

**Case C-502/20****Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

5 October 2020

**Referring court:**

Cour d'appel de Mons (Belgium)

**Date of the decision to refer:**

22 September 2020

**Appellant and defendant at first instance:**

TP

**Respondent and claimant at first instance:**

Institut des experts en automobiles

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**1. Subject matter and circumstances of the dispute:**

- 1 TP pursued the profession of automotive expert in Belgium for many years.
- 2 He has been resident in the Grand Duchy of Luxembourg since 28 January 2014 and states that he has pursued his primary activity there since that date.
- 3 In September 2015, the Institut belge des experts en automobiles (the Belgian Institute of Automotive Experts, 'the IEA') invited TP to put his situation in order by applying for entry to the list of full members of the IEA.
- 4 TP disputes the requirement to enter the list of full members of the IEA. In addition, he states that he also provides some expert opinions outside the Grand Duchy of Luxembourg (in Belgium, France, Germany and Switzerland) and he therefore requests that he be entered in the list of automotive experts who practise on a temporary and occasional basis in Belgium.
- 5 The IEA submits, that since TP has not entered the list of full members, he is pursuing irregular and unfair activity as an automotive expert in Belgium.

- 6 On 28 February 2017, the IEA brought an action against TP before the President of the tribunal de commerce du Hainaut, division Charleroi (Commercial Court, Hainaut, Charleroi Division, Belgium), seeking an injunction ordering TP to cease activity as an automotive expert and use of the title of automotive expert.
- 7 TP filed a counterclaim seeking a finding that he is entered in the list of experts practising on a temporary and occasional basis.
- 8 By judgment of 29 November 2017, the President in essence granted the action for an injunction and dismissed the counterclaim.
- 9 By application lodged on 15 February 2018, TP filed an appeal against the judgment with the Cour d’appel de Mons (Court of Appeal, Mons, Belgium).
- 10 By judgment of 3 December 2019, the Cour d’appel de Mons (Court of Appeal, Mons):
  - held that, on the basis of the documents produced by TP, he had an establishment in the Grand Duchy of Luxembourg within the meaning of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications;
  - found that, since 2016, TP had sought to enter the list of automotive experts practising on a temporary and occasional basis within the meaning of Article 6 of the Law of 15 May 2007 but had been refused on the ground that his services are neither ‘temporary’ nor ‘occasional’.

## 2. Provisions at issue:

### *EU law*

*Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications*

- 11 Recital 5 reads as follows:

‘In view of the different systems established for the cross-border provision of services on a temporary and occasional basis on the one hand, and for establishment on the other, the criteria for distinguishing between these two concepts in the event of the movement of the service provider to the territory of the host Member State should be clarified.’
- 12 Recital 7 states:

‘Host Member States may, where necessary and in accordance with Community law, provide for declaration requirements. These requirements should not lead to a

disproportionate burden on service providers nor hinder or render less attractive the exercise of the freedom to provide services ....’

13 Article 5 provides:

‘Principle of the free provision of services

1. Without prejudice to specific provisions of Community law, as well as to Articles 6 and 7 of this Directive, Member States shall not restrict, for any reason relating to professional qualifications, the free provision of services in another Member State:

(a) if the service provider is legally established in a Member State for the purpose of pursuing the same profession there (hereinafter referred to as the Member State of establishment), and

...

2. The provisions of this title shall only apply where the service provider moves to the territory of the host Member State to pursue, on a temporary and occasional basis, the profession referred to in paragraph 1.

The temporary and occasional nature of the provision of services shall be assessed case by case, in particular in relation to its duration, its frequency, its regularity and its continuity.

3. Where a service provider moves, he shall be subject to professional rules of a professional, statutory or administrative nature which are directly linked to professional qualifications, such as the definition of the profession, the use of titles and serious professional malpractice which is directly and specifically linked to consumer protection and safety, as well as disciplinary provisions which are applicable in the host Member State to professionals who pursue the same profession in that Member State.’

14 Article 6 states:

‘Exemptions

Pursuant to Article 5(1), the host Member State shall exempt service providers established in another Member State from the requirements which it places on professionals established in its territory relating to:

(a) authorisation by, registration with or membership of a professional organisation or body. In order to facilitate the application of disciplinary provisions in force on their territory according to Article 5(3), Member States may provide either for automatic temporary registration with or for pro forma membership of such a professional organisation or body, ...’

