Those essential requirements abolish all discrimination against the person providing the service by reason of his nationality or the fact that he is established in a Member State other than that in which the service is to be provided.

3. The freedom to provide services is one of the fundamental principles of the Treaty and may be restricted only by provisions which are justified by the general good and which are imposed on all persons or undertakings operating in the Member State in which the service is to be provided in so far as that interest is not safeguarded by the provisions to which the provider of the service is subject in the Member State of his establishment.

4. Article 59 of the Treaty does not preclude a Member State which requires agencies for the provision of manpower to hold a licence from requiring a provider of services established in another Member State and pursuing such activities on the territory of the first Member State to comply with that condition even if he holds a licence issued by the State in which he is established, provided, however, that in the first place when considering applications for licences and in granting them the Member State in which the service is provided makes no distinction based on the nationality of the provider of the services or his place of establishment, and in the second place that it takes into account the evidence and guarantees already produced by the provider of the services for the pursuit of his activities in the Member State in which he is established.

In Case 279/80,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) for a preliminary ruling in the criminal proceedings pending before that court against

ALFRED JOHN WEBB

on the interpretation of Articles 59 and 60 of the EEC Treaty,

THE COURT

composed of: J. Mertens de Wilmars, President, G. Bosco, A. Touffait and O. Due (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, T. Koopmans, U. Everling, A. Chloros and F. Grévisse, Judges,

Advocate General: Sir Gordon Slynn
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

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 of the EEC may be summarized as follows:

I — Facts and written procedure

1. Legislation in the Netherlands makes the provision of manpower subject to a system of licensing.

Article 1 (1) (b) of the Wet op het ter Beschikkingstellen van Arbeidskrachten [Law on the provision of manpower] of 31 July 1965, as amended by the Law of 30 June 1967, defines the provision of manpower as follows:

"The provision of manpower for another person for hire or reward otherwise than in pursuance of a contract of employment concluded with that other person, for the performance of work usually carried on in his undertaking."

The opening words of Article 2 (1) of that Law including subparagraph (a) thereof permit the introduction of a licensing system in the following terms:

"If ... the interests of good relations in the labour market or those of the workers affected so require then, by means of a general administrative measure, in general or in cases belonging to categories indicated for that purpose in the measure:

... the provision of manpower may be prohibited unless a licence is granted by our Minister".

Article 6 (1) of the Law provides that:

"A licence shall be refused only when there is reasonable cause to fear that the provision of manpower by the applicant

might harm good relations in the labour market or if for that reason the interests of the labour force affected are insufficiently safeguarded."

Licensing was in fact introduced by means of the Royal Decree of 10 September 1970 adopted in pursuance of the opening words of Article 2 (1) of the aforementioned Law. According to Article 1 of the decree:

"No person shall provide manpower unless he is in possession of a licence issued by the Minister for Social Affairs".

2. In the main proceedings, which concerned criminal charges brought against Alfred John Webb, the accused was sentenced by a judgment of 27 April 1978 of the Economische Politierechter [Magistrate dealing with commercial matters] at the Arrondissementsrecht-bank [District Court], Amsterdam, to three fines of HFL 6 000 each or 60 day's imprisonment, of which HFL 3 000 and 30 days' imprisonment were suspended in each case for two years. The judgment was confirmed on appeal by a decision of the Commercial Chamber of the Gerechtshof [Regional Court of Appeal], Amsterdam, on 14 February 1980. The Gerechtshof described the offence as "counselling or procuring the contravention on three occasions by a legal person of a provision adopted pursuant to Article 2 (1) of the Wet op het ter Beschikkingstellen van Arbeidskrachten".

According to the case-file the accused, who resides in the United Kingdom, is the manager of International Engineering Services Bureau (UK) Limited, an English company based in the United Kingdom, hereinafter to as "the Company".

The Company's principal business is supplying technical staff to the Netherlands, the staff being recruited by the Company and supplied for consideration and for a fixed period to businesses located in the Netherlands, without any contract of employment being entered into with such businesses. Hence the staff are and remain exclusively employees of the Company. The latter holds a licence as provided for by United Kingdom legislation but pursues its business without being in possession of a Netherlands licence.

In the case at issue the court which decided the facts found that on three occasions between 20 February 1978 and 24 February 1979 International Engineering Services made staff available, for consideration, to businesses in the Netherlands for the performance in those undertakings of regular work in conditions other than those laid down by a contract of employment entered into with the latter, without being in possession of a licence issued by the Minister for Social Affairs.

The accused sought to have the conviction quashed on the ground *inter alia* that the Gerechtshof had failed to observe Articles 59 and 62 of the EEC Treaty. His argument was that where the business of providing manpower is dependent in a Member State on the issue of a licence, that State may not require those who provide such services and who are established in another Member State to fulfil that condition if they hold in the Member State in which they are established a licence issued on conditions comparable to those imposed by the State in which the services are provided and when such activities are duly supervised in the first State. It was submitted on his behalf that the

Gerechtshof had failed to appreciate that the conditions are comparable in the sense relevant here if licences such as those issued in the Netherlands under the Wet op het ter Beschikkingstellen van Arbeidskrachten are granted in another Member State subject to both the need to maintain good relations on the labour market and the desire to guarantee to the workers concerned full enjoyment of their social rights.

