

## SUMMARY

# ECJ 23 March 2023, case C-574/21 (O2 Czech Republic), Miscellaneous

## *QT – v – O2 Czech Republic a.s., Czech case*

### Summary

Commission which a commercial agent would have received for contracts with new customers or volume increases of contracts with existing customers, if the agency contract would have continued, must be taken into account in determining the indemnity for post-contract benefits. Even if parties used a one-off commission structure, the agent can still be entitled to an indemnity.

### Questions

Must Article 17(2)(a) of Directive 86/653 be interpreted as meaning that the commission which the commercial agent would have received in the event of a hypothetical continuation of the agency contract, in respect of transactions which would have been concluded after the termination of that agency contract with new customers which he or she transferred to the principal before that termination, or with customers with whom he or she significantly increased the volume of business before that termination, must be taken into account in determining the indemnity provided for in Article 17(2) of that directive?

Must Article 17(2)(a) of Directive 86/653 be interpreted as meaning that the payment of one-off commissions excludes from the calculation of the indemnity, provided for in Article 17(2), the commission lost by the commercial agent resulting from transactions carried out by the principal, after the termination of the commercial agency contract, with new customers which that agent brought to the principal before that termination, or with customers with whom he or she significantly increased the volume of business before that termination?

### Ruling

Article 17(2)(a) 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 is to be interpreted as meaning that the commission which the commercial agent would have received in the event of a hypothetical continuation of the agency contract, in respect of transactions which would have been concluded after the termination of that agency contract with new customers which he or she brought to the principal before that termination, or with customers with which he or she significantly increased the volume of business before that termination, must be taken into account in determining the indemnity provided for in Article 17(2) of that directive.

Article 17(2)(a) of Directive 86/653 is to be interpreted as meaning that the payment of one-off commissions does not exclude from the calculation of the indemnity, provided for in Article 17(2), the commission lost by the commercial agent resulting from transactions carried out by the principal, after the termination of the commercial agency contract, with new customers which he or she brought to the principal before that termination, or with customers with which he or she significantly increased the volume of business before that termination, where those commissions correspond to flat-rate remuneration under any new contract concluded with those new customers or with existing customers of the principal, through the commercial agent.

---

**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2023-03-23

**Case number:** C-574/21