15 Article 7 provides:

‘Declaration to be made in advance, if the service provider moves

1. Member States may require that, where the service provider first moves from one Member State to another in order to provide services, he shall inform the competent authority in the host Member State in a written declaration to be made in advance including the details of any insurance cover or other means of personal or collective protection with regard to professional liability. Such declaration shall be renewed once a year if the service provider intends to provide temporary or occasional services in that Member State during that year. The service provider may supply the declaration by any means ....’

*Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market*

16 Recital 31 reads as follows:

‘This Directive is consistent with and does not affect Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications. ... With regard to temporary cross-border service provision, a derogation from the provision on the freedom to provide services in this Directive ensures that Title II on the free provision of services of Directive 2005/36/EC is not affected. Therefore, none of the measures applicable under that Directive in the Member State where the service is provided is affected by the provision on the freedom to provide services.’

17 Article 16 states:

‘Freedom to provide services

1. Member States shall respect the right of providers to provide services in a Member State other than that in which they are established.

The Member State in which the service is provided shall ensure free access to and free exercise of a service activity within its territory.

...

2. Member States may not restrict the freedom to provide services in the case of a provider established in another Member State by imposing any of the following requirements:

- (a) an obligation on the provider to have an establishment in their territory;
- (b) an obligation on the provider to obtain an authorisation from their competent authorities including entry in a register or registration with a professional body or association in their territory, except where provided for in this Directive or other instruments of Community law;...

18 Article 17 provides:

‘Additional derogations from the freedom to provide services

Article 16 shall not apply to:

...

(6) matters covered by Title II of Directive 2005/36/EC, as well as requirements in the Member State where the service is provided which reserve an activity to a particular profession;...’

***National law***

*Loi du 12 février 2008 instaurant un cadre général pour la reconnaissance des qualifications professionnelles UE (Law of 12 February 2008 establishing a general framework for the recognition of EU professional qualifications)*

19 Article 6 transposes Article 5(2) of Directive 2005/36 in identical terms:

‘The provisions of this title shall only apply where the service provider moves to the territory of Belgium to pursue, on a temporary and occasional basis, the profession referred to in Article 7(1).

The temporary and occasional nature of the provision of services shall be assessed case by case, in particular in relation to its duration, its frequency, its regularity and its continuity.’

20 Article 8 (exemptions from authorisation) transposes Article 6 of Directive 2005/36.

21 Article 9 (rules on declaring the first provision of services) transposes Article 7 of Directive 2005/36.

*Loi du 15 mai 2007 relative à la reconnaissance et à la protection de la profession d’expert en automobiles et créant un Institut des experts en automobiles (Law of 15 May 2007 on the recognition and protection of the profession of automotive expert and establishing an Institute of Automotive Experts)*

22 Article 5 provides:

‘1. The status of full or trainee member of the Institute of Automotive Experts shall be granted to any natural person who wishes to become established in Belgium as an automotive expert and so requests, and who satisfies the following conditions:

...

(2) ability to provide one of the following types of evidence of professional qualifications:

...

(b) an attestation of competence or evidence of formal qualifications issued by a Member State of the European Union, ... in the cases and according to the detailed rules set out in Chapter I of Title III of the Law of 12 February 2008 establishing a new general framework for the recognition of EC professional qualifications; ...’

23 Article 6 states:

‘Where, in the context of the freedom to provide services, nationals of Member States of the European Union, ..., first move to the territory of Belgium in order to pursue, on a temporary and occasional basis, the profession of automotive expert, they shall inform the competent chamber of the Council of the Institute in advance by means of a written declaration, made in accordance with Article 9(1) of the Law of 12 February 2008 establishing a new general framework for the recognition of EC professional qualifications. ... They shall be entered in the register for the provision of services in accordance with Article 8(a) of the abovementioned law ...’.

**3. Assessment by the Cour d’appel de Mons (Court of Appeal, Mons):**

- 24 The Cour d’appel de Mons (Court of Appeal, Mons) states, first of all, that Directive 2006/123 on services in the internal market expressly left intact the rules on the provision of services established by Directive 2005/36 on the recognition of professional qualifications. In the words of recital 31 of the Services Directive, none of the measures applicable under Directive 2005/36 in the Member State where the service is provided is affected by the provision on the freedom to provide services.
- 25 Directive 2005/36/EC was partially transposed into Belgian law by the Law of 12 February 2008, which states that the freedom to provide services applies only where the provider moves to the territory of Belgium to pursue [his or her activity] on a temporary and occasional basis.
- 26 The Law of 15 May 2007, which is specific to automotive experts, lays down the same principle of freedom to provide services where activities are carried out on a temporary and occasional basis.
- 27 In the present case, after having been established for many years in Belgium, TP is currently established in the Grand Duchy of Luxembourg and is seeking registration in Belgium as an automotive expert practising on a temporary and occasional basis within the meaning of Article 6 of the Law of 15 May 2007.

