OPINION OF ADVOCATE GENERAL JACOBS

delivered on 21 November 2002 [1]

1. In this case, the Tribunale civile e penale di Trento (Italy) asks the Court of Justice whether 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 (the Directive) [2] precludes a rule of national law which makes the enrolment of a commercial agent in the register of undertakings conditional on that agent's name having first been entered in a register of commercial agents.

Legal background

2. The Directive coordinates the laws of the Member States as regards the legal relationship between commercial agents [3] and their principals. [4] As the recitals to the Directive make clear, it is intended to protect the interests of commercial agents vis-à-vis their principals, to promote the security of commercial transactions, and to facilitate trade in goods between Member States by approximating the legal systems of the Member States in the matter of commercial representation. [5] To those ends, the Directive provides rules concerning the rights and obligations of commercial agents and principals (Articles 3 to 5), remuneration of commercial agents (Articles 6 to 12), and conclusion and termination of agency contracts (Articles 13 to 20).

3. Italian Law No 204 of 3 May 1985 provides for the establishment of a register of commercial agents and representatives in each Italian Chamber of Commerce. Article 2 of Law No 204 requires 'those acting or intending to act as a commercial agent or representative' to enrol on the register. Article 9 of Law No 204 prohibits 'any person not enrolled on the register from pursuing the activity of commercial agent or representative', under pain of an administrative penalty.

4. Article 2188 of the Italian Civil Code provides for the establishment of a register

1 — Original language: English

2 — OJ 1986 L 382, p. 17.

3 — By Article 1(2) of the Directive, a commercial agent is defined as 'a self-employed intermediary who has continuing authority to negotiate the sale or the purchase of goods on behalf of another person... or to negotiate and conclude such transactions on behalf of and in the name of that principal'.

4 — Article 1(1) of the Directive provides that 'the harmonisation measures prescribed by this Directive shall apply to the laws, regulations and administrative provisions of the Member States governing the relations between commercial agents and their principals'.

5 — Recitals two and three in the preamble to the Directive.

of undertakings which is to be maintained by the office of the register of undertakings. Certain types of undertaking are required to be entered on this register by virtue of Article 2195 of the code. For other types of undertaking, of which commercial agents are one, entry is optional under the terms of Article 2083 of the code. Article 2084 of the code stipulates that the conditions governing the operation of various categories of undertaking are to be laid down by legislation. By Article 2189, the registrar's office must verify that 'the legal requirements for entry in the register are met'.

5. In the case of *Bellone*, [6] the Court of Justice was called upon to consider whether it is compatible with the Directive for a national law to make the validity of a commercial agency contract contingent upon the commercial agent having been entered on a register of commercial agents. The Court held that, while the Directive does not prevent Member States from maintaining a register of commercial agents, [7] it does preclude a national legal rule requiring a commercial agent to be entered on the register as a condition of the validity of a commercial agency contract.

6. The judgment in *Bellone* brought into question the validity of the prior case-law of the Italian Corte di cassazione, which had from 1989 held that Article 1418 of the Italian Civil Code was to be interpreted as requiring that contracts concluded by agents not registered in accordance with Law No 204 be treated as void. Following the Court's judgment in *Bellone*, the Corte di cassazione revised its case-law so that a failure to register in accordance with Law No 204 now no longer entails as a matter of Italian law the nullity of agency contracts. [8]

The facts and question referred

7. The facts, as set out in the order for reference, are as follows. The claimant, Ms Caprini, is an Italian national. The defendant is the registrar of undertakings in Trento. Ms Caprini applied to the defendant on 10 April 2001 for her name to be entered in the register of undertakings as a commercial agent for the sale of advertising space. The defendant refused Ms Caprini's request on the ground that she had not been entered in the register of commercial agents and representatives, established by Italian Law No 204. Because inclusion in that latter register was, according to the defendant, a condition governing the operation of an undertaking within the meaning of Article 2084 of the Civil Code, being required by Articles 2 and 9 of Law No 204, it was also to be regarded as a legal requirement for the purposes of

6 — Case C-215/97 [1998] ECR I-2191.

7 — Paragraph 11 of the judgment. Several Member States have established registers of this nature. For a comparative analysis of national practice, see footnote 17 of the Opinion of Advocate General Cosmas.

8 — See paragraph 17 of the Court's judgment in the subsequent Case C-456/98 Centrosteel [2000] ECR I-6007.

Article 2189, the fulfilment of which the registrar must verify before an entry could be made in the register of undertakings.

