



## Reports of Cases

OPINION OF ADVOCATE GENERAL  
WAHL  
delivered on 16 July 2015<sup>1</sup>

**Case C-338/14**

**Quenon K. SPRL**  
v  
**Citibank Belgium SA**  
and  
**Citibank SA, now Metlife Insurance SA**

(Request for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium)),

(Reference for a preliminary ruling — Self-employed commercial agents — Directive 86/653/EEC — Article 17(2) — Rights of the commercial agent in the event of termination of the agency contract — Goodwill indemnity or compensation for damage — Simultaneous operation — Damages in addition to the goodwill indemnity — Whether permissible)

1. It seems to be well established now in the laws of the Member States of the European Union that the termination of a commercial agency contract may give rise to significant damage for the agent and that such a situation must, in principle, entitle him to financial compensation. Revocation of the agent's authority, withdrawing his power of representation, is apt to cause him to lose the market share he had hitherto established or maintained, and hence deprive him of the potential for financial gain generated by the commercial efforts he had made in common with the principal.

2. The choice of two compensatory mechanisms offered to the Member States by Article 17 of Directive 86/653/EEC,<sup>2</sup> that is to say, the grant of an indemnity calculated on the extent to which the agent has brought in new customers or increased the volume of business, on the one hand, or compensation for the damage suffered as a result of the cessation of the contract, on the other, has not, however, been without its difficulties.<sup>3</sup> That choice continues to raise a good many questions, as illustrated in the present request for a preliminary ruling.

3. In the present case, the cour d'appel de Bruxelles (Court of Appeal, Brussels) seeks to obtain from the Court certain clarification regarding the interpretation of Article 17(2) of Directive 86/653. This request was made in the course of proceedings between Quenon K. SPRL ('Quenon'), on the one hand, and Citibank Belgium SA ('Citibank') and Citilife SA, now Metlife Insurance SA, on the other,

1 — Original language: French.

2 — Council Directive 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).

3 — See, in particular, the difficulties of interpretation discussed in the Commission Report of 23 July 1996 on the application of Article 17 of [Directive 86/653] [COM(96) 364 final], pp. 10 to 13 ('the 1996 Report'). These are further confirmed by the critical assessments of the coexistence of two different legislative approaches in one and the same directive (see, inter alia, point 18 of the Communication from the Commission to the European Parliament and the Council — A more coherent European contract law — An action plan [COM(2003) 68 final].

concerning payment of the indemnities and compensation for damage sought by Quenon following the termination of the agency contracts between them. More specifically, it asks the Court to rule on the relationship between the indemnity scheme provided for in Article 17(2)(a) and (b) of that directive and the possibility that may be open to the agent of seeking damages under point (c) of that provision.

## I – Legal context

### A – EU law

4. Article 1 of Directive 86/653 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.

...’

5. Article 17(1) to (3) of that directive states:

‘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. ...

(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.'

#### B – *Belgian law*

6. Directive 86/653 was transposed into Belgian law by the Law of 13 April 1995 on commercial agency contracts.<sup>4</sup> Article 20 of that law provides:

'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.

If the contract contains a no-competition clause, the principal shall be deemed, unless it is proved to the contrary, to receive substantial benefits.

The amount of the indemnity shall be fixed taking into account both the extent to which the volume of business has been increased and the extent to which the customer base has been expanded.

The indemnity may not exceed the amount of one year's remuneration, calculated on the basis of the average for the past five years or, if the term of the contract is less than five years, on the basis of the average for the preceding years. ...'

7. Article 21 of the Law of 1995 provides:

'In so far as the commercial agent is entitled to the goodwill 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.'

## II – **The dispute in the main proceedings and the questions referred for a preliminary ruling**

8. It appears from the information provided to the Court that Quenon, which was established in 1997 to pursue Mr Quenon's business activities, became the commercial agent for Citibank and Citilife, with effect from 1 December 1997, under two different agency contracts. The banking and insurance businesses were grouped within one and the same agency and Quenon was remunerated exclusively by the commission paid by Citibank on the sale of banking products and by Citilife on the sale of insurance products, respectively.

<sup>4</sup> — *Moniteur belge* of 2 June 1995, p. 15621, the 'Law of 1995'.

