

Q&A DOCUMENT | 4 October 2021

Q&A on Agency Agreements

Part 1: Introduction

Council Directive 86/653 (EEC) on the coordination of the laws of the Member States relating to self-employed commercial agents (the “Directive”) harmonizes the laws, regulations and administrative provisions of Member States governing the relations between the parties to commercial agency agreements.

As the Directive constitutes a minimum harmonization, the Member States are free to set higher standards applicable to agency agreements. In addition, on various aspects the Directive leaves room for further elaboration in national law.

In order to facilitate the use of this Q&A, for each relevant issue the position under the Directive is compared with the position under the relevant implementing rules of French law (“French Agency Law”). The starting point is always the minimum harmonisation reflected in the Directive. The Q&A then aims to identify any deviations or additions from the regime reflected in the Directive.

Part 2: Legislative framework

Q1. Which rules constitute the transposition of the Directive into French Agency Law (a)? Where available, please also include a link to the official publication of the applicable rules (e.g., relevant link to the Official Gazette) (b) and to the English translation of the regulatory framework (c).

a. Legislative framework:

The Directive was implemented into French law by Act 91-593 on relations between commercial agents and their principals. These provisions are codified in the following articles of the French Commercial Code:

- Art. L. 134-1 to L. 134-17;
- Art. R. 134-1 to R. 134-17;
- Art. A. 134-1 to A. 134-5.

b. Link(s) to official publication:

[Art. L. 134-1 to L. 134-17](#), [Art. R. 134-1 to R. 134-17](#) and [Art. A. 134-1 to A. 134-5](#) French Commercial Code.

c. Link(s) to English translation:

Not available.

Part 3: Scope

Q2. The Directive (Art. 1(2)) defines a commercial agent as a self-employed intermediary who has continuing authority to negotiate the sale or the purchase of goods on behalf of another party (the “principal”), or to negotiate and conclude such transactions on behalf of and in the name of that principal. Is the definition in the French Agency Law the same?

No.

Q3. Do other intermediaries fall within the scope of the French Agency Law?

No.

Q4. The Directive (Art. 2(2)) entitles the Member States to exclude from the scope of application parties whose activities as commercial agents are considered secondary in nature. Has France made use of this possibility?

Yes. Under Art. L. 134-1 French Commercial Code, a commercial agent is a representative who has continuing authority, not just when requested, to negotiate and contract on behalf of a principal. If this criterion is fulfilled, commercial agents may exercise their authority as a secondary activity. In this case, and only in this case, may commercial agents, jointly with their principals, decide to exclude the application of the protected status of commercial agent (Art. L. 134-15 French Commercial Code).

Part 4: Contractual phase

A. Form of agency agreements

Q5. The Directive (Art. 13) provides that, as a minimum, each party shall be entitled to receive from the other on request a signed written document setting out the terms of the agency agreement including any terms subsequently agreed. Does the French Agency Law provide for such obligation?

Yes. See, Art. L. 134-2 French Commercial Code.

Q6. Are there any (other) requirements under the French Agency Law as to the form of the agency agreement in order for it to be valid and enforceable?

Yes. In principle, an agency agreement is not subject to any particular formality. It can be oral or in writing (Cour de cassation, chambre commerciale, June 21, 2016, case n°14-26.938). In the interest of legal certainty, the agreement should be in writing. A written agreement becomes necessary when the principal wants to enforce a non-compete post agreement (Art. L. 134-14 French Commercial Code) or guarantee (potentially through a de/credere clause). The exclusivity granted to the agent should be in writing to ensure the acceptance of both

parties, the geographical scope, the products/services concerned and the duration.

Furthermore, the application of the status of commercial agent is not determined by the parties (Cour de cassation, chambre commerciale, September 13, 2017, case n°16-15.248). French courts are not bound by the name or provisions of the agreement and examine the conditions under which the commercial agent actually conducts its activities (Cour d'appel de Paris, May 6, 2021, case n°19/06898).

Moreover, commercial agents wanting to establish their activity in France are required to register with the registry of the commercial court, and must provide a copy of their agency agreement or, failing that, any document establishing the existence of such a agreement (Art. A134-2 French Commercial Code). These documents must be translated into French.

