

EFTA Court
1, rue du Fort Thüngen
L-1499 Luxembourg
Luxembourg

Oslo, 26 August 2021
Our ref.: MJAMAG/
Lawyer in charge: Magne Mjaaland

Case No E-2/21 Norep AS v Haugen Gruppen AS

Reference is made to the EFTA Court's letter of 28 June 2021, in which a time-limit of 30 August 2021 was given to submit written observations in the case. The written submissions of Appellant Norep AS are set out below.

1 Questions of interpretation in the case

The case concerns Article 1(2) 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 (referred to hereinafter as “the Commercial Agents Directive” or “the Directive”), which reads as follows [in the Danish-language version]:

“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.”

Article 1(2) sets out three criteria which must be met. Reference is made to the judgment of 21 November 2018 of the Court of Justice of the European Union in Case C-452/17 (Zako SPRL v Sanidel SA) where paragraph 23 reads as follows:

“Article 1(2) of Directive 86/653 lays down the three necessary and sufficient conditions for a person to be classified as a ‘commercial agent’. First, that person must be a self-employed intermediary. Second, the contractual relationship must be of a continuing character. Third, he must exercise, on behalf of and in the name of the principal, an activity which may consist either simply in being an intermediary for the sale or purchase of goods or in both acting as intermediary and concluding sales or purchases of goods.”

The question of interpretation in this case relates to the wording “negotiate the sale or the purchase of goods” (first alternative of Article 1(2)).

2 The objectives underlying the Commercial Agents Directive

In the interpretation of the first alternative of Article 1(2), significant weight must be attached to the objectives underlying the Commercial Agents Directive, which are expressed in the second and third recitals in the preamble to the Directive and read as follows [in the Danish--language version]:

“Whereas the differences in national laws concerning commercial representation substantially affect the conditions of competition and the carrying-on of that activity within the Community 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;”

As is clear from the preamble, one of the objectives of the Directive is to ensure legal protection for commercial agents in relation to their principals. In order to safeguard commercial agents’ need for protection, the Directive provides that national legislation is to take precedence in the following areas:

- periods of notice (Article 15);
- remuneration for termination (Articles 17 and 18, read in conjunction with Article 19).

3 Article 1(2) of the Directive, viewed in relation to Norwegian legislation

The Directive was implemented into Norwegian law by Law of 19 June 1992 on commercial agents and business travellers (“the Commercial Agents Act”) (*lov om handelsagenter og handelsreisende (agenturloven) 19. juni 1992*). Section 1 of that act reads:

“For the purposes of this Act, ‘commercial agent’ shall mean a person who, in the course of business operations under agreement with another party (the principal) has undertaken, on a continuing self-employed basis, to work to achieve the sale or purchase of goods on behalf of the principal by obtaining orders for the principal or by concluding agreements in the principal’s name.”

The following is reproduced from the preparatory works for the Norwegian act:¹

“Anyone deemed to be a ‘commercial agent’ within the meaning of the EC Directive will also be covered by the definition in the draft legislation, see Article 1(2) of the Directive.”

Under the first alternative of Article 1(2) of the Directive, one of the three criteria for being deemed to be a commercial agent is that a self-employed intermediary has undertaken to “negotiate the sale or the purchase of goods”. In Section 1 of the Norwegian act, that criterion is worded as requiring an intermediary to work to achieve the sale or purchase of goods “by obtaining orders for the principal”.

In its judgment of 4 June 2019 in Case C-828/18 (*Trendsetteuse SARL v DCA SARL*), the Court of Justice of the European Union held that the term “negotiate” in Article 1(2) of the Directive is an autonomous concept of EU law, see paragraph 25 of the judgment.

In the Danish-language version of Article 1(2), the term “formidle” [English-language version: “negotiate”] is used, whilst in some other countries’ language versions a term equating to the Norwegian “forhandle” is used, inter alia in the French version where the parties in Case C-828/18 were domiciled [France]. The assessment in that case was whether it is compliant with the Directive for French law to impose a requirement under which to “negotiate” is not deemed fulfilled unless a commercial agent selling goods on behalf of the principal has the power to change the prices of the goods.

