Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

17 October 2013 *

(Rome Convention on the law applicable to contractual obligations — Articles 3 and 7(2) — Freedom of choice of the parties — Limits — Mandatory rules — Directive 86/653/EEC — Self-employed commercial agents — Contracts for sale or purchase of goods — Termination of the agency contract by the principal — National implementing legislation providing for protection going beyond the minimum requirements of the directive and providing also for protection for commercial agents in the context of contracts for the supply of services)

In Case C-184/12,

REQUEST for a preliminary ruling under the first protocol of 19 December 1988 on the interpretation by the Court of Justice of the Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980 from the Hof van Cassatie (Belgium) made by decision of 5 April 2012, received at the Court on 20 April 2012, in the proceedings

United Antwerp Maritime Agencies (Unamar) NV

v

Navigation Maritime Bulgare,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, C.G. Fernlund, A. Ó Caoimh, C. Toader (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: N. Wahl,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Navigation Maritime Bulgare, by S. Van Moorleghem, advocaat,

— the Belgian Government, by T. Materne and C. Pochet, acting as Agents,

— the European Commission, by R. Troosters and M. Wilderspin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 May 2013

* Language of the case: Dutch.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 3 and 7(2) of the Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1; 'the Rome Convention'), in conjunction with 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).

2 The request was made in proceedings between United Antwerp Maritime Agencies (Unamar) NV ('Unamar'), a company incorporated in Belgium, and Navigation Maritime Bulgare ('NMB'), a company incorporated in Bulgaria, concerning payment of various forms of compensation owed as a consequence of the termination, by NMB, of the commercial agency agreement between the two companies.

Legal context

International law

Convention on the Recognition and Enforcement of Foreign Arbitral Awards

3 Article II(1) and (3) of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York on 10 June 1958 (*United Nations Treaty Series*, Vol. 330, p. 3), provides:

'1. Each Contracting State shall recognise an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

...

3. The court of a Contracting State, when seised of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.'

European Union law

The Rome Convention

4 Article 1(1) of the Rome Convention, entitled 'Scope of the Convention', provides:

'The Rome Convention is to apply to contractual obligations in any situation involving a choice between the laws of different countries.'

5 Article 3 of the Rome Convention, entitled ‘Freedom of choice’, provides:

‘1. A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract.

2. The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice made under this Article or of other provisions of this Regulation. Any change in the law to be applied that is made after the conclusion of the contract shall not prejudice its formal validity under Article 9 or adversely affect the rights of third parties.

3. The fact that the parties have chosen a foreign law, whether or not accompanied by the choice of a foreign tribunal, shall not, where all the other elements relevant to the situation at the time of the choice are connected with one country only, prejudice the application of rules of the law at the country which cannot be derogated from by contract, hereinafter called “mandatory rules”.

4. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 8, 9 and 11.’

6 Article 7 of the Convention, entitled ‘Mandatory rules’, provides:

‘1. When applying under this Convention the law of a country, effect may be given to the mandatory rules of the law of another country with which the situation has a close connection, if and in so far as, under the law of the latter country, those rules must be applied whatever the law applicable to the contract. In considering whether to give effect to these mandatory rules, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

2. Nothing in this Regulation shall restrict the application of the provisions of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation.’

7 Under Article 18 of the Convention, entitled ‘Uniform interpretation’:

‘In the interpretation and application of the preceding uniform rules, regard shall be had to their international character and to the desirability of achieving uniformity in their interpretation and application.’

Regulation (EC) No 593/2008

8 Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6; ‘the Rome I Regulation’) has replaced the Rome Convention. Article 9(1) and (2) of that regulation, entitled ‘Overriding mandatory provisions’, is worded as follows:

‘1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

2. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.’

