JUDGMENT OF THE COURT (Fifth Chamber)
11 November 1986 *

In Case 313/85

Reference to the Court under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters by the Belgian Court of Cassation for a preliminary ruling in the proceedings pending before that court between

Iveco Fiat SpA, a company incorporated under Italian law, having its registered office in Turin (Italy),

and

Van Hool NV, a company incorporated under Belgian law, having its registered office in Koningshooikt-Lier (Belgium),

on the interpretation of Article 17 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Official Journal 1978, L 304, p. 36),

THE COURT (Fifth Chamber)

composed of: Y. Galmot, President of the Chamber, F. Schockweiler, U. Everling, R. Joliet and J. C. Moitinho de Almeida, Judges,

Advocate General: J. L. da Cruz Vilaça
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of

Iveco Fiat SpA, the appellant in cassation, in the written procedure by M. Willemart and F.-X. Dorlodot, and in the oral procedure by J. Lambers, of the Brussels Bar,

* Language of the Case: Dutch.

Van Hool NV, the respondent in cassation, by A. de Caluwé, of the Brussels Bar,

the United Kingdom, in the written procedure by B. McHenry of the Treasury Solicitor's Department,

the Commission of the European Communities, by H. Van Lier, a member of its Legal Department,

having regard to the Report for the Hearing and further to the hearing on 10 June 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 7 October 1986,

gives the following

JUDGMENT

1 By order of 4 October 1985 which was received at the Court on 18 October 1985, the Belgian Court of Cassation referred to the Court of Justice for a preliminary ruling under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (hereinafter referred to as 'the Convention') a question concerning the interpretation of Article 17 of the Convention.

2 The question arose in a dispute between Iveco Fiat SpA ('Fiat'), a company incorporated under Italian law, and Van Hool NV ('Van Hool'), a company incorporated under Belgian law, concerning the validity of a jurisdiction clause inserted in a written agreement granting an exclusive sales concession which stipulated that the agreement could be renewed only in writing but which continued, after its expiry, to serve as the legal basis for the contractual relations between the parties notwithstanding the fact that it was not renewed in writing.

3 The Belgian Court of Cassation, hearing the case, decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Are the requirements of Article 17 of the Convention of 27 September 1968 satisfied by a written agreement which contains a jurisdiction clause but whose expiry date has passed where that agreement has continued to serve as the legal basis for the contractual relations between the parties although the condition stipulating that the agreement could be renewed only in writing was not fulfilled?'

4 For a more detailed exposition of the facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice, reference is made to the Report for the Hearing. Those details are referred to hereinafter only in so far as is necessary for the reasoning of the Court.

5 In order to place the question in its proper context, it should be noted in the first place that the sole purpose of the formal requirement laid down by Article 17 of the Convention to the effect that a jurisdiction clause must be in writing if it is to be valid is to ensure that the consensus between the parties is in fact established and it imposes upon the national court the duty of examining whether the clause conferring jurisdiction upon it was in fact the subject of such a consensus, which must be clearly and precisely demonstrated (judgments of 14 December 1976 in Case 24/76 *Estasis Salotti* v *RÜWA* [1976] ECR 1831, and in Case 25/76 *Segoura* v *Bonakdarian* [1976] ECR 1851).

6 In order to answer the question raised by the national court, it is necessary to distinguish between two situations.

7 If the applicable law allows the original agreement to be renewed without complying with the clause expressly stipulated therein to the effect that renewal must be in writing, all the terms of the agreement continue to be binding on the parties, including the jurisdiction clause, in relation to which their consent must be established beyond doubt in the manner provided for by Article 17.

8 If, however, according to the applicable law, the original agreement could not be renewed otherwise than in writing, it is necessary to consider whether the jurisdiction clause, in so far as it forms part of a set of terms which were tacitly taken over from a previous written agreement that has expired and which continued to serve as the legal basis for the contractual relations between the parties, satisfies the conditions laid down by Article 17.

9 It is clear from the case-law of the Court that in the case of an unwritten agreement conferring jurisdiction, the conditions of Article 17 are satisfied if written confirmation of that agreement by one of the parties has been received by the other and the latter has raised no objection to it within a reasonable time thereafter (judgment of 11 July 1985 in Case 221/84 *Berghöfer* v *ASA* [1985] ECR 2699). Accordingly, on the assumption that the jurisdiction clause forms part of a set of terms which were tacitly taken over from a previous written agreement that expired and which continued to serve as the legal basis for the contractual relations between the parties, the formal requirements of Article 17 are satisfied only if one of the parties has confirmed in writing either the jurisdiction clause or the set of terms of which that clause forms part, without any objection from the other party to whom such confirmation has been notified.

10 The answer to the question submitted by the Belgian Court of Cassation must therefore be that Article 17 of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as meaning that where a written agreement containing a jurisdiction clause and stipulating that the agreement can be renewed only in writing has expired but has continued to serve as the legal basis for the contractual relations between the parties, the jurisdiction clause satisfies the formal requirements in Article 17 if, under the law applicable, the parties could validly renew the original agreement otherwise than in writing, or if, conversely, one of the parties has confirmed in writing either the jurisdiction clause or the set of terms which has been tacitly renewed and of which the jurisdiction clause forms part, without any objection from the other party to whom such confirmation has been notified.

Costs

11 The costs incurred by the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Belgian Court of Cassation, by order of 4 October 1985, hereby rules:

Article 17 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as meaning that where a written agreement containing a jurisdiction clause and stipulating that an agreement can be renewed only in writing has expired but has continued to serve as the legal basis for the contractual relations between the parties, the jurisdiction clause satisfies the formal requirements in Article 17 if, under the law applicable, the parties could validly renew the original agreement otherwise than in writing, or if, conversely, one of the parties has confirmed in writing either the jurisdiction clause or the set of terms which has been tacitly renewed and of which the jurisdiction clause forms part, without any objection from the other party to whom such confirmation has been notified.

Galmot Schockweiler

Everling Joliet Moitinho de Almeida

Delivered in open court in Luxembourg on 11 November 1986.

P. Heim
Registrar

Y. Galmot
President of the Fifth Chamber