9. On 9 January 2004, Citibank terminated its agency contract with Quenon without notice and without giving any reasons for doing so. Citibank paid Quenon a termination indemnity in the amount of EUR 95268.30 and a goodwill indemnity of EUR 203326.80 as well. Citibank forbade Quenon to continue to represent it or to use its name and its trade mark. From that date, Quenon no longer had access to the computer programme enabling it to manage the portfolio of Citilife insurance products. Quenon maintains that it was, from then on, impossible *de facto* to continue to perform the insurance agency contract.

10. On 20 December 2004, Quenon brought proceedings against Citibank and Citilife before the Tribunal de commerce de Bruxelles (Commercial Court, Brussels) and sought an order requiring them, jointly or severally, to pay, in essence, compensation in lieu of notice and a goodwill indemnity for the termination of the insurance agency contract, supplementary damages and commission on the business transacted after the agency contract had been terminated.

11. Following the dismissal of its action by judgment of 8 July 2009, Quenon lodged an appeal before the referring court, amending the sums it had claimed at first instance.

12. It appears from the order for reference that Quenon's submission in support of its appeal is that the amount of the goodwill indemnity paid to it by Citibank for the termination of the banking agency contract is insufficient. It takes the view that, in accordance with Article 21 of the Law of 1995, account should be taken both of the compensation in lieu of notice and goodwill indemnity due on account of the *de facto* termination of its insurance agency contract and of the full extent of the loss it has incurred.

13. For their part, the defendants in the main proceedings contend that that national provision, as interpreted by Quenon, is contrary to Directive 86/653, which does not allow Member States to apply both compensation schemes at the same time, that is to say the indemnity scheme and the scheme providing compensation for damage.

14. According to the referring court, the questions consequently arise whether Directive 86/653 may be interpreted as laying down an obligation to make good the full extent of the loss incurred by a commercial agent and whether, failing any fault on the part of the principal, Member States may provide for the grant of a goodwill indemnity equal to a maximum of one year's remuneration, together, where appropriate, with damages to the value of the difference between the amount of the loss actually incurred and the amount of that indemnity.

15. It was in those circumstances that the cour d'appel de Bruxelles decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'[(1)] Must Article 17 of [Directive 86/653] be interpreted as meaning that the national legislature is authorised to provide that after the termination of the contract, the commercial agent has the right to an indemnity for customers of which the amount must not be greater than the amount of remuneration for one year, and that, if that amount does not cover the whole of the loss actually suffered, damages in the sum of the difference between the amount of loss actually suffered and the amount of that indemnity?

[(2)] More specifically, must Article 17(2)(c) of [Directive 86/653] be interpreted as making the award of damages additional to the indemnity for customers conditional upon the existence of a breach of contract or a non-intentional tort by the principal which was the cause of the losses claimed, and to the existence of loss which is distinct from that compensated for by the lump sum of the indemnity for customers?

[(3)] If the answer to the latter question is affirmative, must the wrongful act or omission be something other than the unilateral termination of the contract, such as, for example, giving insufficient notice, the grant of insufficient compensation in respect of notice and customers, the existence of serious reasons on the part of the principal, a breach of the right to terminate the contract or any other types of breaches of, in particular, market practice?’

16. Written observations have been submitted by Quenon, Citibank, the Belgian and German Governments and the European Commission.

### III – Analysis

#### A – *The jurisdiction of the Court*

17. The Commission has expressed doubts as to the ‘admissibility’ of this request for a preliminary ruling. It argues that the situation at issue in the main proceedings does not fall within the ambit of Directive 86/653, given that the banking and insurance activities that were carried on by Quenon on behalf of Citibank and Citilife related to the provision of services and not ‘the sale or the purchase of goods’, the only activities to which Article 1(2) of that directive refers. The German Government, without formally raising a plea of lack of jurisdiction, has put forward similar considerations.

18. Such doubts can, in my opinion, easily be dispelled.

19. As the German Government and the Commission have moreover quite rightly pointed out, the Law of 1995, which transposes Directive 86/653 into Belgian law, applies without distinction to commercial agents entrusted by their principals both with the purchase or sale of goods and with the provision of services, as Article 1 thereof provides.<sup>5</sup>

20. In the interests of uniform interpretation, the Court has on many occasions held that it had jurisdiction to rule on requests for a preliminary ruling concerning provisions of EU law in situations in which the facts of the cases in the main proceedings fell outside the ambit of EU law, but in which those provisions of EU law had been rendered applicable by domestic law by reason of a reference made by that law to the content of those provisions.<sup>6</sup>

21. With regard to the provisions intended to transpose Directive 86/653 into the Belgian legal order, it is sufficient to point out that the Court, taking as a basis the solutions arrived at in the cases giving rise to the judgments in *Poseidon Chartering*<sup>7</sup> and *Volvo Car Germany*,<sup>8</sup> formed the view, as from the judgment in *Unamar*,<sup>9</sup> that, although the question asked by the referring court referred 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 remained that, when transposing the provisions of that directive into national law, the Belgian legislature had decided to apply the same treatment to both types of situation.

