

СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ  
TRIBUNAL DE JUSTICIA DE LA UNIÓN EUROPEA  
SOUDNÍ DVŮR EVROPSKÉ UNIE  
DEN EUROPÆISKE UNIONS DOMSTOL  
GERICHTSHOF DER EUROPÄISCHEN UNION  
EUROOPA LIIDU KOHUS  
ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ  
COURT OF JUSTICE OF THE EUROPEAN UNION  
COUR DE JUSTICE DE L'UNION EUROPÉENNE  
CÚIRT BHREITHIÚNAIS AN AONTAIS EORPAIGH  
SUD EUROPSKE UNIE  
CORTE DI GIUSTIZIA DELL'UNIONE EUROPEA



EIROPAS SAVIENĪBAS TIESA  
EUROPOS SĄJUNGOS TEISINGUMO TEISMAS  
AZ EURÓPAI UNIÓ BÍRÓSÁGA  
IL-QORTI TAL-ĠUSTIZZJA TAL-UNJONI EWROPEA  
HOF VAN JUSTITIE VAN DE EUROPESE UNIE  
TRYBUNAŁ SPRAWIEDLIWOŚCI UNII EUROPEJSKIEJ  
TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA  
CURTEA DE JUSTIȚIE A UNIUNII EUROPENE  
SÚDNY DVOR EURÓPSKEJ ÚNIE  
SODIŠČE EVROPSKE UNIJE  
EUROOPAN UNIONIN TUOMIOISTUIN  
EUROPEISKA UNIONENS DOMSTOL

## JUDGMENT OF THE COURT (First Chamber)

12 February 2026 \*

(Reference for a preliminary ruling – Article 49 TFEU – Freedom of establishment – Scope – Economic activity – Recognition of professional qualifications – Directive 2005/36/EC – Article 53 – Knowledge of languages – National legislation laying down a requirement that teachers and the members of administrative staff in regular communication with the public and with the administrative authorities employed in a private educational institution are proficient in the official language – Article 4(2) TEU – National identity of a Member State – Protection and promotion of the official language of a Member State – Private educational institution delivering international education programmes – Necessity condition – Principle of proportionality – Requirement of proficiency in the official language with no possibility for exception or flexibility)

In Case C-48/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania), made by decision of 24 January 2024, received at the Court on 25 January 2024, in the proceedings

**VšĮ Vilniaus tarptautinė mokykla**

v

**Valstybinė kalbos inspekcija,**

THE COURT (First Chamber),

composed of F. Biltgen, President of the Chamber, T. von Danwitz (Rapporteur), Vice-President of the Court, I. Ziemele, A. Kumin and S. Gervasoni, Judges,

Advocate General: N. Emiliou,

\* Language of the case: Lithuanian.

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Lithuanian Government, by K. Dieninis, S. Grigonis and V. Kazlauskaitė-Švenčionienė, acting as Agents,
- the Latvian Government, by J. Davidoviča, K. Pommere and S. Zābele, acting as Agents,
- the Netherlands Government, by E. M. M. Besselink and M. K. Bulterman, acting as Agents,
- the European Commission, by L. Armati, G. Meeßen and A. Steiblytė, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 July 2025,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 49 TFEU and Article 53 of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ 2005 L 255, p. 22), as amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 (OJ 2013 L 354, p. 132) ('Directive 2005/36').
- 2 The request has been made in proceedings between VšĮ Vilniaus tarptautinė mokykla (Vilnius International School, Lithuania) ('VTM') and the Valstybinė kalbos inspekcija (National Language Inspectorate, Lithuania) ('the VKI') concerning the requirement imposed on VTM to ensure that its teachers and administrative staff pass an examination demonstrating a specific level of proficiency in Lithuanian.

### **Legal context**

#### ***European Union law***

- 3 Recital 26 of Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No 1024/2012 on

administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ 2013 L 354, p. 132) states as follows:

'Directive 2005/36/EC already provides for the obligation for professionals to have the necessary language skills. The review of the application of that obligation has shown a need to clarify the role of competent authorities and employers, in particular in the interest of better ensuring patient safety. Competent authorities should be able to apply language controls after recognition of professional qualifications. It is important for professions that have patient safety implications in particular that language controls under Directive 2005/36/EC be applied before the professional accesses the profession in the host Member State. Language controls should however be reasonable and necessary for the professions in question and should not aim at excluding professionals from other Member States from the labour market in the host Member State. ... Employers should also continue to play an important role in ascertaining the knowledge of languages necessary to carry out professional activities in their workplaces.'

4 The first subparagraph of Article 2(1) of Directive 2005/36 provides:

'This Directive shall apply to all nationals of a Member State wishing to pursue a regulated profession in a Member State, including those belonging to the liberal professions, other than that in which they obtained their professional qualifications, on either a self-employed or employed basis.'

5 Article 53 of that directive, entitled 'Knowledge of languages', provides, in paragraphs 1 to 3 thereof:

'1. Professionals benefiting from the recognition of professional qualifications shall have a knowledge of languages necessary for practising the profession in the host Member State.

2. A Member State shall ensure that any controls carried out by, or under the supervision of, the competent authority for controlling compliance with the obligation under paragraph 1 shall be limited to the knowledge of one official language of the host Member State, or one administrative language of the host Member State provided that it is also an official language of the Union.

