



## Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

11 June 2020\*

(Reference for a preliminary ruling — Articles 49 and 63 TFEU — Freedom of establishment and the free movement of capital — Directive 2006/123/EC — Acquisition of agricultural land in Latvia for the purpose of use — System of prior authorisation for legal persons — Specific conditions applying only to legal persons controlled or represented by nationals of another Member State — Requirements for residence and knowledge of the official language of the Republic of Latvia — Direct discrimination on grounds of nationality)

In Case C-206/19,

REFERENCE for a preliminary ruling under Article 267 TFEU from the administratīvā rajona tiesa, Rīgas tiesu nams (District Administrative Court, Riga Section, Latvia), made by decision of 28 February 2019, received at the Court on 5 March 2019, in the proceedings between

**‘KOB’ SIA**

v

**Madonas novada pašvaldības Administratīvo aktu strīdu komisija,**

THE COURT (Sixth Chamber),

composed of: M. Safjan, President of the Chamber, J.-C. Bonichot (Rapporteur), President of the First Chamber, C. Toader, Judge,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- ‘KOB’ SIA, by A. Blūmiņš, advokāts,
- the Latvian Government, represented initially by V. Kalniņa and I. Kucina, and subsequently by V. Kalniņa, acting as Agents,
- the Swedish Government, represented initially by A. Falk, J. Lundberg, C. Meyer-Seitz, H. Shev and H. Eklinder, and subsequently by C. Meyer-Seitz, H. Shev and H. Eklinder, acting as Agents,
- the European Commission, by L. Armati and I. Rubene and by L. Malferrari, acting as Agents,

\* Language of the case: Latvian.

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,  
gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 18, 49, 63 and 345 TFEU.
- 2 The request was submitted in the context of a dispute between ‘KOB’ SIA, a commercial company established in Latvia, and the Madonas novada pašvaldības Administratīvo aktu strīdu komisija (Commission for the resolution of administrative disputes of the municipality of Madona, Latvia) concerning the decision by which the latter rejected KOB’s application to purchase agricultural land.

### Legal context

#### *European Union law*

- 3 Article 1(1) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36) provides as follows:

‘This Directive establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services.’

- 4 Article 2(1) of that directive is worded as follows:

‘This directive shall apply to services supplied by providers established in a Member State.’

- 5 Article 4 of that directive provides:

‘For the purpose of this Directive:

...

- (5) “establishment”, means the actual pursuit of an economic activity, as referred to in Article 43 of the Treaty, by the provider for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out;
- (6) “authorisation scheme” means any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof;

...’

- 6 Article 9(1) of that directive, entitled ‘Authorisation schemes’, provides:

‘Member States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied:

- (a) the authorisation scheme does not discriminate against the provider in question;

...’

7 Article 10 of Directive 2006/123 is worded as follows:

‘1. Authorisation schemes are to be based on criteria which preclude the competent authorities from exercising their power of assessment in an arbitrary manner.

2. The criteria referred to in paragraph 1 shall be:

(a) non-discriminatory;

...’

8 Article 14 of that directive, entitled ‘Prohibited requirements’, provides:

‘Member States shall not make access to, or the exercise of, a service activity in their territory subject to compliance with any of the following:

(1) discriminatory requirements based directly or indirectly on nationality or, in the case of companies, the location of the registered office, including in particular:

...  
(b) a requirement that the provider, his staff, persons holding the share capital or members of the provider’s management or supervisory bodies be resident within the territory;

...’

#### ***Latvian law***

9 Section 28.<sup>1</sup>(1)(2) of the likums ‘Par zemes privatizāciju lauku apvidos’ (Law on the privatisation of land in rural areas, *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs*, 1992, Nos 32 to 34) provides that legal persons ‘may acquire ownership of: agricultural land and land where the dominant category of use of that land is for agricultural purposes ... as well as a share in the property held in co-ownership of such land ... [provided that they satisfy] all of the following requirements:

...

(b) they certify in writing that such land will, if the land has been the subject of direct payments in the previous or current year, be used for agricultural activity within one year after its purchase and they will ensure that such use is continuous thereafter, or, if the land has not been the subject of direct payments in the previous or current year, that it will be used for agricultural purposes within three years from the purchase date and they will ensure that such use is continuous thereafter;

...

(f) in cases where the member or members who together represent more than half of the voting rights in the company, and all persons who are entitled to represent the company, are nationals of other European Union Member States or of States that are part of the European Economic Area or nationals of the Swiss Confederation, those persons have obtained a certificate of registration as a Union citizen and a document demonstrating a knowledge of the official language corresponding to at least level B.2.’