- 28 He has submitted a recapitulative statement of intra-Community supplies of services, which shows that he has carried out a few assignments in Belgium but that most of his professional activity now takes place outside Belgian territory. The scale of the activities cannot easily be measured, but could be described as ‘on a secondary basis’; a ratio of 1 to 100 has been referred to.
- 29 The IEA refuses to register TP as an automotive expert working on a temporary and occasional basis on the ground that he is not pursuing a temporary activity but merely continuing previous activity since he had an establishment in Belgium for more than 25 years. The Cour d’appel de Mons (Court of Appeal, Mons) considers that this is tantamount to saying that the existence of previous continuous and regular activity in one Member State precludes the same activity from being regarded as being temporary after the establishment has been transferred to another Member State.
- 30 The Cour d’appel de Mons (Court of Appeal, Mons) is unsure whether that refusal impedes freedom of establishment in the Grand Duchy of Luxembourg. It therefore puts to the Court of Justice the first question, set out below under (a).
- 31 Next, the IEA refuses to register TP as an automotive expert working on a temporary and occasional basis on the ground that he provided services in Belgium in 2016 and 2017 (at least one service per quarter and, in the third and fourth quarters of 2016, three to five services), making the activity regular, and no longer occasional.
- 32 The Cour d’appel de Mons (Court of Appeal, Mons) invited the IEA to specify the point at which an activity ceases to be occasional since the reference solely to the concepts of duration, frequency, regularity and continuity remains vague.
- 33 The range of meaning from ‘sporadic’ or ‘one-off’ to ‘services representing only a small proportion of full-time activity’ (for example, a ratio of 1 to 100) makes Article 6 of the Law of 12 February 2008 sufficiently vague to allow any interpretation and therefore allows a degree of arbitrariness on the part of the authority deciding whether to allow entry in the list.
- 34 In so far as the temporary and occasional nature of the activities in question must be assessed not only in terms of the duration of the provision of the service, but also in terms of its frequency, regularity and continuity, the Cour d’Appel de Mons (Court of Appeal, Mons) concludes that a certain degree of recurrence does not appear to be ruled out *a priori*.
- 35 Similarly, contrary to what the IEA maintains, the fact that the activity is temporary should not mean that the provider may not equip himself or herself with some forms of infrastructure, such as an office, in the Member State where the service is provided.
- 36 Consequently, the Cour d’Appel de Mons (Court of Appeal, Mons) asks the Court of Justice, in the second question, set out under (b), whether the interpretation

offered by the IEA is consistent with the abovementioned provisions of the directive, namely, in essence, Articles 5, 6 and 7 of Directive 2005/36/EC on the recognition of professional qualifications.

4. **Questions referred for a preliminary ruling:**

37 The Cour d'appel de Mons (Court of Appeal, Mons) has referred the following questions to the Court of Justice for a preliminary ruling:

(a) Can the provisions of Article 5[(1)(2)](b) and Article 6 of the Belgian Law of 15 May 2007 on the recognition and protection of the profession of automotive expert, read in conjunction with the provisions of the Law of 12 February 2008 establishing a general framework for the recognition of EU professional qualifications, in particular Articles 6, 8 and 9 thereof, be interpreted as meaning that a service provider who changes his or her place of establishment to another Member State cannot, after that change, be entered, in his or her country of origin (in this instance, Belgium), in the IEA's register of temporary and occasional service providers with a view to pursuing temporary and occasional activity in that country? Is such an interpretation compatible with the freedom of establishment granted under EU law?

(b) Are the provisions of Article 5[(1)(2)](b) and Article 6 of the Belgian Law of 15 May 2007 on the recognition and protection of the profession of automotive expert, read in conjunction with the provisions of the Law of 12 February 2008 establishing a general framework for the recognition of EU professional qualifications, in particular Articles 6, 8 and 9 thereof, interpreted as meaning that the concept of temporary and occasional activity precludes the possibility for a service provider established in one Member State to provide services in another Member State if those services are to a degree recurrent, without being regular, or to possess some forms of infrastructure in that other Member State, compatible with the abovementioned provisions of the directive?