3. Controls carried out in accordance with paragraph 2 may be imposed if the profession to be practised has patient safety implications. Controls may be imposed in respect of other professions in cases where there is a serious and concrete doubt about the sufficiency of the professional's language knowledge in respect of the professional activities that that professional intends to pursue.

Controls may be carried out only after the issuance of a European Professional Card in accordance with Article 4d or after the recognition of a professional qualification, as the case may be.'

*Lithuanian law*

*The Constitution of the Republic of Lithuania*

- 6 Article 14 of the Lietuvos Respublikos Konstitucija (Constitution of the Republic of Lithuania) provides that Lithuanian is to be the State language of the Republic of Lithuania.

*The Law on the State Language and Resolution No 1688*

- 7 Article 2 of the Lietuvos Respublikos valstybinės kalbos įstatymas Nr. I-779 (Law No I-779 of the Republic of Lithuania on the State Language) of 31 January 1995 (Žin., 1995, No 15-344; ‘the Law on the State Language’) provides:

‘The State language of the Republic of Lithuania shall be the Lithuanian language.’

- 8 Article 6 of that law provides:

‘Heads, officials and agents of public authorities, bodies and institutions, as well as heads, officials and agents of the police, law-enforcement services, communication, public transport, public health and social security services and other public services shall have proficiency in the State language corresponding to the language proficiency category laid down by the Government of the Republic of Lithuania.’

- 9 The Lietuvos Respublikos Vyriausybės nutarimas dėl valstybinės kalbos mokėjimo kategorijų patvirtinimo ir įgyvendinimo Nr. 1688 (Resolution No 1688 of the Government of the Republic of Lithuania on the approval and implementation of categories of proficiency in the State language) of 24 December 2003 (Žin., 2003, No 123-5618) was adopted on the basis of Article 6 of the Law on the State Language.

- 10 Paragraphs 2 to 4 of that resolution, in the version applicable to the facts of the dispute in the main proceedings (‘Resolution No 1688’), state:

‘2. Heads of public authorities and bodies, educational institutions wholly or partly dependent on the State or municipalities, regional development services and other public services shall be responsible for drawing up the list of posts of State officials and agents and employees remunerated from the budget of the State or of municipalities or other public funds for which a certain category of proficiency in the State language is required.

3. The heads of public entities, associations, undertakings, institutions and bodies other than those referred to in point 2 of this resolution are recommended to establish the category of proficiency in the State language required for each of

the posts for which the job description provides for interaction with the public and the drafting or processing of documents, and to draw up a list of those posts.

4. The requirement to have a certain category of proficiency in the State language shall not apply to foreign employees who benefit from or have benefited from temporary protection in Lithuania, for a period of two years from the date when that temporary protection was granted.'

11 Paragraphs 2, 5, 6 and 8 of the description of the categories of proficiency in the State language and the detailed rules for their application, as established by Resolution No 1688, state:

'2. The category of proficiency in the State language makes it possible to demonstrate a person's knowledge of that language. ...

...

5. The following six levels of proficiency in the Lithuanian language are established (from the lowest, A1, to the most advanced, C2):

...

5.3. Level of proficiency in the Lithuanian language B1 ('Threshold level') (independent user). The user is able to understand spoken or written texts on familiar topics, to speak on a wide range of topics concerning everyday life and work, to describe experiences, events, dreams, hopes, wishes, to provide a brief explanation of opinions or plans, to fill in standard forms of documents, to write short texts on topics of everyday life or work, to produce a simple coherent text on topics that are familiar or of interest to him. The user is also able to understand spoken language, written text and to communicate.

6. The following three categories of proficiency in the State language (from the lowest, category I, to the highest, category III) are established:

...

6.2. category II proficiency in the State language corresponds to B1 level of competence in Lithuanian (the requirements which correspond to that level are set out in point 5.3 of this description);

...

8. Workers, officials and agents of the State in the education, culture, health and social security sectors and in other sectors who must demonstrate no higher level than a non-university higher education diploma, a vocational higher education diploma obtained before 2009 or a diploma in technical secondary education obtained before 1995, must have category II proficiency in the Lithuanian language if their duties involve regular interaction with the public

and/or the processing of standard forms of documents (with the exception of teachers who teach in the State language).’

*The Law on Education and Order No V-774 on the Approval and Description of the Requirements for the Qualifications of Teachers*

12 Article 2(2) of the Lietuvos Respublikos švietimo įstatymas Nr. I-1489 (Law No I-1489 of the Republic of Lithuania on Education) of 25 June 1991 (Lietuvos aidas, 1991, No 153-0), in the version applicable to the facts in the main proceedings (‘the Law on Education’), provides that the term ‘general education’ covers primary, intermediate and secondary education.

13 Article 48(1) of the Law on Education lists the persons authorised to pursue the profession of teaching and states, in paragraph 3, that the teachers referred to in paragraph 1 ‘must possess the qualifications established by the Minister for Education and Science’. Article 48(4) of that law provides:

‘Any person who has acquired in a Member State or in the Swiss Confederation a qualification for which the equivalence has been recognised in accordance with the Lietuvos Respublikos reglamentuojamų profesinių kvalifikacijų pripažinimo įstatymas [(Law No X-1478 of the Republic of Lithuania on the Recognition of Professional Qualifications) of 3 April 2008 (Žin., 2008, No 47-1747)], and who fulfils the conditions set out in paragraphs 1 and 3 of this Article, may pursue the profession of teacher in Lithuania.’

