Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

12 October 2016*

(Reference for a preliminary ruling — Directive 96/75/EC — Systems of chartering and pricing in inland waterway transport — Scope — Article 1(b) — 'Carrier' — Article 2 — Freedom to conclude contracts and negotiate prices))

In Case C-92/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the hof van beroep te Antwerpen (Court of Appeal, Antwerp, Belgium), made by decision of 15 December 2014, received at the Court on 25 February 2015, in the proceedings

Sven Mathys

v

De Grave Antverpia NV,

THE COURT (Eighth Chamber),

composed of M. Vilaras, President of the Chamber, J. Malenovský and D. Šváby (Rapporteur), Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— De Grave Antverpia NV, by T. Kegels, advocaat,

— the European Commission, by L. Nicolae and F. Wilman, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Dutch.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1(b) and Article 2 of Council Directive 96/75/EC of 19 November 1996 on the systems of chartering and pricing in national and international inland waterway transport in the Community (OJ 1996 L 304, p. 12).

2 The request has been made in proceedings between Mr Sven Mathys and De Grave Antverpia NV ('DGA') concerning the validity and performance of a contract by which DGA entrusted Mr Mathys with the inland waterway transport of sand between two fixed points in Belgian territory between 1 March 2005 and 31 December 2006.

Legal context

EU law

3 The first, third and fifth recitals of Directive 96/75 are worded as follows:

'Whereas the growing problems of road and rail saturation, transport safety, environment, energy saving and quality of life of the citizen call, in the public interest, for greater development and better use of the transport potential offered by inland waterway, in particular by improving its competitiveness;

...

Whereas the smooth functioning of the internal market calls for an adjustment in inland waterways transport to the organisation of chartering by rotation, so as to move towards greater commercial flexibility and a system of freedom of chartering and pricing;

...

Whereas, in accordance with the principle of subsidiarity, it is both necessary and adequate to set a uniform timetable at Community level for the gradual liberalisation of the market, while leaving with the Member States the responsibility for putting such liberalisation into effect.'

4 According to the definition provided in Article 1(a) of Directive 96/75, a 'system of chartering by rotation' essentially consists in allocating requests for transport operations among boatmasters according to a rota and at previously fixed prices, in the context of an exchange.

5 Under Article 1(b) of that directive, 'carrier' is to mean an owner or an operator of one or more inland waterway vessels.

6 Article 2 of that directive provides:

'In the field of national and international inland waterway transport in the Community, contracts shall be freely concluded between the parties concerned and prices freely negotiated.'

7 Articles 3 to 6 of Directive 96/75 provide for a transitional system, which came to an end on 1 January 2000. Apart from in the definition of 'system of chartering by rotation' set out in Article 1(a) of that directive, it is only in the provisions relating to that transitional system that the word 'carrier' is used, specifically in the second indent of Article 3 and the first and second indents of Article 6 of that directive.

8 In addition, Articles 7 and 8 of that directive envisage and provide for a mechanism whereby, in the event of a serious disturbance in the inland waterway transport market, the European Commission may take suitable measures, and in particular measures designed to prevent any new increase in the transport capacity on offer on that market, independently of Council Regulation (EEC) No 1101/89 of 27 April 1989 on structural improvements in inland waterway transport (OJ 1989 L 116, p. 25), which was then in force and was intended to combat, through the destruction of vessels, the structural overcapacity found in certain parts of that market.

9 Lastly, Articles 9 to 11 of Directive 96/75 explain the procedure for its transposition into national law, the date of its entry into force and the fact that it is addressed to the Member States, respectively.

Belgian law

10 The national legislation governing the dispute in the main proceedings essentially consists of, on the one hand, the wet op de binnenbevrachting (Law on inland waterway chartering) of 5 May 1936 (*Belgisch Staatsblad* of 10 June 1936, p. 4190), and, on the other hand, the wet betreffende het statuut van de tussenpersonen op het gebied van het goederenvervoer (Law concerning the status of intermediaries in the field of transport of goods) of 26 June 1967 (*Belgisch Staatsblad* of 27 September 1967, p. 10121).

11 It can be seen from the order for reference that the Law of 5 May 1936 on inland waterway chartering provides, in Article 1 thereof, that any agreement having as its object the use of an inland waterway vessel for the carriage or storage of goods is, unless otherwise stipulated, to be governed by that law.

12 Under Article 3 of that law, for the application thereof, 'charterer' is to mean the party acting as an agent for the conclusion of a chartering contract ('the chartering broker'), 'consignor' is to mean the party loading the vessel in the port of departure, and 'boatmaster' is to mean the boatmaster-owner or the wage-earning bargeman.

13 It follows from the Law of 5 May 1936 on inland waterway chartering that the chartering broker's commission is payable by the boatmaster when, after loading has finished, the bill of lading is presented to him for his signature, regardless of the carriage charge that will actually be paid to him at the end of the journey. Pursuant to the same law, that commission may not exceed 10% of the carriage charge, otherwise the chartering broker forfeits his right to commission.