Commercial agents wanting to conduct temporary or secondary activities in France are not required to register (Art. R. 134-6 French Commercial Code).

However, registration is no longer a condition for the application of the status of commercial agent. Accordingly, the lack of registration cannot be invoked against a party who, meeting the criteria under Art. L.134-1 French Commercial Code, claims this legal status.

B. Content of agency agreements

B.1 - RIGHTS AND OBLIGATIONS OF PRINCIPAL AND COMMERCIAL AGENT

Q7. The Directive (Art. 3) provides that a commercial agent has the following minimum obligations:

- to look after his principal's interests and to act dutifully and in good faith;
- to make proper efforts to negotiate and, where appropriate, conclude the transactions he is instructed to take care of;
- to communicate to his principal all the necessary information available to him;
- to comply with reasonable instructions.

Are these minimum obligations provided for in the French Agency Law?

See, Art. L. 134-4 and R. 134-1 French Commercial Code.

Q8. Does the French Agency Law explicitly impose any other obligations on the commercial agent that go beyond the aforesaid minimum?

Yes. According to Art. L. 134-3 French Commercial Code: "commercial agents may agree, without needing authorisation, to represent new principals. However, they may not agree to represent a company competing with that of one of their principals without the latter's agreement".

Q9. Does the French Agency Law provide that a commercial agent may appoint sub-agents?

Yes. According to Art. L. 134-1 French Commercial Code, commercial agents can be permanently entrusted with negotiating and possibly concluding sale, purchase, rental or service provision agreements *"for and behalf other commercial agents"*.

Q10. The Directive (Art. 4) provides that a principal has the following minimum obligations:

- to act dutifully and in good faith;
- to provide his commercial agent with the necessary documentation relating to the goods concerned;
- to obtain the information necessary for the performance of the agency agreement;
- to notify the commercial agent within a reasonable period once he anticipates that the volume of commercial transactions will be significantly lower than that which the commercial agent could normally have expected;
- to inform the commercial agent within a reasonable period of his acceptance, refusal, and of any non-execution of a commercial transaction which the commercial agent has procured for the principal.

Are these minimum obligations provided for in the French Agency Law?

Yes. See, Art. L. 134-4, R. 134-1 and R. 134-2 French Commercial Code.

Q11. Does the French Agency Law explicitly impose any other obligations on the principal that go beyond the aforesaid minimum?

Yes. The principal provides the commercial agent with a statement of the commissions due no later than on the last day of the month following the quarter in which they are earned. This statement must indicate all information used in calculating the commission (Art. R. 134-3 French Commercial Code).

The commercial agent has the right to require its principal to provide it with all the information, in particular an extract from the accounting documents necessary to verify the commission due (Art. R. 134-3 French Commercial Code).

B.2 - LEVEL AND CALCULATION BASIS OF REMUNERATION

Q12. Are there mandatory rules under the French Agency Law that limit the freedom of the parties to fix the level of the remuneration of the commercial agent?

No.

Q13. The Directive (Art. 6(1)) provides that, in the absence of an agreement on the level of the remuneration, the commercial agent is entitled to the remuneration that is customarily allowed in the place where he carries on his activities and, in the absence of such customary practice, to a reasonable remuneration taking into account all the aspects of the transaction. Do these principles also represent the default regime under the French Agency Law?

Yes. See, Art. L. 134-5 third paragraph and Art. L. 134-6 French Commercial Code.

Q14. The Directive (Art. 6(2)) provides that any part of the remuneration which varies with the number or value of business transactions shall be deemed to be commission. Does this principle also represent the regime under the French Agency Law?

Yes. See, Art. L. 134-5 first paragraph French Commercial Code.

Q15. Does the French Agency Law impose any criteria with regard to the type of the agent's remuneration (i.e. fixed amount or commission)?

No.

Q16. Does the French Agency Law impose any criteria with regard to the calculation of the agent's remuneration?

No.

B.3 - REMUNERATION BY MEANS OF A COMMISSION (DURING)

Q17. According to the Directive (Art. 7(1)) a commercial agent is entitled to a commission during the period covered by the agency agreement:

- where the transaction has been concluded as a result of his action; or
- where the transaction is concluded with a third party whom he has previously acquired as a customer for transactions of the same kind.