14 Article 72 of the Law on Education, entitled ‘Implementation of education programmes from foreign States and international organisations’, provides, in paragraphs 1 and 3 thereof:

‘1. Schools of foreign States and international organisations (except higher education) shall be established and function in the Republic of Lithuania according to the terms and procedures laid down by this Law, international agreements concluded by the Republic of Lithuania and by other laws, regulations or administrative acts. Education programmes from foreign States and international organisations (except higher education) may be delivered (or suspended) in accordance with the procedures laid down by the Government upon the written consent of the Minister for Education and Science.

...

3. Education programmes from foreign States and international organisations may be implemented in a language other than Lithuanian in Lithuanian schools. Persons who have graduated in Lithuania from education programmes from foreign states and international organisations are, at the end of their studies, issued with the certificates issued by the respective foreign state or international organisation.’

- 15 The Lietuvos Respublikos švietimo, mokslo ir sporto ministras isakymas Nr. V-774 Dėl Reikalavimų mokytojų kvalifikacijai aprašo patvirtinimo (Order No V-774 of the Minister for Education, Science and Sports of the Republic of Lithuania approving the Description of the Requirements for the Qualifications of Teachers) of 29 August 2014 (TAR, 2014, No 2014-11394) was adopted on the basis of Article 48 of the Law on Education. Paragraph 7 of that Description, in the version applicable to the facts of the dispute in the main proceedings, provides:

‘Teachers engaged in general education, vocational training and non-formal education must have a level of proficiency of the Lithuanian language corresponding to the categories of proficiency in the State language approved by Resolution [No 1688]; ...’

*Resolution No. 649 on the Approval of the Description of the Procedure for issuing, suspending and revoking the consent to implement education programmes from foreign States and international organisations (except higher education)*

- 16 Paragraph 26 of the Lietuvos Respublikos Vyriausybės nutarimas Nr. 649 Dėl Sutikimo vykdyti užsienio valstybių ir tarptautinių organizacijų švietimo programas (išskyrus aukštojo mokslo studijų programas) išdavimo, galiojimo sustabdymo ir galiojimo panaikinimo tvarkos aprašo patvirtinimo (Resolution No 649 of the Government of the Republic of Lithuania on the Approval of the Description of the Procedure for issuing, suspending and revoking the consent to implement education programmes from foreign States and international organisations (except higher education)) of 6 June 2012 (Žin., 2012, No 66-3343), in the version applicable to the facts in the dispute in the main proceedings, provides:

‘26. A consent holder who implements the education programme from a foreign State or an international organisation (the ‘education programme’) referred to in that consent must:

26.1. ... review knowledge of the State language in accordance with the general programmes approved by the Minister for Education and Science;

26.2. ensure that the training and qualifications of teachers and educational service providers comply with the requirements set out in the [education programme];

26.3. comply with the requirements of the Law on Education of Lithuania and other legal acts;

26.4. provide the supervisory authorities, upon their request, with documents and data relating to the implementation of the [education programme], and allow them to be verified;

...’

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

- 17 VTM, a private educational institution established by a Lithuanian national, has been active in Lithuania since 2004. At the time relevant to the dispute in the main proceedings, 49.96% of its capital was held by a Finnish national, 25.02% by a Danish national and 25.02% by a United States national.
- 18 VTM obtained the administrative consents required to deliver, in English, the International Baccalaureate Primary Years and Middle Years Programmes and the ‘Cambridge International AS & A levels’ secondary education programme.
- 19 On 19 and 25 May 2022, the VKI carried out an inspection at VTM in order to review VTM’s compliance with the requirements laid down by the Law on the State Language and by Resolution No 1688. It found, in that inspection, that eighteen employees of VTM, including the director, her deputy in charge of education, a social pedagogue and fifteen teachers, had not passed the language examination corresponding to category II proficiency in the State language, as defined by Resolution No 1688, or had not submitted the required documents. Of those 18 employees, five were nationals of Member States, while the remaining 13 were nationals of third countries.
- 20 In those circumstances, by an order dated 26 May 2022, the VKI required VTM to ensure that those employees passed that language examination by 2 February 2023 at the latest, and to notify the competent authority thereof by 9 February 2023 at the latest. The VKI also informed VTM that failure to comply with those requirements would result in penalties in accordance with the detailed rules laid down by Lithuanian legislation (‘the Order dated 26 May 2022’).
- 21 VTM brought an action before the Vilniaus apygardos administracinis teismas (Regional Administrative Court, Vilnius, Lithuania) seeking to have the Order dated 26 May 2022 set aside.
- 22 That action was dismissed. VTM then lodged an appeal before the Lietuvos vyriausioji administracinis teismas (Supreme Administrative Court of Lithuania), which is the referring court.
- 23 That court seeks to ascertain, first of all, whether the situation at issue in the main proceedings falls within the scope of Article 49 TFEU. In that regard, it notes that, although VTM is established in Lithuania and was founded by a Lithuanian national, its capital is held, in part, by nationals of Member States other than the Republic of Lithuania. It adds that VTM delivers its courses of study for remuneration. Next, in the event that Article 49 TFEU is applicable to such a situation, the referring court asks whether the restriction on freedom of establishment resulting from the Lithuanian legislation is justified by an overriding reason in the public interest and whether it complies with the principle of proportionality, stating, in particular, that that legislation does not provide for any exception to the language requirement which it establishes. Lastly, it asks

whether Directive 2005/36 permits the application of such a requirement to the staff of an international school, such as VTM, which is practising a regulated profession.