Directive 86/653

9 The first to fourth recitals in the preamble to Directive 86/653 are worded as follows:

‘Whereas the restrictions on the freedom of establishment and the freedom to provide services in respect of activities of intermediaries in commerce, industry and small craft industries were abolished by Directive 64/224/EEC …;

Whereas 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; whereas moreover those differences are such as to inhibit substantially the conclusion and operation of commercial representation contracts where principal and commercial agents are established in different Member States;

Whereas trade in goods between Member States should be carried on under conditions which are similar to those of a single market, and this necessitates approximation of the legal systems of the Member States to the extent required for the proper functioning of the common market; whereas in this regard the rules concerning conflict of laws do not, in the matter of commercial representation, remove the inconsistencies referred to above, nor would they even if they were made uniform, and accordingly the proposed harmonisation is necessary notwithstanding the existence of those rules;

Whereas in this regard the legal relationship between commercial agent and principal must be given priority’.

10 Article 1(2) of that directive provides:

‘1. The harmonisation measures prescribed by this Directive shall apply to the laws, regulations and administrative provisions of the Member States governing the relations between commercial agents and their principals.

2. For the purposes of this Directive, “commercial agent” shall mean a self-employed intermediary who has continuing authority to negotiate the sale or the purchase of goods on behalf of another person, hereinafter called the “principal”, or to negotiate and conclude such transactions on behalf of and in the name of that principal.’

11 Article 17 of that directive provides:

‘1. Member 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.

2.

(a) The commercial agent shall be entitled to an indemnity if and to the extent that:

— 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 such customers, and

— the payment of this indemnity is equitable having regard to all the circumstances and, in particular, the commission lost by the commercial agent on the business transacted with such customers. Member States may provide for such circumstances also to include the application or otherwise of a restraint of trade clause, within the meaning of Article 20;

(b) The amount of the indemnity may not exceed a figure equivalent to an indemnity for one year calculated from the commercial agent's average annual remuneration over the preceding five years and if the contract goes back less than five years the indemnity shall be calculated on the average for the period in question;

(c) The grant of such an indemnity shall not prevent the commercial agent from seeking damages.

3. The commercial agent shall be entitled to compensation for the damage he suffers as a result of the termination of his relations with the principal.

Such damage shall be deemed to occur particularly when the termination takes place in circumstances:

— depriving the commercial agent of the commission which proper performance of the agency contract would have procured him whilst providing the principal with substantial benefits linked to the commercial agent's activities,

— and/or which have not enabled the commercial agent to amortise the costs and expenses that he had incurred for the performance of the agency contract on the principal's advice.

...

5. The commercial agent shall lose his entitlement to the indemnity in the instances provided for in paragraph 2 or to compensation for damage in the instances provided for in paragraph 3, if within one year following termination of the contract he has not notified the principal that he intends pursuing his entitlement.

…'

12 Article 18 of the directive states:

'The indemnity or compensation referred to in Article 17 shall not be payable:

(a) where the principal has terminated the agency contract because of default attributable to the commercial agent which would justify immediate termination of the agency contract under national law;

...'

13 According to Article 22 of Directive 86/653, the Member States were required to bring into force the provisions necessary to comply with the directive before 1 January 1990.

National law

Belgian Law on commercial agency contracts

14 The first paragraph of Article 1 of the Law of 13 April 1995 on commercial agency contracts (*Moniteur belge* of 2 June 1995, p. 15621; 'the Law on commercial agency contracts'), which implemented Directive 86/653 in Belgian law, reads as follows:

'[a] commercial agency contract is an agreement by which one of the parties, the commercial agent, has the continuing authority, in return for remuneration, of the other party, the principal, without being subject to the control of the latter, to negotiate and possibly conclude transactions on behalf of and in the name of the principal.'

15 Article 18(1) and (3) of that law provides:

‘1. Where a commercial agency contract is concluded for an indefinite period or for a fixed term with the possibility of early termination, either party shall be entitled to terminate the contract by notice.

...

3. A party terminating the contract without referring to one of the grounds set out in Article 19(1), or without giving the notice laid down in the second subparagraph of paragraph 1, shall be obliged to pay to the other party compensation equivalent to the payment that would ordinarily be made for the duration of the notice period or for the remainder thereof.’

16 The first paragraph of Article 20 of that law states:

‘After termination of the contract the commercial agent shall be entitled to a goodwill indemnity if he has brought the principal new customers or if he has significantly increased the volume of business with existing customers, in so far as the principal can continue to derive substantial benefits therefrom.’