- 10 According to Article 25 of the Ministru kabineta noteikumi Nr. 675 ‘Kārtība, kādā Savienības pilsoņi un viņu ģimenes iecēlo un uzturas Latvijas Republikā’ (Decree No 675 of the Council of Ministers relating to ‘Procedures for the entry and residence in the Republic of Latvia of citizens of the European Union and their family members’) of 30 August 2011 (*Latvijas Vēstnesis*, 2011, No 141), where an EU citizen wishes to reside in Latvia for a period of more than 3 months, he must register with the Office of Citizenship and Migration Affairs (Latvia) and obtain a registration certificate.
- 11 The procedure for verifying knowledge of the official language of the Republic of Latvia is laid down by the Ministru kabineta noteikumi Nr. 733 ‘Noteikumi par valsts valodas zināšanu apjomu un valsts valodas prasmes pārbaudes kārtību profesionālo un amata pienākumu veikšanai, pastāvīgās uzturēšanās atļaujas saņemšanai un Eiropas Savienības pastāvīgā iedzīvotāja statusa iegūšanai un valsts nodevu par valsts valodas prasmes pārbaudi’ (Decree No 733 of the Council of Ministers on ‘Regulations regarding the level of knowledge of the official language and the procedures for examination of that level of knowledge for the performance of professional duties and official duties, the receipt of a permanent residence permit and obtaining the status of a long-term resident of the European Union as well as relating to the State fee for examination of the level of fluency in the official language’) of 7 July 2009 (*Latvijas Vēstnesis*, 2009, No 110). According to that decree, a knowledge of the official language corresponding to level B.2 means that the person is able to discuss everyday subjects and professional matters.

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

- 12 KOB is a company established in Latvia which is engaged in the commercial activity of agriculture. The sole member of its Board of Directors is VP, a German national, who is authorised to represent the company by himself. Three other companies registered in Latvia and owned by German nationals hold shares in KOB. The beneficial owners of KOB are VP and ZT. ZT is also a German national.
- 13 On 10 January 2018, KOB concluded a contract for the purchase of 8.10 hectares of agricultural land and applied to the competent national authorities to approve that acquisition. By decision of 6 April 2018, the Commission for the resolution of administrative disputes of the municipality of Madona refused to approve the acquisition.
- 14 In support of its appeal against that decision before the referring court, the administratīvā rajona tiesa, Rīgas tiesu nams (District Administrative Court, Riga Section, Latvia), KOB submits that the Latvian legislation governing the conditions for approval of the acquisition of agricultural land is contrary to the prohibition of discrimination on grounds of nationality and to the fundamental freedoms enshrined in Articles 18, 49 and 63 TFEU and Article 45 of the Charter of Fundamental Rights of the European Union.
- 15 The referring court notes in that regard that under Latvian law a legal person may acquire agricultural land located in Latvia. However, where a legal person is represented or controlled by a national of another Member State, two conditions must be satisfied. First, the foreign national must register as an EU citizen in Latvia, which implies that he wishes to stay there for more than three months, and second, he is required to prove that he has a knowledge of Latvian corresponding to a level known as ‘B.2’, which corresponds to a sufficient command of Latvian to converse in a professional context. The same conditions apply to nationals of States of the European Economic Area (EEA) and to Swiss nationals.
- 16 The referring court considers that that legislation raises questions as to its compatibility with EU law. In particular, by referring to paragraph 80 of the judgment of 24 May 2011, *Commission v Belgium* (C-47/08, EU:C:2011:334), the referring court recalls that Article 49 TFEU guarantees that all nationals of a Member State who establish themselves in another Member State for the purpose of pursuing activities there as self-employed persons receive the same treatment as nationals of that

State and prohibits any discrimination on grounds of nationality. The referring court also refers to the judgment of 23 September 2003, *Ospelt and Schlössle Weissenberg* (C-452/01, EU:C:2003:493, paragraph 24), wherein the Court held that, although Article 345 TFEU does not call into question the Member States' right to lay down specific measures applying to the acquisition agricultural land, such measures remain subject to the rules of EU law relating to, inter alia, non-discrimination, freedom of establishment and free movement of capital.

- 17 Furthermore, according to the referring court, it follows from the Commission's interpretative communication on the acquisition of farmland (OJ 2017 C 350, p. 5) that the right to acquire, use or dispose of agricultural land falls under Article 63 TFEU, relating to the movement of capital. According to the referring court, in view of the specific nature of agricultural land, the European Commission has nevertheless recognised that the national authorities may justify certain restrictions in the interest of objectives such as the preservation of traditional farming, maintaining a rural population, combating pressure on land or the preservation of the land and the countryside.
- 18 Accordingly, the administratīvā rajona tiesa, Rīgas tiesu nams (District Administrative Court, Riga Section) decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Does European Union law, in particular Articles 18, 49 and 63 TFEU, preclude national legislation which requires legal persons -- in cases where the member or members who together represent more than half of the voting rights in the company, and all persons who are entitled to represent that company, are nationals of other Member States of the European Union -- to submit certificates of registration of those members or representatives as Union citizens and a document demonstrating that they have a knowledge of the official language corresponding to at least level B.2, in order to acquire ownership of agricultural land?'

