

Published on 26 August 2015



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Legal status of commercial agents: contractual trial period and termination indemnity

The legal status of commercial agents provides notably that a commercial agent is entitled, subject to specific exceptions, to a compensation for the damage suffered as a result of the termination of the relationships with the principal.

In a decision dated June 23, 2015, the *Cour de cassation* (French Supreme Court) recalled that (i) this status, the application of which requires that the agreement be definitively concluded between the parties, does not preclude the provision of a trial period, and (ii) the commercial agent is not entitled to the statutory termination indemnities wherever the agency agreement is terminated prior to the expiry of this trial period.

In the commented case, an agency agreement providing for an eight-month trial period was terminated by the principal prior to the expiry of such period. The principal challenged the payment of the statutory termination indemnities on the ground that the termination had occurred during the contractual trial period. The commercial agent thus sued the principal and sought the payment of such indemnities.

The Court of Appeals granted the commercial agent's requests and ordered the principal to pay the indemnities provided for by the provisions of the French Commercial Code pertaining to the commercial agent

status. In particular, it held that Articles L. 134-12 and L. 134-13 of the French Commercial Code – which are public policy provisions – provide for the payment of an indemnity upon the termination of the agency agreement and list the cases in which the agent is not entitled to such indemnity. The judges further stated that while the provision of a trial period in an agency agreement is not illicit in itself, it cannot deprive the agent of his entitlement to the statutory termination indemnity.

The *Cour de cassation* reversed the decision of the Court of Appeals on the basis of Articles 1134 (which underlines the principle of contractual freedom) and 1184 (which refers to the actions that can be taken by a party against another party that has not performed its obligations) of the French Civil Code: In its decision, the *Cour de cassation* asserted that “*the commercial agents status, the application of which requires the agreement to be definitively concluded, does not preclude the provision of a trial period*”^[1].

Firstly, it is clear from this decision that the parties to an agency agreement may freely provide for a trial period during which both parties would have the right to unilaterally terminate the agreement.

Secondly, the *Cour de cassation* confirmed that the commercial agent is not entitled to the statutory termination indemnity wherever the agency agreement is terminated prior to the expiry of the trial period insofar as the application of the legal status of commercial agents implies that the contract has been definitively concluded between the parties.

The solution adopted by the *Cour de cassation* in this case is not new. It indeed confirms a similar approach taken in a judgment dated July 17, 2001^[2]. However, this decision of June 23, 2015 should put an end to the discussions that arose as a result of some judgments rendered by trial judges who appeared to have taken up a contrary position^[3].

^[1] Decision of the *Cour de cassation* dated June 23, 2015, n°14-17.894

^[2] Decision of the *Cour de cassation* dated July 17, 2001, n°97-17.539

^[3] Decision of the Paris Court of Appeals dated September 6, 2012, n°10/16975 : in this case, the Paris Court of Appeals considered that a clause under which the principal would be entitled to terminate the agreement during a trial period without paying any indemnity to the agent must be deemed unwritten (and thus null and void).

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