14 It can also be seen from the order for reference that the Law of 26 June 1967 concerning the status of intermediaries in the field of transport of goods has been invoked in the main proceedings. According to Article 1(1) and (2) of that law, a 'forwarding agent' is deemed to be any person who, for remuneration, undertakes to transport goods and has such transport carried out in his own name by third parties, and a 'transport broker' is deemed to be any person who, for remuneration, liaises with two or more persons with a view to the conclusion between those persons of a contract for the carriage of goods, and who does not intervene in the conclusion of that contract except as the representative of his clients.

The dispute in the main proceedings and the question referred for a preliminary ruling

15 On 1 December 2004, DGA, described as 'the carrier', concluded a contract of carriage with SCR Sibelco NV ('Sibelco'), the customer, by which DGA undertook to transport sand by inland waterway between two fixed points in Belgian territory for the period running from 1 December 2004 to 31 December 2006. The carriage charge — the price of carriage — agreed upon has not been revealed to the referring court.

16 It can be seen from the order for reference that DGA did not own any inland waterway vessels.

17 At the beginning of 2005, DGA negotiated with Mr Mathys, the owner of an inland waterway vessel, the carriage charge to be paid to him for providing the carriage necessary for the purpose of performing that contract, which would vary depending on whether or not Mr Mathys would agree to be bound to DGA by a framework agreement.

18 On 1 March 2005, following a trial period, DGA concluded, in the capacity of customer, that framework agreement with Mr Mathys, in the capacity of carrier, with a view to having the latter provide carriage which, in concrete terms, corresponded to the commitments made by DGA towards Sibelco.

19 In that agreement, the carriage charge was fixed at EUR 3.37 per tonne of sand transported, all expenses included, subject to an adjustment clause depending on changes in the price of fuel oil, while a 4% commission charge was payable to DGA. It was also explained in the framework agreement that that agreement was drawn up on the basis of the quantities of goods declared by the consignor, namely: Sibelco, and that Mr Mathys undertook to use his vessel exclusively for the performance of that framework agreement.

20 Having unilaterally put an end to the performance of the framework agreement mentioned above, Mr Mathys issued a writ against DGA for the payment of various sums, including a sum, not calculated owing to his not knowing all the necessary information, namely, the amount of the carriage charge agreed between DGA and Sibelco, corresponding to the difference between the carriage charge paid by Sibelco to DGA and the carriage charge paid by DGA to Mr Mathys concerning the quantities of sand transported by Mr Mathys, as well as any commission unduly paid by him to DGA ('damages relating to the difference in carriage charge'). For its part, DGA counter-claimed that Mr Mathys should be ordered to pay damages for unlawful termination of that framework agreement.

21 The judgment delivered at first instance partially upheld Mr Mathys' claim, but did not award him any damages relating to the difference in carriage charge, and declared that DGA's counterclaim was well founded in principle, ordering that an expert report be drawn up in order to assess the damage suffered by DGA as a result of the termination of that framework agreement by Mr Mathys.

22 In the appeal brought by him against that judgment, Mr Mathys repeated his claim for damages relating to the difference in carriage charge.

23 In that regard, he maintained, in particular, that Article 1(b) of Directive 96/75 means that only the owner or operator of an inland waterway vessel may conclude a contract of carriage as a carrier. Therefore, any person other than such an owner or operator may not conclude such a contract in that capacity and a national law, in the present case the Law of 26 June 1967 concerning the status of intermediaries in the field of transport of goods, could not enable a person other than such an owner or operator to conclude a contract of carriage as a carrier.

24 He also maintained that the practice, for a person other than the owner or operator of an inland waterway vessel, of concluding a contract of carriage with a consignor in order subsequently to have the services necessary for the performance of that contract provided by the owner or operator of an inland waterway vessel under different conditions and for a lower carriage charge than that stipulated in that contract, conditions and charges unknown to that owner or operator, is contrary to Article 2 of Directive 96/75.

25 According to Mr Mathys, DGA must accordingly be regarded not as a carrier but as a chartering broker, that is, as a 'charterer' within the meaning of Article 3 of the Law of 5 May 1936 on inland waterway chartering, so that a contract of carriage should be deemed to have been concluded directly

between Sibelco and himself. He argues that DGA unlawfully claimed to be acting towards Sibelco as a carrier for the sole purpose of circumventing the public policy provisions that limit the amount of commission that can be received by a chartering broker.

26 In view of the line of argument developed by Mr Mathys, the referring court considers that the resolution of the case brought before it may depend on the compatibility with Directive 96/75 of Article 3 of the Law of 5 May 1936 on inland waterway chartering.

27 In those circumstances, the hof van beroep te Antwerpen (Court of Appeal, Antwerp, Belgium) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 3 of the Belgian Law of 5 May 1936 on inland waterway chartering compatible with Articles 1 and 2 of Directive 96/75/EC, in so far as a person who is not the owner or operator of an inland waterway vessel concludes a contract for the carriage of goods on inland waterways as carrier and is not acting as an agent ("charterer") within the meaning of Article 3 [of the Law on inland waterway chartering]?'

