



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

17 May 2017*

(Reference for a preliminary ruling — Self-employed commercial agents — Directive 86/653 — Commercial agent's commission — Article 11 — Partial non-execution of the contract between the third party and the principal — Consequences for the right to commission — Concept of 'reason for which the principal is to blame')

In Case C-48/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Okresný súd Dunajská Streda (District Court, Dunajská Streda, Slovakia), made by decision of 23 November 2015, received at the Court on 27 January 2016, in the proceedings

ERGO Poist'ovňa a.s.

v

Alžbeta Barlíková,

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, E. Juhász, C. Vajda, K. Jürimäe (Rapporteur) and C. Lycourgos, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Slovak Government, by B. Ricziová, acting as Agent,
- the German Government, by T. Henze and M. Hellmann, acting as Agents,
- the European Commission, by K.-P. Wojcik, A. Tokár and L. Malferrari, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 January 2017

gives the following

* Language of the case: Slovak.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 11 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).
- 2 The request has been made in proceedings between ERGO Poist'ovňa a.s. ('ERGO') and Ms Alžbeta Barlíková concerning a demand for payment of the sum of EUR 11421.42, sent by ERGO to Ms Barlíková, in respect of the repayment of commissions.

Legal context

European Union law

- 3 The second and third recitals of Directive 86/653 state the following:

'Whereas the differences in national laws concerning commercial representation substantially affect the conditions of competition and the carrying-on of that activity within the [European Union] 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 agent 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'.

- 4 Article 1(2) of that directive provides:

'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 3(1) of that directive provides:

'In performing his activities a commercial agent must look after his principal's interests and act dutifully and in good faith.'

- 6 Article 4(1) of that directive provides:

'In his relations with his commercial agent a principal must act dutifully and in good faith.'

- 7 Chapter III of Directive 86/653, entitled 'Remuneration', contains, inter alia, the applicable rules where the commercial agent is remunerated by commission. As provided in Article 6(2) of that directive, 'any part of the remuneration which varies with the number or value of business transactions' is deemed to be commission within the meaning of that directive.

8 Article 7(1) of that directive is worded as follows:

‘A commercial agent shall be entitled to commission on commercial transactions concluded during the period covered by the agency contract:

(a) where the transaction has been concluded as a result of his action;

or

(b) where the transaction is concluded with a third party whom he has previously acquired as a customer for transactions of the same kind.’

9 Article 10(1) of that directive provides:

‘The commission shall become due as soon as and to the extent that one of the following circumstances obtains:

(a) the principal has executed the transaction; or

(b) the principal should, according to his agreement with the third party, have executed the transaction; or

(c) the third party has executed the transaction.’

10 Article 11 of Directive 86/653 provides:

‘1. The right to commission can be extinguished only if and to the extent that:

— it is established that the contract between the third party and the principal will not be executed,
and

— that fac[t] is due to a reason for which the principal is not to blame.

2. Any commission which the commercial agent has already received shall be refunded if the right to it is extinguished.

3. Agreements to derogate from paragraph 1 to the detriment of the commercial agent shall not be permitted.’

Slovak law

The Commercial Code

11 Paragraph 642 of the Obchodný zákonník (Commercial code), which relates to the mediation agreement, provides:

‘By a mediation agreement, the intermediary commits himself to carrying out activity enabling the interested party to conclude a contract with a third party, and the interested party commits himself to paying the intermediary remuneration (commission).’

- 12 Directive 86/653 was transposed into the law of the Slovak Republic by Paragraph 652 et seq. of the Commercial code. Paragraph 652(1) of that code provides:

‘By a contract for commercial agency, a commercial agent as a trader commits himself to carrying on activity for the principal leading to the conclusion of a certain type of contracts (“transactions”) or to negotiate and conclude transactions in the name and on behalf of the principal, and the principal commits himself to paying the commercial agent commission.’

- 13 Paragraph 660(1) and (2) of that code provides:

‘1. The entitlement to commission shall arise at the time when ...

- (a) the principal has fulfilled the obligation arising from the transaction or
- (b) the principal was obliged to fulfil the obligation arising from the transaction ... or
- (c) the third party has fulfilled the obligation arising from the transaction.