### Consideration of the question referred

- 19 By its question, the referring court seeks to ascertain, in essence, whether Articles 18, 49 and 63 TFEU must be interpreted as precluding legislation of a Member State which makes the right for a legal person to acquire agricultural land located in the territory of that Member State -- in cases where the member or members who together represent more than half of the voting rights in the company, and all persons who are entitled to represent that company, are nationals of other Member States -- conditional upon, first, submitting a certificate of registration of those members or representatives as residents of that Member State and, second, a document demonstrating that they have a knowledge of the official language of that Member State corresponding to a level which enables them to at least converse on everyday subjects and on professional matters.
- 20 As a preliminary point, it should be recalled that, although Article 345 TFEU, relied on by the referring court, lays down the principle of the neutrality of the Treaties with regard to the system of property ownership in the Member States, it does not, however, have the effect of exempting the systems of property ownership existing in the Member States from the fundamental rules of the FEU Treaty. Thus, although that provision does not call into question the Member States' right to establish a system for the acquisition of immovable property which lays down specific measures applying to transactions concerning agricultural and forestry land, such a system remains subject inter alia to the principle of non-discrimination, and to the rules relating to freedom of establishment and free movement of capital (see, to that effect, judgment of 6 March 2018, *SEGRO and Horváth*, C-52/16 and C-113/16, EU:C:2018:157, paragraph 51 and the case-law cited).
- 21 Furthermore, the question referred for a preliminary ruling refers to the provisions of the FEU Treaty on freedom of establishment and the free movement of capital.

- 22 With regard to the freedoms of movement, the Court has held that where a national measure relates to several fundamental freedoms at the same time, the Court will in principle examine the measure in relation to only one of those freedoms if it appears, in the circumstances of the case, that the other freedoms are entirely secondary in relation to the first and may be considered together with it (judgment of 8 June 2017, *Van der Weegen and Others*, C-580/15, EU:C:2017:429, paragraph 25).
- 23 It is clear from settled case-law that, in that context, the purpose of the legislation concerned must be taken into consideration (see, to that effect, judgments of 13 March 2014, *Bouanich*, C-375/12, EU:C:2014:138, paragraph 27, and of 3 March 2020, *Tesco-Global Áruházak*, C-323/18, EU:C:2020:140, paragraphs 50 and 51).
- 24 In the present case, it is apparent from the order for reference that KOB is seeking to acquire agricultural land in Latvia in order to farm it. It is also evident that the national legislation at issue in the main proceedings not only governs the acquisition of agricultural land located in Latvia, but also seeks to ensure the continued use of that land for agricultural purposes.
- 25 Thus, it is not clear from the subject matter of that legislation whether it falls predominantly under Article 49 TFEU or Article 63 TFEU. In such circumstances, the Court takes account of the facts of the case in point in order to determine whether the situation to which the dispute in the main proceedings relates falls within the scope of one or other of those provisions (see, by analogy, judgment of 13 March 2014, *Bouanich*, C-375/12, EU:C:2014:138, paragraph 30).
- 26 In the present case, it is apparent from the order for reference and from the file submitted to the Court that the factual situation giving rise to the main proceedings is characterised by the fact that a commercial company is not authorised to acquire agricultural land in Latvia for the purpose of carrying on its agricultural activity until its representative and its members prove their residence in that Member State and the required knowledge of Latvian.
- 27 It must be held that such a situation, unlike others in which the Court may have found that the free movement of capital was mainly affected (see, inter alia, judgment of 6 March 2018, *SEGRO and Horváth*, C-52/16 and C-113/16, EU:C:2018:157, paragraphs 58 and 59), falls primarily under the freedom of establishment.
- 28 Consequently, and in accordance with the case-law of the Court referred to in paragraph 22 of the present judgment, it must be held that national legislation such as that at issue in the main proceedings must be examined exclusively in the light of the freedom of establishment.
- 29 Moreover, since Article 49 TFEU lays down a specific rule of non-discrimination, Article 18 TFEU, which was also relied on by the referring court, does not apply (see, by analogy, judgment of 29 October 2015, *Nagy*, C-583/14, EU:C:2015:737, paragraph 24).
- 30 Furthermore, it should be borne in mind that a national measure in an area which has been the subject of exhaustive harmonisation at EU level must be assessed in the light of the provisions of that harmonising measure and not those of the Treaty (see, to that effect, judgment of 16 December 2008, *Gysbrechts and Santurel Inter*, C-205/07, EU:C:2008:730, paragraph 33 and the case-law cited).
- 31 In that regard, it should be noted that, pursuant to Article 1(1) of Directive 2006/123, that directive lays down general provisions to facilitate the exercise of freedom of establishment for service providers. Chapter III of that directive, which covers Articles 9 to 15, governs the freedom of establishment of service providers.
- 32 Articles 9 to 13 of Directive 2006/123 impose requirements on Member States which must be met by their respective national laws where the service activity is subject to authorisation. As has already been held with regard to Article 14 of that directive, which establishes a list of requirements that are