Paragraphs 26, 27, 29 and 30 of the judgment in Case C-828/18 read:

“26 In that regard, it is settled case-law that the meaning and scope of terms, for which EU law gives no definition, must be determined by considering their usual meaning in everyday language, while also taking into account the context in which they occur and the purposes of the rules of which they are part (see, inter alia, judgment of 29 July 2019, *Spiegel Online*, C-516/17, EU:C:2019:625, paragraph 77).

27 While the majority of the language versions of Article 1(2) of Directive 86/653 use terms which can be translated as ‘negotiate’, inter alia the German- and Polish-language versions contain broader terms, which can be translated as ‘act as intermediary’.

...

29 It is appropriate, therefore, to interpret the term ‘negotiate’, contained in Article 1(2) of Directive 86/653, taking into account the context in which that provision operates and the objectives pursued by that directive.

¹ Draft legislative proposal submitted to the Odelsting – Ot.prp. nr. 49 (1991–1992), page 12.

30 As regards, in the first place, the context in which that provision operates, first, it follows from Article 3(1) and (2) of Directive 86/653 that, under its contract, the commercial agent must safeguard the principal's interests by, in particular, making proper efforts to negotiate and, where applicable, to conclude the transactions of which he has been instructed to take care by the principal. The purpose of a commercial agent's activity thus depends on the terms of the contract which binds him to the principal and, in particular, on the agreement between the parties with regard to the goods which the principal intends to sell or purchase through the mediation of that commercial agent (judgment of 7 April 2016, Marchon Germany, C-315/14, EU:C:2016:211, paragraphs 31 and 32)."

The passages reproduced above from the judgment in Case C-828/18 show that it is contrary to the Directive for national legislation to impose additional requirements concerning how a commercial agent must perform the activities.

Viewed in relation to the Norwegian Commercial Agents Act, it is contrary to the Directive to impose requirements in Section 1 to the effect that a commercial agent must perform the activities by "obtaining orders" for the principal, if the term is to be understood as a requirement that the agent is to have direct involvement with orders, because that entails an additional requirement that is not compatible with Article 1(2) of the Directive.

As stated above in part 2, one of the objectives of the Directive is to safeguard commercial agents' interests. Accordingly, the term "negotiate" must be interpreted in the light thereof (see paragraph 29 in Case C-828/18).

Moreover, paragraph 30 in Case C-828/18 shows that "under its contract, the commercial agent must safeguard the principal's interests".

4 Commercial agents' performance of their activities

In the judgment in Case C-452/17 (*Zako SPRL v Sanidel SA*), it is stated that if a commercial agent fulfils the three criteria set out in Article 1(2) of the Directive, it is irrelevant how the commercial agent performs the activities. In that case, the commercial agent performed the activities out of the principal's office premises. Reference is made to paragraph 24 of the judgment, which reads:

"24 Therefore, it is sufficient that a person satisfies those three conditions to be classified as a 'commercial agent' within the meaning of Article 1(2) of Directive 86/653, regardless of the arrangements under which he performs his activities, and provided that he does not fall within one of the exclusions laid down by Article 1(3) and Article 2 of that directive."

The Commercial Agents Directive does not contain any regulation of the relationship between principals and third parties (customers), or between commercial agents and third parties.

The Directive regulates the relationship between the principal and the commercial agent, but is silent on how the commercial agent shall perform the activities. In an agency contract, the principal will have a right of control over the agent, e.g., relating to how the agent is to conduct himself or herself with customers, and the duty of loyalty provided for in Article 3 of the Directive entails a duty of compliance for the agent.

In businesses engaging commercial agents, the sales work will often take place in the course of an interaction between a principal and an agent. The principal may, for example, enter into overall agreements with retail chains, purchasing groups, etc., in which the commercial agent's task consists of sales follow-up on sales with stores/members of such chains/groups.

Where a principal has engaged a commercial agent, it must be deemed established that the first alternative of Article 1(2) presumes that customers' decisions to place orders is a result of a preceding sales process in which the agent has contributed.

Question No 1 in the Request for an Advisory Opinion of 26 May 2021 from the Supreme Court (*Høyesterett*) reads:

“Shall the term ‘negotiate’ in Article 1(2) of Directive 86/653 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, as the facts in the present case are described in Chapter 3 above?”