Considering that a decision in the dispute depended on questions concerning the interpretation of provision of Community law, the Hoge Raad stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

"1. Does the expression 'services' in Article 60 of the EEC Treaty include the service of providing manpower within the meaning of the opening words of the first paragraph of Article 1 and subparagraph (b) of the same paragraph of the Wet op het ter Beschikkingstellen van Arbeidskrachten [Law on provision of manpower]?

2. If Question 1 is answered in the affirmative, does Article 59 of the Treaty always or only under certain conditions preclude a Member State in which the provision of that service is made dependent on the possession of a licence — that requirement being imposed in order that such a licence may be refused if there is reasonable cause to fear that the provision of manpower by the applicant might harm good relations in the labour market or that the interests of the workforce affected are insufficiently safeguarded — from compelling a person providing the services who is established in another Member State to fulfil those conditions?

3. To what extent is the answer to Question 2 affected if a foreigner providing the service possesses a licence to provide that service in the State in which he is established?"

3. The judgment containing the reference was lodged at the Court Registry on 30 December 1980.

Written observations were submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC by the Netherlands Government, represented by C. H. A. Plug on behalf of the Ministry of Foreign Affairs; by the Federal German Government, represented by Martin Seidel and Hans Hinrich Boie; by the United Kingdom Government, represented by R. D. Munrow of the Treasury Solicitor's Department; by the French Government, represented by Thierry Le Roy on behalf of the Secretary-General of the Interministerial Committee on European Economic Cooperation; and by the Commission of the European Communities, represented by its Legal Adviser, Robert Caspar Fischer, acting as Agent and assisted by Christine Berardis-Kayser, a member of the Commission's Legal Department.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations

First question

1. *The Federal German Government, the United Kingdom Government* and *the Commission* are of the opinion that the

reply to the first question should be in the affirmative. Their argument is that the concept of "services" in Article 60 of the EEC Treaty includes the business of hiring out manpower as described in the Netherlands legislation at issue when such activity operates across borders, that is to say, when the business is carried out from another Member State.

The German Government adds that the hiring out of manpower as described in the Netherlands legislation represents an independent occupation provided for remuneration within the terms of Article 60 of the Treaty.

The Commission explains that the expression "services" within the meaning of the Treaty is a residual concept which embraces all services not regulated elsewhere. The service provided consists in the supply or "loan" of workers who are and remain in the employ of the "lender". They do not enter into any contract of employment with their "actual" employer but are made available to the latter on the basis of the legal relationship which exists between them and the "lender", which is normally a contract of employment. The "actual" employer pays to the agency for temporary staff, not the workers' remuneration, but the remuneration due to the lender for supplying the workers.

2. The *French Government* does not dispute that the provision of manpower is covered by the concept of "services" in Article 60 of the Treaty, but it points out that that activity represents a special kind of service which cannot be compared with other recognized commercial services. In the first place, the provision of manpower brings the recipient undertaking only the "services" of the temporary worker. In the second place, the activities of agencies for temporary staff necessarily affect both the normal system of engaging salaried workers, from which it constitutes a derogation, and the work of public employment services. That is why such activities are regulated, or may become so as they develop, not only in all the Member States but also internationally. Discussions are at present in progress at Community level on temporary work, including temporary work across frontiers. The discussions cover such problems as the free movement of workers, social security for employed persons, the employment situation and working hours.

The French Government therefore suggests that the Court reply to the first question as follows:

"The provision of manpower within the meaning of the opening words of the first paragraph of Article 2 and subparagraph (a) of the same paragraph of the Wet op het ter Beschikkingstellen van Arbeidskrachten, though covered by the concept of "services" mentioned in Article 60 of the EEC Treaty, must be regarded as being in a special category inasmuch as such activities may also be covered by measures relating to social policy and to the free movement of persons."

Second and third questions

1. The Netherlands Government considers that although the Court has confirmed on more than one occasion that the freedom to supply services under the Treaty precludes any discrimination on the grounds of nationality or place of establishment, the provision of services may nevertheless be made the subject of special rules based on the special nature of certain services. More particularly, if

an activity is subject to licensing provisions in one Member State licences may also be required for nationals of another Member State if that is objectively necessary in order to safeguard, *inter alia*, the public interest, and in so far as the State of origin does not issue licences on comparable conditions and does not exercise appropriate supervision. That is apparent from, *inter alia*, the judgment of 18 March 1980 (Case 52/79 *Debauve* [1980] ECR 833).

The Netherlands Government goes on to compare the licensing provisions in force in the Netherlands and the United Kingdom.

In the Netherlands a licence may be withheld if there is reason to fear that the provision of manpower by the applicant might prejudice good relations on the labour market of if, by reason of that fact, the interests of the workers concerned are inadequately safeguarded. Those interests are defined by standard provisions as follows.

First, in the absence of a collective agreement to the contrary effect, temporary staff may receive no more than the remuneration which is given to staff employed to perform identical or equivalent work in the undertaking to which the temporary staff is assigned. There are also strict rules governing the reimbursement of expenses and periodic payments. The provisions are justified by the fact that large differences in pay might well bring about serious disturbances in labour relations by creating conflict with the permanent staff employed by the undertakings. They might lead, in particular, to the occurrence of strikes.