17 Under Article 21 of the law:

‘In so far as the commercial agent is entitled to the indemnity referred to in Article 20 and the amount of such indemnity does not fully indemnify the agent for the loss actually incurred, the commercial agent may, subject to proof of the actual extent of the loss claimed, obtain damages, in addition to that indemnity, in the sum of the difference between the amount of the loss actually incurred and the amount of that indemnity.’

18 Article 27 of the Law on commercial agency contracts provides:

‘Without prejudice to the application of international conventions to which Belgium is a party, any activity of a commercial agent whose principal place of business is in Belgium shall be governed by Belgian law and shall be subject to the jurisdiction of the Belgian courts.’

Bulgarian commercial law

19 In Bulgaria, Directive 86/653 was implemented by an amendment to the Law on commerce (DV No 59 of 21 July 2006).

The dispute in the main proceedings and the question referred for a preliminary ruling

20 In 2005, Unamar, as commercial agent, and NMB, as principal, concluded a commercial agency agreement for the operation of NMB’s container liner shipping service. The agreement, which was for a one-year term and was renewed annually until 31 December 2008, provided that it was to be governed by Bulgarian law and that any dispute relating to the agreement was to be determined by the arbitration chamber of the Chamber of Commerce and Industry in Sofia (Bulgaria). By circular of 19 December 2008, NMB informed its agents that it was obliged, for financial reasons, to terminate their contractual relationship. Against that background, the agency contract concluded with Unamar was extended only until 31 March 2009.

21 Taking the view that its commercial agency contract had been unlawfully terminated, Unamar brought an action on 25 February 2009 before the rechtbank van koophandel te Antwerpen (Antwerp Commercial Court) for an order that NMB pay various forms of compensation provided for under the Law on commercial agency contracts, namely, compensation in lieu of notice, a goodwill indemnity and supplementary compensation for dismissal of staff, amounting to EUR 849 557.05 in total.

22 NMB in turn brought an action against Unamar for payment of outstanding freight in the amount of EUR 327 207.87.

23 In the proceedings brought by Unamar, NMB raised a plea of inadmissibility alleging that the Belgian court did not have jurisdiction to hear the dispute before it because there was an arbitration clause in the commercial agency contract. By judgment of 12 May 2009, after joining the cases referred to it by each of the parties, the rechtbank van koophandel te Antwerpen, ruled that NMB's plea of lack of jurisdiction was unfounded. As regards the applicable law in the two disputes brought before it, that court ruled, inter alia, that Article 27 of the Law on commercial agency contracts was a unilateral conflict-of-law rule which was directly applicable as a 'mandatory rule' and which thus rendered the choice of foreign law ineffective.

24 By a judgment of 23 December 2010, the hof van beoep te Antwerpen (Court of Appeal, Antwerp) upheld in part the appeal brought by NMB against the judgment of 12 May 2009, ordering Unamar to pay outstanding freight in an amount of EUR 77 207.87 with default interest at the statutory rate and costs. In addition, it declared that it did not have jurisdiction to rule on the claim for payment of compensation made by Unamar because of the arbitration clause in the commercial agency contract, which it held to be valid. It took the view that the Law on commercial agency contracts was not part of public policy, nor of Belgian international public policy, within the meaning of Article 7 of the Rome Convention. In addition, it considered that the Bulgarian law chosen by the parties also allowed Unamar, as the maritime agent of NMB, the protection of Directive 86/653, even if that directive provided for only a minimum level of protection. Against that background, in the view of the hof van beoep te Antwerpen, the principle of the freedom of contract of the parties had to prevail and, therefore, Bulgarian law was applicable.

25 Unamar brought an appeal in cassation against that judgment of the hof van beoep te Antwerpen. According to the order for reference, the Hof van Cassatie (Court of Cassation) takes the view that it is apparent from the legislative history of the Law on commercial agency contracts that Articles 18, 20 and 21 of that law must be regarded as mandatory rules of law, owing to the mandatory nature of Directive 86/653 which it transposes into national law. It appears from Article 27 of that law that the objective it pursues is to offer an agent whose principal place of business is in Belgium the protection of the mandatory rules of Belgian law, irrespective of the law applicable to the contract.