22. I am therefore of the view that the Court has jurisdiction to rule on the present request for a preliminary ruling.

5 — That provision states that commercial agents are entrusted with ‘*the negotiation and, where appropriate, the conclusion of business transactions* on behalf of and in the name of the principal’ (emphasis added).

6 — See to that effect, inter alia, the judgments in *Dzodzi* (C-297/88 and C-197/89, EU:C:1990:360, paragraph 36); *SC Volksbank România* (C-602/10, EU:C:2012:443, paragraph 86 and the case-law cited); and *Nolan* (C-583/10, EU:C:2012:638, paragraph 45).

7 — C-3/04, EU:C:2006:176, paragraphs 14 to 17.

8 — C-203/09, EU:C:2010:647, paragraphs 23 to 26.

9 — C-184/12, EU:C:2013:663, paragraph 30.

B – *The questions referred for a preliminary ruling*

23. By its request for a preliminary ruling, the referring court wishes to have certain points clarified concerning the interpretation to be given of Article 17(2) of Directive 86/653. Although the Court has on several occasions<sup>10</sup> been called upon to rule on the compensatory measures to be adopted by the Member States under Article 17 of that directive, this is the first time it has been asked to rule on the full significance of Article 17(2)(c), which provides that '[t]he grant [of the goodwill indemnity] shall not prevent the commercial agent from seeking damages'.

24. The first question referred for a preliminary ruling relates to the scope of the action for damages to which that provision refers (first aspect). The second and third questions, for their part, are concerned with the rules on liability by which any such action must be governed (second aspect).

1. First aspect (first question): scope and limits of the simultaneous operation of a goodwill indemnity and a claim for damages under Article 17(2)(c) of Directive 86/653

25. It should be borne in mind that Article 17 of Directive 86/653 is one of the provisions that are, in the general scheme of that directive, of crucial importance, in that they define the level of protection which the EU legislature considered it reasonable to grant commercial agents in the course of the creation of the single market.<sup>11</sup>

26. As the Court has repeatedly held, the interpretation of Article 17 of Directive 86/653 requires regard to be had to the objectives pursued by that directive.

27. In that connection, it is well established, and has been so since the judgments in *Bellone* and *Ingmar*,<sup>12</sup> that the objective pursued by that directive is twofold: it seeks not only to protect the interests of commercial agents in their relations with their principals (*objective of protecting the commercial agent*), but also to promote the security of commercial transactions and to facilitate trade between the Member States through the approximation of national laws (*objective of harmonisation for the purposes of, inter alia, legal certainty*).

28. As the Court has held, Article 17 of Directive 86/653, which obliges the Member States to establish a mechanism for compensating a commercial agent following the termination of his contract, must be interpreted in the light of that twofold objective.<sup>13</sup>

29. Furthermore, it is important to point out that Article 17 of Directive 86/653 forms part of a body of harmonisation provisions which are both mandatory and minimal. Thus, the protection provided for in the directive must not only be guaranteed by the Member States, which may provide only for greater protection, but is also binding on the parties to the commercial agency contract, who may not, before the contract expires, derogate from it to the detriment of the commercial agent (see Article 19 of Directive 86/653).

10 — See, inter alia, the judgments in *Ingmar* (C-381/98, EU:C:2000:605); *Poseidon Chartering* (C-3/04, EU:C:2006:176); *Honyvem Informazioni Commerciali* (C-465/04, EU:C:2006:199); *Semen* (C-348/07, EU:C:2009:195); *Volvo Car Germany* (C-203/09, EU:C:2010:647); and *Unamar* (C-184/12, EU:C:2013:663).

11 — See the judgment in *Unamar* (C-184/12, EU:C:2013:663, paragraph 39).