Secondly, temporary work is wholly forbidden in the Netherlands in the building and metallurgical industries. In those sectors the labour market is subject to abnormal pressures, on which the disturbing effect of discrepancies in pay would be particularly marked.

Thirdly, legislation in the Netherlands restricts the hiring out of temporary staff to a period not exceeding three months unless an authorization has been granted by the Ministry of Social Affairs on grounds of the special status of the temporary staff or exceptional circumstances obtaining in the undertaking to which the manpower is supplied. Those restrictions stem from the desire to restrict temporary employment to work which is itself strictly of a temporary nature.

Finally, where the hiring out of manpower supplants regular employment based on contracts with undertakings, that is considered to have a disturbing effect on labour relations. The same applies when the activity which an applicant proposes to pursue would have the effect of depriving permanent employees of their work.

The Employment Agencies Act in the United Kingdom, by contrast, allows licences to be refused on grounds pertaining to the person of the applicant or for reasons connected with the management of the undertaking, or in the case of unsuitable premises.

The systems existing in the Netherlands and the United Kingdom are thus not

comparable. The Netherlands attaches great importance to good relations on the labour market as a matter of policy in the granting of licences, whereas the United Kingdom does not apply that criterion. In the latter country, in particular, there is no prohibition regarding the building and metallurgical industries, and under the system in force in the United Kingdom there is no restriction on the length of time for which temporary staff may be engaged.

A number of other Member States recognize the need for applying certain controls in the field of temporary work. Most of them have legislation covering temporary work. Thus Italy, for example, prohibits it altogether, whereas Luxembourg has a system which is wholly unrestricted within the Community. Most of the Member States have specific rules grafted on to their own labour legislation, usually imposing certain restrictions on the duration of the hiring. Besides the legislation in force in the Netherlands that is the position in Belgium, Denmark and France.

The problems presented by transnational temporary work have been discused by, *inter alia*, the Standing Committee on Employment within the Community. There was general agreement within the Committee that besides approval by the appropriate national authorities transnational activities of agencies for temporary staff should be authorized by the appropriate authorities in the recipient country.

The Netherlands legislation does not discriminate on the grounds of nationality or place of establishment, businesses and persons from other Member States being subject to the same conditions as businesses or persons of Netherlands nationality. There would be discrimination, however, if British businesses were not required to have a licence issued in the Netherlands because in that case they would be considered for the purposes of the grant of a licence on the basis of rules different from those applied to their counterparts in the Netherlands. The result would be that Netherlands licence holders might endeavour to become established in the United Kingdom as well in order to evade the provisions of Netherlands Law by obtaining a United Kingdom licence.

Moreover, the authorities in the Netherlands have no authority to exercise supervision within the United Kingdom just as the United Kingdom authorities cannot check the provisions of Netherlands law; they can only ensure that British law is observed in accordance with the principles laid down by United Kingdom legislation.

The reply to the second and third questions might therefore be as follows:

"A licensing system in a Member State which is necessary in the public interest, for instance in order to preserve good relations on the labour market, may be extended to nationals from other Member States even where such persons are in possession of a licence issued in their own State for the same activities if the latter licensing system does not take adequate account of public interests such as that mentioned above and is therefore not comparable to the licensing system in question, so that adequate supervision is impossible."

2. The observations submitted by the *Federal German Government* may be summarized as follows:

(a) In principle the reply to the *second question* should be in the negative. Article 59 of the Treaty does not prevent the introduction of this kind of compulsory licensing system in the circumstances in question when such a licence is indispensable in order to safeguard the interests of the workers concerned and provided that it is issued on the same conditions as those applicable to its own nationals. The German Government does not intend to discuss whether a compulsory licensing system may also be justified for reasons connected with the situation on the labour market.

Inasmuch as national rules such as those here at issue have been adopted in order to protect workers they must be considered as a restriction, permitted by Community law, on the freedom to provide services, provided that the provision of services supplied in another Member State is effected "under the same conditions as are imposed by that State on its own nationals", as required by Article 60 of the Treaty.

In its judgment of 3 December 1974 (Case 33/74 *Van Binsbergen* [1974] ECR 1299) the Court expressly confirmed that the principle of the freedom to provide services does not prohibit such rules. In the opinion of the German Government the control exercised by the State on the business of providing manpower constitutes rules for the conduct of business, justified by the general good, of the kind at issue in the case just cited, which cannot be considered incompatible with the Treaty at least in so far as such control is essential for the protection of the social rights of the workers concerned.

The provision of manpower is governed in the Federal Republic of Germany by the Arbeitnehmerüberlassungsgesetz [Law on agency work] of 7 August 1972. The Law is designed to safeguard the social rights of workers who without special legal provision governing their employment relationship would be exposed to greater risk. To that end the following measures have been adopted by the legislature:

Official authorization to pursue the activity of hiring out staff is granted only to those able to provide the requisite guarantees of good conduct. That requirement covers, *inter alia*, the duty to comply with all the legal provisions concerning social insurance, the deduction and payment of tax on remuneration, the placing of staff, recruitment abroad and work permits, together with compliance with the provisions on employment protection and obligations laid down by the law relating to employment. In addition the agency must be so organized that it is in a position to fulfil consistently the normal obligations of any employer, that is to say, for example, it must have sufficient capital to ensure its proper management.