24 In those circumstances, the Lietuvos vyriausiasis administracinis teismas (Supreme Administrative Court of Lithuania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- ‘(1) Is Article 49 [TFEU] to be interpreted as meaning that it includes within its scope the requirement, laid down by national law, for proficiency in the State language which applies to the administrative staff and teachers of an educational establishment founded by a private natural person, which establishment implements an international secondary education programme and International Baccalaureate programmes for primary years and middle years?’
- (2) If the answer to the first question is in the affirmative, is Article 49 [TFEU] to be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which the requirement for proficiency in the State language applies without exception, first, to all teachers working in an educational establishment founded by a private natural person, which establishment delivers an international secondary education programme and International Baccalaureate primary years and middle years programmes, and, second, to the administrative staff of such educational establishment, irrespective of any circumstances specific to the activities of the educational establishment concerned?’
- (3) Is Article 53 of Directive [2005/36] to be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which the requirement for proficiency in the State language applies, without exception, first, to all teachers working in an educational establishment founded by a private natural person, which establishment delivers an international secondary education programme and International Baccalaureate primary years and middle years programmes, irrespective of any circumstances specific to the activities of the educational establishment concerned?’

### **Admissibility of the request for a preliminary ruling**

25 The Lithuanian Government submits that the request for a preliminary ruling is inadmissible on the ground that Lithuanian law does not make teachers at a private educational institution, such as VTM, which delivers an international secondary education programme and primary and middle years education programmes of the International Baccalaureate, subject to a requirement for proficiency in Lithuanian. Accordingly, the questions asked by the referring court bear no relation to the actual facts of the main action or its purpose, and the interpretation of EU law to which those questions relate is not necessary to resolve the dispute in the main proceedings.

- 26 In that regard, it should be recalled that the presumption of relevance enjoyed by questions on the interpretation of EU law submitted by a national court in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine cannot be rebutted by arguments disputing the interpretation of national law adopted by the referring court, which alone has jurisdiction to interpret and apply that law (see, to that effect, judgment of 20 September 2018, *OTP Bank and OTP Faktoring*, C-51/17, EU:C:2018:750, paragraph 41).
- 27 In addition, in its response to the request for information sent to it by the Court on 12 December 2024, the referring court confirmed, on the basis of a detailed analysis of the provisions of its national law, that all teachers and administrative staff in regular communication with the public and with the administrative authorities of educational institutions such as VTM are subject to a requirement for proficiency in the Lithuanian language.
- 28 It follows that the present request for a preliminary ruling is admissible.

### **Consideration of the questions referred**

#### *The first question*

- 29 By its first question, the referring court is, in essence, asking whether Article 49 TFEU must be interpreted as applying to the situation of a private educational institution established in a Member State and in the capital of which nationals of other Member States have a holding, where that institution delivers, in the Member State in which it is established, an international secondary education programme and the primary and middle years education programmes of the International Baccalaureate.
- 30 In that regard, the second paragraph of Article 49 TFEU states that freedom of establishment is to include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54 TFEU, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.
- 31 It is settled case-law that the concept of ‘establishment’ within the meaning of the FEU Treaty is very broad in scope, allowing a national of a Member State to participate, on a stable and continuous basis, in the economic life of a Member State other than his or her State of origin and to profit therefrom (judgment of 4 October 2024, *Lithuania and Others v Parliament and Council (Mobility Package)*, C-541/20 to C-555/20, EU:C:2024:818, paragraph 363 and the case-law cited).

- 32 That concept thus involves the actual pursuit of an economic activity through a fixed establishment in the host Member State for an indefinite period. Consequently, it presupposes actual establishment of the operator concerned in that Member State and the pursuit of genuine economic activity there (judgment of 4 October 2024, *Lithuania and Others v Parliament and Council (Mobility Package)*, C-541/20 to C-555/20, EU:C:2024:818, paragraph 364).
- 33 The Court has accordingly already held that freedom of establishment covers the situation where a national of a Member State acquires a holding in the capital of a company established in another Member State allowing him or her to exert a definite influence on that company's decisions and to determine its activities (see, to that effect, judgment of 21 December 2016, *AGET Iraklis*, C-201/15, EU:C:2016:972, paragraph 46 and the case-law cited).
- 34 In the present case, it is common ground that the capital of VTM, which is established in Lithuania and delivers education programmes there on a stable and continuous basis, was, at the date when the Order dated 26 May 2022 was adopted, held inter alia by a Finnish national as to 49.96%, and by a Danish national as to 25.02%, which was, in principle, such as to confer on those nationals definite influence over the decisions and activities of that educational institution (see, by analogy, judgment of 22 December 2008, *Truck Center*, C-282/07, EU:C:2008:762, paragraphs 28 and 29).
- 35 It follows that the situation at issue in the main proceedings is capable of falling within the scope of Article 49 TFEU, provided that it is established, in accordance with the case-law cited in paragraph 31 of the present judgment, that VTM actually pursues an economic activity by means of its establishment located in Lithuania.
- 36 However, while the referring court has doubts only concerning the interpretation of Article 49 TFEU, the Netherlands Government is of the view that the situation at issue in the main proceedings ought to be examined in the light of Article 45 TFEU, since the requirement for proficiency in Lithuanian is imposed on VTM staff.
- 37 In that regard, the Court has held that, where a national measure relates to several of those fundamental freedoms at the same time, the Court will in principle examine the measure in relation to only one of those freedoms if it appears, in the circumstances of the case, that the other freedoms are entirely secondary in relation to the first and may be considered together with it. In order to determine the predominant fundamental freedom, the purpose of the legislation concerned must be taken into consideration and, where appropriate, the facts relating to the dispute in the main proceedings (see, to that effect, judgments of 11 June 2020, *KOB*, C-206/19, EU:C:2020:463, paragraphs 23 and 25, and judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraphs 50 and 51 and the case-law cited).

