Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

21 June 2016*

(Reference for a preliminary ruling — Free movement of goods — Prohibition of measures having equivalent effect to quantitative restrictions on exports — Article 35 TFEU — Company established in the Dutch-speaking region of the Kingdom of Belgium — Legislation requiring invoices to be drawn up in Dutch, failing which they are null and void — Cross-border concession agreement — Restriction — Justification — Disproportionate)

In Case C-15/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the rechtbank van koophandel te Gent (Ghent Commercial Court, Belgium), made by decision of 18 December 2014, received at the Court on 16 January 2015, in the proceedings

New Valmar BVBA

v

Global Pharmacies Partner Health Srl,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, L. Bay Larsen, A. Arabadjiev and F. Biltgen, Presidents of Chambers, J. Malenovský, J.-C. Bonichot, C. Vajda, S. Rodin and E. Regan (Rapporteur), Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 26 January 2016,

after considering the observations submitted on behalf of

— New Valmar BVBA, by P. Devos, advocaat,

— the Belgian Government, by J. Van Holm and L. Van den Broeck, acting as Agents, and by H. De Bauw and B. Martel, advocaten,

— the Lithuanian Government, by D. Kriaučiūnas and R. Dzikovič, acting as Agents,

— the European Commission, by E. Manhaeve, M. van Beek and G. Wilms, acting as Agents,

* Language of the case: Dutch.

after hearing the Opinion of the Advocate General at the sitting on 21 April 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 45 TFEU.

2 The request has been made in proceedings between New Valmar BVBA and Global Pharmacies Partner Health Srl ('GPPH') concerning the non-payment of various invoices.

Legal context

EU law

3 Article 226 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1), as amended by Council Directive 2010/45/EU of 13 July 2010 (OJ 2010 L 189, p. 1) ('Directive 2006/112'), sets out the details that are required on invoices.

4 Article 248a of that directive provides:

'For control purposes, and as regards invoices in respect of supplies of goods or services supplied in their territory and invoices received by taxable persons established in their territory, Member States may, for certain taxable persons or certain cases, require translation into their official languages. Member States may, however, not impose a general requirement that invoices be translated.'

Belgian law

5 Article 4 of the Grondwet (Constitution), in its consolidated version of 17 February 1994 (*Belgisch Staatsblad*, 17 February 1994, p. 4054), states:

'Belgium comprises four linguistic regions: the French-speaking region, the Dutch-speaking region, the bilingual region of Brussels-Capital and the German-speaking region.

Each municipality of the Kingdom forms part of one of these linguistic regions.

…'

6 Article 129(1)(3) of the Constitution provides:

'The Parliaments of the Flemish and French Communities, to the exclusion of the federal legislature, shall regulate by decree, each one as far as it is concerned, the use of languages for:

…

3. relations between employers and their staff, as well as company acts and documents required by the law and by regulations.'

7 The first subparagraph of Article 52(1) of the wetten op het gebruik van de talen in bestuurszaken (laws on the use of languages in administrative matters), consolidated by the Royal Decree of 18 July 1966 (*Belgisch Staatsblad*, 2 August 1966, p. 7798) ('the Law on the use of languages'), states:

'Private industrial, commercial and financial undertakings shall use, for acts and documents required by the law and by regulations ..., the language of the region in which they have their establishment or various establishments.'

8 The decreet tot regeling van het gebruik van de talen voor de sociale betrekkingen tussen de werkgevers en de werknemers, alsmede van de door de wet en de verordeningen voorgeschreven akten en bescheiden van de ondernemingen (decree regulating the use of languages with regard to relations between employers and employees, and with regard to company acts and documents required by the law and by regulations), of the Vlaamse Gemeenschap (Flemish Community, Belgium), of 19 July 1973 (*Belgisch Staatsblad*, 6 September 1973, p. 10089; 'the Decree on the use of languages'), was adopted on the basis of Article 129(1)(3) of the Constitution.

9 Article 1 of the Decree on the use of languages provides:

'This decree is applicable to natural and legal persons having a place of business in the Dutch-speaking region. It regulates use of languages in relations between employers and employees, as well as in company acts and documents required by the law.

…'

10 Article 2 of that decree provides that 'the language to be used for relations between employers and employees, and for company acts and documents required by the law, shall be Dutch'.

11 According to Article 10 of that decree:

'Documents or acts which infringe the provisions of this Decree shall be null and void. Nullity shall be determined by the courts of their own motion.

…

The judgment shall order that the relevant documents be replaced as a matter of course.

Revocation of the nullity shall be effective only from the date of the substitution: for written documents, from the date of deposit of the substitute documents at the registry of the labour tribunal.

