

Position Paper

UEAPME¹ position on the Public consultation on the Evaluation of the Commercial Agents Directive (86/ 653/ ECC)

General Comments

UEAPME welcomes the European Commission's initiative to evaluate the functioning of the Commercial Agents Directive 86/653/EEC adopted in 1986. The objective of this Directive was to harmonise commercial representation contracts across Europe and define the rights and obligations of both the commercial agents and their principals. UEAPME is of the opinion that the objective has been achieved and that the Directive contributes to simplifying the negotiation and conclusion of contracts and that it remains very useful and efficient. It should therefore be maintained.

Benefits of the Directive

According to the statistics, there are about 600.000 commercial agents in the EU generating a combined turnover of € 260 billion and this number continues to grow every year, while the 88% of principals they work for, are Small and Medium Enterprises.

Since its adoption in 1986, the Directive has had indisputable positive effects. Since then, no commercial agent, nor the business sector, have challenged the Directive or asked to change it. The Directive is a guarantee against any arbitrary differences between the Member States of the EU, and it acts as a legal protection for the whole European Union, accepted by all parties concerned. It developed into a stable legal practice and it has created a level of legal certainty. Furthermore, as it has been translated into all the national languages and transposed in each EU country, it avoids additional costs and the need to consult the different national law systems as it was the case before the adoption.

According to UEAPME and its member organisations, both commercial agents and companies have benefited a lot and are still benefiting from this Directive. SMEs in fact often rely on commercial agents as it is a cost-effective way to promote a new business and to open markets with foreign partners without needing to hire a new worker on a full-time basis, which for financial reasons is often not possible and not necessary for commercial reasons. This possibility therefore limits fixed costs for SMEs and potential administrative burdens that they would have if hiring new personnel. Especially for cross border businesses, the Commercial Agents Directive ensures common rights and obligations for both parties, also regarding contracts and commission, and guarantees commercial agents (that are self-employed) the legal protection and certainty when working for different enterprises within the EU market. Additional costs are limited as they do not need to ask legal advice to negotiate their contracts. In a period of high unemployment rates, the profession of commercial agents can also be a possible starting point to enter the labour market as only a small initial capital is needed to start the activity and there are no additional expenses for special equipment.

¹UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](https://ec.europa.eu/transparency/regexp1/index.cfm?do=grouping.grouping&id=55820581197-35).

On the other hand, SMEs can trust commercial agents to approach new markets for them and have access to customers from other Member States while avoiding high costs. Indeed, the costs of the cooperation are set in the contract with the agent, and normally increasing commissions mean increasing sales as the commission is paid when orders are concluded and relevant businesses have been carried out. SMEs can therefore estimate the amount they have to pay the agents based on the contract. Furthermore, commercial agents often work for different enterprises and therefore have experience in different products and sectors and this could be helpful for SMEs as well.

Negative effects of the withdrawal of the Directive

Without the Directive, Member States may amend their national law relating to commercial agents, by removing the right to compensation, for example, which would cause legal fragmentation within the EU. Uncertainty would therefore seriously increase. Contract negotiations would be more complicated and long and would require more frequent interventions from lawyers. Trade inside the EU would also decrease and this uncertainty and additional costs could discourage SMEs to sell their products through commercial agents, or even deter them to have commercial agents. Disputes in the courts would increase and multinational corporations could in future choose to apply the law which would be the most favourable and would allow them to escape to any right to compensation of the agent if the member state changes its national law on commercial agency. Without the Directive, constituents would attempt to evade the rules that protect commercial agents, especially if they are domiciled in a non EU member country. This would also have a negative impact on the profession and activity of the commercial agent. The withdrawal of this directive would create difficulties and instability for both commercial agents and businesses, especially if one and the other are based in two different countries. It could also slow down the European market and economy by making it more difficult for SMEs to expand their business in other EU countries because of the different national laws. It could also have a negative effect on competition between principals working in the same industrial sector.

Directive remains fit-for-purpose

The Directive is therefore still fit-for-purpose and in its current version is still efficient and effective and compatible with the full body of European legislation by creating a solid legal environment for businesses. The Directive is also the reflection of common and accepted practices that were already in place before.

It is important for the growth of the European economy to favour stability of the companies and a level of protection for commercial agents. They might be of support to the growth of businesses and international trade in a cost-efficient way for SMEs, which are the backbone of the European economy.

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