- 38 In addition, the Court has held that, while it has been established that the rights to freedom of movement provided for in Article 45 TFEU benefit workers, there is nothing in the wording of that article to indicate that those rights may not be relied on by others, in particular employers. It must further be noted that, in order to be truly effective, the right of workers to be engaged and employed without discrimination necessarily entails as a corollary the employer's entitlement to engage them in accordance with the rules governing freedom of movement for workers (see, to that effect, judgments of 7 May 1998, *Clean Car Autoservice*, C-350/96, EU:C:1998:205, paragraphs 19 and 20, and of 13 December 2012, *Caves Krier Frères*, C-379/11, EU:C:2012:798, paragraph 28).
- 39 That said, apart from the fact that the action in the main proceedings was brought by VTM on its own initiative, it is apparent from the order for reference without being called into question in the observations submitted to the Court, that the Order dated 26 May 2022 referred to in that action was addressed not to the 18 members of staff concerned but to VTM itself, which the VKI criticised for failing to comply with its obligation to ensure that its staff satisfy the requirement for proficiency in Lithuanian, as laid down by the national legislation. Under that legislation, the holder of consent to apply education programmes from foreign States and international organisations is required, inter alia, to review knowledge of the State language in accordance with the general programmes approved by the Minister for Education and Science, to ensure that the training and qualifications of teachers and educational service providers comply with the requirements set out in the education programme, to comply with the requirements of the Law on Education and other legal acts, and to provide the supervisory authorities, upon their request, with documents and data relating to the implementation of the education programme and to allow them to be verified.
- 40 Lastly, the request for a preliminary ruling does not indicate that VTM, before the referring court, asserted its right to be able to engage its employees in accordance with the rules governing freedom of movement for workers.
- 41 Accordingly, taking into account both the purpose of the national legislation at issue in the main proceedings and the purpose of the dispute in the main proceedings, the latter must be assessed in the light of Article 49 TFEU.
- 42 In that regard, the Court has ruled that the provision of higher education courses for remuneration is an economic activity falling within Chapter 2 of Title IV in Part Three of the FEU Treaty on the right of establishment when that activity is carried on by a national of one Member State in another Member State on a stable and continuous basis from a principal or secondary establishment in the latter Member State (judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 52 and the case-law cited). Since the classification of an educational activity as an economic activity depends on whether the courses are delivered for remuneration, and not on the degree of education to which they relate, that case-law applies by analogy to the organisation, for remuneration, of primary, intermediate and secondary courses of education by a private educational

institution established in a Member State and in the capital of which a national of another Member State has a holding allowing him or her to exert a definite influence on its decisions and to determine its activities.

- 43 In the present case, it is therefore for the referring court to examine whether the education programmes which VTM delivers are organised for remuneration.
- 44 In the light of the foregoing considerations, the answer to the first question is that Article 49 TFEU must be interpreted as applying to the situation of a private educational institution established in a Member State and in the capital of which a national of another Member State has a holding allowing him or her to exert a definite influence on its decisions and to determine its activities, where that institution delivers in the Member State in which it is established, for remuneration, an international secondary education programme and the primary and middle years education programmes of the International Baccalaureate.

### *The second question*

- 45 As a preliminary point, it must be stated that the Lithuanian legislation requires private educational establishments to review whether their teachers and members of their administrative staff in regular communication with the public and with the administrative authorities have category II proficiency in Lithuanian, corresponding to the ability of those persons, inter alia, to understand spoken or written texts on familiar topics, to speak on a wide range of topics concerning everyday life or work, or to draft a simple coherent text on familiar topics.
- 46 Accordingly, by its second question, the referring court is, in essence, asking whether Article 49 TFEU must be interpreted as precluding, in a situation falling within its scope, legislation of a Member State under which a private educational institution – which delivers, in a language other than the official language of that Member State, an international secondary education programme and the primary and middle years education programmes of the International Baccalaureate – is required to review whether its teachers and the members of its administrative staff in regular communication with the public and with the administrative authorities fulfil the requirement for an intermediate level of proficiency in that official language.