The German Government maintains that as Community law stands at present, that is to say, in the absence of harmonizing provisions emanating from the Community legislature, Member States are compelled to retain their systems for regulating and supervising the hiring out of manpower if they do not wish to undermine the protection of workers' social rights. The form of the legislation which governs the hiring out of manpower differs widely from one Member State to another. Hence if the rule requiring providers of services across national frontiers to be in possession of a licence issued in the country where their staff work were judged to be unlawful, agencies for temporary staff would go and establish themselves in each instance in those Member States where the degree of protection was lowest in order to pursue their activities from that territory.

Furthermore, the requirement of a licence for the hiring out of manpower is not unknown to Community law. Thus, for example, the general programmes for the abolition of restrictions on freedom of establishment and on freedom to provide services drawn up by the Council

under Articles 54 and 132 (5) make express allowance for the maintenance in force of similar national compulsory licensing provisions. Similarly, in the case of other activities which are no different, from the economic point of view, from the hiring out of manpower, such as that of private employment agencies, the Directive of 12 January 1967 concerning the attainment of freedom of establishment and freedom to provide services (Official Journal, English Special Edition 1967, p. 3) was based on the assumption that in so far as national systems of authorization apply in the same way to nationals of the country and to other Community citizens they remain, in principle, in force.

Recently the Commission drew up draft directives for common action in the field of temporary work (the hiring out of manpower). They provide expressly that any agency providing temporary work which is engaged in the business of supplying staff abroad must apply to the appropriate national authorities for authorization to commence such activities, seek the prior authorization of the appropriate authorities in the recipient country and comply with the laws of the recipient country.

The Federal German Government therefore suggests that the answer to the second question might be as follows:

"Article 59 of the Treaty does not preclude a Member State in which the provision of manpower is subject to the grant of a licence from requiring that such a licence be held by a provider of services who is established in a different Member State, if that licence is indispensable to the protection of the interests of the workers concerned and if it is issued on the same conditions as those which must be met by its own nationals."

(b) The reply to the *third question* should be that if the issue of a licence in addition to a licence which has already been granted is essential for overriding considerations of social policy the restriction is not incompatible with the EEC Treaty within the meaning of Articles 52 and 59 thereof but a restriction on the practical scope of those provisions which is recognized by Community law and which may be maintained.

That interpretation coincides in particular with the principles enunciated in the judgment of the Court of 18 January 1979, Joined Cases 110 and 111/78 (*Van Wesemael* [1979] ECR 35). In that case, which concerned an employment agency for entertainers, the Court allowed restrictions on the freedom to provide services "where they have as their purpose the application of professional rules, justified by the general good or by the need to ensure the protection of the entertainer, which are binding upon any person established in the said State". It did not, therefore, rule out the possibility that a transfer of the effect of a licence to another State may be prohibited even where the procedure for granting licences is similar in both Member States.

There are some differences, however, between the facts of the present case and those in *Van Wesemael.* The last-mentioned judgment concerned the business of finding employment for entertainers. The task of the agency was limited in that case to establishing contact between supply and demand on a

very small part of the labour market and arranging for a contract of employment to be made between the entertainer and the organizer. Conclusion of the contract signified the end of the agency's task so that it had no other social obligations towards the worker for whom it had found employment.

In the case of temporary staff, however, consideration must be given to their social rights if they are sent from one Member State to work for a user established in another Member State. The private temporary staff agency is their employer for as long as their services are made available to others and by reason of that fact it has numerous legal obligations incumbent upon it by virtue of, *inter alia,* employment laws and legislation on social insurance or security of employment.

The German Government therefore suggests that the answer to the third question might be as follows:

"A Member State may require agencies for temporary staff to be in possession of a licence in order to carry out services on its territory even if the agency already holds a licence in its country of origin, provided that such a requirement is essential to the proctection of the social rights of agency workers because such protection cannot be afforded by supervision of the hiring out of manpower in the country of origin."

3. The *United Kingdom Government* commences its observations with a comparison of the provisions regulating employment agencies and employment businesses in the United Kingdom and in the Netherlands, and goes on to discuss the judgment of the Court of Justice of 18 January 1979 (Joined Cases 110 and 111/78 *Van Wesemael* [1979] ECR 35).

(a) British legislation on the subject, namely the Employment Agencies Act 1973, makes the carrying on of employment agencies or businesses subject to the grant of a licence. Under the Act "employment agency" means "the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them". "Employment business" means "the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity".

A licence is to be issued to any person who applies for one unless the applicant or any person concerned with the carrying on of the agency or business, or the premises themselves, are unsuitable. Only those who wish to set up an agency or branch in the United Kingdom require a licence, whilst an employment business or agency outside the United Kingdom may provide its services for employers or employees in the United Kingdom without being in possession of a United Kingdom licence.