Are both cases reflected in the French Agency Law?

Yes. See, Art. L. 134-6 first paragraph French Commercial Code.

Q18. The Directive (Art. 7(2)) provides for an additional case of entitlement to a commission and has left it to the Member States to choose between two options:

- Option 1: the transaction is entered into with a customer belonging to a specific geographic area or group of customers entrusted to the commercial agent; or
- Option 2: the transaction is entered into with a customer belonging to a specific geographical area or group of customers in respect of which the commercial agent enjoys exclusive rights.

Which option has been retained in the French Agency Law?

Option 1. Art. L. 134-6 second paragraph French Commercial Code.

B.4 - REMUNERATION BY MEANS OF COMMISSION (AFTER TERMINATION)

Q19. According to the Directive (Art. 8) a commercial agent is entitled to a commission after the agency

agreement has terminated if:

- the transaction is mainly attributable to the commercial agent's efforts during the period covered by the agency agreement and if the transaction was entered into within a reasonable period after that agreement terminated; or
- the order of the third party reached the principal or the commercial agent before the agency terminated and the conditions applicable to entitlement during the term of the agency are met.

Are both cases reflected in the French Agency Law?

Yes. See, Art. L. 134-7 French Commercial Code.

Q20. Are there any additional cases provided for in the French Agency Law?

Yes. Art. X.9,1° CEL specifies what constitutes a reasonable period: a transaction needs to be entered into within a period of six months after the agreement terminated.

Q21. According to the Directive (Art. 9) a commercial agent is not entitled to the commission, if that commission is payable, to the previous commercial agent, unless it is equitable because of the circumstances for the commission to be shared between the commercial agents. Do these principles also represent the regime under the French Agency Law?

Yes. See, Art. L. 134-8 French Commercial Code.

Q22. According to the Directive (Art. 10(1)) the commission shall become due as soon as and to the extent that one of the following circumstances obtains:

- the principal has executed the transaction; or
- the principal should, according to his agreement with the third party, have executed the transaction; or
- the third party has executed the transaction.

Are these circumstances reflected in the French Agency Law?

See, Art. L. 134-9 first paragraph French Commercial Code.

Q23. Are there any additional circumstances provided for in the French Agency Law?

Yes. Parties can deviate from these rules if it is favourable to the agent (Art. L. 134-16 French Commercial Code). For example, they can set a constant practice where the payment is made when sales are received (Cour de cassation, chambre commerciale, 27 September 2017, case n°14-25.100).

Q24. The Directive (Art. 10(2)) provides that the commission shall be due at the latest when the third party has executed his part of the transaction or should have done so if the principal had executed his part of the

transaction, as he should have. Does the French Agency Law apply the same deadline?

Yes. See, Art. L. 134-9 second paragraph French Commercial Code.

Q25. The Directive (Art. 10(3)) provides that the commission needs to be paid no later than on the last day of the month following the quarter in which it became due. Does the French Agency Law apply the same deadline?

Yes. See, Art. L. 134-9 second paragraph French Commercial Code.

Q26. The Directive (Art. 10(4)) stipulates that parties cannot by agreement derogate from the principles included in Art. 10(2) and 10(3) to the detriment of the commercial agent. Does the French Agency Law impose the same restriction on the parties?

Yes. See, Art. L. 134-16 French Commercial Code.

Q27. According to the Directive (Art. 11(1)) the right to commission can be extinguished only if and to the extent that:

- it is established that the agreement between the third party and the principal will not be executed; and
- that fact is due to a reason for which the principal is not to blame.

Does the French Agency Law impose these cumulative conditions?

Yes. See, Art. L. 134-10 first paragraph French Commercial Code.

Q28. Does the French Agency Law allow for other cases where the agent's entitlement to commission is extinguished?

No.

Q29. According to the Directive (Art. 11(2)) any commission which the commercial agent has already received must be refunded in case the right to it is extinguished. Does the French Agency Law also provide for such an obligation of restitution?

Yes. See, Art. L. 134-10 second paragraph French Commercial Code.

Q30. The Directive (Art. 12(1)) provides that the principal must supply his commercial agent with a statement of the commission due. This statement must be supplied no later than the last day of the month following the quarter in which the commission has become due, and shall set out the main components used in calculating the amount of the commission. Do these principles also represent the default regime under the French Agency Law?