12 — C-215/97, EU:C:1998:189, paragraphs 13 and 17 and C-381/98, EU:C:2000:605, paragraphs 20 and 23, respectively.

13 — Judgments in *Semen* (C-348/07, EU:C:2009:195, paragraphs 14 and 31) and *Unamar* (C-184/12, EU:C:2013:663, paragraph 37).

30. The fact remains, however, that Article 17 of that directive, the fruit of compromise, having regard to the different approaches hitherto taken in the laws of the Member States,<sup>14</sup> leaves to the latter a choice of two approaches: either the system, taken from German practice, of an *indemnity* determined in accordance with the criteria set out in Article 17(2), or the mechanism, akin to that established in French law, of *compensation* for damage in accordance with the criteria set out in Article 17(3). The fact that these compensatory schemes operate as alternatives has been confirmed by the Court, which has clearly stated that Article 17 of the directive prohibits the simultaneous operation of the indemnity referred to in paragraph 2 of that article and of the compensation for damage referred to in paragraph 3 of the same article.<sup>15</sup>

31. To my mind, however, the harmonisation measures prescribed by Article 17 of Directive 86/653 are intended, with a view in particular to standardising the conditions of competition and increasing the security of commercial transactions, only to coordinate the conditions for compensating an agent for the economic loss arising directly from the termination of relations with the principal and, ultimately, from the actual loss of customers.

32. In other words, the harmonisation of conditions for compensating commercial agents for which that directive provides is exhaustive only in so far as it relates to goodwill or 'customer' indemnity. It is not meant to govern every conceivable means of reparation for loss sustained by commercial agents under the laws of the Member States governing liability in tort or contract. Thus, agents whose contracts have been terminated still have the option of bringing proceedings, under the applicable national law, for a declaration of the liability of their principals in order to obtain reparation for loss other than that covered by the compensatory goodwill indemnity provided for in Article 17(2) of Directive 86/653.

33. In this regard, it must be pointed out that, although the system established by Article 17 of the directive is mandatory and although it has fixed a framework, it does not, however, give any detailed indications as regards the method of calculation of the indemnity for termination of contract. Consequently, within the framework defined by that provision, the Member States enjoy a certain discretion.<sup>16</sup>

34. That, to my mind, applies both to the actual rules for calculating the indemnity provided for in Article 17(2) of Directive 86/653, subparagraph (b) of the latter provision merely determining its maximum amount, and to any combination of that indemnity with a claim for damages such as that provided for in subparagraph (c) of that provision. As the Commission stated in its 1996 Report, Article 17(2)(c) of Directive 86/653 governs situations in which national law confers on the agent the right to obtain damages for breach of contract or failure to observe the notice period provided for in that directive.

35. As it has been possible to stress,<sup>17</sup> the indemnity provided for in Article 17(2) of Directive 86/653 serves an essentially remunerative purpose from the point of view of the commercial agent. It is apparent from the conditions governing the grant of the indemnity laid down in Directive 86/653 (that the commercial agent must have brought in new customers or increased the volume of business with pre-existing customers; that substantial benefits continue to accrue to the principal after the agency contract has been terminated, and that there exist none of the circumstances that would exclude entitlement to an indemnity, as defined in Article 18 of the directive) that that indemnity,

14 — See the 1996 Report, p. 1. For a more comprehensive overview of the approaches taken by the Member States, see de Theux, A., *Le statut européen de l'agent commercial: Approche critique de droit comparé*, Facultés universitaires Saint-Louis, 1992, in particular p. 280 et seq.

15 — Judgments in *Honyvem Informazioni Commerciali* (C-465/04, EU:C:2006:199, paragraph 20) and *Semen* (C-348/07, EU:C:2009:195, paragraph 15).

16 — Judgments in *Ingmar* (C-381/98, EU:C:2000:605, paragraph 21); *Honyvem Informazioni Commerciali* (C-465/04, EU:C:2006:199, paragraphs 34 and 35); *Semen* (C-348/07, EU:C:2009:195, paragraph 18); and *Unamar* (C-184/12, EU:C:2013:663, paragraph 40).