2. The entitlement to commission shall arise at the latest at the time when the third party has fulfilled his part of the obligation, or was obliged to fulfil it if the principal had fulfilled his part. However, if the third party does not have to fulfil his obligation until after more than six months have elapsed from the conclusion of the contract, the commercial agent’s entitlement to commission shall arise on conclusion of the transaction.’

- 14 Paragraph 662(1) and (3) of the Commercial code provides:

‘1. The entitlement to commission shall cease only if it is clear that the contract between the principal and the third party will not be performed and its non-performance is not the consequence of circumstances for which the principal is responsible, unless some other consequence follows from the contract.

...

3. The ceasing of the entitlement to commission in accordance with subparagraph 1 may be regulated otherwise by agreement, to the advantage of the commercial agent only.’

The Civil Code

- 15 Paragraph 801(1) and (2) of the Civil Code provides:

‘1. The insurance contract shall cease where the premium for the first insurance period or the one-off premium has not been paid by three months from the date when it was due.

2. The insurance contract shall cease where the premium for a further period has not been paid by one month from the date of delivery of a call by the insurer for payment, if the premium has not been paid before delivery of that call ...’

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

- 16 On 13 March 2012, ERGO, a company operating in the insurance sector, and Ms Barlíková concluded a contract that they entitled ‘Mediation agreement with a tied financial agent’ (‘the contract at issue’). That contract referred to Paragraph 642 of the Commercial code.

- 17 By that agreement, Ms Barlíková undertook to carry on 'mediation in the insurance sector' for ERGO. That activity consisted, *inter alia*, in submitting offers to conclude insurance contracts proposed by that company with customers. Ms Barlíková was also authorised to conclude those contracts in the name and on behalf of ERGO.
- 18 Ms Barlíková was to receive a commission for the conclusion of each insurance contract, consisting in a percentage of the premium amount or the annual premium of such contract. She was entitled to advance payment of that commission as soon as the contract with the customer was concluded. However, the entitlement to the commission was acquired definitively only if the insurance contract was not terminated before three or five years.
- 19 Moreover, the contract at issue stipulated that the non-payment of premiums by the customers would result in the ceasing of the entitlement to commission, if it occurred during the first few months of the insurance contract, or a proportional reduction of the amount of the commission, if it occurred after the first three months of the execution of that contract.
- 20 Ms Barlíková brought several clients to ERGO. In accordance with the contract at issue, when the insurance contracts were concluded with those clients, she received, in advance, the commissions payable to her. However, three to six months after those contracts were signed, certain clients ceased to pay the premiums relating to those contracts and failed to react to the letter of formal notice demanding payment, referring to the settlement of the sums payable, sent by ERGO. Consequently, those contracts ceased automatically, pursuant to Paragraph 801 of the Civil Code. Certain clients indicated to ERGO that they had ceased to pay those premiums after losing the confidence that they initially had in that company, because it had treated them inappropriately.
- 21 Following the ceasing of the insurance contracts concerned, pursuant to the contract at issue, ERGO asked Ms Barlíková to pay back the commissions received in respect of those insurance contracts, for a total amount of EUR 11421.42. Since Ms Barlíková did not pay that sum, ERGO brought an application before the Okresný súd Dunajská Streda (District Court, Dunajská Streda, Slovakia) seeking an order for payment of that sum.
- 22 Before that court, Ms Barlíková claimed that the ceasing of those insurance contracts was the fault of ERGO. It is allegedly apparent from letters sent by several clients to that company that it had not treated them properly, in particular, by asking them to reply to numerous questions, even though the insurance contract had been concluded, and by sending them reminder letters for payment of premiums which had already been settled.
- 23 In that context, the referring court seeks to ascertain whether Paragraph 662 of the Commercial code, which transposes Article 11 of Directive 86/653, precludes the clauses of the contract at issue pursuant to which non-payment of the premiums provided for in the contract concluded between the principal and the third party, as the case may be, terminates entitlement to commission or gives rise to a reduction of the amount of that commission in proportion to the period of execution of that contract.
- 24 Accordingly, the referring court is uncertain whether the first indent of Article 11(1) of that directive makes it possible to take account of the characteristics specific to long-term contracts. That court observes, in that regard, that that directive does not refer to the case of partial execution of the contract. Moreover, the referring court considers that it is necessary to clarify the concept of whether the 'principal [is] to blame', within the meaning of the second indent of Article 11(1) of that directive. According to that court, such clarification is important in the present case, on account of the specific set of rules applicable to the ceasing of insurance contracts, referred to in Paragraph 801(2) of the Civil Code. Pursuant to that provision, insured parties may terminate contracts by refraining from paying the premiums due, even though they could use standard ways of terminating the contract, such as giving notice or withdrawal. From a legal point of view, the ground of termination of the contract

would be based on the non-payment of premiums, which constitutes a breach, by the insured party, of his obligations. That inactivity may, however, be explained by other circumstances which led the insured party to proceed in that manner.