### *Whether there is a restriction on the freedom guaranteed by Article 49 TFEU*

- 47 In accordance with Article 6 TFEU, the European Union is to have competence to carry out actions to support, coordinate or supplement the actions of the Member States, including in the area of education. While EU law does not detract from the power of those Member States as regards, first, the content of education and the organisation of education systems and their cultural and linguistic diversity and, secondly, the content and organisation of vocational training, as is apparent from Article 165(1) and Article 166(1) TFEU, the fact remains that, when exercising that power, Member States must comply with EU law, in particular the provisions

on freedom of establishment (judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraphs 58 and 59 and the case-law cited).

- 48 In that regard, the first paragraph of Article 49 TFEU provides that, within the framework of the provisions in Chapter 2 of Title IV in Part Three of the FEU Treaty, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State are to be prohibited. All measures which prohibit, impede or render less attractive the exercise of the freedom guaranteed by Article 49 TFEU must be regarded as restrictions on the freedom of establishment (judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraphs 60 and 61 and the case-law cited).
- 49 In the present case, while it is true that nationals of Member States other than the Republic of Lithuania may establish themselves in its territory and deliver there, in the context of a private educational institution, education programmes in a language other than Lithuanian, such a possibility remains, in principle, subject to compliance with a language requirement laid down by the legislation in force. Accordingly, the VKI required VTM, its teachers and members of its administrative staff in regular communication with the public and with the administrative authorities, by the Order dated 26 May 2022, to demonstrate category II proficiency in Lithuanian, because of the failure to comply with that language requirement.
- 50 The national legislation at issue in the main proceedings is capable, by the constraints it may entail in relation to the recruitment of suitably qualified staff, of making the creation and operation in Lithuania, by nationals of other Member States, of an educational institution designed to provide education programmes in a language other than Lithuanian less attractive, which constitutes a restriction on freedom of establishment.

*Whether the restriction on the freedom guaranteed by Article 49 TFEU is justified*

- 51 According to settled case-law, a restriction on freedom of establishment is permissible only if, in the first place, it is justified by an overriding reason in the public interest and, in the second place, it observes the principle of proportionality, which means that it is suitable for securing, in a consistent and systematic manner, the attainment of the objective pursued, that it does not go beyond what is necessary in order to attain that objective and that it is not disproportionate to that objective (see, to that effect, judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 65 and the case-law cited).
- 52 In the present case, as regards whether there is an overriding reason in the public interest, it is apparent from the documents before the Court that the national legislation at issue in the main proceedings appears to be intended to protect and promote the use of the official language of the Republic of Lithuania constituting a legitimate objective which, in principle, justifies a restriction on the fundamental

freedoms provided for by EU law (see, by analogy, judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraphs 67 and 70 and the case-law cited).

- 53 Indeed, the fourth subparagraph of Article 3(3) TEU and Article 22 of the Charter of Fundamental Rights of the European Union state that the European Union must respect its rich cultural and linguistic diversity and, in accordance with Article 4(2) TEU, it must also respect the national identity of its Member States, which include the protection of the official language of the Member State concerned (judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 68 and the case-law cited).
- 54 As regards whether the national legislation at issue in the main proceedings is appropriate for ensuring the attainment of the legitimate objective of protecting and promoting the Lithuanian language, whether it does not go beyond what is necessary in order to attain it and whether it is not disproportionate to that objective, it is ultimately for the referring court, which has sole jurisdiction to assess the facts of the main proceedings and interpret the national legislation, to determine whether and to what extent such legislation satisfies those conditions (see, by analogy, judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 72 and the case-law cited).
- 55 However, the Court of Justice, which is called on to provide answers of use to the referring court, may provide guidance based on the documents relating to the main proceedings and on the written observations which have been submitted to it, in order to enable that court to give judgment (see, by analogy, judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 73 and the case-law cited).
- 56 In that regard, it should be observed, first, that legislation of a Member State such as that at issue in the main proceedings appears to be appropriate for ensuring that the objective of protecting and promoting the official language of that Member State is attained. Such legislation encourages the use of that language by persons subject to that language requirement in their relations with pupils, pupils' parents and the general public and, as regards more particularly the administrative staff, with the national administrative authorities.
- 57 That said, the legislation in question can be regarded as capable of ensuring that objective only if it genuinely reflects a concern to attain it and is implemented in a consistent and systematic manner (judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 75 and the case-law cited).
- 58 That appears to be so in the present case since, as is apparent from the documents before the Court, the national legislation at issue in the main proceedings applies not only to all educational institutions located in Lithuania but also to all employees of those institutions whose employment involves, inter alia, regular

communication with other persons and the need to complete standard forms of official documents.

