

QUALIFICATION AS A COMMERCIAL AGENT DOES NOT NECESSARILY IMPLY THE POWER TO MODIFY PRICES.

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Court of Justice of the European Union, 4 June 2020, Case C-828/18

The Court of Justice of the European Union (hereinafter the "**Court**") rendered on 4 June 2020 an important decision on the negotiation power of commercial agents.

The practical consequences of this judgment are important since the characterization of such negotiation power is a condition for the qualification and submission to the statutory regime of the commercial agent^[1], and in particular the possibility for the commercial agent to be compensated in the event of contract termination^[2].

The context of the decision

In the context of a dispute before the Commercial Court of Paris^[3], a company claimed to be a commercial agent in order to benefit from the termination indemnity provided for by the statutory rules applicable to commercial agents. The opposing party objected to this request, arguing that its co-contractor did not have the power to modify the conditions and sale prices of its goods, and that it did not therefore have the power to "negotiate", which is required to qualify as a commercial agent.

The Commercial Court of Paris has noted that there was a divergence in case law in interpreting the commercial agent's power to "negotiate" as provided for in Article L. 134-1 of the French Commercial Code. Thus, for several years, the French Supreme Court ("*Cour de cassation*")^[4] had interpreted the term "negotiate" restrictively, holding that a person cannot have the status of commercial agent if they do not have the power to modify the conditions of sale and prices of the goods. Some courts^[5] had a contrary interpretation of the power to "negotiate". The Commercial Court of Paris also pointed out that there was a divergence of interpretation of the term "negotiate" between the Member States of the European Union.

It was therefore in that context that the Commercial Court of Paris decided to ask the Court of Justice of the European Union for a preliminary ruling on the interpretation of the commercial agent's negotiating power by asking: "*Should Article 1(2) of Directive [86/653] be interpreted as meaning that a self-employed intermediary who is acting as an agent on behalf of and in the name of his principal, but does not have the power to change the prices and contractual conditions of his principal's sales contracts, does not have the authority to negotiate those contracts for the purposes of that article, and consequently cannot be classified as a commercial agent and benefit from the status provided for in the Directive?*"

The Court's decision

Before interpreting the commercial agent's negotiation power, the Court states that it is an autonomous concept which must be interpreted in a uniform manner throughout the territory of the European Union. In other words, this means that the interpretation of the term "negotiate" made in the context of the decision of 4 June 2020 must not be limited to French territory but must apply to all the Member States of the European Union.

According to the Court, the term 'negotiate' must be interpreted in the light of the context in which that provision lies, and the objectives pursued by Directive 86/653 of 18 December 1986.

First, the Court considers that the contract binding the commercial agent to his principal may provide for the sale prices of the goods, without it being possible for the commercial agent to modify them as part of the negotiation. According to the Court, this may be justified by reasons of commercial policy, the position of an undertaking on the market, the prices charged by competitors and the continued existence of the undertaking. The absence of the power to change prices does not prevent the commercial agent from carrying out his "main tasks", which refers to bringing in new customers and developing business with existing customers, for example through information, advice and discussions.

Secondly, the Court considers that it would be contrary to the objectives of the abovementioned directive to exclude a person from the qualification of commercial agent solely on the ground that they could not modify the prices of the goods. According to the Court, such an interpretation would limit the scope of the protection of the commercial agent provided for by the directive, and in particular the provisions which provide for their compensation in case of termination of the contract.

In conclusion, the Court considers that "a person does not necessarily need to have the power to modify the prices of the goods which they sell on behalf of the principal in order to be qualified as a commercial agent".

The French courts, and especially the French Supreme Court, will now have to comply with this new interpretation of the commercial agent's "negotiating" power of the Court of Justice of the European Union.

Footnotes :

1] Articles L. 134-1 et seq. of the French Commercial Code (Law No. 91-593 of 25 June 1991 transposing Directive 85/653/EEC of 18 December 1986).

2] Article L. 134-12 of the French Commercial Code.

3] Commercial Court of Paris, 19 December 2018, No. 2017015204.



4] Cour de Cassation, January 15, 2008, No. 06-14.698; Cour de Cassation, January 20, 2015, No. 13-24.231.

5] Lyon Court of Appeal, 8 September 2016, No. 14/00666; Paris Commercial Court, 7 February 2018, No. 2016070413; Paris Commercial Court, 28 November 2018, No. 2017037386.
