



Warsaw, 13 June 2022

Current Report No. 9/2022

Subject: Opinion of the Advocate General of the CJEU on the Supreme Court's question referred for a preliminary ruling to the CJEU in a case brought by a subsidiary of the Issuer.

With reference to Report 20/2020 of 18 September 2020, which informed of the question referred for a preliminary ruling sent by the Supreme Court to the CJEU (Court of Justice of the European Union) in the case “for an order concerning commissions on contracts entered into during the term of the agency contract without the participation of the agent, but with customers previously acquired by the agent for contracts of the same type”, the Management Board of Arteria S.A. (hereinafter the “Issuer”) became aware of the opinion expressed by the Advocate General of the CJEU in the case in question.

According to the information received, provided by the Issuer’s legal representative for the purpose of litigation, the Advocate General of the CJEU proposes the following judgement:

“Article 7(1)(b) 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 must be interpreted as meaning that a commercial agent’s entitlement to the commission referred to in that provision may be modified or excluded in the contract.”

This opinion should be interpreted as meaning that the parties to the agency contract are free to decide how to determine the remuneration of the commercial agent and that, if they choose to pay commission, they may refer to the provisions of the aforementioned Directive indicating the model manner of its establishment as long as the contract provides for its payment.

Comments from the Management Board of Arteria SA

The opinion of the Advocate General of the CJEU in the present case should be interpreted as unfavourable to the Issuer. Although this view is not binding on the Court of Justice, it is highly likely that it will be shared by the CJEU in response to the question referred for a preliminary ruling. It should also be pointed out that even in the event of a response from the CJEU unfavourable to the Issuer, this does not oblige the Supreme Court to interpret Polish regulations, in particular Article 761 § 1 of the Civil Code, in the same way as the Advocate General of the CJEU did when interpreting Article 7(1)(b) of the said Directive. In the opinion of the Management Board of the Company, however, this should be considered possible.

Taking into account the above circumstances, the Issuer's Management Board prudently considered that the above information may affect the final judgement delivered by the Supreme Court in the case and thus has the potential to affect prices.

Description of the legal case

The question referred for a preliminary ruling was raised by the Supreme Court in a case brought by Rigall Arteria Management spółka z o.o. sp. k. in Warsaw (a company belonging to the Arteria S.A. Group) against Bank Handlowy w Warszawie S.A. with its registered office in Warsaw concerning the exercise of information rights to which Rigall Arteria Management spółka z o.o. sp. k. in Warsaw is entitled under Article 7615 of the Civil Code. The interpretation adopted in the opinion of the Advocate General of the CJEU may also affect the dispute in the case brought by Rigall Arteria Management spółka z o.o. sp. k. in Warsaw (a company belonging to the Arteria S.A. Group) against Bank Handlowy w Warszawie S.A. with its registered office in Warsaw, for an order against Bank Handlowy w Warszawie S.A. to pay a significant amount on account of commission remuneration on contracts entered into during the term of the agency contract between the parties to the dispute, resulting from the intensive use of the commercial relations with the customers acquired by the claimant, as well as after its termination (indemnity). The Issuer's Management Board described the case in detail in Reports No. 1/2019 of 2 January 2019, No. 5/2019 of 12 March 2019, No. 6/2019 of 1 April 2019, No. 8/2019 of 13 June 2019 and No. 15/2019 of 26 November 2019.

Signatures of persons authorised to represent the Issuer:

Marcin Marzec - President of the Management Board

Sebastian Pielach - Vice-President of the Management Board