8. Ms Caprini appealed against the defendant's decision, first to the Giudice del registro, the court responsible for supervising the defendant, which dismissed her action on 2 November 2001, and then to the Tribunale di Trento, seeking either an order securing her entry on the register of undertakings or a declaration that she was under no obligation to have her name entered on that register.

9. The Tribunale di Trento, noting the difference between the situation before it and that which gave rise to the reference for a preliminary ruling in *Bellone*, has stayed the main proceedings and has asked the Court whether the Directive precludes a rule of national law which makes the enrolment of the commercial agent in the register of undertakings conditional on that agent's name having been entered in an appropriate register.

Assessment

10. In order to address the question referred by the Tribunale di Trento, it is useful to revisit the reasoning underlying the Court's judgment in *Bellone*. In my opinion, two propositions of relevance to the present case can be derived from that judgment.

11. The first proposition is that there is nothing in the Directive which prevents a Member State from requiring commercial agents to be entered in an appropriate register if that Member State considers it expedient to do so in order to satisfy certain administrative needs. [9]

12. However, that first proposition is limited by a second proposition, which explains the Court's decision in *Bellone*, namely that a Member State cannot make the legal protection afforded by the Directive to commercial agents vis-à-vis their principals conditional upon inclusion in any register which it chooses to establish or upon any basis which is not explicitly provided for under the terms of the Directive. [10]

13. The national legal requirement at issue in *Bellone*, whereby an agency contract would not be valid unless the agent was entered in the register of commercial agents, clearly curtailed the legal protection afforded by the Directive. The consequence for the commercial agent of the invalidity of her agency contract under domestic law was that she was unable to obtain from the principal either the remuneration guaranteed to her by chapter III of the Directive or

9 — Paragraph 11 of the judgment.

10 — Paragraphs 13 and 14 of the judgment. An example of a restriction which Member States may permissibly make to the protection afforded under the Directive is the imposition of a requirement that, in order to be valid, an agency contract must be evidenced in writing. That requirement is explicitly permitted by Article 13(2) of the Directive.

the indemnities provided for under chapter IV of the Directive.

14. Turning to the present case, the question referred describes a national measure providing that an agent who is not entered on a register of commercial agents may not obtain entry on the register of undertakings.

15. The Commission maintains in its submissions to the Court that such a measure is not incompatible with the Directive given that it does not curtail the legal protection which the Directive affords to commercial agents vis-à-vis their principals. Such a rule would not of itself prevent commercial agents who had not been entered on either of the registers in question from concluding agency contracts which were valid and enforceable in the national courts, the application of which would be governed by the terms of the Directive.

16. I agree with that analysis.

17. Ms Caprini maintains, however, that the Italian legal rule requiring commercial agents to be entered on the register of commercial agents before they can be entered on the register of undertakings does in practice adversely affect the legal protection available to agents under the Directive. In the absence of such registration, Italian chambers of commerce will not grant to agents the certification which they need in order to be able to comply with the fiscal and social regulations applicable to them. She submits that the ability of agents to enter into valid agency contracts is of no assistance to them if they are then unable to carry out the contracts which they have concluded.

18. I am not convinced by that argument.

19. It seems clear from the Court's judgment in *Bellone* that Member States are permitted, consistent with the terms of the Directive, to attach administrative consequences to inclusion in a register of commercial agents, provided always that the legal protection afforded by the Directive is not curtailed.

20. It is not clear to me that the consequences which Ms Caprini describes as flowing from non-inclusion in the register of commercial agents, namely that unregistered commercial agents will be unable to obtain entry on the register of undertakings, with repercussions for the regulation

of their fiscal and social affairs, could be said to curtail the protection which the Directive provides to commercial agents in legal relations with their principals.

21. It is therefore my opinion that a national law requiring commercial agents to be entered in a register of such agents before they can be included in a register of companies is compatible with the Directive, provided always that the consequence is not in any way to curtail the legal protection afforded by the Directive to commercial agents. Such would be the case, for example, if the validity of agency contracts were made subject to the entry of a commercial agent on either or both of the registers in question.

Conclusion

22. I am accordingly of the opinion that the Court should rule that:

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 does not preclude a national law which makes the enrolment of a commercial agent in the register of undertakings conditional on that agent's name having been entered in a register of commercial agents, provided that the inclusion or otherwise of a commercial agent in either register does not affect the validity of agency contracts entered into by that agent or otherwise weaken the legal protection afforded to that agent by the aforementioned Directive.