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### Judgment in Case E-2/21 *Norep AS v Haugen Gruppen AS*

#### DEFINITION OF “COMMERCIAL AGENT” UNDER COUNCIL DIRECTIVE 86/653/EEC

In a judgment delivered today, the Court answered questions referred to it by the Supreme Court of Norway (*Norges Høyesterett*) concerning the interpretation of Council Directive 86/653/EEC on the coordination of the laws of the Member States relating to self-employed commercial agents (“the Directive”).

The case in the main proceedings concerns an appeal brought by Norep AS (“Norep”) against the judgment of Hålogaland Court of Appeal (*Hålogaland lagmannsrett*) in relation to a claim for remuneration upon termination of a contract with Haugen Gruppen AS. The claim is made under the Norwegian Act on Commercial Agents and Commercial Travellers which is intended to implement the Directive. The parties disagree as to whether the activity performed by Norep under the contract is to be regarded as that of a commercial agent under that act.

By its first question, the referring court asked whether the term “negotiate” in Article 1(2) of the Directive shall be interpreted as presupposing involvement with orders from customers to the principal, with the result that the orders may not go directly from customers to the principal. The Court found that the term “negotiate” should be interpreted as not necessarily presupposing the agent’s direct involvement with the placing of orders by customers with the principal, nor excluding a scenario in which customers’ orders go directly to the principal. The Court further noted that the fact that a commercial agent does not have a role in taking or finalising orders on behalf of the principal does not, in itself, prevent the commercial agent from carrying out his main tasks, namely to bring the principal new customers and to increase the volume of business with existing customers.

By its second question, the referring court inquired as to the relevant factors for the assessment of whether sales-related activity should be deemed to constitute negotiation for the purposes of Article 1(2) of the Directive. The Court held that sales-related activity should be deemed to be negotiation if it is specifically undertaken with a view to achieving the conclusion of contracts of sale or purchase of goods by the principal, and if the agent acts as an intermediary between the principal and his customers.

The full text of the judgment may be found on the Court’s website: [www.eftacourt.int](http://www.eftacourt.int).

This press release is an unofficial document and is not binding upon the Court.