SUMMARY

ECJ 19 December 2012, case C-577/10 (European Commission – v – Belgium supported by Denmark), Miscellaneous, Freedom of service provision

Facts

This case concerns an aspect of the Belgian "Limosa" legislation that was introduced on 1 April 2007. Article 153 of the relevant Act of Parliament (Programmawet) requires independent service providers coming from abroad to provide services in Belgium, with certain exceptions, to notify the social security authorities before starting their service provision, on pain of a fine of up to € 2,500. The notification must include details about the identity of the service provider, the type of work to be performed in Belgium, the start date, the anticipated duration of the services, the place where those services are to be provided, value added tax details, identification details of the Belgian customer and the weekly hours of work. A notification is valid for a maximum period of 12 months.

In 2009, the European Commission informed the Belgian government that it viewed the "Limosa notification" requirement as being incompatible with the freedom to provide services guaranteed by Article 49 EC. The Belgian government took the opposite view, explaining that the Limosa rules were introduced to combat abuse by "fake self-employed persons" who circumvent the minimum standards regarding the social protection of employees. Following further exchanges of views, the Commission instituted the present infraction proceedings pursuant to Article 238 TFEU. The Danish government was given leave to intervene in support of Belgium.

ECJ's findings

1. It is settled case-law that Article 156 TFEU requires the abolition of discrimination of service providers established in another Member State on the basis of their nationality or place of business, as well as the abolition of every restriction prohibiting, hindering or making less attractive the provision of services by a service provider that is established, and regularly performs similar services, in another Member State, even where the restriction applies equally to domestic service providers (§ 37-38).

2. The formalities that non-Belgian service providers are required to fulfil before being allowed to start providing services in Belgium restrict their freedom to provide services. The issue is, therefore, whether this restriction is justified, taking into account that cross-border service provision is a matter that has yet to be harmonised within the EU (§ 39-43).

3. A provision such as that at issue can be justified if (i) it meets an urgent need in the general interest and that need has not been met by rules applying to the service provider in its country of origin, (ii) it is suitable for that purpose and (iii) it does not go beyond what is necessary to achieve that aim (§ 44).

4. The aim of combatting fraud, in particular fake self-employment and undocumented ("black") work, relates not only to the aim of guaranteeing the financial equilibrium of the social security systems, but also to the aim of preventing unfair competition and social dumping, as well as protecting workers, including self-employed service providers. As the governments of Belgium and Denmark point out, non-Belgian service providers who provide services temporarily in Belgium are in a situation that is not comparable to service provides who are permanently established in Belgium. The discrimination identified by the Commission is therefore attributable to objective differences between both categories of service providers. The issue is therefore whether the provision at issue is suitable for achieving the stated aim and does not go beyond what is necessary for that purpose (§ 45-49).

5. The regulations regarding administrative cooperation between Member States do not provide Belgium with adequate means to combat social fraud (§ 50-52).

6. A general suspicion of fraud is not sufficient to justify a measure that undermines the TFEU's objectives (§ 53).

7. The Limosa notification requirement is not limited to cases where there is reason to investigate compliance with tax or social obligations. Moreover, the Belgian government has failed to explain satisfactorily why it is necessary for the achievement of its general interest

objective for foreign self-employed service providers to provide such detailed information and in what respects that requirement does not go beyond what is necessary to achieve that objective. Thus, the provision at issue is disproportionate (§ 54-56).

Ruling

By imposing a prior declaration requirement on self-employed service providers established in Member States other than Belgium in respect of their activity in Belgium, Belgium has failed to fulfil its obligations under Article 56 TFEU.

Creator: European Court of Justice (ECJ)
Verdict at: 2012-12-19
Case number: C-577/10