BRIEFING

Requested by the PETI committee

European Parliament

Language requirements and the internal market in goods and services

KEY FINDINGS

This analysis looks at the compatibility with the EU Treaties of rules requiring signs, information and customer service to be in a regional language which is an official language of a Member States but not an official language of the EU. In order for rules to fall within the scope of the Treaty free movement of goods and services provision, some conditions need to be satisfied: first of all, there must be a **cross-border element**, so that the rule must affect imports or cross-border services. Secondly, the rules must constitute a **barrier** to movement, which also includes a barrier to market access. If the rules fall within the scope of the Treaties, they might still be **justified**, for instance by the need to promote and protect the use of a given **language**; or by the need to protect consumers by providing information that the consumer can understand. Furthermore, in order to be justified the rule needs to be **necessary** to achieve the purported aim, and **proportionate**. It also must be compatible with **fundamental rights** as provided in the Charter of Fundamental Rights.

Rules imposing that the **signage** be in a given language are less likely to fall within the scope of the free movement of goods, in that they would not affect access to the market of imported goods. A link might however be established if the characteristic of the goods sold were better communicated in a different language. If such rules were to be found to fall within the scope of the free movement of goods, it would be justified only to the extent to which the use of a language easily understood by the consumer was also allowed. And, or, dual signage (in the given language and another language) was allowed. In relation to services, the cross-border dimension is easier to establish insofar as the service might be directed to customers established in other Member States (for instance tourists). In that instance, the rule would have to be justified and would have to be necessary to either protect the language or the consumer and be **proportionate**.

Rules relating to documentation having to be provided in a regional language would more easily fall within the scope of the Treaty to the extent to which they **applied to imported goods, or cross-border services**. Whereas the public interest of consumer protection or language protection are compatible with the Treaties, the rules would also need to be necessary to achieve that aim and proportionate. In this respect, for consumer protection it would be sufficient for the

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operator to provide information in a language easily **understood** by the consumer. As far as language protection is concerned, the Court has adopted a **strict proportionality** test in relation to the imposition of language rules in case of cross-border situations, which would render these rule not compatible with EU law.

The legal framework[1]

The protection of linguistic diversity is a constitutional value of the EU: thus, Article 3(3) of the TEU provides that the European Union "shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced"; Article 4(2) TEU provides that the Union must respect the constitutional identity of the Member States, and linguistic diversity is considered to be part of that constitutional identity; Article 21 of the Charter of Fundamental Rights provides for the right not to be discriminated on grounds of language, and Article 22 of the same instrument provides that "The Union shall respect cultural, religious and linguistic diversity". Furthermore, Article 165 TFEU refers to linguistic diversity in relation to the EU's supporting competence in the field of education, and Article 207 TFEU provides for the need for unanimity in case of international agreements in the field of audio-visual services if there is a risk of prejudice to linguistic diversity. It should be stressed, that the protection of linguistic diversity encompasses not only the official languages of the EU,[2] but all languages spoken across the territory of the Member States, arguably even when those are not protected at national level. However, as it is the case with most constitutional values, **linguistic diversity must also be balanced against other rights and values expressed in the Treaties**; in particular, for our purposes, the protection of linguistic diversity must be balanced with the **Treaty free movement rights** as well as, when applicable, with the other rights provided for in the Charter and especially language discrimination, freedom of expression and freedom to conduct a business.

The Treaty free movement provisions provide for broad rights to import and export goods across the Member States, as well as the right to provide and receive cross-border services. In this respect, the Treaty as interpreted by the Court, precludes Member States from erecting barriers to movement: those barriers might arise because of direct discrimination on grounds of nationality (which can be very seldom justified), or because of indirect discrimination on grounds of nationality, i.e. when a rule is neutral in its formulation but it affects imported goods, services, or out of State

[1] Eleanor Spaventa, Professor of European Law, Bocconi University, Director Bocconi Lab in European Studies. This analysis assesses the compatibility of language rules with EU law; it does not provide any interpretation of the Catalan legislation, or provide any view on the details of that legislation as that goes beyond the expertise of the author.

[2] See Article 55 TEU and Regulation No 1 determining the languages to be used by the European Economic Community (OJ P 017 6.10.1958, p. 385), as amended, consolidated version https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01958R0001-20130701&qid=1752152006692. There are also rules at Union level regulating language requirements, see e.g. Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304 22.11.2011, p. 18), as amended, consolidated version https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011R1169-20250401.

providers, more than domestic goods/ providers. Finally, also barriers to market access might fall within the scope of the Treaty free movement provisions. If a barrier to movement (which is not directly discriminatory) is found to exist, then it has to be justified. In order to be justified, a barrier to movement must pursue a public interest, be necessary and be proportionate. **Language requirements are usually considered a barrier to movement, and need to be justified**: whereas the public interest in imposing such requirements is usually not contested, not least on the grounds of protecting linguistic diversity and for the purposes of consumer protection, rules must also be necessary to achieve the purported aim, and proportionate (i.e. the least restrictive means to achieve that aim). Furthermore, in order to be justified, a barrier to movement must also comply with fundamental rights as recognised in the Charter.