26 In those circumstances, the Hof van Cassatie decided to stay proceedings and to refer the following question to the Court:

'Having regard, not least, to the classification under Belgian law of the provisions at issue in this case (Articles 18, 20 and 21 of the [Law on] commercial agency contracts) as special mandatory rules of law within the terms of Article 7(2) of the Rome Convention, must Articles 3 and 7(2) of the Rome Convention, read, as appropriate, in conjunction with [Directive 86/653], be interpreted as meaning that special mandatory rules of law of the forum that offer wider protection than the minimum laid down by [Directive 86/653] may be applied to the contract, even if it appears that the law applicable to the contract is the law of another Member State of the European Union in which the minimum protection provided by [Directive 86/653] has also been implemented?'

The question referred for a preliminary ruling

27 At the outset, it must be pointed out, first, that the Court of Justice has jurisdiction to rule on the present request for a preliminary ruling concerning the Rome Convention under the first protocol thereof, which entered into force on 1 August 2004. Under Article 2(a) of that protocol, the Hof van Cassatie is entitled to request the Court to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of the provisions of the Rome Convention.

28 Secondly, despite the fact that the question of jurisdiction to hear the dispute in the main proceedings was debated before the courts at first instance and on appeal, the referring court has referred to the Court of Justice only the question of the law applicable to the contract, thus taking the view that it has jurisdiction to decide the dispute on the basis of Article II(3) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed in New York on 10 June 1958. In that regard, it must be recalled that, according to the settled case-law of the Court, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (Case C-470/11 *Garklans* [2012] ECR, paragraph 17 and the case-law cited). The Court therefore intends to answer the question referred without prejudice to the question of jurisdiction.

29 By its question, the referring court asks, essentially, whether Articles 3 and 7(2) of the Rome Convention must be interpreted as meaning that the law of a Member State which meets the requirement for minimum protection laid down by Directive 86/653 and which has been chosen by the parties to a commercial agency contract may be disregarded by the court before which the dispute has been brought, established in another Member State, in favour of the law of the forum on the ground of the mandatory nature, in the legal order of that Member State, of the rules governing the position of self-employed commercial agents.

30 In that regard, it must be observed that, although the question asked by the referring court refers not to a contract for the sale or purchase of goods but to an agency contract for the operation of a shipping service, the fact remains that, when transposing the provisions of that directive into national law, the Belgian legislature decided to apply the same treatment to both types of situation (see, by analogy, Case C-3/04 *Poseidon Chartering* [2006] ECR I-2505, paragraph 17, and Case C-203/09 *Volvo Car Germany* [2010] ECR I-10721, paragraph 26). Moreover, as mentioned in paragraph 24 of the present judgment, the Bulgarian legislature has also decided to apply the rules of the directive to commercial agents with authority to negotiate and conclude transactions, such as the agent at issue in the case in the main proceedings.

31 According to settled case-law, where domestic legislation adopts the same solutions as those adopted in Community law in order, in particular, to avoid discrimination or any distortion of competition, it is clearly in the interest of the European Union that, in order to forestall future differences of interpretation, provisions or concepts taken from European Union law should be interpreted uniformly, irrespective of the circumstances in which they are to apply (see Case C-28/95 *Leur-Bloem* [1997] ECR I-4161, paragraph 32, and *Poseidon Chartering*, paragraph 16 and the case-law cited).

32 It is against that background that the question arises as to whether a national court may disregard, pursuant to Article 7(2) of the Rome Convention, the law of a Member State, which is chosen by the parties to a contract and transposes binding provisions of European Union law, in favour of the law of another Member State, which is the law of the forum, considered to be mandatory in that legal order.

33 According to NMB, the application of the Law on commercial agency contracts to the dispute in the main proceedings cannot be considered to be ‘mandatory’ within the meaning of Article 7(2) of the Rome Convention, given that the dispute concerns a matter covered by Directive 86/653 and the law

chosen by the parties is precisely the law of another Member State of the European Union which has also transposed that directive into its national law. Thus, according to NMB, the principles of the freedom of contract of the parties and legal certainty preclude the rejection of Bulgarian law in favour of Belgian law.

