

JUDGMENT OF THE COURT (First Chamber)
30 April 1998 *

In Case C-215/97,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunale, Bologna (Italy) for a preliminary ruling in the proceedings pending before that court between

Barbara Bellone

and

Yokohama SpA

on the interpretation 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 (OJ 1986 L 382, p. 17),

THE COURT (First Chamber),

composed of: M. Wathelet, President of the Chamber, P. Jann (Rapporteur) and L. Sevón, Judges,

Advocate General: G. Cosmas,

Registrar: R. Grass,

after considering the written observations submitted on behalf of the Commission of the European Communities, by Antonio Caeiro, Principal Legal Adviser and Laura Pignataro, of its Legal Service, acting as Agents,

having regard to the Report of the Judge-Rapporteur,

* Language of the case: Italian.

after hearing the Opinion of the Advocate General at the sitting on 29 January 1998,

gives the following

Judgment

- 1 By order of 16 April 1997, received at the Court on 9 June 1997, the Tribunale (District Court), Bologna, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question concerning the interpretation 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 (OJ 1986 L 382, p. 17, hereinafter 'the Directive').
- 2 That question was raised in proceedings between Mrs Bellone and Yokohama SpA (hereinafter 'Yokohama').
- 3 It is apparent from the documents before the court in the main proceedings that Mrs Bellone acted as commercial agent on behalf of Yokohama pursuant to an agency contract entered into between the parties. After Yokohama terminated that contract Mrs Bellone claimed payment of various indemnities.
- 4 At first instance, the Pretore (Magistrate), Bologna, rejected Mrs Bellone's claims on the ground that the agency contract was void because she was not entered on the register of commercial agents and representatives at the time when the contract was concluded; registration is compulsory pursuant to Article 2 of Italian Law No 204 of 3 May 1985 (GURI No 119 of 22 May 1985, p. 3623).

- 5 That article provides that in each Chamber of Commerce a register of commercial agents and representatives is to be established in which 'all persons pursuing or intending to pursue the activity of commercial agent or representative are to be registered'. Article 9 of Law No 204 'prohibits any person not so registered from pursuing the activity of commercial agent or representative'.
- 6 According to the national court, Italian case-law treats an agency contract entered into by a person who is not registered as void on the grounds of infringement of the mandatory provision laid down in Article 9 of Law No 204 and such a person cannot bring proceedings for the recovery of commission and indemnities in respect of the activities carried out by him.
- 7 Mrs Bellone appealed to the Tribunale, Bologna, which considered that a question of Community law arose in so far as the national rules in issue in the main proceedings, which make the rights of agents conditional upon entry in the appropriate register, could be incompatible with the Directive, which makes no provision for any such register. In particular, it pointed out that Article 1 of the Directive defines a 'commercial agent' by reference to the activity pursued and does not require any specific administrative implementing measures.
- 8 In those circumstances, the national court decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Is Directive 86/653/EEC compatible with Articles 2 and 9 of Italian Law No 204 of 3 May 1985, which make the validity of agency contracts conditional upon commercial agents being entered in the appropriate register?'
- 9 By this question, the national court is essentially asking whether the Directive precludes a national rule which makes the validity of an agency contract conditional upon the commercial agent being entered in the appropriate register.

- 10 It should be noted, first, that the Directive is intended to coordinate the laws of the Member States as regards the legal relationship between the parties to a commercial agency contract. According to Article 22, Member States were to comply with the Directive before 1 January 1990. As regards the obligations deriving from Article 17, the Italian Republic was authorised to adopt implementing measures until 1 January 1993.
- 11 It is common ground that the Directive does not deal with the question of registration of commercial agents. Even though, according to the Commission, the general introduction of a register of agents was proposed by the Economic and Social Committee during the preparatory work preceding adoption of the Directive, that proposal was not retained in the final draft of the Directive, for reasons of legal certainty. It is therefore left to the Member States to require entry in the appropriate register if they consider it expedient so to do in order to satisfy certain administrative needs. As the Advocate General pointed out at point 32 of his Opinion, registration of commercial agents is required by law in a number of Member States.
- 12 However, the national law at issue in the main proceedings does not only require every commercial agent to be entered on that register, but also makes the validity of the agency contract conditional upon such registration, with the result that an agent who is not registered is deprived of any legal protection, in particular once the contract is terminated. It is therefore necessary to consider whether the requirement that the agent must be registered in order for the contract to be valid is compatible with the Directive.
- 13 In that respect it should be borne in mind, first, that the Directive is designed to protect commercial agents, within the meaning of the Directive. According to Article 1(2), a commercial agent is 'a self-employed intermediary who has continuing authority to negotiate the sale or the purchase of goods on behalf of another person ... or to negotiate and conclude such transactions on behalf of and in the name of that principal'. Since entry in a register is not referred to as a condition for protection under the Directive, it follows that protection under the Directive is not conditional upon entry in a register.

- 14 As regards, next, the form of the agency contract, Article 13(2) of the Directive, in Chapter IV, 'Conclusion and Termination of the Agency Contract', permits Member States to 'provide that an agency contract shall not be valid unless evidenced in writing'. It follows, on the one hand, that the Directive starts from the principle that the contract is not subject to any formal requirement, whilst leaving it open to the Member States to require it to be in writing. On the other hand, as the Commission pointed out and the Advocate General noted at point 37 of his Opinion, by referring only to the requirement that the contract be in writing in order to be valid, the Community legislature dealt exhaustively with the matter in that provision. Member States may therefore not impose any condition other than requiring that a written document be drawn up.
- 15 That conclusion is confirmed by the fact that whenever the Directive allows the Member States to derogate from its provisions, express provision is made to that effect (see, in particular, Article 2(2), the second subparagraph of Article 7(2), Article 12(4), Article 15(3), Article 16, Article 20(4) and Article 21). If Article 13(2) of the Directive leaves it open to the Member States to require only that the document be in writing, it therefore follows that other derogations from the principle of freedom of form are contrary to the Directive. The entry of the agent in a register can therefore not be accepted as a condition for the validity of the contract.
- 16 That interpretation of the Directive is borne out by the fact that, as already mentioned, the question of registration of agents had already been addressed during the preparatory work, but was not taken up, since it was not considered necessary for agents to be registered in order to enjoy rights under the Directive.
- 17 Furthermore, it is apparent from the first and second recitals in the preamble to the Directive that it is intended, *inter alia*, to eliminate restrictions on the freedom of establishment. Although Italian practice appears not to apply the condition of entry in the register to foreign agents, the national provisions at issue in the main proceedings, which are drafted in general terms, nevertheless also encompass agency relationships between parties established in different Member States. They are still capable of significantly hindering the conclusion and operation of agency contracts between parties in different Member States and therefore from that point of view also are contrary to the aims of the Directive.

- 18 It follows from the foregoing that the answer to the question put to the Court must be that the Directive precludes a national rule which makes the validity of an agency contract conditional upon the commercial agent being entered in the appropriate register.

Costs

- 19 The costs incurred by the Commission, which has submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Tribunale, Bologna, by order of 16 April 1997, hereby rules:

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 precludes a national rule which makes the validity of an agency contract conditional upon the commercial agent being entered in the appropriate register.

Wathelet

Jann

Sevón

Delivered in open court in Luxembourg on 30 April 1998.

R. Grass

M. Wathelet

Registrar

President of the First Chamber

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