- 25 In those circumstances, the Okresný súd Dunajská Streda (District Court, Dunajská Streda) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1)

Must the expression “the contract between the third party and the principal will not be executed” in Article 11 of Directive 86/653 be interpreted as meaning:

- (a) complete non-execution of the contract, that is, neither the principal nor the third party even partly performs what is provided for in the contract, or
 - (b) even partial non-execution of the contract, that is, the volume of transactions envisaged is not achieved, for example, or the contract will not last for the time envisaged?
- (2) If the interpretation in indent (b) of Question 1 is correct, must Article 11(2) of Directive 86/653 be interpreted as meaning that a provision in a contract for commercial agency under which the agent is obliged to return a proportionate part of his commission if the contract between the principal and the third party is not executed to the extent envisaged, or to the extent defined by the contract for commercial agency, is not a derogation to the detriment of the agent?
- (3) In the cases concerned in the main proceedings, when assessing whether “the principal is to blame” within the meaning of the second indent of Article 11(1) of Directive 86/653,
- (a) may there be taken into consideration only legal reasons leading directly to termination of the contract (for example, the contract ceases as a result of the non-performance of an obligation under it by the third party), or
 - (b) may there also be taken into consideration the question of whether those legal reasons were the result of the conduct of the principal in the context of the legal relationship with that third party which induced the third party to lose confidence in the principal and consequently to breach an obligation under the contract with the principal?

The jurisdiction of the Court

- 26 As a preliminary point, it should be pointed out that, as is apparent from the reference for a preliminary ruling, ERGO contends, before the referring court, that Directive 86/653 is not applicable to the case in the main proceedings, since the contract at issue, in the light of its title and the reference to Paragraph 642 of the Commercial code that it makes, constitutes a mediation agreement rather than a contract for commercial agency.
- 27 In that regard, it is sufficient to note that it is apparent from that reference for a preliminary ruling that the referring court is of the view that the contract at issue must be considered a contract for commercial agency rather than a mediation agreement. This judgment must therefore be based on the latter assumption.
- 28 Moreover, it should be pointed out that, whilst, admittedly, that contract does not fall within the scope of Directive 86/653, which applies, according to the definition of the concept of ‘commercial agent’ set out in Article 1(2) thereof, only to commercial agents who have continuing authority either to negotiate or to negotiate and conclude the sale or purchase of goods. A commercial agent whose activity consists, as is the case in the main proceedings, in the negotiation and conclusion of the sale of insurance services does not therefore fall within the definition covered by Article 1(2).

- 29 However, it follows from settled case-law that where domestic legislation adopts the same solutions as those adopted in EU law in order, in particular, to avoid discrimination against foreign nationals or any distortion of competition, it is clearly in the European Union's interest that, in order to forestall future differences of interpretation, provisions or concepts taken from EU law should be interpreted uniformly, irrespective of the circumstances in which they are to apply (judgment of 3 December 2015, *Quenon K.*, C-338/14, EU:C:2015:795, paragraph 17 and the case-law cited).
- 30 In that regard, the referring court stated that it is aware that the dispute before it fell outside the scope of EU law. However, referring to the judgment of the Court of 16 March 2006, *Poseidon Chartering* (C-3/04, EU:C:2006:176), the referring court stated that the requirements of Directive 86/653 applied to the case at hand, concerning a contract for commercial agency relating to insurance services.
- 31 As was stated in paragraph 12 of this judgment, Directive 86/653 was transposed into the law of the Slovak Republic by Paragraph 652 et seq. of the Commercial code. As the Slovak Government observes, those paragraphs are not limited to the sale or purchase of goods, but also concern contracts for services. It follows that, in transposing the provisions of that directive in that manner into domestic law, the Slovak legislature sought to apply identical treatment to agency contracts relating to goods and those relating to services.
- 32 Accordingly, it must be held that the Court has jurisdiction to give a preliminary ruling on the question referred to it.