The conditions under which licences are granted in the United Kingdom are therefore substantially different from those governing the issue of a licence in the Netherlands. Thus, the United Kingdom licensing system involves

consideration of the suitability of the applicant and the persons who are to be involved in the activities of the agency as well as the suitability of the premises, but does not include considerations of a general kind such as good labour relations or the interests of the workers. The United Kingdom system covers both employment agencies and employment businesses whereas under the system in the Netherlands a general prohibition is placed on private employment agencies. Finally, unlike the Netherlands system the United Kingdom system is of general application and cannot be restricted to a specific industry or to a particular region or locality.

(b) The *Van Wesemael* judgment cited above concerns only fee-charging employment agencies for entertainers licensed in France but operating in Belgium without being licensed according to Belgian law. It does not support the view that the freedom to supply services is wholly unfettered or unconditional as far as the activities of employment agencies or businesses are concerned.

The Court adopted a similar approach in its decision of 18 March 1980 (Case 52/79 *Debauve* [1980] ECR 833), which concerned the problem of broadcasting and transmitting television signals.

(c) Accordingly the United Kingdom Government considers that the reply to be given to both the second and third questions should be as follows:

"If a person providing the service possesses a licence to provide that service in the Member State in which he is established (the first State), then Article 59 does not preclude another Member State in which the service is provided (the second State) from requiring a licence where the conditions under which licences are granted in the first State are not comparable in that they do not give substantially similar protection to that required by the second State to persons affected by the conduct of the business, as long as the conditions for the grant of such a licence by the second State are (a) non-discriminatory, and (b) do not require the person providing the service to set up an establishment in that State."

4. (a) The *French Government* observes on the subject of the *second question* that there is no outright prohibition in Article 60, *in fine*, of the EEC Treaty of a requirement that persons providing services must comply with all the legislation in force in the recipient country, but nevertheless some provisions of law adopted by legislation, regulation or administrative action may be considered as restrictions on the freedom to provide services, which are prohibited under Article 59. According to past decisions of the Court of Justice, that applies to all requirements imposed on the provider of services which are based on, in particular, his nationality or the fact that he is not in possession of a permanent residence in the State in which the service is supplied.

Such requirements may, however, be considered to comply with Article 59 if their motive is the application of rules for the conduct of business which are justified by the common good and if they apply equally to all persons or businesses established on the territory of the Member State concerned. In the present instance the obligation to be in

possession of a licence in order to carry on the business of an agency for temporary staff applies without distinction to businesses established in the Netherlands and to businesses established in any other Member State. It may therefore be considered to be the result of the application of rules for the conduct of business which are justified by the common good inasmuch as the intention is to preserve good labour relations or to safeguard the interests of workers.

Accordingly the French Government suggests that the reply to be given by the Court to the second question might be as follows:

"Article 59 of the Treaty does not preclude a Member State in which the provision of such services is made dependent on the possession of a licence — that requirement being imposed in order that a licence may be refused if there is cause to fear that the provision of manpower by the applicant might be prejudicial to good relations on the labour market or that the interests of the workforce affected may therefore be insufficiently safeguarded — from requiring any provider of such services who is established in another Member State to fulfil that condition."

(b) The problem raised by the *third question* was considered by the Court in its judgment of 18 January 1979 (Joined Cases 110 and 111/78 *Van Wesemael* [1979] ECR 35). The decision made it clear that Member States may not impose on persons providing services any requirements other than those which are objectively necessary in order to ensure compliance with rules for the conduct of business and to safeguard the public interest.

The requirement that a licence or authorization must be obtained may therefore be considered contrary to Article 59 of the EEC Treaty if the provider of services holds, in the Member State in which he is established, a licence which was issued on comparable conditions, and if his activities are subject in that State to appropriate supervision irrespective of the Member State in which the services are to be supplied.

That cannot be said in the present instance, however, in view of the difference between the national provisions governing the subject and above all the fact that the aims pursued in the general interest are not the same in each case. Where, as in the Netherlands, temporary work may be restricted in order to maintain equilibrium on the labour market, it would not be acceptable to have regard to such considerations when issuing licences to its own nationals. Similarly, it is not possible to ask the national authorities of the provider of the services to exercise the necessary supervision of the activities in question in order to ensure the protection of workers' rights in the Member State in which their services are to be provided.

In an area where the employment situation, the safeguards enjoyed by workers and working hours are all placed at issue the legal provisions and procedures applicable in the Member State wherein the services are rendered must be considered to be compatible with Community law and applicable to providers of services who are established in another Member State.

The French Government suggests that the Court's reply to the third question should be as follows:

"The fact that a foreign operator providing such services holds in the Member State in which he is established a licence authorizing him to provide such services in that country does not affect the reply to Question 2 in so far as, where the provision of manpower is concerned, the authorities in the country of establishment are not able to take account of all the social considerations determining the conditions for the issue of licences in the Member State in which the services are rendered or to ensure by appropriate supervision observance of the requisite guarantees irrespective of the Member State in which the services are to be supplied."

5. The observations submitted by the *Commission* may be summarized as follows.

(a) As to the *second question,* the prohibition contained in Article 59 has direct and unconditional effect as from the expiry of the transitional period, at least in so far as concerns any discrimination against the provider of the services on the basis of his nationality or the fact that he is established in a Member State other than that in which the service is to be supplied.

Article 59 also has direct and unconditional effect with regard to all other requirements imposed on the provider of services, which are of such a nature as to prohibit or otherwise obstruct his activities, subject, however, to three reservations.

