

Request for a preliminary ruling from the Bundesarbeitsgericht (Deutschland) lodged on 19 November 2012 — Tevfik Isbir v DB Services GmbH

(Case C-522/12)

(2013/C 32/06)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: Tevfik Isbir

Defendant: DB Services GmbH

Questions referred

1. Is the expression ‘minimum rates of pay’ in Article 3(1), first subparagraph, point (c) of Directive 96/71/EC ⁽¹⁾ to be interpreted as referring to the consideration of the employer for the work done by the worker which should be discharged according to the law, regulation or administrative provision or the universally applicable collective agreement referred to in the opening sentence of Article 3(1) of the directive only and exclusively by the collective minimum wage (‘usual work’), meaning that it is only those employer payments which reward that usual work and which must be available to the worker at the latest on the date when they are payable within the respective wage payment period which can be counted towards the fulfilment of the obligation to pay the minimum rate of pay?
2. Is the expression ‘minimum rates of pay’ in Article 3(1), first subparagraph, point (c) of Directive 96/71/EC to be interpreted as precluding national provisions or practices according to which payments by an employer are not to be regarded as part of the minimum wage and therefore cannot be counted towards fulfilment of the entitlement to the minimum wage, if the employer makes those payments on the basis of a collective agreement-based obligation,
 - and the payments, according to the intention of the parties to the collective agreement and of the legislature, have capital-generating objectives for the workers,
 and to that end,
 - the monthly payments by the employer to the employee are for long-term purposes such as contributions towards savings, the construction or acquisition of a residence or capital life insurance, and
 - are subsidised by allowances and tax breaks from the State, and
 - the worker is entitled to access those contributions only after several years have elapsed, and

- the level of the contributions in the form of a fixed monthly sum is dependent only on the agreed working time and not on the salary paid (‘capital-generating contributions’)?

⁽¹⁾ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ 1997 L 18, p. 1)

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per la Puglia (Italy) lodged on 19 November 2012 — Dirextra Alta Formazione Srl v Regione Puglia

(Case C-523/12)

(2013/C 32/07)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per la Puglia

Parties to the main proceedings

Applicant: Dirextra Alta Formazione Srl

Defendant: Regione Puglia

Question referred

Is a provision of law — such as Article 2(3) of Puglia Regional Law No 12/2009, in force at regional level — which regulates in a restrictive manner access to the market for the provision of certain specific services designed to enhance the level of education locally (post-graduate Masters degree courses), making such access conditional upon meeting a single requirement which, in relation to the purpose of the Community measure (enhancement of the quality of education and, accordingly, selection of individuals with suitable qualifications) is arbitrarily chosen and expressed (a number of hours spread over an unnecessarily long period) and not differentiated according to the actual duration of the specific service, compatible with Article 56 et seq. and Article 101 et seq. (formerly Article 49 et seq. and Article 81 et seq. of the EC Treaty) and Article 107 et seq. of the Treaty on the Functioning of the European Union (in the version in force from 1 December 2009) and with the principles of competition, proportionality, non-discrimination and equal treatment which may be inferred from those rules, and with Articles 9 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2 of the Additional Protocol thereto and Articles 11 and 14 of the Charter of Fundamental Rights?