34 For its part, the Belgian Government argues that the provisions of the Law on commercial agency contracts are binding and can be described as mandatory rules. In that connection, the Belgian Government points out that this law, although adopted as a measure for the transposition of Directive 86/653, gave a wider scope to the term 'commercial agent' than that given to it in the directive, in so far as any commercial agent with authority 'to negotiate and possibly conclude transactions' is covered by that law. The Belgian Government also emphasised, in its observations, that that law extended the possibility of compensation for commercial agents in the event of termination of their contracts, with the result that it is clear that it is under Belgian law that the dispute in the main proceedings must be heard.

35 The European Commission argues, essentially, that unilateral reliance on mandatory rules by a State is contrary to the principles underlying the Rome Convention, in particular the fundamental rule of precedence given to the law chosen contractually by the parties, in so far as that law is that of a Member State which has implemented in its national legal order the binding provisions of European Union law concerned. Consequently, Member States may not act contrary to that fundamental principle by systematically describing their national rules as mandatory unless they expressly relate to an important interest.

36 The Court has already had occasion to hold that Directive 86/653 aims to coordinate the laws of the Member States as regards the legal relationship between the parties to a commercial agency contract (Case C-215/97 *Bellone* [1998] ECR I-2191, paragraph 10; Case C-465/04 *Honyvem Informazioni Commerciali* [2006] ECR I-2879, paragraph 18; and Case C-348/07 *Semen* [2009] ECR I-2341, paragraph 14).

37 It is apparent from the second recital in the preamble to the Directive that 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 (Case C-381/98 *Ingmar GB* [2000] ECR I-9305, paragraph 23).

38 It is also clear from settled case-law that, inter alia, national provisions subjecting the validity of an agency contract to a condition of entry in the register provided for that purpose are capable of significantly hindering the conclusion and operation of agency contracts between parties in different Member States and therefore from that point of view are contrary to the aims of Directive 86/653 (see, to that effect, *Bellone*, paragraph 17).

39 In that regard, Articles 17 and 18 of the directive are of crucial importance, as they define the level of protection which the European Union legislature considered reasonable to grant commercial agents in the course of the creation of the single market.

40 As the Court has already held, the regime established by Directive 86/653 for that purpose is mandatory in nature. Article 17 of that directive requires Member States to put in place a mechanism for providing compensation to the commercial agent after the termination of a contract. Admittedly, that article allows the Member States to choose between indemnification and compensation for damage. However, Articles 17 and 18 of the directive 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. Moreover, under Article 19 of the directive, the parties may not derogate from them to the detriment of the commercial agent before the contract expires (*Ingmar GB*, paragraph 21).

41 As regards the question whether a national court may reject the law chosen by the parties in favour of its national law transposing Articles 17 and 18 of the directive, reference must be made to Article 7 of the Rome Convention.

42 It must be observed that Article 7 of that convention, entitled 'Mandatory rules', refers, in paragraph (1), to the mandatory provisions of foreign law, and in paragraph (2) of that article, to the mandatory provisions of the law of the forum.

43 Thus, Article 7(1) of that convention allows the State of the forum to apply the mandatory rules of another country with which the situation has a close connection instead of the law applicable to the contract. In considering whether to give effect to these mandatory rules, regard has to be had to their nature and purpose and to the consequences of their application or non-application.

44 Article 7(2) of the convention, for its part, allows the rules of the law of the forum to be applied whatever the law applicable to the contract.

45 It follows from the foregoing considerations that, under Article 7(1) of the Rome Convention, the application by the national court of mandatory rules of foreign law may arise only under expressly defined conditions, whereas the wording of Article 7(2) of that convention does not expressly lay down any particular condition for the application of the mandatory rules of the law of the forum.