…'

The facts in the main proceedings and the question referred for a preliminary ruling

12 On 12 November 2010, New Valmar, a Belgian company established in Evergem (Belgium), and GPPH, an Italian company established in Milan (Italy), concluded an agreement appointing GPPH as New Valmar's exclusive concession-holder in Italy for the distribution of children's articles. That agreement was to be valid until 31 December 2014.

13 Under Article 18 of that concession agreement, the agreement was to be governed by Italian law and the courts in Ghent (Belgium) had jurisdiction to hear any disputes that might arise between the parties.

14 By registered letter of 29 December 2011, New Valmar terminated the agreement prematurely, with effect from 1 June 2012.

15 By summons dated 30 March 2012, New Valmar brought an action before the rechtbank van koophandel te Gent (Ghent Commercial Court, Belgium) seeking an order requiring GPPH to pay to it a sum of approximately EUR 234 192 in settlement of various invoices that had not been paid.

16 GPPH lodged a counterclaim seeking an order that New Valmar should pay a sum of EUR 1 467 448 in compensation for the wrongful termination of their concession agreement.

17 GPPH disputed New Valmar's claim, contending that the invoices at issue in the main proceedings were null and void on the ground that, although they are 'acts and documents required by the law and by regulations' within the meaning of the Law on the use of languages and the Decree on the use of languages (together, 'the legislation at issue in the main proceedings'), the invoices fail to comply with the public policy rules contained in that legislation, since, with the exception of the identifying particulars for New Valmar, and the VAT and bank details, all the details on the invoices, including the general terms and conditions, were set out in a language other than Dutch, namely in Italian, even though New Valmar is established in the Dutch-speaking region of the Kingdom of Belgium.

18 On 14 January 2014, in the course of the proceedings, New Valmar supplied to GPPH a translation into Dutch of the invoices concerned. It is apparent, however, from the file before the Court that the invoices are, and remain, in their entirety null and void under the legislation at issue in the main proceedings.

19 New Valmar does not dispute that the invoices in question fail to comply with the legislation at issue in the main proceedings. However, New Valmar claims that that legislation is contrary to, inter alia, the provisions of European Union law concerning the free movement of goods, in particular Article 26(2) TFEU, and Articles 34 and 35 TFEU.

20 The referring court questions whether, having regard to the judgment of 16 April 2013 in *Las* (C-202/11, EU:C:2013:239), the imposition of an obligation on undertakings which have their place of establishment within the Dutch-speaking region of the Kingdom of Belgium to draw up, on pain of nullity, their invoices in Dutch may constitute an obstacle to international trade, whether any such obstacle may be justified by one or more objectives in the public interest, such as promoting and encouraging the use of an official language or ensuring the effectiveness of administrative checks, and whether any such obstacle is proportionate to the objectives pursued.

21 In those circumstances, the rechtbank van koophandel te Gent (Ghent Commercial Court) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 45 TFEU be interpreted as precluding legislation of a federal entity of a Member State, such as, in the present case, the Flemish Community in the Federal State of Belgium, which requires every undertaking which has its place of establishment within the territory of that entity to draw up, pursuant to Article 52 of the [Law on the use of languages] in conjunction with Article 10 of the [Decree on the use of languages], cross-border invoices exclusively in the official language of that federal entity, failing which those invoices are to be declared by the [national] courts of their own motion to be null and void?'

Consideration of the question referred

Admissibility and scope of the question

22 First, it is apparent from the order for reference that the agreement at issue in the main proceedings expressly provided that it was to be subject to Italian law. However, the question is based on the assumption that, despite the choice of Italian law as the law governing the contract, the legislation at issue in the main proceedings is applicable to the dispute in the main proceedings.

23 In that regard, it is appropriate to note that, since it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the judicial decision to be made, to determine, in the light of the particular circumstances of the case, both the need for and the relevance of the questions that it submits to the Court (see, inter alia, judgment of 18 February 2016 in *Finanmadrid EFC*, C-49/14, EU:C:2016:98, paragraph 27), the question referred must be answered on that assumption, the merits of which, however, the referring court must assess, taking into account, in particular, and as the Advocate General observed in points 25 to 28 of his Opinion, the provisions of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual relations (Rome I) (OJ 2008 L 177, p. 6).

24 Second, both in its written observations and at the hearing, the Belgian Government argued that, contrary to what the referring court indicated in its decision, the legislation at issue in the main proceedings prescribes the use of Dutch not for all the details on an invoice, but only for the details required by law, in the light of the applicable VAT legislation. Given that those latter details are listed in Article 226 of Directive 2006/112, it would, according to the Belgian Government, be easy to obtain a translation of them in all the languages of the European Union.

