



Press and Information

Court of Justice of the European Union

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Judgment in Case C-202/11  
Anton Las v PSA Antwerp NV

## **Decree of the Flemish Community requiring all cross-border employment contracts to be drafted in Dutch infringes freedom of movement for workers**

*In the particular context of a cross-border employment contract, such a linguistic obligation is disproportionate to the objectives invoked by Belgium (protection of a national language, protection of employees and effective supervision by the national authorities)*

In Belgium, a decree of the Flemish Community requires the use of Dutch, inter alia, for the drafting of employment contracts concluded between employees and employers, where the employer's established place of business is in the Dutch-language region. Non-compliance with that linguistic obligation results in the nullity of the employment contract, but without prejudice to the employee or to the rights of third parties.

Mr Anton Las, a Netherlands national resident in the Netherlands, was hired in 2004 as a Chief Financial Officer by PSA Antwerp, a company established in Antwerp (Belgium) but belonging to a multinational group whose registered office is in Singapore. The employment contract, drafted in English, stipulated that Mr Las was to carry out his work in Belgium.

In 2009, by a letter drafted in English, Mr Las was dismissed by PSA Antwerp, who paid him a severance allowance calculated on the basis of his employment contract. Mr Las brought an action before the Arbeidsrechtbank (Labour Court, Belgium) claiming that the provisions of the employment contract were null and void because they infringed the provisions of the Flemish Decree on Use of Languages. He sought, inter alia, a higher severance allowance, in accordance with Belgian employment law.

The Belgian court asks the Court of Justice whether the Flemish Decree on Use of Languages infringes freedom of movement for workers within the EU, in that it imposes an obligation on all undertakings established in the Dutch-language region, when hiring a worker for a cross-border post, to draft all documents relating to the employment relationship in Dutch, failing which the contract is to be declared null and void by the national courts of their own motion.

In its judgment delivered today, the Court points out, first, that the employment contract at issue falls within the scope of freedom of movement for workers, since it was concluded between a Netherlands national, resident in the Netherlands, and a company established in Belgian territory. In addition, the principle of freedom of movement may be relied on not only by workers, but also by employers. The Court points out that the provisions relating to freedom of movement for workers are intended to facilitate the pursuit of occupational activities of all kinds throughout the EU, and preclude measures which might place EU nationals at a disadvantage when they wish to pursue an economic activity in the territory of another Member State.

The Court notes that only the Dutch text is authentic in the drafting of cross-border employment contracts concluded by employers whose established place of business is located in the Dutch-speaking region of Belgium. Consequently, such legislation, which is liable to have a dissuasive effect on non-Dutch-speaking employees and employers from other Member States, constitutes a restriction on freedom of movement for workers.

The Court states that such a restriction is justified only if it pursues an objective in the public interest, is appropriate to ensuring the attainment of that objective, and is strictly proportionate.

In response to the justifications advanced by the Belgian Government, the Court points out that EU law does not preclude the adoption of a policy for the protection and promotion of one or more official languages of a Member State. The EU must respect its rich cultural and linguistic diversity. It must also respect the national identity of its Member States, which includes protection of the official language or languages of those States.

The Court also examines the objectives raised by Belgium concerning the protection of employees, which consists of enabling them to examine employment documents in their own language and to enjoy the effective protection of their representative bodies and national authorities, and the efficacy of the checks and supervision of the Employment Inspectorate. The Court accepts that those objectives are among the overriding reasons in the general interest capable of justifying a restriction on freedom of movement for workers.

However, it is apparent from the contested decree that the penalty for breach of the obligation to draft in Dutch an employment contract concluded between a worker and an employer whose established place of business is located in the Dutch-speaking region of the Kingdom of Belgium is the nullity of that contract, which must be declared by the national courts of their own motion provided that that decision does not adversely affect the worker and is without prejudice to the rights of third parties.

Yet parties to a cross-border employment contract do not necessarily have knowledge of Dutch. In such a situation, the establishment of free and informed consent between the parties requires those parties to be able to draft their contract in a language other than the official language of that Member State. Moreover, the Court continues, legislation which would also permit the drafting of an authentic version in a language known to all the parties concerned would be less prejudicial to freedom of movement for workers while being appropriate for securing the objectives pursued by that legislation. Therefore, according to the Court, the contested decree goes beyond what is strictly necessary to attain the objectives invoked and cannot be regarded as proportionate.

**In those circumstances, the Court holds that the contested decree which requires all employers whose established place of business is located in Flanders to draft all cross-border employment contracts exclusively in Dutch is in breach of EU law.**

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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