17 — See, in particular, the Opinion of Advocate General Poiares Maduro in *Honyvem Informazioni Commerciali* (C-465/04, EU:C:2005:641, points 14 to 19) and the Opinion of Advocate General Bot in *Volvo Car Germany* (C-203/09, EU:C:2010:315, point 50).

commonly referred to as a 'goodwill indemnity', serves primarily to remunerate the agent for his past efforts, in so far as the principal continues to benefit from the economic advantages resulting from those efforts even after the agency contract has been terminated, and, at the same time, to prevent any unjust enrichment or opportunistic behaviour at the time when the contract is terminated. If there were no obligation to indemnify the agent on termination of the contract, the principal could — without having to pay the agent any form of consideration in return — continue to benefit from gains towards which the commercial agent has in one way or another contributed through his activities.

36. The right to an indemnity under Directive 86/653 does not, therefore, cover all damage caused to the agent as a result of the termination of his relationship with the principal, but only that brought about directly by the loss of customers.

37. It has thus been possible to emphasise the point that the system of compensation for damage provided for in Article 17(3) of that directive, under which compensation is not linked exclusively to the loss of customers and is not limited in terms of its amount, encompasses all loss incurred by the agent and may in certain respects appear to be more favourable to the commercial agent.<sup>18</sup>

38. I therefore take the view that the cap fixed in Article 17(2)(b) of Directive 86/653, that is to say, one year's remuneration, applies only to the goodwill indemnity and does not limit the award of damages, the loss compensated by which ought to be different from that compensated by the indemnity. It is therefore possible that, as provided for in Article 17(2)(c) of that directive, in addition to that remuneration, the commercial agent may claim damages intended to cover a separate head of loss. Although, taking into account the harmonisation brought about by Article 17 of the directive, the simultaneous operation of two actions both seeking reparation for the damage arising from the loss of customers is impossible, it must be accepted that two actions aimed at securing reparation for separate heads of loss may co-exist.

39. To my mind, moreover, it is quite clear from the wording and structure of Article 17 of Directive 86/653 that the action for damages provided for in Article 17(2)(c) of the directive is intended as a potential supplement to the grant of an indemnity and is not, as such, subject to the cap on the amount of the goodwill indemnity provided for in point (b) of that same paragraph. As Quenon has submitted, it is apparent from the drafting history of Directive 86/653 that the legislature ultimately decided not to adopt that part of the Commission's initial proposal which envisaged that the cap on the indemnity would be absolute.<sup>19</sup>

40. In addition, it follows from the case-law of the Court that, when Member States choose one of the two options provided for in Article 17 of the directive, the goodwill indemnity must be at least equal to or greater than that which results from the application of Article 17(2).<sup>20</sup> The use of the word 'greater' shows that the harmonisation brought about by Directive 86/653 is minimal and that the Member States are therefore free to make provision, not only for the specific indemnity referred to in Article 17(2), but also for an action for damages in accordance with Article 17(2)(c).<sup>21</sup>

41. This ought in particular to be the case when the commercial agent considers that, irrespective of the remuneration he has received for expanding or consolidating the principal's existing customer base and for the loss of future earnings consequent upon the loss of those customers, to which he is entitled under the agency contract itself, he has suffered particular damage at the same time as that

18 — See, inter alia, Gardiner, C., 'Compensat[ing] commercial agents under the Commercial Agents Directive — Uncertainty continues', *Commercial Law Practitioner*, 2006, 8, p. 195.

19 — See Articles 28, 30 and 31 of the Proposal for a Council Directive to coordinate the laws of the Member States relating to (self-employed) commercial agents, submitted by the Commission to the Council on 17 December 1976 (OJ 1977 C 13, p. 2).

20 — Judgment in *Honyvem Informazioni Commerciali* (C-465/04, EU:C:2006:199, paragraph 32).

21 — As I stated in my Opinion in *Unamar* (C-184/12, EU:C:2013:301, point 52), the mechanism provided for in Directive 86/653 is intended only to ensure that the commercial agent receives *minimum compensation* and does not pre-empt the freedom of the Member States to make provision for additional compensation in their laws.

resulting from termination of the contract. Article 17 does not prevent the commercial agent from asserting additional rights to reparation against the principal in order to obtain for the material or non-material loss caused to him compensation which goes beyond the right to a post-contractual indemnity. Reference has thus been made, by way of examples of heads of loss eligible for reparation in the context of an action for damages brought under Article 17(3)(c) of Directive 86/653, to unamortised investment expenditure incurred by the commercial agent, indemnities in lieu of notice due to staff dismissed or yet the costs connected with tenancy or leasing agreements.<sup>22</sup>

42. That would indeed appear to be so in the case in the main proceedings, in which the sudden termination of the banking agency contract concluded between Quenon and the defendant companies appears to have made it impossible *de facto* to perform the insurance agency contract. In this instance, the allegation of loss made by Quenon could be regarded as seeking not only compensation for the damage arising directly from the termination of the banking agency contract and the loss of future earnings, but also reparation for the indirect damage constituted by the impossibility of performing the insurance agency contract and the collateral loss cause by failure to observe the notice period.