Yes. See, Art. R. 134-3 first paragraph French Commercial Code.

Q31. Does the French Agency Law impose that the parties cannot by agreement derogate from the principles included in Art. 12(1) of the Directive to the detriment of the commercial agent?

Yes. See, Art. R. 134-4 French Commercial Code.

Q32. Does the French Agency Law impose any additional requirements with regard to the statement of the commission due?

No.

Q33. The Directive (Art. 12(2)) entitles the commercial agent to demand to be provided with all the information, and in particular an extract from the books, which he needs to check the amount of the commission due to him.

Does the French Agency Law grant the commercial agent the same right?

See, Art. R. 134-3 second paragraph French Commercial Code.

Q34. Does the French Agency Law broaden this right to information of the commercial agent?

No.

Q35. Does the French Agency Law impose any criteria with regard to the calculation of the commission?

No.

Q36. Do specific rules and/or restrictions apply to:

- non-solicitation clauses;
- minimum sales quota;
- specific sectors?

No.

B.5 - NON-COMPETE CLAUSE

Q37. The Directive (Art. 20(2)) provides that a non-compete clause shall only be valid if and to the extent that:

- it is concluded in writing; and
- it relates to the geographical area or the group of customers and the geographical area entrusted to the commercial agent and to the kind of goods covered by the agency agreement.

Does the French Agency Law impose these cumulative criteria?

Yes. See, Art. L. 134-14 French Commercial Code.

Q38. Does the French Agency Law impose any additional criteria in order for a non-compete clause to be valid?

Yes. The validity of the post-contractual non-competition clause shall depend on the necessity to protect the former principal's interests and the professional freedom of the agent (Cour de cassation, chambre commerciale, September 23, 2014, case n°13-21.285; Cour de cassation, chambre commerciale, January 17, 2012, case n° 10-27.701).

Q39. The Directive (Art. 20(3)) provides that a non-compete clause shall be valid for not more than 2 years after termination of the agency agreement. Does the same maximum period apply under the French Agency Law?

Yes.

Q40. The Directive (Art. 20(4)) provides that national law may impose other restrictions:

- on the validity or enforceability of non-compete clauses, or
- which enable the courts to reduce the obligations on the principal or the commercial agent.

Does the French Agency Law impose any such restrictions?

No.

Q41. Does the French Agency Law provide any criteria with regard to the calculation method of the indemnification in case of a violation of the non-compete clause?

No.

B.6 - LIABILITY

Q42. Under the French Agency Law, can the parties agree that the commercial agent shall be liable (in whole or in part) for the breach of third party-customers with whom he/she has negotiated and/or concluded an agreement on behalf of the principal, by including a so-called del credere clause?

Yes. No article of the French Commercial Code prevents the parties to agree that the commercial agent shall be liable for the breach of third-party customers with whom he/she has negotiated and/or concluded an agreement on behalf of the principal, by including a so-called del credere clause.

Q43. If yes, are such clauses subject to certain rules and/or restrictions?

A del credere clause must be in writing. There are no formal requirements, but the language used should be sufficiently clear to ascertain the parties' intentions regarding allocation of liabilities and what may be required of the commercial agent in such an event.

Q44. Are there liability-related clauses that must be mandatorily included in agency agreements?

No.

C. Term and termination

C.1 - TERM

Q45. According to the Directive (Art. 14) an agency agreement for a fixed period which continues to be performed by both parties after that period has expired shall be deemed to be converted into an agency agreement for an

indefinite period. Does this principle also represent the default regime under the French Agency Law?

See, Art. L. 134-11 first paragraph French Commercial Code.

Q46. Does the French Agency Law contain particular rules and/or restrictions in relation to the term (incl. renewal) of agency agreements?

No.

C.2 - TERMINATION BY NOTICE

Q47. According to the Directive (Art. 15(1)) an agency agreement that is concluded for an indefinite period may by either party be terminated by notice. Does this principle also represent the regime under the French Agency Law?

Yes. See, Art. L. 134-11 second paragraph French Commercial Code.

Q48. According to the Directive (Art. 15(2)) the notice period is 1 month for the first year, 2 months for the second year commenced, and 3 months for the third year commenced and subsequent years. Do these notice periods also represent the regime under the French Agency Law?

