

Case C-60/03

Wolff & Müller GmbH & Co. KG

v

José Filipe Pereira Félix

(Reference for a preliminary ruling from the Bundesarbeitsgericht)

(Article 49 EC — Restrictions on freedom to provide services — Undertakings in the construction sector — Subcontracting — Obligation on an undertaking to act as guarantor in respect of the minimum remuneration of workers employed by a subcontractor)

Judgment of the Court (Second Chamber), 12 October 2004 1 - 9555

Summary of the Judgment

Freedom to provide services — Posting of workers in the framework of the provision of services — Directive 96/71 — National rules providing that an undertaking using the services of another undertaking established in another Member State is to act as a guarantor in respect of

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the minimum remuneration of workers employed by the other undertaking — Restriction on freedom to provide services — Whether justified on grounds of public interest — Social protection of workers

(Art. 49 EC; European Parliament and Council Directive 96/71, Art. 5)

Article 5 of Directive 96/71 concerning the posting of workers in the framework of the provision of services, under which the Member States are to take appropriate measures in the event of non-compliance with the terms of that directive and, in particular, are to ensure that the workers and/or their representatives have available to them adequate procedures for the enforcement of obligations under that directive, interpreted in the light of Article 49 EC, does not in principle preclude a national system whereby, when subcontracting the conduct of building work to an undertaking established in another Member State, a building contractor established in the Member State concerned becomes liable, in the same way as a guarantor who has waived the defence of prior recourse, for the obligation on that undertaking or that undertaking's subcontractors to pay the minimum wage to a worker employed by the latter or to pay contributions to a joint scheme for parties to a collective agreement where the minimum wage means the sum payable to the worker after deduction of tax, social security contributions, payments towards the promotion of employment or other such social insurance payments (net pay), even if the safe-

guarding of workers' pay is not the primary objective of the national legislation concerned or is merely a subsidiary objective.

If entitlement to minimum rates of pay constitutes a feature of worker protection, which is one of the overriding reasons relating to the public interest which may justify a restriction on freedom to provide services, procedural arrangements ensuring observance of that right, such as the liability of the guarantor, must likewise be regarded as being such as to ensure that protection, since that provision benefits posted workers on the ground that, to the advantage of the latter, it adds to the primary obligant in respect of the minimum rate of pay, namely the employer, a further obligant who is jointly liable with the first debtor and is generally more solvent.

(see paras 28, 34-35, 37, 40, 45, operative part)