As stated above, it is the principal alone who decides whether or not a commercial agent is to have involvement with orders or not and it would be a significant narrowing of the intended scope of the Commercial Agents Directive if commercial agents who do not have involvement with orders were not to come within the scope of the Directive.

The placing of orders is the second stage of a sales process in which a customer's decision is formalised. Whether or not a commercial agent has involvement with orders will, in practice, not affect the agent's sales work in relation to customers, because the agent's task is to contribute to influence customers to purchase the principal's goods. Accordingly, when a customer takes a decision to place an order, it must be deemed established and as a presumption that the commercial agent's efforts have been a contributory cause in that context.

The principal determines who is to be the addressee of the customers' decisions to place orders. The principal is generally free to opt for the approach that serves the purpose best, although the decision may be influenced by agreements with customers (e.g., that orders are to go directly to the principal or a third party (wholesaler, etc.)). The principal also gets to decide on the use of technical solutions (electronic and/or automated order systems, etc.).

In practice, there are major differences on whether or not commercial agents have involvement with orders. It may be that an agent does not have any involvement with orders, or that all orders

go via the agent. The principal can opt for a mixed approach under which, for example, large-scale customers (chains, etc.) must place orders directly with the principal and small-scale customers may make a choice.

The usual approach is for orders to be placed directly with the principal. Reference is made to the discussion of this in Danish legal theory², where it is stated “[i]n practice, orders resulting from the commercial agent’s activity will often be sent directly to the principal”. The same holds true in Norway. With the technological development of the past 20–30 years, this has become more and more common.

In some situations, placing orders with a commercial agent will appear to be an unnecessary extra layer for customers’ placing of orders, given that the addressee for orders is the principal. It may also be liable to cause delays in supplies of goods if the agent is the recipient of orders and delays passing them on to the principal. Hence it will usually be in the customers’ interest that orders go directly to the principal.

The protection conferred on commercial agents through the Directive will be eliminated if involvement with orders is required to be deemed to be a commercial agent. If the first alternative of Article 1(2) is interpreted this narrowly, it will entail that the protection of commercial agents will be set aside. In those circumstances, the principal will easily be able to circumvent the mandatory provisions in the Directive and national legislation on, for example, remuneration for termination, by letting all orders go directly to him. This would make it impossible to achieve the objective of the Directive.

Paragraph 11 of the Request for an Advisory Opinion reproduces parts of the Court of Appeal’s judgment, where it is stated that, in the period from the 1990s to the 2000s, orders from stores to wholesalers in the Norwegian grocery sector became automated, so that an electronic system automatically generated new orders to wholesalers when the stock of a given good in a store ran low.

Whether the placing of orders that go directly to the principal, or to a third party under an agreement with the principal (e.g., a wholesaler), takes place in an “automated” manner or not, has no significance for the assessment of question 1 in the Request for an Advisory Opinion. There is nothing to suggest that a commercial agent who works for a principal who uses an automated order system (according to the principal’s own choice or agreements with customers) should not come within the scope of the Directive. Commercial agents in such a situation have the same need for protection as other agents.

Factors such as these are completely irrelevant for the determination of whether a commercial agent comes within the scope of the Directive.

² Bernt Iversen in his book on commercial agents and exclusive distributors, *Handelsagenten og eneforhandleren* (5th edition, 2013), page 133.

Nor is it in any way relevant whether an intermediary, pursuant to an agreement with the principal, performs tasks that come partly within and are partly outside the scope of the Directive. The Court of Justice of the European Union held in Case C-452/17 (*Zako SPRL v Sanidel SA*) that the Directive does not preclude a commercial agent from also performing tasks for the principal other than those referred to in Article 1(2). Reference is made to paragraphs 47 and 48 of the judgment, which read:

- “47. Thus, an interpretation of Article 1(2) of Directive 86/653 as meaning that the status of commercial agent cannot apply to persons who combine the activities of a commercial agent with one of more kind of activities of another nature may lead to the exclusion from the scope of that provision of a large number of persons, thereby depriving that directive of part of its effectiveness.
48. Therefore, it must be held that Directive 86/653 does not, in principle, preclude a commercial agent, within the meaning of that provision, from performing tasks for the principal other than those expressly mentioned in Article 1(2) of Directive 86/653.”

