

ELLINT – comparative law

Applicable Law

EU Directive 86/653/EEC (18 December 1986) on Commercial Agents was implemented in each of the following national laws.

Most of the articles are identical to those of the EU Directive.

UK	FRANCE	SPAIN	GERMANY
<ul style="list-style-type: none">Commercial Agents (Council Directive) Regulations 1993	<ul style="list-style-type: none">Act No 91-593 (25 June 1991) in Arts. L. 134-1 et seq.	<ul style="list-style-type: none">Agency Contract Act 12/1992 (27 May 1992)	<ul style="list-style-type: none">German Commercial Code, Sec. 84 HGB et seq.

Most of the articles are identical to those of the EU Directive.

Right to Earn and Receive Commission

Art 7 of the EU Directive applies.

1. A commercial agent shall be entitled to commission on commercial transactions concluded during the period covered by the agency contract:
 - (a) where the transaction has been concluded as a result of his action; or
 - (b) where the transaction is concluded with a third party whom he has previously acquired as a customer for transactions of the same kind.

2. A commercial agent shall also be entitled to commission on transactions concluded during the period covered by the agency contract:
 - either where he is entrusted with a specific geographical area or group of customers,
 - or where he has an exclusive right to a specific geographical area or group of customers,and where the transaction has been entered into with a customer belonging to that area or group.
Member State shall include in their legislation one of the possibilities referred to in the above two indents.

Right to Earn and Receive Commission

UK	FRANCE	SPAIN	GERMANY
<p>UK follows the EU Directive exactly.</p> <p>With the nuance in para 2, the second option is followed.</p> <p>The agent is entitled to that commission even if the transaction was accomplished by someone else's actions.</p>	<p>France follows the EU Directive exactly. Both possibilities are allowed.</p> <p>With the nuance in para 2, the first option is followed.</p>	<p>Spain follows the EU Directive exactly.</p> <p>With the nuance in para 2, the second option is followed.</p> <p>The agent is entitled to that commission even if the transaction was accomplished by someone else's actions.</p>	<p>Germany follows the EU Directive exactly.</p> <p>With the nuance in para 2, the second option is followed.</p> <p>The agent is entitled to that commission even if the transaction was accomplished by someone else's actions.</p> <p>The commercial agent shall not be entitled to a commission, if the commission is subject to an entitlement of another former commercial agent whose agency contract has been terminated.</p>

Right to receive commissions in case of termination of the agency contract

Art. 8 of EU Directive regulates this.

A commercial agent shall be entitled to commission on commercial transactions concluded after the agency contract has terminated:

- (a) if the transaction is mainly attributable to the commercial agent's efforts during the period covered by the agency contract and if the transaction was entered into within a reasonable period after that contract terminated; or
- (b) if, in accordance with the conditions mentioned in Article 7, the order of the third party reached the principal or the commercial agent before the agency contract terminated.

Right to receive commissions in case of termination of the agency contract

UK	FRANCE	SPAIN	GERMANY
<p>The relevant provision of the UK Act is a copy of Art. 8 of the EU Directive without modification.</p>	<p>Art. L. 134-7 of the French Act is a copy of Art. 8 of the EU Directive without modification.</p>	<p>Art. 13 of the Spanish Act is a copy of Art. 8 of the EU Directive.</p> <p>The Spanish Act states, however, that in order for the agent to be entitled to that commission, the transaction must be completed within 3 months of the contract termination.</p>	<p>Sec. 87 (3) HGB is a copy of Art. 8 of the EU Directive.</p> <p>The entitlement shall not be waived in advance. It has to be claimed within a period of one year after the termination of the agency contract.</p>

Non-Competition Agreements

Art. 20 of EU Directive regulates this.

For the purposes of this Directive an agreement restricting the business activities of a commercial agent following termination of the agency contract is hereinafter referred to as a restraint of trade clause.

A restraint of trade clause shall be valid only if and to the extent that:

- (a) it is concluded in writing; and
- (b) 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 his agency under the contract.

A restraint of trade clause shall be valid for not more than two years after termination of the agency contract.

This Article shall not affect provisions of national law which impose other restrictions on the validity or enforceability of restraint of trade clauses or which enable the courts to reduce the obligations on the parties resulting from such an agreement.

