



Reports of Cases

Case C-518/16

'ZPT' AD

v

Narodno sabranie na Republika Bulgaria and Others

(Request for a preliminary ruling from the Sofijski gradski sad)

(Reference for a preliminary ruling — State aid — Regulation (EC) No 1998/2006 — Article 35 TFEU — *De minimis* aid in the form of tax relief — National legislation excluding investments in the production of goods intended for export from the benefit of that tax relief)

Summary — Judgment of the Court (First Chamber), 28 February 2018

1. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits — Questions referred in the context of an action seeking to establish State liability for infringement of EU law by reason of a decision having the force of res judicata — Admissibility — Application for designation of the national court having jurisdiction to hear an action seeking to establish liability — Inadmissibility*

(Art. 267 TFEU)

2. *Judicial proceedings — Intervention — Preliminary ruling procedure — Participation of the parties to the main proceedings — Status of party to the proceedings — Assessment by the national court*

(Art. 267 TFEU; Statute of the Court of Justice, Art. 23, second para.; Rules of Procedure of the Court of Justice, Art. 96(1)(a))

3. *Free movement of goods — Quantitative restrictions on exports — Measures having equivalent effect — Meaning — Commission Regulation prohibiting aid to export-related activities towards third countries or Member States — Not included*

(Art. 35 TFEU and 107 TFEU; Commission Regulation No 1998/2006, Art. 1(1)(d))

4. *State aid — Effect on trade between Member States — Aid of minor importance — Regulation No 1998/2006 — Scope — Exclusion of aid to export-related activities — Meaning — National legislation excluding investments in the production of goods intended for export from the benefit of tax relief constituting de minimis aid — Not included*

(Art. 107(1) TFEU; Commission Regulation No 1998/2006, Art. 1(1)(d))

1. See the text of the decision.

(see paras 21, 22, 24)

2. See the text of the decision.

(see paras 31, 32)

3. Article 35 TFEU prohibits quantitative restrictions on exports between Member States, as well as all measures having equivalent effect. In that regard, the Court has held that a national measure applicable to all traders active in the national territory which has a greater effect on goods leaving the market of the exporting Member State than on the marketing of goods in the domestic market of that Member State is covered by the prohibition laid down by Article 35 TFEU (see judgment of 21 June 2016, *New Valmar*, C-15/15, EU:C:2016:464, paragraph 36 and the case-law cited).

It follows from that definition that classification as a ‘measure having equivalent effect to a quantitative restriction on exports’ presupposes the existence of restrictive effects on trade (judgment of 21 June 2016, *New Valmar*, C-15/15, EU:C:2016:464, paragraph 42). Those effects may be of merely minor importance (judgment of 1 April 2008, *Government of the French Community and Walloon Government*, C-212/06, EU:C:2008:178, paragraph 52), provided that they are not too uncertain or too indirect (judgment of 21 June 2016, *New Valmar*, C-15/15, EU:C:2016:464, paragraph 45 and the case-law cited). The prohibition of aid linked to exports to Member States laid down in Article 1(1)(d) of Regulation No 1998/2006, even if it does not exceed the *de minimis* threshold, has no effect on trade in itself, since it merely requires the Member States to refrain from granting a certain type of aid. Consequently, that provision cannot amount to a measure having an effect equivalent to a quantitative restriction on exports, prohibited by Article 35 TFEU.

However, the main effect of the fundamental rules of the internal market and of the general aid scheme which forms part of it is that the exclusion of export aid from the scope of Regulation No 1998/2006 is justified in the light of the actual purpose of Article 107 TFEU. Export aid, even of a modest amount, is, by definition, one of the forms of aid which may affect trade between Member States, both directly by conferring a competitive advantage on the products exported and indirectly by inciting the other Member States to take symmetric countermeasures intended to counterbalance that competitive advantage. As the Commission argued during the hearing, allowing such aid would be particularly detrimental to the functioning of the internal market. It follows that Article 35 TFEU cannot justify a measure contrary to Article 107 TFEU.

(see paras 38, 43-47)

4. Article 1(1)(d) of Regulation No 1998/2006 must be interpreted as not precluding provisions of national law, such as those at issue in the main proceedings, which exclude investments in assets used for export-related activities from the benefit of tax relief constituting *de minimis* aid.

Article 1(1)(d) of Regulation No 1998/2006 does not exclude all aid which may have an impact on exports, but only that which has as its direct purpose, by its very form, the promotion of sales in another State. Aid ‘directly linked to the quantities exported’, aid relating to the establishment and operation of a distribution network or aid relating to other current expenditure linked to the export activity are the only forms of aid that are regarded as such. It follows that investment aid, on condition of it not being, in one form or another, determined, in principle and in its amount, by the quantity of the goods exported, is not included within ‘aid to export-related activities’ within the meaning of Article 1(1)(d) of Regulation No 1998/2006 and does not therefore come within the scope of application of that provision, even if the investments thus supported facilitate the development of goods intended for export.

(see paras 55, 56, 58, operative part 2)