This said, it is important to stress that unlike much of secondary legislation (Directives and Regulations),[3] for the Treaty free *movement* provisions to apply there must be a **cross-border element**,[4] although at times a purely potential cross-border link has been held sufficient to trigger the Treaties.[5] However, national (constitutional) law might extend rights conferred by the Treaty (as interpreted by the Court) also to domestic situations in order to avoid so-called reverse discrimination, i.e. situations in which purely domestic situations are treated less favourably than situations benefiting from protection under the Treaties. The Treaties (and EU law more generally) apply to all levels of government: central, regional and local.[6]

The Catalan rules on signage and the free movement of goods and services

Article 34 TFEU provides for the elimination of quantitative restrictions on imports and for all measures having equivalent effect to quantitative restrictions. Whereas the concept of quantitative restrictions prohibits quotas and import bans,[7] the concept of a measure having equivalent effect to a quantitative restriction on imports encompasses all rules that directly or indirectly, actually or potentially hinder intra-Community trade.[8] This broad definition has been somehow "adjusted" in the years so as to strike an equilibrium between national regulatory autonomy of the Member States and the right to free movement. For our purposes, it is important to recall that in the *Keck* ruling the Court has clarified that "certain selling arrangements" fall outside the scope of the Treaties unless they are directly or indirectly discriminatory and/or they affect market access of imported goods.[9]

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[3] The services Directive applies regardless of a cross-border link; however, it being a Directive it applies only to vertical situations; see C-261/20 *Thelen Technopark Berlin GmbH v MN* EU:C:2022:33, noted Bert Keirsbilck and Lennard Michaux "Primacy, direct effect and the effectiveness of the Services Directive: Thelen Technopark Berlin GmbH v MN" (2024) 49 ELRev 276.

[4] See generally Case C-268/15 *Fernand Ullens de Schooten v État belge* EU:C:2016:874, noted Sara Iglesias Sanchez "Purely internal situations and the limits of EU law: a consolidated case law or a notion to be abandoned?" (2018) 14 ECR 7. See also C-261/20 *Thelen Technopark Berlin GmbH v MN* EU:C:2022:33, paras 50 and ff.

[5] See e.g. Case C-405/98 *Gourmet International Products AB (GIP)*[2001] ECR I-1795; Case C-355/00 *Freskot* [2003] ECR I-5263.

[6] E.g. Case C-21/88 *Du Pont De Nemours Italiana* [1990] ECR I-889.

[7] E.g. Case 2/73 *Geddo* [1973] ECR 865; Case 34/79 *Henn and Darby* [1979] ECR 3795; Case C-170/04 *Rosengren* [2007] ECR I-4071.

[8] Case 8/74 Procureur du Roi v Benoit and Dassonville [1974] ECR 837.

[9] C-267&268/91 *Keck and Mithouard* [1993] ECR I-6079; further nuanced in subsequent case law; see Case C-405/98 *Konsumentombudsmannen (KO) v Gourmet International Products AB (GIP)*[2001] ECR I-1795; Case 322/01

It is in this light then that the rules requiring the use of Catalan in relation to signs must be assessed. In this respect, rules concerning the signs of shops fall within the free movement of goods only to the extent to which they would have an effect on imported goods. This would not be the case unless such rules were to either discriminate, directly or indirectly, or affect access of, imported goods to the Catalan market: for instance, that might be the case if a shop were prevented to use, in its signage, a certain foreign word designating a certain imported good. Furthermore, the Catalan rules do not appear to prevent shops from also having signage in another language (for instance in English for goods, like souvenirs, particularly directed at non-Catalan speaking customers) so that it is very difficult to maintain that they would have an effect on market access of imported goods. If such an effect were to be proven, then the rule would have to be justified. In this respect, the protection of consumers is a legitimate ground to justify a restriction on free movement, provided that the rule is also necessary and proportionate to achieve the aim intended. Yet, the Court has clarified that it is sufficient that information to consumers is provided in a language that can be easily understood by consumers so that, for instance, in a bilingual region a shop displaying signage in the State's official language rather than in the regional language would fulfil that requirement of effective communication.[10] On the other hand, signage in a language not spoken and/or understood in that country might be prevented on the grounds of consumer protection. A language requirement might also be justified for the purposes of protecting and promoting the use of a given language. Whereas the Court has been receptive to the need to protect languages, it has also demanded that rules fulfil a strict necessity and proportionality test. This means that the restrictive rule must be necessary to protect the given language, and that it must be the least restrictive means to do so.