Non-Competition Agreements

UK	FRANCE	SPAIN	GERMANY
UK follows the EU Directive exactly on this point.	France follows the EU Directive exactly on this point.	Spain follows the EU Directive exactly on this point.	Germany follows the EU Directive exactly on this point.

Each country's national laws apply, imposing other restrictions on the validity or enforceability of restraint of trade clauses or enabling the courts to reduce the obligations on the parties resulting from such an agreement

Terminating the Agency Contract

Arts. 13 and 15 of EU Directive regulates this.

Each party shall be entitled to receive from the other on request a signed written document setting out the terms of the agency contract including any terms subsequently agreed. Waiver of this right shall not be permitted.

In the absence of any express agreement on the point the contract is deemed to be for an indefinite duration. Contracts for an indefinite duration come to an end by unilateral termination by either of the parties with prior notice of one month for each year for which the contract has been in force with a minimum of one month and a maximum of six.

Terminating the Agency Contract

UK	FRANCE	SPAIN	GERMANY
UK law follows the EU Directive Art. 13 exactly. An agency contract may be terminated by notice.	French law follows the EU Directive Art. 13 exactly. A written agreement is not mandatory. Concerning the notice period, both articles of the EU Directive and the French commercial code are identical with the same length of notice period.	Spanish law follows the EU Directive Art. 13 exactly. Spain opted for the maximum prior notice allowed by the Directive, establishing a mandatory notice period of up to 6 months for the contracts that have duration of six years or more.	German law follows the EU Directive Art. 13 exactly.

Indemnities for termination

Arts. 17 and 18 of EU Directive regulates this.

An agent has the right to compensation or an indemnity on termination of the agency agreement in certain circumstances.

There is no requirement for any minimum period to have elapsed before the right arises. The agent has no right to compensation/indemnity where:

The principal terminates because of the agent's serious breach;

The agent terminates – unless the reason for doing so is his age, illness or because of circumstances attributable to the principal; or

The agent assigns the agreement with the principal's consent to another agent.

Under the **compensation alternative**, the agent is entitled to be compensated for the damage he suffers as a result of the termination of his relations with his principal. Such damage is deemed to occur particularly where the termination takes place in circumstances which either:

Deprive the agent of the commission which proper performance of the agency contract would have generated, while providing the principal with substantial benefits linked to the activities of the commercial agent; or

Have not enabled the commercial agent to amortise the costs and expenses that it had incurred in the performance of the agency contract on the advice of the principal.

There is no maximum cap on compensation. Compensation is calculated by reference to the loss of the value of the agency (the amount a hypothetical purchaser would be willing to pay for it as at the date of termination).

Under the **indemnity alternative**, the agent is entitled to an indemnity on termination if and to the extent that:

He has brought in new customers or significantly increased the principal's business with existing customers, and substantial benefits continue to be derived by the principal from those customers; or

The payment of an indemnity is "equitable" in all the circumstances and in particular with regard to the commission lost by the agent on the principal's business with those customers.

There is a maximum cap of one year's commission (taking the agent's average annual remuneration over the five years prior to termination or the whole life of the agreement if shorter).

Indemnities for termination

EU Directive 86/653/EEC Arts. 17 and 18 apply.

UK	FRANCE	SPAIN	GERMANY
<p>The compensation option applies unless the parties have expressly chosen the indemnity option. UK law follows the EU Directive exactly.</p>	<p>Arts. L. 134-12 and 134-13 of the French commercial code applies; it is less detailed than the article of the EU Directive. Commercial agents are entitled to an indemnity for the loss suffered due to termination without conditions. The legal successors of commercial agents shall also benefit from the right to compensation when the cessation of the contract is due to the agent's death.</p>	<p>Arts. 28 and 29 of the Spanish Act applies. Compensation for goodwill/cleintele indemnity is provided where new customers or increased sales. Spanish courts tend to grant the agent the maximum amount of compensation as long as s/he can prove all the requirements. EU Directive exclusions apply. Additionally, agents can claim for damage compensation of Art. 1124 of the Spanish Civil Code.</p>	<p>German law follows the EU Directive exactly. According to Sec. 89b (1) HGB the commercial agent may be entitled to an indemnity after the termination of the agency contract.</p>