

EXECUTIVE SUMMARY

Background

The Commission Communication "REFIT – results and next steps"¹ identified the Commercial Agents Directive ('the Directive') as legislation that should be assessed given that it had never been evaluated since it entered into force in 1986 and there was an interest to know whether the Directive was still relevant to stakeholders and had EU added value. This evaluation therefore assesses performance of the Directive and examines whether it remains fit-for-purpose, delivers on its objectives at reasonable costs, is relevant, coherent and has EU added value.

The Directive affects a large and steadily growing market across a wide range of industrial sectors. It is estimated that in 2012 there were some 590 000 commercial agents in the EU, practically all SMEs, generating a combined turnover of EUR 260 billion (about 3 % of total commercial turnover) and providing employment to over 1 million people. On the other side of the commercial representation market, there are an estimated 1.7 million principals, 88 % of which are SMEs.

Historically, EU Member States had different rules regarding the rights and obligations of commercial agents and their principals. This created legal uncertainty and made it difficult in practice for market operators to use commercial representation across different Member States. Against this backdrop, the general objectives of the Directive, adopted in 1986, were to create a single market for commercial representation and eliminate barriers to the cross-border activities of commercial agents and their principals. More specifically, the Directive harmonises rules on: the rights and obligations of commercial agents and their principals; the remuneration of commercial agents; and the conclusion and termination of agency contracts, in particular any indemnity or compensation due to commercial agents when a contract ends.

Methodology

This evaluation assesses the functioning of the Directive, i.e. whether it has achieved its objectives and whether it is still fit-for-purpose today. The evaluation criteria are the Directive's: (1) effectiveness; (2) efficiency; (3) relevance; (4) EU added value; and (5) coherence with other policies.

Hard economic data to support the assessment has been difficult to find. Statistics and other quantitative data on the commercial agents market covering the period before and after the Directive's adoption do not exist.² Therefore, a counterfactual or comparative analysis is practically impossible to perform, at least in quantitative terms. This is particularly the case for the quantitative data needed for a comprehensive cost/benefit analysis of the Directive. To corroborate the findings of the evaluation, the evaluation process has built on a public consultation focused on stakeholders and a separate consultation of Member States. The consultation process aimed to collect evidence on the Directive's functioning and added value and to make it possible to assess the Directive's possible future. Other sources of information included data from Eurostat and information and data provided by representative associations and academics.

¹ COM(2013)685.

² Eurostat data for commercial representation is only available as from 2008.

Findings

Effectiveness: The Directive meets its objective of facilitating cross-border activities. Long-term economic data supporting this conclusion is only available for two countries (Germany and Austria). However, stakeholder feedback received during the public consultation corroborates the finding with a large degree of consensus. Most Member States having responded to the consultation also state that the Directive functions well.

Efficiency: Due to the lack of quantitative data from the period preceding and following the adoption of the Directive, the efficiency analysis relies mostly on qualitative data and information. On this basis, the costs arising from the Directive are limited and affordable. While the Directive does not create administrative burden, it does possibly entail incremental operational costs for principals in those countries where commercial representation has not previously been regulated (e.g. UK, Ireland and Sweden). The Directive creates significant operational and commercial benefits by facilitating cross-border activities. An analysis of the costs and benefits at the level of individual businesses, based on responses to the stakeholder consultation, shows that the benefits of the Directive generally outweigh its costs.

Relevance: The Directive's objectives and its importance in establishing and maintaining a single market for commercial representation remain relevant today. The market for commercial representation is still growing and the attractiveness of the business model, especially for SMEs aiming to operate across borders, has not suffered from the emergence of other alternative sales channels, such as e-commerce. Feedback from stakeholders and Member States confirms the Directive's relevance.

EU added value: The Directive still adds value to the single market, because of the level of harmonisation it ensures. The benefits generated through the Directive remain valid, in particular for SMEs. Consumers also benefit from an EU-wide framework for commercial representation as it makes it possible for them to access products and goods that would otherwise not be available in their country.

These views were confirmed by stakeholders. Most operators were concerned about the possible risks related to the possible withdrawal of the Directive and believed that the benefits of the internal market for commercial representation were only secure if the Directive continued to ensure the current level of harmonisation throughout the EU. Specifically, both agents and most principals feared the risk that, without harmonised European legislation, future regulatory adjustments in some Member States may lead to increasing fragmentation, which would cause problems for SMEs (agents and principals) that provide and use commercial representation services across borders.

Coherence with other policies: The Directive's objective to increase the cross-border activities of commercial representation is in line with the wider objective of the single market. Due to the nature of commercial agents and their principals, a Directive that facilitates commercial representation also supports the Commission's SME policy. The evaluation has not found any possible conflicts with other policy fields.

The conclusion of the evaluation is that the Directive meets its objectives and functions well. The Directive's benefits outweigh its costs, it remains relevant and continues to have EU added value. Based on these findings, it is recommended that the Directive is maintained in its current form.