In the first place, a Member State may impose on providers of services certain specific requirements which are based on the application of rules for the conduct of business, justified in the public interest and applying to any person established on the territory of the said State provided, however, that such requirements are necessary in order to ensure that the provider of the services does not escape the effects of such rules by reason of the fact that he is established in another Member State where he is not subject to similar provisions.

In the second place, Member States may require providers of services established in other Member States to obtain a licence, and to be subject to the supervision of the appropriate authorities, only if such a requirement is objectively necessary in order to ensure observance of rules for the conduct of business and to safeguard the public or private interest. The requirement is not objectively necessary if the supplier of the services holds in the Member State in which he is established a licence issued on conditions comparable to those imposed by the State in which the services are supplied and if his activities are subject in the first State to appropriate supervision of the services which he supplies, whichever may be the Member State in which the services are to be supplied.

In the third place, a Member State may not, by imposing a requirement of residence in the said State, preclude persons resident in a different Member State from supplying services if less stringent measures suffice to ensure compliance with rules for the conduct of business.

When those principles, which are derived from the decisions of the Court of Justice, are applied to the circumstances of the present case it becomes evident that the two considerations on which the refusal of a licence may be based under Netherlands law, namely good relations on the labour market and the interests of

the workers concerned, may be served to a certain extent just as well by provisions of a general nature and the exercise of supervision, methods which would prove less of a hindrance to the free supply of services.

To what extent the requirement of a licence is objectively necessary and therefore may be imposed on providers of services who are not established in the country is a question for the national court to decide, however.

Licences may also, of course, be required of providers of services not established in the country in order to exclude undertakings which are inefficient or untrustworthy. In some other cases, however, the adoption of certain general provisions in conjunction with a compulsory declaration, for example on the working conditions of the staff supplied, would suffice. As to the supervision necessary to ensure compliance with both the law in general and the provisions concerning the supply of manpower, as well as supervision of the management of the undertaking, all that is required is the application of special requirements in the case of providers of services who are not established in the country, for example the production to the authorities of satisfactory accounts. In any case there is no reason to require providers of services who are not established in the country to obtain a licence merely for statistical purposes. Lastly, there can be no question of Member States' applying in the case of agencies for temporary staff established in other Member States rules restricting the number of approved temporary employment agencies or dividing among them the maximum number of workers who may be made available, particularly if the allocation is not based on objective and compelling criteria which have been published.

To sum up, the Commission suggests that the reply to the second question might be couched in the following terms:

"A Member State which, pursuant to rules for the conduct of business which are justified in the public interest, makes the provision of manpower subject to possession of a licence (which may be refused only if there is reason to fear that such an activity when pursued by the applicant may be detrimental to the interests of good relations on the labour market or that the interests of the workers affected would be inadequately protected thereby) may require providers of such services established in other Member States to fulfil that condition only in so far as to do so is objectively necessary in order to ensure at the outset, by the issue of a licence, that they meet the objective, general conditions governing the pursuit of such activities which are imposed by the rules for the conduct of business governing that occupation in the general interest."

(b) The reply to the *third question* may be based on the principle set out in the judgment of 18 January 1979 (Joined Cases 110 and 111/78 *Van Wesemael* [1979] ECR 35), that the Member State affected may not subject the provision of services by persons established in another Member State to the grant of the licence required under its own rules for the conduct of business if the provider of the service holds in that other Member State a licence which was issued on comparable conditions.

Since according to the reply to the second question a licence is not necessary in order to compel the provider of the services to comply with the legislation of the Member State in which he supplies his services, or to allow supervision of such compliance and of the management of the undertaking, those two considerations must not enter into account in determining whether the licence held by the provider of the services who is established in another Member State was issued on comparable conditions.

The Member State in which the services are supplied may, by contrast, have regard to the manner in which supervision is exercised in the Member State in which the supplier of the services is established inasmuch as if the last-mentioned State controls the activities of the provider of the services only when they are pursued in its own territory, the other Member State may impose more specific conditions. However, that in no way justifies the requirement of a licence, since it is not objectively necessary in order to ensure appropriate supervision.

The reply to the third question might therefore be in the following terms:

"If the foreign provider of the services holds in the Member State in which he is established a licence authorizing him to provide such services in that country, the Member State in which the services are to be supplied may not require the provider of the services to hold a licence issued under its own laws if the licence granted in the Member State in which the provider of the services is established is issued on conditions which are comparable to those which the Member State in which the services are supplied may, in accordance with the reply to the second question, apply to the issue of licences to providers of services who are established in a different Member State who are not in possession of a licence in the latter State."

III — Oral procedure

At the sitting on 9 July 1981 oral argument was presented by the following: G. M. Borchardt, acting as Agent, and Mrs De Bruin, consultant, for the Netherlands Government; Alexandre Carnelutti, acting as Agent, for the French Government; Martin Seidel and Hans Hinrich Boie, acting as Agents, for the Federal German Government; Laurids Mikaelsen, acting as Agent, for the Danish Government; and Robert Caspar Fischer, Legal Adviser to the Commission, for that institution.

The Advocate General delivered his opinion at the sitting on 21 October 1981.