46 However, it must be pointed out that the possibility of pleading the existence of mandatory rules under Article 7(2) of the Rome Convention does not affect the obligation of the Member States to ensure the conformity of those rules with European Union law. According to the case-law of the Court, the fact that national rules are categorised as public order legislation does not mean that they are exempt from compliance with the provisions of the Treaty; if it did, the primacy and uniform application of European Union law would be undermined. The considerations underlying such national legislation can be taken into account by European Union law only in terms of the exceptions to European Union freedoms expressly provided for by the Treaty and, where appropriate, on the ground that they constitute overriding reasons relating to the public interest (Joined Cases C-369/96 and C-376/96 *Arblade and Others* [1999] ECR I-8453, paragraph 31).

47 In that connection, it must be recalled that the classification of national provisions by a Member State as public order legislation applies to national provisions compliance with which has been deemed to be so crucial for the protection of the political, social or economic order in the Member State concerned as to require compliance therewith by all persons present on the national territory of that Member State and all legal relationships within that State (*Arblade and Others*, paragraph 30, and Case C-319/06 *Commission* v *Luxembourg* [1999] ECR I-4323, paragraph 29).

48 That interpretation is also consistent with the wording of Article 9(1) of the Rome I Regulation, which is, however, not applicable *ratione temporis* to the dispute in the main proceedings. According to that article, overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this regulation.

49 Thus, to give full effect to the principle of the freedom of contract of the parties to a contract, which is the cornerstone of the Rome Convention, reiterated in the Rome I Regulation, it must be ensured that the choice freely made by the parties as regards the law applicable to their contractual relationship is respected in accordance with Article 3(1) of the Rome Convention, so that the plea relating to the existence of a 'mandatory rule' within the meaning of the legislation of the Member State concerned, as referred to in Article 7(2) of that convention, must be interpreted strictly.

50 It is thus for the national court, in the course of its assessment of whether the national law which it proposes to substitute for that expressly chosen by the parties to the contract is a 'mandatory rule', to take account not only of the exact terms of that law, but also of its general structure and of all the circumstances in which that law was adopted in order to determine whether it is mandatory in nature in so far as it appears that the legislature adopted it in order to protect an interest judged to be essential by the Member State concerned. As the Commission pointed out, such a case might be one where the transposition in the Member State of the forum, by extending the scope of a directive or by choosing to make wider use of the discretion afforded by that directive, offers greater protection to commercial agents by virtue of the particular interest which the Member State pays to that category of nationals.

51 However, in the course of that assessment and in order not to compromise either the harmonising effect intended by Directive 86/653 or the uniform application of the Rome Convention at European Union level, account must be taken of the fact that, unlike the contract at issue in the case giving rise to the judgment in *Ingmar*, in which the law which was rejected was the law of a third country, in the case in the main proceedings, the law which was to be rejected in favour of the law of the forum was that of another Member State which, according to all those intervening and in the opinion of the referring court, had correctly transposed Directive 86/653.

52 Having regard to all the foregoing considerations, the answer to the question referred is that Articles 3 and 7(2) of the Rome Convention must be interpreted as meaning that the law of a Member State of the European Union which meets the minimum protection requirements laid down by Directive 86/653 and which has been chosen by the parties to a commercial agency contract may be rejected by the court of another Member State before which the case has been brought in favour of the law of the forum, owing to the mandatory nature, in the legal order of that Member State, of the rules governing the situation of self-employed commercial agents only if the court before which the case has been brought finds, on the basis of a detailed assessment, that, in the course of that transposition, the legislature of the State of the forum held it to be crucial, in the legal order concerned, to grant the commercial agent protection going beyond that provided for by the directive, taking account in that regard of the nature and of the objective of such mandatory provisions.

Costs

53 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Articles 3 and 7(2) of the Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980 must be interpreted as meaning that the law of a Member State of the European Union which meets the minimum protection requirements laid down by 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 and which has been chosen by the parties to a commercial agency contract may be rejected by the court of another Member State before which the case has been brought in favour of the law of the forum, owing to the mandatory nature, in the legal order of that Member State, of the rules governing the situation of self-employed commercial agents, only if the court before which the case has been brought finds, on the basis of a detailed assessment, that, in the course of that transposition, the legislature of the State of the forum held it to be crucial, in the legal order concerned, to grant the commercial agent protection going beyond that provided for by that directive, taking account in that regard of the nature and of the objective of such mandatory provisions.

[Signatures]