43. It is important to point out, however, that an action brought under Article 17(2)(c) of Directive 86/653 must not, lest it create a situation of over-compensation of the agent contrary to the objectives pursued by that directive, circumvent the rule against overlapping compensation laid down in the case-law. Consequently, the alleged loss forming the subject of such an action must be distinct from that covered by the indemnity. Moreover, to accept that the additional damages referred to in that provision may also compensate for the loss of future earnings would be to fail to have regard to the capping of the amount of the goodwill indemnity provided for in Directive 86/653.

44. In conclusion, Article 17 of Directive 86/653 ought not to preclude national legislation which provides that, in the event of the termination of an agency contract, the agent is entitled, not only to the grant of a goodwill indemnity the amount of which may not exceed the value of one year of the agent's remuneration, but also to the award of damages for loss actually incurred but not covered by that indemnity.

45. So far as concerns the question whether or not the award of damages in conjunction with the goodwill indemnity may exceed the maximum amount stipulated in Article 17(2)(b) of the directive, it seems to me clear enough that the cap fixed by that provision applies only to the goodwill indemnity and does not limit the amount of the additional compensation intended to make good loss other than that covered by that indemnity. Because this action concerns loss other than that covered by the goodwill indemnity, it is conceivable that the total amount of the sums recovered by the commercial agent may exceed that threshold.

46. In the light of those considerations, I propose that the answer to be given to the first question is that Article 17 of Directive 86/653 must be interpreted as not precluding national legislation which provides that, following termination of the contract, the commercial agent is entitled to a goodwill indemnity the amount of which may not exceed one year's remuneration, and, if the amount of that indemnity does not cover the entirety of the loss actually incurred, to damages.

22 — Crahay, P., 'La rupture du contrat d'agence commerciale', *Les dossiers du Journal des tribunaux*, No 65, Larcier 2008.

2. Second aspect (second and third questions): requirement of fault and classification of that fault as serious for the purposes of the award of damages

47. By its second question, the referring court wishes to ascertain whether, in the context of an action for damages under Article 17(2)(c) of Directive 86/653, it is necessary, on the one hand, to demonstrate fault on the part of the principal causally connected to the alleged loss and, on the other hand, that there should be loss distinct from that compensated for by the lump sum goodwill indemnity.

48. The answer to this question seems clear enough to me. As Quenon, the Belgian and German Governments and the Commission have submitted, that directive gives no indication of the rules on liability applicable to an action for damages brought by a commercial agent under Article 17(2)(c) of Directive 86/653.

49. Provided that they observe the principles of equivalence and effectiveness, Member States are therefore free, within the framework defined by that directive, to determine the conditions applicable to an action for damages, such as the requirement of fault, whether or not that fault is classified as serious and the extent of the reparable loss.

50. In contrast, as I have previously stated, loss pleaded on this head must, if the fact that the two options provided for by the directive may not be exercised simultaneously is not to be disregarded, be distinct from that resulting directly from termination of the contract, which is already covered by the goodwill indemnity.

51. By its third question, the referring court asks about the nature and extent of fault required for the purposes of an action for damages brought under Article 17(2)(c) of Directive 86/653.

52. In view of the answer given to the second question, there is no need to answer this question.

#### **IV – Conclusion**

53. In the light of all those considerations, I therefore propose that the Court answer the questions referred by the Cour d'appel de Bruxelles as follows:

Article 17 of 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 does not preclude national legislation which provides that, following termination of the agency contract, the commercial agent is entitled to a goodwill indemnity the amount of which may not exceed one year's remuneration and, if the amount of that indemnity does not cover the entirety of the loss actually incurred, to damages.

Article 17(2)(c) of Directive 86/653 is to be interpreted as making the award of damages additional to the goodwill indemnity conditional upon the existence of loss distinct from that compensated for by that indemnity, but not upon the existence of fault on the part of the principal, whether of a contractual or of a quasi-delictual nature, causally connected to the alleged loss.