4.1 Question 1 in relation to other provisions in the Directive

Under Section 1 of the Norwegian Commercial Agents Act, it is a requirement that a commercial agent must “obtain orders”. In the Court of Appeal’s judgment, it was held that that requirement must be interpreted as meaning that an agent must have direct involvement with orders. No such requirement is provided for in Article 1(2) of the Directive or in other provisions of the Directive. On the contrary, there is an underlying premise in the Directive that no such requirement applies. This follows *inter alia* from Article 7 of the Directive, which reads as follows [in the Danish-language version]:

“Article 7

1. 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.
2. A commercial agent shall also be entitled to commission on transactions concluded during the period covered by the agency contract:
 - either where he is entrusted with a specific geographical area or group of customers,
 - or where he has an exclusive right to a specific geographical area or group of customers,

and where the transaction has been entered into with a customer belonging to that area or group.

Member States shall include in their legislation one of the possibilities referred to in the above two indents.”

Article 7(1)(a) only imposes a requirement of “as a result of his action” (*“medvirken”* in Danish), and there is no requirement that a commercial agent must have had some involvement with orders placed by third parties in order for it to be held to be “as a result of his action”. Entitlement to commission in cases covered by Article 7(1)(b) is not contingent on any activity on the part of the agent. Nor is this a requirement under Article 7(2), which provides that an agent entrusted with a specific geographical area (as was the case for Norep AS) will be entitled to commission on all orders received by the principal from customers in the area, irrespective of whether or not the orders were the result of the commercial agent’s actions.

In part 6.2 of the Request for an Advisory Opinion, Haugen Gruppen AS’s submissions are reproduced and, by way of final remarks in paragraph 26, it is argued that Article 4(3) of the Directive substantiates the point that actual participation in the actual conclusion/obtention of the sales agreement is required in order to be deemed a commercial agent. Norep AS disagrees with this.

Article 4(3) reads as follows:

“A principal must, in addition, 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.”

Article 4(3) does not impose any requirement that commercial agents must participate in obtaining sales agreements, but is only to be considered as a duty for the principal to notify, relating to orders the agent has negotiated. The duty to notify forms part of the principal’s duty of loyalty in relation to the agent, which is the overall subject-matter of Chapter 4 of the Directive.

5 Consequences if involvement with orders is required to be deemed a commercial agent under Article 1(2) of the Directive

If a premise is interpreted requiring a commercial agent to be involved with orders from customers to the principal so as to come within the definition of commercial agent in Article 1(2) of the Directive, it will undermine the considerations of protection that form the basis of the Directive. The consequences will inter alia be that Article 15 on mandatory periods of notice and Articles 17 and 18 on mandatory remuneration for termination will not be applicable. Nor will mandatory protective provisions in national legislation which provide for protection against termination of agency contracts (Section 27) and rules on time-limits for putting forward claims for remuneration for termination (Section 31), apply.

If a premise is interpreted requiring a commercial agent to be involved with orders from customers to the principal so as to come within the definition in the first alternative of Article 1(2) of the Directive, this will be liable to give rise to considerable legal uncertainty. For example, what is to apply if the principal in an existing contractual relationship in which the commercial agent has had direct involvement with orders decides that all orders are to go directly to the principal; in that scenario, will the agent's protection under the Directive and national legislation cease as from the time the change is implemented? In contractual relationships where a segment of the customers place orders directly with the principal and the remaining segment(s) do so via a commercial agent, is the agent's contractual relationship with the principal to be deemed to come within the scope of the Directive/national legislation for the entire contractual relationship, or is it to be limited to that part of the agent's activities that is directed at customers who place orders via the agent? Must commercial agents in existing contractual relationships under which the principal determines that all orders are to go directly to him put forward a claim for remuneration for termination so as not subsequently to risk being met with an objection that the claim is time-barred?

If involvement with orders is held to be a requirement for coming within the scope of Article 1(2), that allows for the possibility that principals will align themselves so that all orders are to go directly from customers to the principal, thereby avoiding obligations under mandatory provisions in the Directive and national legislation, such as the obligation to pay remuneration for termination.

The examples above illustrate that, if involvement with orders is held to be a requirement for coming within the scope of Article 1(2), that will give rise to considerable legal uncertainty and undermine the considerations of protection underlying the Directive.