Whereas it is doubtful whether rules imposing the use of a regional language in signage would fall within the scope of the free movement of goods, the assessment is different in relation to the free movement of services. Here, it should be remembered that Article 49 TFEU also applies to service providers who provide their services to customers established in another Member State, even if the service recipient and the service provider are in the same location at the time when the service is provided.[11] In this respect, a rule which prohibits signage in another language which might more easily understood by the intended recipient of the service (e.g. tourists) might well constitute a barrier to service provision. Again, however, if instead the rule is requiring that the signage is *also* in the local language, so that signage in another language might be included, it would most likely be compatible with the Treaty provisions as it would be justified by the need to promote the use of a certain language and/or the need to protect the consumer whilst also be proportionate. This said, the use of a language, different from the local language but easily understood by consumers, such as the State's official language would have to be allowed and the restriction would also have to be

Deutscher Apothekerverband v Doc Morris [2003] ECR I-14887; Case C-110/05 *Commission v Italy* (trailers) EU:C:2009:66; Case C-142/05 *Mickelsson and Roos* [2009] ECR I-4273; Case C-147/21 *Comité interprofessionnel des huiles essentielles françaises (CIHEF)* EU:C:2023:31. See E Spaventa "Leaving *Keck* behind? The free movement of goods after the rulings in *Commission* v *Italy* and *Mickelsson and Roos*" (2009) ELRev 914; J Snell "The Notion of Market Access: a Concept or a Slogan?" (2010) CMLRev 437.

[10] See fn 12 below.

[11] See e.g. Joined Cases 286/82 and 26/83 *Graziana Luisi and Giuseppe Carbone v Ministero del Tesoro* EU:C:1983:325; Case C-388/01 *Commission v Italy* (museum admissions) EU:C:2003:30. This said, also the free movement of services does not apply to purely internal situations see e.g. Case C-591/15 *The Queen, on the application of: The Gibraltar Betting and Gaming Association Limited, v Commissioners for Her Majesty's Revenue and Customs, Her Majesty's Treasury* EU:C:2017:449.

compatible with the Charter of Fundamental rights, and particularly with Article 21 on language discrimination; with Article 11 on freedom of expression, and with Article 16 on freedom to conduct a business.

Rules on documentation and customer service

The rules on signs might be more easily compatible with EU law because of their "static" nature – as long as they do not have a specific effect on out of state providers they would fall altogether outside the scope of the free movement of goods provisions. If they were to fall within the scope of the free movement of goods or services they might be justified especially if the concurrent use of a foreign language is not prohibited. Use of the official language of the Member State would also have to be allowed as it is easily understood by the consumer – however, and as said above, the provisions relating to the free movement of services would apply only if it was established that there is a link to a cross-border situation.

Rules on documentation accompanying the sale of goods or the provision of services are much more likely to fall within the scope of the Treaty free movement provisions if they apply also to imported goods and/or services provided to customers established in another Member States (whether physically present or not within the territory at the moment of the provision of services). If the cross-border requirement is established, then a rule providing the right to receive all information in Catalan would be more difficult to justify having regard to the rules of the Treaties.

On the one hand, it is clear that the consumer has a right to understand all the information pertaining to the purchase of goods and/or services; on the other hand, the Court has clarified that for that purpose it is sufficient that the language used is easily understood by the consumer, [12] which would be the case were the language used be the official language of the Member State. Here, it is important to stress that the requirement of using a regional language would create a barrier to movement since it would make access to part of the national market more difficult. This is the case especially if the producer /service provider would already have to provide all documentation in the EU official language: imposing a regional language would hence entail extra costs and be a barrier to trade in goods and/or services.

In this respect, the case law of the Court is quite revealing: in *Las* the issue related to the compatibility with the free movement of workers of a Belgian rule requiring employers whose place of business was located in a federated entity's territory (in that case the Dutch speaking part of Belgium) to draft cross-border employment contracts exclusively in the official language of that federated entity. The Court stressed how language protection is woven in the constitutional fabric of the EU: in Article 3(3) TEU and Article 22 of the Charter of Fundamental Rights of the European Union, which provide that the EU must respect its rich cultural and linguistic diversity; and in Article

[12] Consistent case law; see Case C-369/89 *Piageme v Peeters* EU:C:1991:256; Case C-85/94 *Piageme* v *Peeters* (use of language most widely spoken plus another language)EU:C:1995:312; in Case C-385/96 *Goerres* EU:C:1998:356 the Court declared that a rule which provided for a specific language requirement whilst also allowing for the use of a language commonly understood by the consumer was compatible with EU law; Case C-33/97 *Colim NV and Bigg's Continent Noord NV* EU:C:1999:274; Case C-366/98 *Yannick Geffroy and Casino France SNC* EU:C:2000:430.