Yes. See, Art. L. 134-11 third paragraph French Commercial Code.

Q49. According to the Directive (Art. 15(3)) the notice period for the fourth, fifth and sixth year and subsequent years may be respectively 4, 5 and 6 months. Do these notice periods also represent the regime under the French Agency Law?

No. The notice period is 1 month for the first year, 2 months for the second year commenced and 3 months for the third year started and for subsequent years (Art. L. 134-11, French Commercial Code).

Q50. Can the parties agree to a shorter notice period?

No.

Q51. According to the French Agency Law, if no notice period has been agreed, is there a notice period that always applies irrespective of the duration of the agency agreement?

No.

Q52. According to the Directive (Art. 15(4)), if a principal and commercial agent agree on longer notice periods than those laid down in Art. 15(2) and (3) of the Directive, the notice period to be respected by the principal must not be shorter than that to be observed by the commercial agent. Does the same default regime apply under the French Agency Law?

Yes. See, Art. L. 134-11 fourth paragraph French Commercial Code.

Q53. According to the Directive (Art. 15(5)), unless otherwise agreed by the parties, the end of the notice period must coincide with the end of a calendar month. Does the same default regime apply under the French Agency

Law?

Yes. See, Art. L. 134-11 third paragraph French Commercial Code.

Q54. Does the French Agency Law provide how the termination notice must be notified to the other party?

No.

Q55. According to the Directive (Art. 15(6)), the answers to questions 47 to 53 also apply to agency agreements having a fixed term if they are converted to agency agreements having an indefinite term due to the continuation of the agreement beyond the fixed term, provided that the earlier fixed period must be taken into account in the calculation of the notice period. Does the same default regime apply to agency agreements having a fixed term under the French Agency Law?

Yes. See, Art. L. 134-11 first paragraph French Commercial Code.

C.3 - TERMINATION FOR CAUSE

Q56. According to the Directive (Art. 16) an agency agreement may immediately be terminated:

- because of the failure of one party to carry out all or part of his obligations; or
- where exceptional circumstances arise.

Are both termination grounds reflected in the French Agency Law?

Yes. See, Art. L. 134-11 last paragraph French Commercial Code.

Q57. Are there additional termination grounds provided in the French Agency Law?

No.

Q58. Does the French Agency Law provide that the parties may not derogate from the regime on termination for cause to the detriment of the commercial agent before the agency agreement is terminated?

Yes. See, Art. L. 134-16 French Commercial Code.

Q59. Is it possible to terminate the agency agreement based on certain grounds for termination (breach or other) included in the agency agreement?

No. It is worth noting that a change of control is not one of the grounds for termination without notice period mentioned by the legislator (Art. L. 134-11 French Commercial Code only provides serious misconduct and force majeure).

The agent has the right to present a successor to the principal. This right is considered to be public policy provisions by French law. The principal can only oppose this assignment on objective and non-arbitrary reason. When the agreement is assigned by the agent, the same agency agreement continues between the principal and

the successor. There is no breach of contract as such.

However, agency agreements are usually concluded *intuitu personae* (i.e. in consideration of the person of the contracting party). Thus, it can only be transferred with the agreement of the parties. If this requirement is not fulfilled, the assignment shall be unlawful and the agreement shall be terminated. In that case, the termination is considered to be resulting from the sole fault of the transferor.

When the 'change of control' takes place in the principal's company, this situation only entails the transfer of the agency agreement to the transferee if the agent has accepted the transaction. In that case, this agreement shall be continued. The principal must inform the agent in advance and obtain his acceptance, failing which the agency agreement may be terminated to his detriment.

Q60. If yes, is prior judicial intervention required in order for the termination of the agreement to take effect?

No.

Q61. Are there any other particular rules and/or restrictions as regards the termination of the agency agreement (e.g. trial period, etc.)?

Yes. According to Art. L. 134-11 French Commercial Code, prior notice shall not apply when the agreement ends due to serious misconduct (1) or the occurrence of a case of legally recorded force majeure (2).

1. Serious misconduct

According to French case law, a commercial agent is rarely held liable for serious misconduct. Even if the commercial agent fails to meet the objectives set in the agreement, this fact alone is insufficient to establish serious misconduct (Cour de cassation, chambre commerciale, September 15, 2009, case n°08-16.696).