6 Question No 2 in the Request for an Advisory Opinion

Question No 2 in the Request for an Advisory Opinion from the Supreme Court reads:

“2. If question 1 is answered in the negative, which factors are relevant in the assessment of whether sales-related activity is to be deemed to be ‘negotiation’ for the purposes of Article 1(2) of Directive 86/653?”

Factors Norep AS considers to be relevant are discussed below.

6.1 The parties' agreement

A key factor is what the parties have agreed. Where there is a written agreement, it will usually state which position the intermediary has and describe the tasks to be performed.

In part 3 of the Request for an Advisory Opinion from the Supreme Court, the facts of the case are described. Norep AS had a 28 years of continuous contractual relationship with Haugen Gruppen AS, and the agreement the parties entered into in 1991 was replaced by a new agreement in 2008, which remained in place until 2019.

In both agreements Norep is stated to be the “exclusive agent” in a specific geographical area (Northern Norway). This kind of designation in an agreement between a principal and an intermediary, and the statement of a geographic area within which the intermediary is to operate as exclusive representative, are key factors substantiating the point that it is a contractual relationship coming within the scope of the Directive.

The tasks that are described for an intermediary will also be a key factor. In the agreement from 2008 between Norep AS and Haugen Gruppen AS, Clause 1 “Objective”, point a provides that “[i]t is incumbent upon Norep to safeguard E.H.’s interests in the area, ... and with the follow-up that is required/agreed upon with HG’s customers/chains”. In point b of Clause 1, it is stated that “[t]hrough purposeful efforts, Norep shall, by pursuing active and serious sales work, have as its objective to promote the sale and distribution of E.H.’s products”, and in point h of Clause 3 of the agreements, it is stated that Norep AS shall “[o]ptimally promote E.H.’s sales in the area through regular visits to Retailers and Wholesalers”. Furthermore, point i of Clause 3 provides that Haugen Gruppen AS “is to supply Norep with all information that may affect Norep’s ability to perform its sales tasks optimally”.

The tasks referred to above taken from the agreement between Norep AS and Haugen Gruppen AS are within the core area of what commercial agents usually perform and, if an agreement between a principal and an intermediary contains such an indication of what the intermediary is to do, these are factors substantiating the point that it is a contractual relationship coming within the scope of the Directive.

6.2 The principal’s obligation to clarify premises

One factor will be whether a principal in an agreement with an intermediary has clarified premises which the principal considers to form the basis of the agreement. If the agreement contains words/expressions and contains a description of tasks normally associated with agency activity, the principal will have occasion to clarify if he considers that the agreement does not come within the scope of national legislation in which the Commercial Agents Directive is incorporated. General non-statutory rules on the duty of loyalty in contractual relationships so indicates this.

6.3 Renewal of the contractual relationship

The description of the facts in the Request for an Advisory Opinion from the Supreme Court shows that, when Norep AS and Haugen Gruppen AS replaced the agreement from 1991 with a new agreement in 2008, the new agreement had an identical description of Norep AS’s position (“exclusive agent”) and almost the same wording as was used for the description of Norep AS’s tasks, as under the 1991 agreement.

If a contractual relationship has existed for a longer period of time and a new agreement is concluded in which the description of the intermediary’s tasks coincide with the previous agreement, this will be a confirmation that these were tasks that were actually performed and which

the principal wishes to be continued. When a previous and a new agreement set out tasks coming within the core area of commercial agents' activities, this is a factor weighing heavily in favour of the contractual relationship's coming within the scope of the Directive.

6.4 The manner in which an intermediary is remunerated

How the principal remunerates an intermediary for the tasks performed will be a factor. Article 7 of the Directive provides that a commercial agent is entitled to commission on agreements concluded by the principal with customers, where the conditions set out in that article are fulfilled. If the agreement or practice is that an intermediary shall be remunerated in the mentioned way, that is a factor suggesting that the contractual relationship comes within the scope of the Directive. By way of information, in the 28 years the contractual relationship with Haugen Gruppen AS was in existence, Norep AS never received any remuneration other than commission which, under point h of Clause 6 of the parties' agreement, was based on Haugen Gruppen AS's net invoiced wholesale turnover in the area where Norep AS was the sole distributor (see information about this in paragraph 11 of the Request for an Advisory Opinion).

