

Case C-341/02

Commission of the European Communities

v

Federal Republic of Germany

(Failure of a Member State to fulfil obligations — Directive 96/71/EC — Posting of workers in the framework of the provision of services — Undertakings in the construction industry — Minimum wages — Comparison between the minimum wage established by the provisions of the Member State to the territory of which a worker is posted and the remuneration actually paid by his employer established in another Member State — Failure to take into account, as constituent elements of the minimum wage, all of the allowances and supplements paid by the employer established in another Member State)

Judgment of the Court (First Chamber), 14 April 2005 I - 2735

Summary of the Judgment

1. *Actions for failure to fulfil obligations — Proof of failure — Burden of proof on the Commission — Presumptions — Not permissible*
(Art. 226 EC)

2. *Freedom to provide services — Posting of workers in the framework of the provision of services — Directive 96/71 — Conditions of work and employment — Minimum wage — Constituent elements — National legislation which fails to take account of allowances and supplements that do not alter the relationship between the service provided by a worker and the consideration received in return — Not permissible*
(*European Parliament and Council Directive 96/71, Art. 3*)

1. In an action for failure to fulfil obligations it is for the Commission to prove the allegation that the obligations have not been fulfilled. It is the Commission which must provide the Court with the evidence necessary for the Court to establish that the obligations have not been fulfilled, and it may not rely on any presumption.

(see para. 35)

relationship between the service provided by a worker and the consideration which that worker receives in return, and which are paid by employers established in other Member States to their employees in the construction industry who are posted to the first Member State, with the exception of a general bonus granted to workers in that industry, is in breach of its obligations under Article 3 of Directive 96/71 concerning the posting of workers in the framework of the provision of services.

2. A Member State the legislation of which does not recognise as constituent elements of the minimum wage allowances and supplements which do not alter the

(see para. 43, operative part)