Decision

1 By a judgment of 9 December 1980 which was received at the Court on 30 December 1980 the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] referred to the Court for a preliminary ruling under Article 177

of the EEC Treaty three questions concerning the interpretation of Articles 59 and 60 of the Treaty in connection with the Netherlands legislation governing the provision of manpower.

2 The questions arose in the course of criminal proceedings for offences against Article 1 of the Koninklijk Besluit [Royal Decree] of 10 September 1970 (Staatsblad 410). That article prohibits the provision of manpower without authorization from the Minister for Social Affairs.

3 The above-mentioned Royal Decree was adopted pursuant to the opening words of Article 2 (1) and subparagraph (a) thereof of the Wet op het ter Beschikkingstellen van Arbeidskrachten [Law on the provision of manpower] of 31 July 1965 (Staatsblad 379), as amended by the Law of 30 June 1967 (Staatsblad 377). That article provides that the provision of manpower without authorization may be prohibited by means of a Royal Decree if required in the interests of good relations on the labour market or of the labour force affected. Article 6 (1) of the Law provides, however, that the authorization may be refused only when there is reasonable cause to fear that the provision of manpower by the applicant might harm good relations on the labour market or if the interests of the labour force in question are inadequately safeguarded.

4 Article 1 (1) (b) of the above-mentioned Law defines the activity in question as the provision of manpower for another person for hire or reward and otherwise than in pursuance of a contract of employment with that other person, for the performance of work usually carried on in his undertaking.

5 The accused in the main action, Alfred John Webb, who is the manager of a company incorporated under English law and established in the United Kingdom, holds a licence under United Kingdom law for the provision of manpower. The company provides technical staff for the Netherlands in particular. The staff are recruited by the company and made available, temporarily and for consideration, to undertakings located in the Netherlands, no contract of employment being entered into as between such staff and the undertakings. In the case at issue it was established by the court considering the facts that in February 1978 the company had on three occasions, not being in possession of a licence issued by the Netherlands Minister for Social Affairs, supplied workers for undertakings in the Netherlands, for consideration and otherwise than in pursuance of a contract of employment concluded with the latter, for the performance of work usually carried on in those undertakings.

6 Considering that a decision in the case depended on whether the Netherlands legislation was compatible with the rules of Community law governing the freedom to supply services and, in particular, with Articles 59 and 60 of the EEC Treaty, the Hoge Raad, hearing the appeal in cassation, referred the following questions to the Court of Justice:

"1. Does the expression 'services' in Article 60 of the EEC Treaty include the service of providing manpower within the meaning of the opening words of the first paragraph of Article 1 and subparagraph (b) of the same paragraph of the Wet op het ter Beschikkingstellen van Arbeidskrachten [Law on provision of manpower]?

2. If Question 1 is answered in the affirmative, does Article 59 of the Treaty always or only under certain conditions preclude a Member State in which the provision of that service is made dependent on the possession of a licence — that requirement being imposed in order that such a licence may be refused if there is reasonable cause to fear that the provision of manpower by the applicant might harm good relations in the labour market or that the interests of the workforce affected are insufficiently safeguarded — from compelling a person providing the services who is established in another Member State to fulfil those conditions?

3. To what extent is the answer to Question 2 affected if a foreigner providing the service possesses a licence to provide that service in the State in which he is established?"

First question

7 The substance of the first question raised by the national court is whether the concept of "services" contained in Article 60 of the Treaty extends to the supply of manpower within the meaning of the Netherlands legislation cited above.

8 According to the wording of the first paragraph of Article 60 of the Treaty the expression "services" means services which are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. In the second

paragraph of the article examples of activities covered by the expression "services" are listed.

9 Where an undertaking hires out, for remuneration, staff who remain in the employ of that undertaking, no contract of employment being entered into with the user, its activities constitute an occupation which satisfies the conditions laid down in the first paragraph of Article 60. Accordingly they must be considered a "service" within the meaning of that provision.

10 The French Government has sought to emphasize in this connection the special nature of the activity in question, which although covered by the expression "services" in Article 60 of the Treaty ought to receive special consideration inasmuch as it may be covered as well both by provisions concerning social policy and by those concerning the free movement of persons. Whilst employees of agencies for the supply of manpower may in certain circumstances be covered by the provisions of Articles 48 to 51 of the Treaty and the Community regulations adopted in implementation thereof, that does not prevent undertakings of that nature which employ such workers from being undertakings engaged in the provision of services, which therefore come within the scope of the provisions of Article 59 et seq. of the Treaty. As the Court has already declared, in particular in its judgment of 3 December 1974 (Case 33/74 *Van Binsbergen* [1974] ECR 1299), the special nature of certain services does not remove them from the ambit of the rules on the freedom to supply services.

11 The reply to the first question must therefore be that the expression "services" in Article 60 of the Treaty includes the provision of manpower within the meaning of the Wet op het ter Beschikkingstellen van Arbeidskrachten.

Second and third questions

12 The second and third questions ask in substance whether Article 59 of the Treaty precludes a Member State from making the provision of manpower within its territory subject to possession of a licence in the case of an undertaking established in another Member State, in particular when that undertaking holds a licence issued by the latter State.