‘prohibited’ within the framework of the exercise of freedom of establishment, the Court considers that Articles 9 to 13 of Directive 2006/123 provide for exhaustive harmonisation concerning the services falling within their scope (see, that effect, judgment of 14 July 2016, *Promoimpresa and Others*, C-458/14 and C-67/15, EU:C:2016:558, paragraphs 60 and 61).

- 33 Consequently, in so far as, and as is apparent from paragraph 27 of the present judgment, the national legislation at issue in the main proceedings is liable to affect freedom of establishment, it must be examined in the light of the provisions of Chapter III of Directive 2006/123.
- 34 As is apparent from the order for reference, the national legislation at issue in the main proceedings establishes an authorisation procedure prior to the acquisition, by a legal person, of agricultural land in Latvia and, in that context, makes authorisation subject to certain conditions, including, in particular, the certification, in writing, that the land in question will be used continuously for agricultural purposes.
- 35 Such a procedure is likely to constitute an ‘authorisation scheme’ within the meaning of Article 4(6) of Directive 2006/123, namely a procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof.
- 36 Article 9(1) of Directive 2006/123 makes the possibility for Member States to provide for an authorisation scheme subject to certain conditions. In particular, such a scheme must not discriminate against the provider. Article 10(2)(a) of that directive also requires that the criteria for authorisation be non-discriminatory.
- 37 Furthermore, Article 14 of that directive provides that Member States may not make access to or exercise of a service activity on their territory subject to compliance with the requirements listed in that article. In particular, in accordance with Article 14(1), discriminatory requirements based directly or indirectly on nationality as well as the requirement to be resident in their territory for persons holding the share capital or members of the provider’s management or supervisory bodies are prohibited.
- 38 In that respect, the Court held that it follows both from the wording of Article 14 of Directive 2006/123 and from the general scheme of that directive that no justification can be given for the requirements listed in that article (see, to that effect, judgments of 16 June 2015, *Rina Services and Others*, C-593/13, EU:C:2015:399, paragraphs 28 to 35, and of 23 February 2016, *Commission v Hungary*, C-179/14, EU:C:2016:108, paragraph 45).
- 39 As regards the case in the main proceedings, it should be noted that, where a legal person that wants to acquire agricultural land in Latvia is controlled or represented by nationals of other Member States, the legislation at issue in the main proceedings lays down specific conditions, namely the obligation on those persons to register as residents in Latvia and to demonstrate that their knowledge of the official language of that Member State corresponds to at least level B.2, which requires them to be able to converse on everyday subjects and on professional matters in the official language of that Member State.
- 40 Since those specific conditions do not apply to Latvian nationals, it must be concluded that the legislation at issue in the main proceedings involves direct discrimination on grounds of nationality.
- 41 It follows that such legislation is contrary to Articles 9, 10 and 14 of Directive 2006/123.
- 42 Consequently, there is no longer any need to examine whether Article 63 TFEU also precludes legislation such as that at issue in the main proceedings.

- 43 In the light of all the foregoing considerations, the answer to the question referred for a preliminary ruling is that Articles 9, 10 and 14 of Directive 2006/123 must be interpreted as precluding legislation of a Member State which makes the right for a legal person to acquire agricultural land located in the territory of that Member State — in cases where the member or members who together represent more than half of the voting rights in the company, and all persons who are entitled to represent that company, are nationals of other Member States — conditional upon, first, submitting a certificate of registration of those members or representatives as residents of that Member State and, second, a document demonstrating that they have a knowledge of the official language of that Member State corresponding to a level which enables them to at least converse on everyday subjects and on professional matters.

### Costs

- 44 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Sixth Chamber) hereby rules:

**Articles 9, 10 and 14 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market must be interpreted as precluding legislation of a Member State which makes the right for a legal person to acquire agricultural land located in the territory of that Member State — in cases where the member or members who together represent more than half of the voting rights in the company, and all persons who are entitled to represent that company, are nationals of other Member States — conditional upon, first, submitting a certificate of registration of those members or representatives as residents of that Member State and, second, a document demonstrating that they have a knowledge of the official language of that Member State corresponding to a level which enables them to at least converse on everyday subjects and on professional matters.**

[Signatures]