6.5 Development in the society

The requirement in Section 1 of the Norwegian Commercial Agents Act, that for an intermediary to be held to be a commercial agent, he must "obtain orders for the principal", is a continuation of the same kind of requirement that was set out in provisions on commercial agents in the Norwegian Commission Act (*kommisjonsloven*) of 1916 (which was based on Nordic legislative cooperation). Section 65 of the Commission Act had the following definition:

"In the present Act, commercial agent (agent) shall be understood to mean a party who, by assignment for another party (the principal) to contribute towards sales of goods by obtaining purchase offers (orders) for the principal ..."

The preparatory works for the Norwegian legislation are silent on why the previous legislation's requirement of obtaining orders was maintained in Section 1 of the new Act. The Norwegian legislative text in Section 1 coincides with Section 1 of the Swedish Commercial Agents Act of 2 May 1991. As far as Norep AS is aware, nor do the Swedish preparatory works state anything as to why requirements set out in the Swedish Commission Act were continued in Section 1 of that Commercial Agents Act.

From the 1990s and until today, there have been significant developments in the grocery trade by establishing chain constellations, purchasing groups, etc., with the result that producers/suppliers have had to adapt. Moreover, technological developments have led to more rational solutions, such as automated order systems in some sectors. Another change has taken place in that the retail level, through the establishment of chains/groups, has acquired much stronger market power than individual businesses formerly had.

What is expressed in the first alternative of Section 1 of the Norwegian legislation is a description of what previously was the normal scheme in the grocery trade, in which a commercial agent travelled around to customers and took orders, before sending them on to his principal. In some sectors, this method of obtaining orders no longer exists or is very uncommon since there are more rational solutions which both customers and principals find more beneficial.

Development in the society is a relevant factor, since what used to be the normal way of obtaining orders has changed and shifted more towards orders being placed directly with the principal or a third party, and in some sectors the placing of orders with commercial agents are non-existing or highly unusual. If a requirement is imposed that there must be involvement with orders for an intermediary to come within the scope of the Directive, then the protection objective underlying the Directive will not be safeguarded.

7 Comments on Haugen Gruppen AS's submissions in the Request for an Advisory Opinion

Haugen Gruppen AS has in its submissions reproduced in part 6.2 of the Request for an Advisory Opinion, referred to paragraph 24 of Case C-828/18 (*Trendsetteuse SARL v DCA SARL*). That judgment concerns the interpretation of the second alternative of Article 1(2) of the Directive. Reference is made to paragraph 10 of the judgment where, in reference to the parties' agreement, it is stated that "[t]hat agreement stipulated in particular that Trendsetteuse was responsible for concluding, in the name of and on behalf of DCA, contracts for the sale of products of the brand IZI-MI ...". Norep AS submits that the statements in paragraph 24 of that judgment are of no relevance since the assessment in the present case is the first alternative of Article 1(2).

Haugen Gruppen AS has submitted that the Directive sets out a clear criterion which requires that, in order to be deemed a commercial agent within the meaning of the Directive, the person must act as an independent intermediary in those agreements for the sale of the principal's goods which are concluded. Norep AS disagrees with this. Such a line of arguments can be relevant when the term "negotiate" is assessed under the second alternative of Article 1(2) (that is to say, where an intermediary enters into sale or purchase agreements on behalf of the principal), but not under the first alternative in the provision. Reference is also made to part 4.1. above, where it is explained that Article 7 of the Directive does not impose any requirements of particular activity on the part of a commercial agent in order to be entitled to receive a commission on orders placed with the principal that result in agreements, except for Article 7(1), which imposes a requirement of "result of his action" (which does not impose any requirement of involvement with orders for it to be fulfilled).

Haugen Gruppen AS has further submitted that the activity Norep AS have performed does not fall within the scope of the objectives of the Directive. Norep AS understands this to be based on structural features of the Norwegian grocery sector, and the fact that Norep AS was not involved in negotiations with the grocery chains' head offices. Norep AS contests that the activity the

company has performed fell outside the scope of the objectives of the Directive. As stated previously, tasks described in the parties' agreements from 1991 and 2008 fall within the core area of what commercial agents are involved with.

Sincerely,
SANDS Advokatfirma DA

(Signed)
Magne Mjaaland
Advokat (H) [right of audience before the Supreme Court]