25 In that regard, it is appropriate to recall that the Court must take into account, under the division of jurisdiction between the Courts of the European Union and the national courts, the factual and legal context, as set out in the order for reference, of the questions referred for a preliminary ruling. Consequently, whatever criticism the Belgian Government may have made of the interpretation of national law adopted by the referring court, this reference for a preliminary ruling must be examined in the light of that court's interpretation of that law (see, to that effect, inter alia, judgment of 29 October 2009 in *Pontin*, C-63/08, EU:C:2009:666, paragraph 38).

26 In the present case, it is therefore necessary to provide an answer to the question asked by the referring court by proceeding on the assumption that all the details on an invoice must, in accordance with the legislation at issue in the main proceedings, be drawn up in Dutch.

27 Third, in its written observations, the Belgian Government argues that, in the absence of any link between the situation at issue in the main proceedings and the freedom of movement for workers, this request for a preliminary ruling is inadmissible or, at least, does not need to be answered, since it concerns the interpretation of Article 45 TFEU.

28 In that regard, suffice it to state that, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it. The Court has a duty to interpret all provisions of EU law which national courts require in order to decide the actions pending before them, even where those provisions are not expressly indicated in the questions referred to the Court of Justice by those courts (see, inter alia, judgment of 17 December 2015 in *Szemerey*, C-330/14, EU:C:2015:826, paragraph 30).

29 Consequently, even if, formally, the referring court has limited its question to the interpretation of Article 45 TFEU alone, that does not prevent the Court from providing the referring court with all the elements of interpretation of European Union law which may be of assistance in adjudicating in the case pending before it, whether or not the referring court has referred to them in the wording of its questions. It is, in this regard, for the Court to extract from all the information provided by the national court, in particular from the grounds of the order for reference, the points of European Union law which require interpretation in view of the subject matter of the dispute in the main proceedings (see, by analogy, inter alia, judgment of 17 December 2015 in *Szemerey*, C-330/14, EU:C:2015:826, paragraph 31).

30 In the present case, notwithstanding the mention of Article 45 TFEU in the question referred, it is clear from the grounds of the order for reference that the referring court seeks to determine whether the legislation at issue in the main proceedings is in conformity with the rules laid down by the FEU Treaty on the free movement of goods, that court explicitly stating, in that regard, that New Valmar relied, in the main proceedings, on Article 26(2) TFEU and on Articles 34 and 35 TFEU.

31 Since the case in the main proceedings concerns not imports, but the export of goods from Belgium to another Member State, Italy in this case, it is clear that only Article 35 TFEU, which prohibits measures having equivalent effect to quantitative restrictions on exports, can apply.

32 The Belgian Government argues, however, that the legislation at issue in the main proceedings must be assessed by reference not to primary EU law, but to Directive 2006/112 alone, since that directive effected complete harmonisation in this field. Article 248a of that directive, in its view, permits Member States to require, in their domestic legislation, that invoices issued in a cross-border context be drawn up in a language other than that of the Member State of destination of services or goods. In providing the right, for Member States, to request, as regards invoices in respect of goods or services supplied in their territory, a translation of invoices into their official language, that provision implies, moreover, that invoices are generally to be drawn up in the official language of the Member State in which the undertaking issuing the invoice is established.

33 In that regard, it must, however, be borne in mind that the harmonisation of national legislation being brought about by the European Union rules on VAT is only gradual and partial (see, to that effect, inter alia, judgment of 26 February 2015 in *VDP Dental Laboratory and Others*, C-144/13, C-154/13 and C-160/13, EU:C:2015:116, paragraph 60 and the case-law cited).

34 Accordingly, neither Article 226 of Directive 2006/112, which concerns the content of invoices, nor Article 248a of that directive, which permits Member States of destination to require, in certain cases, the translation, into one of their official languages, of an invoice concerning a cross-border supply, restricts, as the Advocate General observed in points 45 to 48 of his Opinion, the option for Member States to impose on the undertakings established in their territory the obligation to draw up any invoice in their official language or in the language of that territory.

35 In the light of the foregoing, it is necessary to reformulate the question referred as meaning that the referring court is seeking to ascertain, by that question, whether Article 35 TFEU must be interpreted as precluding legislation of a federated entity of a Member State, such as the Flemish Community of the Kingdom of Belgium, which requires every undertaking which has its place of establishment within the territory of that entity to draw up all the details on invoices relating to cross-border transactions exclusively in the official language of that entity, failing which those invoices are to be declared by the national courts of their own motion to be null and void.