- 59 Second, as regards whether the national legislation at issue in the main proceedings is necessary, in particular the language requirement in that legislation, it should be borne in mind that measures which restrict a fundamental freedom cannot be justified where the objective pursued can be attained by less restrictive measures (see, to that effect, judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 81 and the case-law cited).
- 60 In that context, while Member States enjoy broad discretion in their choice of the measures capable of achieving the objectives of their policy of protecting the official language, since such a policy constitutes a manifestation of national identity for the purposes of Article 4(2) TEU, that discretion cannot justify the rights which individuals derive from the provisions of the Treaties enshrining their fundamental freedoms being seriously undermined (judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraph 83 and the case-law cited).
- 61 In the present case, although the Republic of Lithuania seeks to ensure, as demonstrated by its legislation, that the level of protection and promotion of its official language is high, it has not been established, as the Advocate General observed in point 54 of his Opinion, that measures less restrictive than the language requirement at issue in the main proceedings could ensure an equivalent level of effectiveness in the attainment of such an objective.
- 62 Accordingly, the language requirement at issue in the main proceedings appears, as such, to satisfy the condition of being necessary.
- 63 However, it is necessary to take into account, when assessing that condition, the detailed rules of evidence required by the national legislation in order to establish that that language requirement is satisfied.
- 64 In that regard, in its response to the request for information referred to in paragraph 27 of the present judgment, the referring court stated that the national legislation provides that a person who seeks to demonstrate that he or she possesses the required level of proficiency in Lithuanian is required to provide a certificate issued by the Nacionalinė švietimo agentūra (National Education Agency, Lithuania) based on language tests organised in Lithuanian territory.
- 65 It is true that the provision of a certificate may constitute a criterion for assessing the required linguistic knowledge (see, by analogy, judgment of 5 February 2015, *Commission v Belgium*, C-317/14, EU:C:2015:63, paragraph 27). However, the fact that it is impossible for a candidate for a post in a private educational institution to prove that he or she meets the language requirement other than by obtaining a certificate, such as that required under the Lithuanian legislation, appears to go beyond what is necessary to attain the legitimate objective pursued, since it precludes any consideration of the level of knowledge which a person

holding a certificate or diploma obtained in another Member State can be assumed to possess on the evidence of that certificate or diploma, having regard to the nature and duration of the courses which it demonstrates (see, by analogy, judgment of 5 February 2015, *Commission v Belgium*, C-317/14, EU:C:2015:63, paragraph 29).

- 66 In those circumstances, national legislation such as that at issue in the main proceedings, which requires the persons covered by it, in order to demonstrate that they have the requisite level of proficiency in the official language, to provide a certificate issued by a body of the Member State concerned based on language tests organised in the territory of that State, appears to go beyond what is necessary to achieve its legitimate objective, which it is for the referring court to ascertain.
- 67 Third, as regards whether the national legislation at issue in the main proceedings is proportionate, in the strict sense, it must be recalled that an objective of general interest, such as the protection and promotion of the official language, may not be pursued by a national measure without having regard to the fact that it must be reconciled with the fundamental rights and principles affected by that measure, as set out in the Treaties, by properly balancing that objective of general interest against the rights and principles at issue, in order to ensure that the disadvantages caused by that measure are not disproportionate to those objectives pursued (see, by analogy, judgment of 18 December 2025, *Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge*, C-417/23, EU:C:2025:1017, paragraph 168).
- 68 Accordingly, where a Member State seeks to impose, for the purposes of the objective of protecting and promoting its official language, a language requirement on teachers and certain members of the administrative staff of private educational institutions, it is for that Member State to balance properly that objective of general interest against the rights derived from Article 49 TFEU. By way of example, such a proper balance would be achieved by national legislation providing for a possibility to bring the proficiency in the official language progressively up to the required standard after recruitment, to be flexible regarding the level of proficiency required according to the duration of the post or even to introduce an exemption from that language requirement, justified by appropriate circumstances, in particular where no fully qualified candidate applies for the post to be filled (see, to that effect, judgment of 7 September 2022, *Cilevičs and Others*, C-391/20, EU:C:2022:638, paragraphs 84 and 85).
- 69 In the present case, it is apparent from the order for reference that the language requirement at issue in the main proceedings is imposed on all teachers and members of administrative staff who are in regular communication with the public and with the administrative authorities and who are employed in a private educational institution as soon as they begin their duties and irrespective of the duration of their employment contract, there being no exceptions or flexibility laid down in that regard.

- 70 It follows that the national legislation at issue in the main proceedings does not appear to comply with the principle of proportionality, in the strict sense, in that it appears to be disproportionate in relation to the objective pursued, which it is for the referring court to assess.
- 71 In the light of the foregoing considerations, the answer to the second question is that Article 49 TFEU must be interpreted as not precluding, in a situation falling within its scope, legislation of a Member State under which a private educational institution – which delivers, in a language other than the official language of that Member State, an international secondary education programme and the primary and middle years education programmes of the International Baccalaureate – is required to review whether its teachers and the members of its administrative staff in regular communication with the public and with the administrative authorities fulfil the requirement for an intermediate level of proficiency in that official language, provided that such legislation is justified by the objective of protecting and promoting that official language and that it is necessary and proportionate to the attainment of that objective. That condition is not satisfied where that legislation applies, with no possibility for exception or flexibility, to all the persons covered by it and requires them, in order to demonstrate that they possess the requisite level of proficiency in the official language, to provide a certificate issued by a body of the Member State concerned on the basis of language tests organised in the territory of that Member State.

*The third question*

- 72 By its third question, the referring court is, in essence, asking whether Article 53(1) of Directive 2005/36 must be interpreted as precluding, in a situation falling within its scope, legislation of a Member State under which teachers from a private educational institution which delivers, in a language other than the official language of that Member State, an international secondary education programme and the primary and middle years education programmes of the International Baccalaureate are subject to a requirement of an intermediate level of proficiency in that official language.
- 73 It should be recalled that, under the first subparagraph of Article 2(1) of Directive 2005/36, that directive applies to all nationals of a Member State wishing to pursue a regulated profession in a Member State other than the Member State in which they obtained their professional qualifications.
- 74 In addition, Article 53(1) of Directive 2005/36/EC provides that professionals benefiting from the recognition of professional qualifications are to have a knowledge of languages necessary for practising the profession in the host Member State.
- 75 Accordingly, in the present case, in order to determine whether the dispute in the main proceedings falls within the scope of Article 53(1) of Directive 2005/36, it is for the referring court to investigate, first, whether those VTM teachers who are

not Lithuanian nationals obtained their professional qualifications in Member States other than the Republic of Lithuania and have benefited from the recognition of those professional qualifications in Lithuania.