Consideration of the questions referred

The first question

- 33 By its first question, the referring court asks, in essence, whether the first indent of Article 11(1) of Directive 86/653 must be interpreted as meaning that it covers not only cases of complete non-execution of the contract between the principal and the third party, but also cases of partial non-execution of the contract, such as non-compliance with the volume of transactions or the duration envisaged by that contract.
- 34 In most of the language versions, the first indent of Article 11(1) of that directive provides that the right to commission can be extinguished only 'if and to the extent that' it is established that the contract between the third party and the principal will not be executed.
- 35 The use of the phrase 'to the extent that' indicates that, in order to determine whether the right to commission is extinguished, it is necessary to take account of the proportion in which the contract has not been executed. Thus, it may be inferred from the use of that phrase that the first indent of Article 11(1) of that directive covers cases of both complete non execution and partial non-execution of the contract.
- 36 However, the Czech, Latvian and Slovak language versions of Article 11(1) of Directive 86/653 do not contain wording which could be translated as 'to the extent that'.
- 37 According to the settled case-law of the Court of Justice, provisions of EU law must be interpreted and applied uniformly in the light of the versions existing in all the languages of the European Union. Where there is divergence between the various language versions of an EU legislative text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (judgment of 1 March 2016, *Alo and Osso*, C-443/14 and C-444/14, EU:C:2016:127, paragraph 27).

- 38 It follows that, in the light of the divergence referred to in paragraph 36 of this judgment, the first indent of Article 11(1) of Directive 86/653 should be interpreted in the light of the general scheme and purpose of that directive.
- 39 In the first place, as regards the general scheme of Directive 86/653, Article 7(1) of that directive provides that the commercial agent is to be entitled to commission *inter alia* where the transaction has been concluded as a result of his action. Article 10(1) of that directive specifies nonetheless that the commission is to become due ‘as soon as and to the extent that’ the transaction has been executed or should have been executed. Admittedly, no conclusion may be drawn from the use of the phrase ‘to the extent that’, since that phrase is not used in all the language versions of that provision.
- 40 However, it is apparent from Article 7(1) of Directive 86/653, read in conjunction with Article 10(1) thereof that, although the commercial agent is entitled to commission in respect of transactions that the principal concludes with clients that the agent has found, that right materialises only at the time that the transactions in question are executed or that those transactions should have been executed. It may thus be inferred from this that the commission becomes due as that execution progresses, which, in the case of long-term contracts in which execution is ongoing, such as the insurance contracts at issue in the main proceedings, is spread out over time. If the commission becomes due only in the proportion to which those transactions are executed, the right to commission is extinguished to the extent that those transactions have not been executed. The first indent of Article 11(1) of that directive must therefore be interpreted as covering also cases of partial non-execution of the contract concluded between the principal and the third party.
- 41 In the second place, as regards the purpose of Directive 86/653, it should be borne in mind that it is apparent from its second and third recitals that one of the objectives of that directive is to protect the commercial agent in his relations with the principal (see, to that effect, judgment of 3 December 2015, *Quenon K.*, C-338/14, EU:C:2015:795, paragraph 23).
- 42 However, it follows from Article 3(1) and Article 4(1) of that directive that the commercial agent and the principal must act dutifully and in good faith in their mutual relations. Similarly, it is apparent from Article 10(1) of that directive that the legislature intended to make commission becoming due subject to the execution of the contract rather than to its conclusion.
- 43 An interpretation of the first indent of Article 11(1) of Directive 86/653, as relating solely to cases of complete non-execution of the contract, would run counter to the purpose of the provisions of that directive cited in the previous paragraph of this judgment and of that directive in general, if, for long-term contracts, such as the insurance contracts at issue in the main proceedings, the agent were to be guaranteed all his commission from the beginning of the execution of those contracts, without any account being taken of a possible partial non-execution of those contracts.
- 44 In the light of the foregoing considerations, the answer to the first question is that the first indent of Article 11(1) of Directive 86/653 must be interpreted as meaning that it covers not only cases of complete non-execution of the contract concluded between the principal and the third party, but also cases of partial non-execution of that contract, such as non-compliance with the volume of transactions or the duration envisaged by that contract.

