the contract, subject to notice being given. Approximately six months after the conclusion of the contract, DTT terminated it because CMR had made only one sale in five months and the objective set by the contract had therefore not been met.

CMR seeks compensation for the loss resulting from the termination of the commercial agency contract from DTT. According to an EU directive,¹ a commercial agent is entitled, after termination of the contract, to an indemnity or compensation for damage. He is entitled to compensation for the damage he suffers as a result of the termination of his relations with the principal where the termination (i) deprives the agent (in this instance, CMR) of the commission which proper performance of the contract would have procured him whilst providing the principal (in this instance, DTT) with substantial benefits and/or (ii) has not enabled the agent to amortise the costs and expenses that he has incurred for the performance of the contract on the principal's advice. The agent is entitled to an indemnity where (i) 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 those customers, and (ii) the payment of the indemnity is equitable having regard to all the circumstances, in particular the commission lost by the commercial agent on the business transacted with those customers.

The French Cour de cassation (Court of Cassation), before which the proceedings between CMR and DTT were brought, asks the Court of Justice whether the article of the Directive providing for the indemnity or compensation also applies where the commercial agency contract is terminated during the trial period, given that the directive makes no reference to such a trial period.

In today's judgment, the Court observes first of all that, as that the directive does not regulate the provision of a trial period, such a period falls within scope of the freedom of contract of the parties and is not as such prohibited by the directive.

Next, the Court states, on the basis of an interpretation of the wording of the directive, that **the indemnity and compensation regimes laid down by the directive are not intended to penalise termination of the contract but to indemnify the commercial agent for his past services** from which the principal will continue to benefit beyond the termination of the contractual relationship **or for the costs and expenses he has incurred** in providing those services. **Consequently, the agent cannot be denied the indemnity or compensation on the sole ground that the termination of the commercial agency contract occurred during the trial period**, as long as the conditions for the award of the indemnity or compensation set out in the Directive are satisfied. It follows that the right to indemnity and compensation is applicable even if the termination of the

¹ 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).

contractual relationship between the principal and the commercial agent occurs during the trial period.

The Court states that that conclusion is supported by the **objective of the Directive, which is, inter alia, to protect the commercial agent in his relations with the principal**, and in the light of which any interpretation of that directive which may be detrimental to the agent is not permissible. Making reparation conditional on whether or not a trial period is provided for in the commercial agency contract, without regard for the performance of the agent or the costs and expenses that he has incurred, would be detrimental to the agent, since he may be denied any reparation on the sole ground that the contract he has with the principal includes a trial period.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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