Consideration of the question referred

28 By its question, the referring court asks, in essence, whether, in the context of inland waterway transport activities, Article 1(b) of Directive 96/75, in so far as it defines a 'carrier' as an owner or an operator of one or more inland waterway vessels, and Article 2 of that directive, in so far as it states that, in that field, contracts are to be freely concluded between the parties concerned, must be interpreted as precluding national legislation, such as that applicable to the dispute in the main proceedings, that would enable a person who does not correspond to that definition to conclude a contract of carriage as a carrier.

29 First of all, it is apparent from the first, third and fifth recitals of Directive 96/75 and from Article 1(a) and Article 2 thereof that the main purpose of that directive is to put an end to a specific charter exchange system which, by imposing a rota and previously fixed prices on boatmasters, restricted the right of those boatmasters to conclude contracts with clients. Because that system was considered to be an obstacle to the development and competitiveness of the inland waterway transport of goods in the European Union, that directive is intended to liberalise the internal market in that field by imposing, from 1 January 2000, on the one hand, a system of freedom of chartering abolishing the system of chartering by rotation and, on the other, a system of freedom of carriage pricing eliminating all systems of previously fixed compulsory prices of carriage.

30 So it is that Article 2 of Directive 96/75 sets out the rule of principle of that directive, pursuant to which, in the context of inland waterway transport activities, 'contracts shall be freely concluded between the parties concerned and prices freely negotiated'. However, it must be pointed out that the wording of that provision in no way limits the circle of parties who can conclude such contracts to persons corresponding to the definition of 'carrier' set out in Article 1(b) of that directive. In using the words 'the parties concerned' without defining them further, Article 2 does not rule out the possibility that a person who is not a 'carrier' within the meaning of Article 1(b) may conclude a contract of carriage in that field.

31 Regarding Article 1(b) of Directive 96/75, which defines a 'carrier', for the purposes of that directive, as 'an owner or an operator of one or more inland waterway vessels', it must be noted that the wording of that provision in no way indicates that it is necessary to be a 'carrier', within the meaning of that provision, in order to be able to conclude a contract of carriage in the field of inland waterway transport.

32 In addition, Directive 96/75 does not use the word 'carrier' except in Articles 3 and 6 thereof pertaining to the transitional period derogating from the principle set out in Article 2 of that directive and coming to an end on 1 January 2000. Accordingly, the definition set out in Article 1(b) of that directive has lost all legal force since that date and cannot have any relevant normative value whatsoever in a context such as that in the case in the main proceedings.

33 It follows that Directive 96/75 is specifically limited to prohibiting the two characteristic features of the functioning of charter exchanges by rotation, namely, the system of allocation according to the order in which the vessels become available and the system of previously fixed prices. Accordingly, it does not have as its aim the general regulation of contracts for the carriage of goods by inland waterway.

34 As a result, while Directive 96/75 makes no mention of a party intervening as a 'chartering broker' or 'charterer' in contracts in the field of inland waterway transport, that directive in no way governs the intervention of chartering brokers or persons who, without themselves possessing the means to carry on inland waterway transport activities, would nonetheless personally undertake to provide such transport by making provision for the use of the services of a boatmaster. Accordingly, the description, in national law, of a party to such contracts as a 'chartering broker' or a 'charterer' has no connection with the interpretation of that directive.

35 It therefore follows from the relevant recitals and provisions of Directive 96/75 that that directive does not govern any of the elements covered by the question referred for a preliminary ruling, namely, whether it is necessary to own a vessel in order to be able legally to conclude a contract for the transport of goods by inland waterway as a carrier, and, accordingly, is completely neutral with regard to all those elements.

36 Having regard to all of the foregoing, the answer to the question referred is that, in the context of inland waterway transport activities, Article 1(b) of Directive 96/75, in so far as it defines a 'carrier' as an owner or an operator of one or more inland waterway vessels, and Article 2 of that directive, in so far as it states that, in that field, contracts are to be freely concluded between the parties concerned, must be interpreted as not precluding national legislation, such as that applicable to the dispute in the main proceedings, that would enable a person who does not correspond to that definition to conclude a contract of carriage as a carrier.

Costs

37 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

In the context of inland waterway transport activities, Article 1(b) of Council Directive 96/75/EC of 19 November 1996 on the systems of chartering and pricing in national and international inland waterway transport in the Community, in so far as it defines a 'carrier' as an owner or an operator of one or more inland waterway vessels, and Article 2 of that directive, in so far as it states that, in that field, contracts are to be freely concluded between the parties concerned, must be interpreted as not precluding national legislation, such as that applicable to the dispute in the main proceedings, that would enable a person who does not correspond to that definition to conclude a contract of carriage as a carrier.

[Signatures]