The second question

- 45 By its second question, the referring court asks, in essence, whether Article 11(2) and (3) of Directive 86/653 must be interpreted as meaning that the clause of a contract for commercial agency, pursuant to which the agent is required to refund, on a pro-rata basis, a part of his commission in the event of

partial non-execution of the contract concluded between the principal and the third party constitutes a 'derogation to the detriment of the commercial agent', for the purposes of Article 11(3) of that directive.

- 46 It should be borne in mind, in that regard, that Article 11(3) of Directive 86/653 prohibits agreements to derogate from Article 11(1) of that directive to the detriment of the commercial agent.
- 47 However, the fact that the contract for commercial agency requires the agent to reimburse, on a pro-rata basis, a part of his commission, in the event that the contract concluded between the principal and the third party is executed only partially, cannot, as a general rule, be considered a 'derogation to the detriment of the commercial agent', for the purposes of Article 11(3) of Directive 86/653. On the contrary, that obligation is consistent with the requirements of Article 11(1) and (2) of that directive.
- 48 It follows from the answer to the first question that the first indent of Article 11(1) of Directive 86/653 must be interpreted as meaning that the right to commission can be extinguished also where the contract concluded between the principal and the third party has been partially executed. Moreover, pursuant to Article 11(2) of that directive, commissions which the commercial agent has already received are to be refunded if the right to them is extinguished. It follows that in accordance with those provisions, the agent may be required to refund commissions already paid, to the extent that the contract concluded between the principal and the client has not been executed.
- 49 Nonetheless, it should be specified that the obligation to refund the commission must be strictly proportionate to the extent to which the contract has not been executed. An obligation to refund a part of the commission proportionately greater than the extent of that non-execution would constitute a derogation to the detriment of the agent, prohibited by Article 11(3) of Directive 86/653. By contrast, a derogation to the advantage of the agent, consisting in requiring the refund of a part of the commission proportionally smaller than the extent of the non-execution of the contract remains possible.
- 50 Moreover, it follows from Article 11(3) of Directive 86/653 that it is not permitted to derogate, by contract, from the second condition laid down in Article 11(1) of that directive, pursuant to which the right to commission is extinguished only where the non-execution of the contract is due to a reason for which the principal is not to blame. A contractual clause which might provide that the right to commission in circumstances where the non-execution of the contract is due to a reason for which the principal is to blame would, therefore, be contrary to that Article 11(3).
- 51 In the light of the foregoing considerations, the answer to the second question is that Article 11(2) and (3) of Directive 86/653 must be interpreted as meaning that the clause of a contract for commercial agency pursuant to which the agent is required to refund, on a pro-rata basis, a part of his commission in the event of partial non-execution of the contract concluded between the principal and the third party does not constitute a 'derogation to the detriment of the commercial agent', for the purposes of that Article 11(3), if the part of the commission subject to the refund obligation is proportionate to the extent to which that contract has not been executed and on condition that that non-execution is not due to a reason for which the principal is to blame.

The third question

- 52 By its third question, the referring court asks, in essence, whether the second indent of Article 11(1) of Directive 86/653 must be interpreted as meaning that the concept of 'a reason for which the principal is to blame' relates only to the legal reasons which led directly to the termination of the contract

concluded between the principal and the third party or whether that concept covers all the legal and factual circumstances for which the principal is to blame, which are the cause of the non-execution of that contract.

