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The Freedom of Establishment and the Free Movement of Persons – The Protection of Commercial Agents in the European Union and in Hungary

The differences in national laws concerning commercial representation substantially affect the conditions of competition and the carrying-on of that activity within the Community. The differences are detrimental both to the protection available to commercial agents, their principals and to the security of commercial transactions. Those differences are such as to inhibit substantially the conclusion and operation of commercial representation contracts where principal and commercial agents are established in different Member States.

While in this regard the rules concerning conflict of laws do not, in the matter of commercial representation, remove the inconsistencies, the Council has adopted the Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents. In Hungary the Act CXVII of 2000 on the Commercial Representation Contracts of Self-employed Commercial Agents contains regulations designed to approximate with the Council Directive.

In practice the European Court of Justice has faced with at least four types of problems: the meaning of being a commercial agent, the validity of the commercial agency contract, the commission of the commercial agent and the indemnity or compensation after termination of the agency contract. I would like to show you the first two problems in a nutshell and I will try to point questions out that would be raised according to the Hungarian rules. The problems with the commission, indemnity or compensation of the commercial agent would be another lecture.