Art. L. 134-12 and L. 134-13 French Commercial Code are considered to be public policy provisions by French courts. Therefore, the parties may not decide that a specific behaviour constitutes a serious misconduct. Any clause to that effect shall be considered as null and void. Only the judge can qualify a breach as serious misconduct on the basis of which the agreement may be terminated without compensation and prior notice (Cour de cassation, chambre commerciale, May 28, 2002, case n°00-16.857).

Moreover, except for the scenarios outlined in Art. 18 Directive (which includes the commercial agent's breach), courts invariably hold that compensation is due to the agent.

2. Force majeure

In the event of force majeure, the notice period must be observed and the principal is not excused from paying compensation. For instance, courts held that the indemnity provided for in Art. L. 134-12 is a claim of public economic order, from which the principal is excused only in the three cases exhaustively listed in Art. L.134-13 French Commercial Code (and Art. 18 Directive). Consequently, no other circumstance can be considered, even

if the circumstance is analogous to an event of force majeure (Cour d'appel de Paris, March 26, 2015, case n°14/06339).

3. Trial period

If the agreement is terminated during the trial period, the compensation is due (Cour de cassation, chambre commerciale, January 23, 2019, case n°15-14.212).

C.4 - INDEMNIFICATION

Q62. The Directive (Art. 17(2)(a)) provides that the commercial agent is entitled to an indemnification 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. Does the French Agency Law provide for this criterion?

No. The French legislator chose to implement a compensation (Art. 17(3) Directive), rather than an indemnification (Art. 17(2) Directive).

Q63. The Directive (Art. 17(2)(a)) also provides that the commercial agent is entitled to an indemnification if and to the extent that the payment of this indemnification is equitable having regard to all circumstances and, in particular, the commission lost by the commercial agent on the business transacted with such customers. Does the French Agency Law provide for this criterion?

Not applicable, see Q62.

Q64. Is under the French Agency Law the application of a non-compete clause a circumstance on the basis of which the commercial agent is presumed to be entitled to an indemnification (cfr. Art. 17(2)(a), second indent of the Directive)?

Not applicable, see Q62.

Q65. Other than the criteria set forth in Art. 17(2)(a) of the Directive, are there any specific rules or precedents derived from the French case law on the basis of which the indemnification is calculated?

No.

Q66. The Directive (Art. 17(2)(b)) provides that the amount of the indemnification may not exceed a figure equivalent to an indemnification for 1 year calculated from the commercial agent's average annual remuneration over the preceding 5 years, and if the agreement goes back less than 5 years the indemnification shall be calculated on the average for the period in question. Does the same regime apply under the French Agency Law?

Not applicable, see Q62.

Q67. According to the Directive (Art. 18), indemnification or compensation for damage is not payable where

- the principal has terminated the agency agreement because of default attributable to the commercial agent which would justify immediate termination of the agency agreement;
- the commercial agent has terminated the agency agreement, unless such termination is justified by circumstances attributable to the principal or on grounds of age, infirmity or illness of the commercial agent in consequence of which he/she cannot reasonably be required to continue his/her activities; and/or
- with the agreement of the principal, the commercial agent assigns his rights and obligations under the agency agreement to another parties.

Do these principles also represent the default regime under the French Agency Law?

Yes. See, Art. L. 134-13 French Commercial Code.

Q68. According to the Directive (Art. 17(5)), a commercial agent may lose his/her entitlement to the indemnification or compensation for damage if within 1 year following termination of the agency agreement he/she has not notified the principal of his/her intention to pursue the entitlement. Does this principle also represent the default regime under the French Agency Law?

Yes. See, Art. L. 134-12 second paragraph French Commercial Code.

C.5 - ADDITIONAL COMPENSATION

Q69. The Directive (Art. 17(2)(c)) provides that the commercial agent, in addition to the indemnification, is entitled to seek damages for breach of agreement, failing to respect the notice period, etc. Does the same regime apply under the French Agency Law?