- 53 In that regard, It should be recalled that, according to the order for reference, in the case in the main proceedings, the non-execution of the insurance contracts giving rise, according to ERGO, to the refund of the commissions received by Ms Barlíková results from the non-payment of the premiums relating to those contracts by certain clients. Under the law of the Slovak Republic, that alone leads, in accordance with Paragraph 801 of the Civil Code, to the automatic termination of the contracts concerned. According to the referring court, in the case in the main proceedings, the non-payment of those premiums by the clients concerned was allegedly prompted by a loss of confidence in the principal, which 'lacked professionalism' with respect to those clients.
- 54 The concept of 'a reason for which the principal is to blame' is not defined by Directive 86/653. As the Advocate General observed in point 53 of his Opinion, in certain language versions of that directive, in particular in the French language version, the second indent of Article 11(1) is worded in neutral terms, merely evoking the idea that the non-execution of the contract concluded with the third party cannot be attributed to the principal. By contrast, in other language versions of that directive, including the Slovak version, that provision refers to the idea of fault by the principal.
- 55 It is therefore necessary, in accordance with the case-law cited in paragraph 37 of this judgment, to interpret the second indent of Article 11(1) of Directive 86/653 in the light, in particular, of the purpose of that directive.
- 56 It was stated, in paragraphs 41 and 42 of this judgment, that that directive seeks, inter alia, to protect the commercial agent and refers, moreover, to the relations, based on fairness and good faith, between the commercial agent and the principal. The condition that non-execution must not be due to reasons for which the principal is to blame contributes to the achievement of those objectives, by ensuring that that principal is not released from his obligation to pay the commission to the agent, when the principal was the cause of the non-execution of the transaction.
- 57 A narrow definition of the concept of 'a reason for which the principal is to blame', relating only to the legal reasons which led directly to the termination of the contract, irrespective of the legal or factual circumstances accounting for that termination, is not consistent with those objectives. Indeed, such a narrow definition would not make it possible to assess whether, in actual fact, the principal is the cause of the termination of the contract, nor whether blame for the non-execution of that contract must lie with the principal. There would therefore be situations in which the principal might evade payment of the commission, when that termination results from his own conduct.
- 58 That would be the case in particular in relation to legislation such as that at issue in the main proceedings, which provides that the non-payment of the premiums leads, in accordance with Paragraph 801 of the Civil Code, to the insurance contracts concerned being extinguished automatically. Under such legislation the termination of the contract is due to the non-execution of the contractual obligations by the third party who ceases to pay the premiums relating to that contract, without however account being taken of the cause of the termination of payment.
- 59 It follows that the concept of 'a reason for which the principal is to blame', set out in the second indent of Article 11(1) of Directive 86/653 cannot relate only to the legal reasons which led directly to the termination of the contract, but refers to the reasons which led to that termination, which must be assessed by the national court on the basis of all the relevant facts and points of law, for the purposes of determining whether the non-execution of the contract is due to a reason for which the principal is not to blame.

- 60 Consequently, as regards in particular the facts at issue in the main proceedings, in order to adjudicate on the application brought by ERGO for refund of commissions and on the possible extinction of Ms Barlíková's right to commission, it is for the referring court to take into consideration all the facts of the present case, beyond the mere failure of the insured parties in their obligation to pay the premiums relating to the insurance contracts concluded, in order to establish whether that company is to blame for the non-execution of those insurance contracts.
- 61 In the light of the foregoing considerations, the answer to the third question is that the second indent of Article 11(1) of Directive 86/653 must be interpreted as meaning that the concept of 'a reason for which the principal is to blame' does not relate only to the legal reasons which led directly to the termination of the contract concluded between the principal and the third party, but covers all the legal and factual circumstances for which the principal is to blame, which are the cause of the non-execution of that contract.

Costs

- 62 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fourth Chamber) hereby rules:

1. **The first indent of Article 11(1) 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 must be interpreted as meaning that it covers not only cases of complete non-execution of the contract concluded between the principal and the third party, but also cases of partial non-execution of that contract, such as non-compliance with the volume of transactions or the duration envisaged by that contract.**
2. **Article 11(2) and (3) of Directive 86/653 must be interpreted as meaning that the clause of a contract for commercial agency pursuant to which the agent is required to refund, on a pro-rata basis, a part of his commission in the event of partial non-execution of the contract concluded between the principal and the third party does not constitute a 'derogation to the detriment of the commercial agent', for the purposes of that Article 11(3), if the part of the commission subject to the refund obligation is proportionate to the extent to which that contract has not been executed and on condition that that non-execution is not due to a reason for which the principal is to blame.**
3. **The second indent of Article 11(1) of Directive 86/653 must be interpreted as meaning that the concept of 'a reason for which the principal is to blame' does not relate only to the legal reasons which led directly to the termination of the contract concluded between the principal and the third party, but covers all the legal and factual circumstances for which the principal is to blame, which are the cause of the non-execution of that contract.**

[Signatures]