

The right to indemnity for termination of a commercial agency contract during a trial period (CMR SARL v Demeures terre et tradition SARL)

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Commercial analysis: Joseph Vogel, managing partner at Vogel & Vogel says that the Court of Justice of the European Union's decision to indemnify a commercial agent for the termination of a contract during a trial period calls into question the utility of the trial period.

CMR SARL v Demeures terre et tradition SARL Case [C-645/16](#)

What are the practical implications of this case?

While we understand the ratio legis of the decision, which is to protect the commercial agent in his relations with the principal, the Court of Justice deprives the trial period of most of its utility, as an indemnity must be paid to the commercial agent in the case of a termination of contract during that period. The decision will surely lead to a decrease in commercial agents' appointments. The only scenario in which no compensation will be due will be in the event of a serious breach of contractual obligations by the commercial agent. Yet again, this is unfavourable to the principal insofar as such breaches are very rarely upheld. For instance, under French law, the Court of Cassation considered that a series of breaches of obligations, such as the non-compliance with the schedule of visits to customers, the lack of response to requests for information, non-accountability and the refusal to participate in business meetings, do not constitute sufficient reasons not to pay the indemnity.

What was the background?

A commercial agency contract was signed in 2011 between Demeures Terre et Tradition SARL (DTT) and Conseil et Mise en Relations (CMR), respectively principal and agent. The contract included a trial period of 12 months and a target of 25 sales per year. After five months, CMR had made only one sale and DTT terminated the contract.

The question of law asked of the Court of Justice was whether the indemnity provided for in [Article 17](#) of Directive 86/653/EEC (Commercial Agents Directive) had to be paid even though the termination had occurred during the trial period.

French commercial agency agreements often stipulate a trial period, as the indemnity due to the agent in case of termination can be considerable—ordinarily two years of gross remuneration. Therefore, the Court of Cassation has, so far, accepted to preclude any indemnity for terminations during the trial period, provided it is reasonable, ie six or eight months. This practical solution will, no longer, be possible.

What did the court decide?

After noting that the Commercial Agents Directive neither allowed, nor prohibited a trial period, the Court of Justice stated that the termination of the contract during this period could not deprive the commercial agent of indemnity, giving four arguments in support of this decision:

- the relationship between the principal and the agent exists as soon as the contract is signed
- the agent must be indemnified irrespective of when the termination occurs

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- the loss of the right to compensation provided for in French case law adds grounds for terminating the contract, which is not provided for in Article 18 of the Commercial Agents Directive to be interpreted restrictively
- any interpretation of the Commercial Agents Directive which would be contrary to the objective of protecting the commercial agent must be excluded

Interviewed by Stephanie Boyer.

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