No. Under Art. 17(1) Directive, Member States can choose between two options:

- First option: the commercial agent is, after termination of the agency agreement, indemnified in accordance with paragraph Art. 17(2) Directive; or
- Second option: the commercial agent is, after termination of the agency agreement, compensated for damage in accordance with paragraph Art. 17(3) Directive.

France has adopted the second option (Art. L. 134-12 French Commercial Code). Therefore, the legal regime referred to in Q71-73 applies.

Q70. The Directive (Art. 17(3)) provides that the commercial agent is entitled to compensation for damage suffered as a result of the termination of the agency agreement. Does the same default regime apply under the French Agency Law?

Yes. See, Art. L. 134-12 first paragraph French Commercial Code.

Q71. According to the Directive (Art. 17(3)) such damages 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 agreement 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 amortize the costs and expenses that he had incurred for the performance of the agency agreement on the principal's advice.

Does the French Agency Law take the same circumstances into account?

Yes. The circumstances in which such damages shall be particularly deemed to occur are not set forth in the French Commercial Code.

Q72. Are there any other specific rules or precedents, than the criteria set forth in Art. 17(3) of the Directive, derived from case law on the basis of which the compensation is calculated?

The right to compensation is not conditional on a demonstration that the commercial agent has brought in new customers to the principal, or that the turnover between the principal and the customers has increased.

The right to compensation is therefore widely recognised in France, particularly as courts rarely find commercial agents liable for serious misconduct.

The objective of French law is to award commercial agents full compensation for the loss of earnings earned during the contract period, and established in the common interest of the parties, without distinction according to their nature (Cour d'appel de Paris, January 21, 2021, case n°19/01371). As a result, there is no need to distinguish pre-existing customers and customers brought in by the commercial agent (Cour de cassation, chambre commerciale, February 10, 2009, case n°07-21.386).

Most courts award the commercial agent compensation equal to two years of commissions, generally calculated based on the average of commissions received over the last two or three years (Cour d'appel de Paris, November 9, 2017, case n°16/15841), or the duration of the agreement if shorter (Cour d'appel de Paris, February 4, 2021, case n°17/08814).

A contract clause limiting compensation before the damages can be fully assessed is generally considered invalid as it prevents the commercial agent from being compensated in full (Cour d'appel de Paris, February 4, 2021, case n°17/08814).

Q73. The Directive (Art. 17(4)) provides that a commercial agent is entitled to indemnification or compensation for damage where the agency agreement is terminated as a result of the commercial agent's death. Is this default

entitlement available under the French Agency Law?

Yes. See, Art. L. 134-12 last paragraph French Commercial Code.

Q74. The Directive (Art. 19) stipulates that the parties may not derogate from Art. 17 and 18 to the detriment of the commercial agent before the agency expires. Does the French Agency Law impose the same restriction on the parties?

Yes. See, Art. L. 134-16 French Commercial Code.

Q75. Are the parties under the French Agency Law free to opt for either indemnification or compensation?

No.

Q76. Must the commercial agent under the French Agency Law claim the indemnification or compensation within a certain period of time after termination of the agency agreement?

Yes. The commercial agent shall lose the right to compensation if he/she has not notified the principal within one year of the termination of the agreement that he/she intends to assert his/her rights (Art. L. 134-12 French Commercial Code).

Q77. Are there other specific rules with respect to compensation or indemnification following the termination of the agency agreement?

No.

Part 5: Dispute resolution

Q78. Do any specific rules and/or restrictions apply as regards the choice of forum and/or jurisdiction under the French Agency Law?

No.

Q79. Can the parties opt for arbitration?

Yes.

Q80. If yes, are there any rules and/or restrictions as regards the enforceability of arbitration clauses in agency agreements?

The arbitration clause or agreement must be in writing and may result from an exchange of writings or from a document in which the agreement is mentioned (Art. 1442 and 1443 French Code of Civil Procedure). To be effective, the agreement must sufficiently describe the subject matter of the disputes to be resolved by arbitration so as to avoid subsequent arguments about the scope of the arbitration clause or agreement.

Q82. Does the French Agency Law provide for a statute of limitations that is applicable to claims regarding the

performance of agency agreements?

Yes. The statute of limitations for claims regarding the performance of agency agreements is five years and runs from the date of the event giving rise to the claim (Art. 2224 French Civil Code and Art. L. 110-4 French Commercial Code).