Whether there is a restriction falling within the scope of Article 35 TFEU

36 The Court has held that a national measure applicable to all traders active in the national territory whose actual effect is greater 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, to that effect, judgment of 16 December 2008 in *Gysbrechts and Santurel Inter*, C-205/07, EU:C:2008:730, paragraphs 40 to 43).

37 Moreover, it should be borne in mind that any restriction, even minor, of one of the fundamental freedoms enshrined by the FEU Treaty is prohibited by it (see, to that effect, judgment of 1 April 2008 in *Government of the French Community and Walloon Government*, C-212/06, EU:C:2008:178, paragraph 52 and the case-law cited).

38 In this case, it is stated in the order for reference that, under the legislation at issue in the main proceedings, it is mandatory that invoices, including those relating to cross-border transactions, issued by undertakings which have their place of establishment within the Dutch-speaking region of the Kingdom of Belgium, must be drawn up in Dutch, that language alone being authentic, failing which those invoices will be declared by the national courts of their own motion to be null and void.

39 According to the Belgian Government, such legislation cannot be considered a restriction on the free movement of goods, since invoices, which are the sole subject matter of that legislation, merely confirm liability arising out of a contract concluded by the parties concerned. Such legislation, unlike that at issue in the case giving rise to the judgment of 16 April 2013 in *Las* (C-202/11, EU:C:2013:239), does not affect the freedom of the parties to draw up such a contract in the language of their choice and, therefore, does not impinge on the establishment of *consensus ad idem*. Consequently, the view cannot be taken that the legislation at issue in the main proceedings has an impact on trade between Member States.

40 Nevertheless, in depriving the traders concerned of the possibility of choosing freely a language which they are both able to understand for the drawing-up of their invoices and in imposing on them to that end a language which does not necessarily correspond to the one they agreed to use in their contractual relations, legislation such as that at issue in the main proceedings is likely to increase the risk of disputes and non-payment of invoices, since the recipients of those invoices could be encouraged to rely on their actual or alleged inability to understand the invoices' content in order to refuse to pay them.

41 Conversely, the recipient of an invoice drawn up in a language other than Dutch could, given that such an invoice is null and void, be encouraged to dispute its validity for that reason alone, even if it were drawn up in a language he understands. Such nullity could, moreover, be the source of significant disadvantages for the issuer of the invoice, including the loss of default interest, since it is apparent from the file submitted to the Court that, in the absence of a contractual term to the contrary, interest will begin to run, in principle, only from the issue of a new invoice drawn up in Dutch.

42 It follows that legislation, such as that at issue in the main proceedings, even if it concerns the language version in which the details on an invoice — not the content of the underlying contractual relationship — must be drawn up, produces, because of the legal uncertainty it creates, restrictive effects on trade which are likely to deter the initiation or continuation of contractual relationships with an undertaking established in the Dutch-speaking region of the Kingdom of Belgium.

43 While it is true that such legislation, since it applies indiscriminately to all invoices issued by an undertaking which has its place of establishment within that region, can affect both domestic trade within the Member State concerned and cross-border trade, the fact remains that it is more likely to affect the latter, as the Advocate General observed in points 61 to 68 of his Opinion, given that a

purchaser established in a Member State other than the Kingdom of Belgium is less likely to be able to understand Dutch than a purchaser established in the latter Member State, where that language is one of the official languages.

44 Taking into account the arguments of the Belgian Government regarding the scope of the legislation at issue in the main proceedings, mentioned in paragraph 24 of the present judgment, it must be pointed out that the restrictiveness of such legislation would be no less open to challenge were it to prove – which it is for the referring court to determine – that only the obligatory details listed in Article 226 of Directive 2006/112 have to be drawn up in Dutch, since the same legal uncertainty as that identified in paragraph 42 of this judgment would also arise in that situation.

45 Furthermore, the restrictive effects of that legislation cannot be considered to be too indirect or too uncertain for it to be possible to regard that legislation, in accordance with the Court's case-law stemming from, inter alia, the judgments of 7 March 1990 in *Krantz* (C-69/88, EU:C:1990:97, paragraphs 10 and 11), and of 13 October 1993 in *CMC Motorradcenter* (C-93/92, EU:C:1993:838, paragraphs 10 to 12), as not constituting a restriction within the meaning of Article 35 TFEU.