4(2) TEU which provide that the EU must respect the national identity of the Member States.[13] Thus, the aim of protecting and promoting the use of one of the languages of a Member State is a legitimate aim which can justify a barrier to movement; however, the Court found that the requirement was disproportionate since a rule allowing also for the drafting of a cross-border employment contract in a language understood by the parties would be less prejudicial to free movement. Similarly, in the *New Valmar* case,[14] the Court assessed the compatibility with the Treaty of Belgian rules providing that acts and documents required by law be in the language of the region where the company has its establishment, which means that in the Flemish speaking region of Belgium those documents would have to be in Dutch or be considered void. In the case under consideration, the Italian company, in order to avoid payment, sought to rely on this legislation to invoke the nullity of the invoices drafted in Italian pursuant to the contractual arrangement between the parties. The Court found that the Belgian language requirements were a hindrance to the free movement of goods and, in particular, to the freedom of export. Turning to the assessment of whether the rules were justified, the Court accepted 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".[15] However, whilst it found that the legislation was appropriate to pursue such objective (and that of fiscal supervision) it also found that it was disproportionate since the rule could instead provide for invoices relating to cross-border transactions to be drawn up not only in the official language of that Member State but also, in addition, allow "an authentic version of such invoices to be drawn up in a language known to the parties concerned", so as to 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".[16] Finally, and as mentioned above, rules that need justification under the Treaty free movement provisions also need to be compatible with the Charter. The imposition of the Catalan rules might also be incompatible with Directive 2006/123 if they were to be imposed on out of State providers- in this respect the provision on protection on language diversity in that Directive would be immaterial as it would still have to be compatible with other provisions of EU law. [17]

Overall then whilst the imposition of language requirements is recognised to be a legitimate public interest, the compatibility of those requirements with EU law depends on the necessity and proportionality of those rules: here, the Court has been careful in finding a balance between different

[13] Case C-202/11 Anton Las v PSA Antwerp NV, EU:C:2013:239, para 26; See also Joined Cases C-340/14 and C-341/14 R.L. Trijber, trading as Amstelboats v College van burgemeester en wethouders van Amsterdam, and J. Harmsen v Burgemeester van Amsterdam, where the Court distinguished a language requirement limited to the need for the parties to be able to communicate with one another from that at issue in Las. Language requirements are more easily justified in the context of public service provision, including education. See e.g. C-379/89 Anita Groener v Minister for Education and the City of Dublin Vocational Educational Committee EU:C:1989:599; Case C-391/20 Boriss Cilevičs and others EU:C:2022:638;

[14] Case C-15/15 New Valmar BVBA v Global Pharmacies Partner Health Srl, EU:C:2016:464.

[15] Case C-15/15 New Valmar BVBA v Global Pharmacies Partner Health Srl, EU:C:2016:464, para 50.

[16] Case C-15/15 New Valmar BVBA v Global Pharmacies Partner Health Srl, EU:C:2016:464, para 54.

[17] See Article 1(4) Directive 2006/123 on services in the internal market OJ 2006 L 376/36. There are also a number of EU actions and project supporting and promoting linguistic diversity, for examples see e.g. European Commission *Linguistic Diversity in the European Union Examples of Projects supporting Regional and Minority Languages* (2024) https://www.anefore.lu/wp-content/uploads/2024/05/Linguistic-diversity-in-the-European-Union.pdf

interests, demanding that those rules do not necessarily apply in the same way to situations which have a cross border dimension.

Conclusions

In order to be assessed vis-à-vis the Treaty free movement provisions rules must have a cross-border dimension, although in some legal systems the protection conferred by the Treaty to cross-border situations is extended also to purely internal situations.

Language requirements concerning signage might well fall outside the scope of the Treaty if there is no barrier to the free movement of goods and services. If a link to a cross border situation and a barrier could be established, those rules would have to be justified. The public interest invoked (protection of the language and/or consumer protection) would be compatible with EU law, but the rule would have to be necessary to the aim pursued. Thus, dual language signage would have to be allowed.

Rules demanding that documentation is to be provided in a given language are more difficult to be justified in relation to the Treaties if they apply also to situations in which there is a cross-border dimension (imports of goods and/or cross-border services). In this respect, it is sufficient that information be provided in a language easily understood by the consumer, which could also be the EU official language of the Member State.

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