

Dispute Resolution Newsflash

March 2022

New limitations regarding unilateral costs increase to be borne by commercial agents

On 16 February 2022, unbeknownst to most practitioners, the Belgian federal Parliament passed a bill amending article X.13 of the Code of Economic Law, which entered into force on 14 March 2022. In its previous wording, this legal provision essentially curtailed the unilateral modification by the principal of a commercial agent's commission by considering such unilateral variation as a so-called "acte equipollent à rupture"/"handeling die gelijkstaat met verbreking", *i.e.*, a decision that is can be considered as the equivalent of the termination of the agency contract. In other words, unless the agent (tacitly) accepts the principal's decision, he is entitled to declare the termination of the contract as if it had been the principal's decision. If a contract terminates in this manner, the agent is entitled to obtain the various indemnities provided by the law on commercial agency (*i.e.*, an indemnity in lieu of notice and goodwill compensation) and to ignore any post-contractual restrictive covenants contained in the agency contract, such as a non-compete clause.

According to the promotors of the new bill, a rather widespread practice would exist in the financial sector (*i.e.*, concerning bank and insurance agents) under which certain costs are charged to the agents, such as IT infrastructure costs. It is believed by the promotors that agents are insufficiently protected against unilateral increases of these costs by the principals, since commercial agents in the financial sector are often bound by exclusivity and non-compete obligations and consequently have few means to challenge such increases. If they decide to terminate the contract without there being a specific protective provision of law, they risk (i) losing their right to severance compensation and (ii) being bound by post-contractual restrictive covenants.

For these reasons, as of 14 March 2022, new rules apply to the costs charged to agents (active in **any sector**), which are similar to what already exists regarding commissions: the parties are free to provide whether any specific costs are charged to the agent upon signature of the contract, but any unilateral increase in these costs decided by the principal during the performance of the contract may from now on also qualify as a *de facto* termination of the agreement.

The new act also provides that, specifically for the finance and insurance industries, the existing sector committees composed of representatives of the principals and of the agents are entitled to enact industry-specific regulations that derogate from this new legal regime, as was already the case regarding unilateral modifications in commission rates.

The new act does not contain any transition provisions, so that one should assume that its mandatory nature entails that it also applies to all existing commercial agency agreements with immediate effect.

The members of our dispute resolution team specialize in national and international distribution, agency and franchising matters. Do not hesitate to reach out for assistance or queries.



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