13 The first paragraph of Article 59 of the Treaty requires restrictions on freedom to provide services within the Community to be progressively abolished during the transitional period in respect of nationals of Member States of the Community. As stated by the Court in its judgment of 18 January 1979 (Joined Cases 110 and 111/78 *Van Wesemael* [1979] ECR 35) that provision, interpreted in the light of Article 8 (7) of the Treaty, imposes an obligation to obtain a precise result, the fulfilment of which had to be made easier by, but not made dependent on, the implementation of a programme of progressive measures. It follows that the essential requirements of Article 59 of the Treaty became directly and unconditionally applicable on the expiry of that period.

14 Those essential requirements abolish all discrimination against the person providing the service by reason of his nationality or the fact he is established in a Member State other than that in which the service is to be provided.

15 The Federal German Government and the Danish Government maintain that the legislation of the State in which the service is provided must, as a general rule, be applied *in toto* to any person providing such services whether or not he is established in that State by virtue of the principle of equality and, in particular, the third paragraph of Article 60 of the Treaty, according to which the person providing a service may, in order to do so, pursue his activity in the Member State where the service is provided under the same conditions as are imposed by that State on its own nationals.

16 The principal aim of the third paragraph in Article 60 is to enable the provider of the service to pursue his activities in the Member State where the service is given without suffering discrimination in favour of the nationals of that State. However, it does not mean that all national legislation applicable to nationals of that State and usually applied to the permanent activities of undertakings established therein may be similarly applied in its entirety to the temporary activities of undertakings which are established in other Member States.

17 In the above-mentioned judgment of 18 January 1979 the Court held that, regard being had to the particular nature of certain services, specific requirements imposed on the provider of the services cannot be considered incompatible with the Treaty where they have as their purpose the application of rules governing such activities. However, the freedom to provide services is one of the fundamental principles of the Treaty and may be restricted only by provisions which are justified by the general good and which are imposed on all persons or undertakings operating in the said State in so far as that interest is not safeguarded by the provisions to which the provider of the service is subject in the Member State of his establishment.

18 It must be noted in this respect that the provision of manpower is a particularly sensitive matter from the occupational and social point of view. Owing to the special nature of the employment relationships inherent in that kind of activity, pursuit of such a business directly affects both relations on the labour market and the lawful interests of the workforce concerned. That is evident, moreover, in the legislation of some of the Member States in this matter, which is designed first to eliminate possible abuse and secondly to restrict the scope of such activities or even prohibit them altogether.

19 It follows in particular that it is permissible for Member States, and amounts for them to a legitimate choice of policy pursued in the public interest, to subject the provision of manpower within their borders to a system of licensing in order to be able to refuse licences where there is reason to fear that such activities may harm good relations on the labour market or that the interests of the workforce affected are not adequately safeguarded. In view of the differences there may be in conditions on the labour market between one Member State and another, on the one hand, and the diversity of the criteria which may be applied with regard to the pursuit of activities of that nature on the other hand, the Member State in which the services are to be supplied has unquestionalby the right to require possession of a licence issued on the same conditions as in the case of its own nationals.

20 Such a measure would be excessive in relation to the aim pursued, however, if the requirements to which the issue of a licence is subject coincided with the proofs and guarantees required in the State of establishment. In order to maintain the principle of freedom to provide services the first requirement is that in considering applications for licences and in granting them the Member State in which the service is to be provided may not make any distinction based on the nationality of the provider of the services or the place of his establishment; the second requirement is that it must take into account the evidence and guarantees already furnished by the provider of the services for the pursuit of his activities in the Member State of his establishment.

21 The reply to the second and third questions raised by the Hoge Raad is therefore that Article 59 does not preclude a Member State which requires agencies for the provision of manpower to hold a licence from requiring a provider of services established in another Member State and pursuing such activities on the territory of the first Member State to comply with that condition even if he holds a licence issued by the State in which he is established, provided however, that in the first place when considering applications for licences and in granting them the Member State in which the service is provided makes no distinction based on the nationality of the provider of the services or his place of establishment, and in the second place that it takes into account the evidence and guarantees already produced by the provider of the services for the pursuit of his activities in the Member State in which he is established.

Costs

The costs incurred by the Governments of the Netherlands, the Federal Republic of Germany, the United Kingdom, France and Denmark and by the Commission, which have submitted observations to the Court, are not recoverable. As the proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Hoge Raad der Nederlanden by a judgment of 17 December 1981, hereby rules:

1. The expression "services" in Article 60 of the EEC Treaty includes the provision of manpower within the meaning of the Wet op het ter Beschikkingstellen van Arbeidskrachten.

2. Article 59 does not preclude a Member State which requires agencies for the provision of manpower to hold a licence from requiring a provider of services established in another Member State and pursuing activities on the territory of the first Member State to comply with that condition even if he holds a licence issued by the State in which he is established, provided, however, that in the first place when considering applications for licences and in granting them the Member State in which the service is provided makes no distinction based on the nationality of the provider of the services or his place of establishment, and in the second place that it takes into account the evidence and guarantees already produced by the provider of the services for the pursuit of his activities in the Member State in which he is established.

Mertens de Wilmars Bosco Touffait

Due Pescatore Mackenzie Stuart O'Keeffe

Koopmans Everling Chloros Grévisse

Delivered in open court in Luxembourg on 17 December 1981.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President