



## Agreement

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## European Court of Justice Rules on Denial of Indemnity to a Commercial Agent

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The European Court of Justice (ECJ) has made a ruling which clarifies the circumstances surrounding when a principal can deny an agent indemnity or compensation on the termination of an agency agreement.

The ruling concerned a case which involved the termination of a Volvo dealership in Germany. Under German law, a dealership of this kind is treated in the same way as a commercial agency agreement, and so is subject to the Commercial Agents Directive.

Volvo terminated the dealership by giving the required period of notice stipulated in the contract.

However, upon termination of the contract they refused to pay the dealer an indemnity after they discovered that the dealer had breached the terms of their agreement during the notice period.

The breaches would have been sufficient for Volvo to terminate the agreement immediately, but they only found out about the breaches after the contract had already been terminated by notice.

In determining the case, the ECJ considered Article 18(a) of the Directive, which states that indemnity (or compensation) need not be paid in circumstances where the principal has terminated the agency agreement because of a default of the agent which would justify immediate termination under national law.

The ECJ found that Article 18(a) implied that there has to be a direct causal link between the breach of contract by the agent and the principal's decision to terminate.

**Therefore in this case, as the principal's decision to terminate the agency agreement was not related to any breaches, the indemnity should be paid.**

However, principals should not that the ECJ also suggested in its ruling that the breaches of contract may be taken into account when deciding if payment of the indemnity was equitable, as is required by Article 17(2)(a) of the Directive.

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