46 As is apparent from paragraphs 40 to 43 of this judgment, such legislation is likely to have an impact, however minor, on contractual relations, particularly since, as was indicated at the hearing, it is not unusual for the drawing-up of an invoice to be the only concrete manifestation of those relations. Moreover, as the Advocate General observed in point 69 of his Opinion, that impact depends not on a future and hypothetical event, but on the exercise of the right to free movement of goods (see, by analogy, inter alia, judgment of 1 April 2008 in *Government of the French Community and Walloon Government*, C-212/06, EU:C:2008:178, paragraph 51).

47 It follows that legislation such as that at issue in the main proceedings constitutes a restriction falling within the scope of Article 35 TFEU.

Whether there is justification

48 According to settled case-law, a national measure restricting the exercise of the fundamental freedoms guaranteed may be allowed only if it pursues a legitimate objective in the public interest, is appropriate to ensuring the attainment of that objective and does not go beyond what is necessary to attain the objective pursued (see, to that effect, inter alia, judgment of 1 October 2015 in *Trijber and Harmsen*, C-340/14 and C-341/14, EU:C:2015:641, paragraph 70).

49 In this case, the Belgian Government argues that the legislation at issue in the main proceedings is aimed, first, at encouraging the use of the official language of the linguistic region concerned and, second, at ensuring the effectiveness of checks by the competent VAT authorities.

50 In that regard, it must be recalled that the objective of promoting and encouraging the use of one of the official languages of a Member State constitutes a legitimate objective which, in principle, justifies a restriction on the obligations imposed by EU law (see, to that effect, judgments of 28 November 1989 in *Groener*, C-379/87, EU:C:1989:599, paragraph 19; of 12 May 2011 in *Runevič-Vardyn and Wardyn*, C-391/09, EU:C:2011:291, paragraph 85, and of 16 April 2013 in *Las*, C-202/11, EU:C:2013:239, paragraphs 25 to 27).

51 Moreover, the Court has previously recognised that the need to protect the effectiveness of fiscal supervision constitutes an objective of general interest capable of justifying a restriction on the exercise of the fundamental freedoms guaranteed by the Treaty (see, to that effect, inter alia, judgments of 20 February 1979 in *Rewe-Zentral*, 120/78, EU:C:1979:42, paragraph 8, and of 15 May 1997 in *Futura Participations and Singer*, C-250/95, EU:C:1997:239, paragraph 31).

52 It must be held that legislation such as that at issue in the main proceedings is appropriate for achieving those two objectives, since, first, it ensures that the general use of Dutch in the drawing-up of official documents, such as invoices, is protected, and, second, it can make it easier for the competent national authorities to check such documents.

53 Nevertheless, in order to satisfy the requirements laid down by EU law, legislation, such as that in issue in the main proceedings, must be proportionate to those objectives.

54 In the present case, as the Advocate General observed in points 90 to 92 of his Opinion, legislation of a Member State which not only required the use of the official language of that Member State for the drawing-up of invoices relating to cross-border transactions but which also, in addition, permitted an authentic version of such invoices to be drawn up in a language known to the parties concerned, would be less prejudicial to the free movement of goods than the legislation at issue in the main proceedings, while being appropriate for securing the objectives pursued by that legislation (see, by analogy, judgment of 16 April 2013 in *Las*, C-202/11, EU:C:2013:239, paragraph 32).

55 Thus, as regards the objective of ensuring the effectiveness of fiscal supervision, the Belgian Government itself indicated, at the hearing, that, according to an administrative circular of 23 January 2013, the right of deduction of VAT cannot be refused by the tax authorities on the sole ground that the details that are required by law to be in an invoice were drawn up in a language other than Dutch, which tends to suggest that the use of another language is not liable to prevent the attainment of that objective.

56 In the light of all the foregoing, it must be held that legislation such as that at issue in the main proceedings goes beyond what is necessary to attain the objectives referred to in paragraphs 49 to 51 of this judgment and cannot therefore be regarded as proportionate.

57 Consequently, the answer to the question referred is that Article 35 TFEU must be interpreted as precluding legislation of a federated entity of a Member State, such as the Flemish Community of the Kingdom of Belgium, which requires every undertaking that has its place of establishment within the territory of that entity to draw up all the details on invoices relating to cross-border transactions exclusively in the official language of that entity, failing which those invoices are to be declared null and void by the national courts of their own motion.

Costs

58 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber), rules as follows:

Article 35 TFEU must be interpreted as precluding legislation of a federated entity of a Member State, such as the Flemish Community of the Kingdom of Belgium, which requires every undertaking that has its place of establishment within the territory of that entity to draw up all the details on invoices relating to cross-border transactions exclusively in the official language of that entity, failing which those invoices are to be declared null and void by the national courts of their own motion.

[Signatures]