- 76 Subject to that observation, it must be held that, in view of the importance of education for the implementation of a policy for the protection and promotion of the language of a Member State, and in view of the fact that teachers have an essential role to play not only through the teaching which they provide but also by their participation in the daily life of the educational institution and the privileged relationship which they have with their pupils, a requirement of proficiency in the official language of the Member State in which they pursue their profession may be regarded as constituting a condition corresponding to the knowledge of languages necessary for practising their profession, within the meaning of Article 53(1) of Directive 2005/36 (see, by analogy, judgment of 28 November 1989, *Groener*, C-379/87, EU:C:1989:599, paragraphs 19 and 21).
- 77 However, it is necessary to take into account the fact that Directive 2005/36 must be interpreted in the light of the fundamental freedoms guaranteed by EU law, in particular Article 49 TFEU, in situations where, as in the case in the main proceedings, the legislation of a Member State requires educational institutions established in its territory to ensure that the teachers of that institution fulfil a specific language requirement.
- 78 Accordingly, the compatibility of such legislation with Article 53(1) of Directive 2005/36, read in the light of Article 49 TFEU, must be assessed using the same criteria as are applicable to the examination of the compatibility of that legislation with Article 49 TFEU, referred to in paragraphs 51 to 68 of the present judgment, which involves ascertaining whether that legislation is justified by the objective of protecting and promoting the official language of the Member State in question and whether it is necessary and proportionate to the attainment of that objective.
- 79 For the sake of completeness, it should be noted that Article 53(3) of Directive 2005/36 provides that controls aimed at reviewing compliance with the obligation laid down in Article 53(1) of that directive may be imposed on professions other than those with patient safety implications only where there is ‘a serious and concrete doubt’ about the sufficiency of the professional’s language knowledge in respect of the professional activities that that professional intends to pursue.
- 80 In the light of the foregoing considerations, the answer to the third question is that Article 53(1) of Directive 2005/36, read in the light of Article 49 TFEU, must be interpreted as not precluding, in a situation falling within its scope, legislation of a Member State under which teachers from a private educational institution which delivers, in a language other than the official language of that Member State, an international secondary education programme and the primary and middle years education programmes of the International Baccalaureate are subject to a requirement of an intermediate level of proficiency in that official language, provided that such legislation is justified by the objective of protecting and

promoting that official language and that it is necessary and proportionate to the attainment of that objective. That condition is not satisfied where that legislation applies, with no possibility for exception or flexibility, to all the persons covered by it and requires them, in order to demonstrate that they possess the requisite level of proficiency in the official language, to provide a certificate issued by a body of the Member State concerned on the basis of language tests organised in the territory of that Member State.

### Costs

- 81 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (First Chamber) hereby rules:

#### 1. Article 49 TFEU

**must be interpreted as applying to the situation of a private educational institution established in a Member State and in the capital of which a national of another Member State has a holding allowing him or her to exert a definite influence on its decisions and to determine its activities, where that institution delivers in the Member State in which it is established, for remuneration, an international secondary education programme and the primary and middle years education programmes of the International Baccalaureate.**

#### 2. Article 49 TFEU

**must be interpreted as not precluding, in a situation falling within its scope, legislation of a Member State under which a private educational institution – which delivers, in a language other than the official language of that Member State, an international secondary education programme and the primary and middle years education programmes of the International Baccalaureate – is required to review whether its teachers and the members of its administrative staff in regular communication with the public and with the administrative authorities fulfil the requirement of an intermediate level of proficiency in that official language, provided that such legislation is justified by the objective of protecting and promoting that official language and that it is necessary and proportionate to the attainment of that objective. That condition is not satisfied where that legislation applies, with no possibility for exception or flexibility, to all the persons covered by it and requires them, in order to demonstrate that they possess the requisite level of proficiency in the official language, to provide a**

**certificate issued by a body of the Member State concerned on the basis of language tests organised in the territory of that Member State.**

- 3. Article 53(1) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as amended by Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013, read in the light of Article 49 TFEU,**

**must be interpreted as not precluding, in a situation falling within its scope, legislation of a Member State under which teachers from a private educational institution which delivers, in a language other than the official language of that Member State, an international secondary education programme and the primary and middle years education programmes of the International Baccalaureate are subject to a requirement of an intermediate level of proficiency in that official language, provided that such legislation is justified by the objective of protecting and promoting that official language and that it is necessary and proportionate to the attainment of that objective. That condition is not satisfied where that legislation applies, with no possibility for exception or flexibility, to all the persons covered by it and requires them, in order to demonstrate that they possess the requisite level of proficiency in the official language, to provide a certificate issued by a body of the Member State concerned on the basis of language tests organised in the territory of that Member State.**

[Signatures]