Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

12 February 2015 *

(Reference for a preliminary ruling — Articles 56 TFEU and 57 TFEU — Directive 96/71/EC — Articles 3, 5 and 6 — Workers of a company with its seat in Member State A, posted to carry out works in Member State B — Minimum wage provided for by the collective agreements of Member State B — Locus standi of a trade union with its seat in Member State B — Legislation of Member State A prohibiting the assignment to a third party of claims relating to pay)

In Case C-396/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Satakunnan käräjäoikeus (Finland), made by decision of 12 July 2013, received at the Court on 15 July 2013, in the proceedings

Sähköalojen ammattiliitto ry

v

Elektrobudowa Spółka Akcyjna,

THE COURT (First Chamber),

composed of S. Rodin, President of the Sixth Chamber, acting President of the First Chamber, A. Borg Barthet, E. Levits (Rapporteur), M. Berger and F. Biltgen, Judges,

Advocate General: N. Wahl,

Registrar: I. Illessy, Administrator,

having regard to the written procedure and further to the hearing on 11 June 2014,

after considering the observations submitted on behalf of:

— the Sähköalojen ammattiliitto ry, by J. Kailiala, asianajaja, and J. Hellsten,

— Elektrobudowa Spółka Akcyjna, by V.-M. Lanne, asianajaja, and W. Popiołek, adwokat,

— the Finnish Government, by J. Heliskoski, acting as Agent,

— the Belgian Government, by M. Jacobs and L. Van den Broeck, acting as Agents,

— the Danish Government, by M. Wolff and C. Thorning, acting as Agents,

— the German Government, by T. Henze and B. Beutler, acting as Agents,

* Language of the case: Finnish.

— the Austrian Government, by G. Hesse, acting as Agent,

— the Polish Government, by B. Majczyna, M. Arciszewski, J. Fałdyga and D. Lutostańska, acting as Agents,

— the Swedish Government, by A. Falk and C. Hagerman, acting as Agents,

— the Norwegian Government, by P. Wennerås, acting as Agent,

— the European Commission, by E. Paasivirta and J. Enegren, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 September 2014,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 56 TFEU and 57 TFEU, of Articles 12 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), of Protocol (No 30) on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom, annexed to the FEU Treaty, of Articles 3, 5, second paragraph, and 6 of 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), and of Article 14(2) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6, and corrigendum OJ 2009 L 309, p. 87).

2 The request has been made in proceedings between the Sähköalojen ammattiliitto ry ('the Sähköalojen ammattiliitto'), a Finnish trade union in the electricity sector, and Elektrobudowa Spółka Akcyjna ('ESA'), a company established in Poland, concerning pay claims arising out of employment relationships.

Legal context

EU law

3 Article 1 of Directive 96/71, which is entitled 'Scope', provides:

'1. This Directive shall apply to undertakings established in a Member State which, in the framework of the transnational provision of services, post workers, in accordance with paragraph 3, to the territory of a Member State.

...

3. This Directive shall apply to the extent that the undertakings referred to in paragraph 1 take one of the following transnational measures:

...

(b) post workers to an establishment or to an undertaking owned by the group in the territory of a Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting;

…’

4 In the words of Article 3 of that directive, which is entitled ‘Terms and conditions of employment’:

‘1. Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in Article 1(1) guarantee workers posted to their territory the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down:

— by law, regulation or administrative provision, and/or

— by collective agreements or arbitration awards which have been declared universally applicable within the meaning of paragraph 8, in so far as they concern the activities referred to in the Annex:

...

(b) minimum paid annual holidays;

(c) the minimum rates of pay, including overtime rates ...;

...

For the purposes of this Directive, the concept of minimum rates of pay referred to in paragraph 1(c) is defined by the national law and/or practice of the Member State to whose territory the worker is posted.

...

7. Paragraphs 1 to 6 shall not prevent application of terms and conditions of employment which are more favourable to workers.

Allowances specific to the posting shall be considered to be part of the minimum wage, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging.

8. “Collective agreements or arbitration awards which have been declared universally applicable” means collective agreements or arbitration awards which must be observed by all undertakings in the geographical area and in the profession or industry concerned.

...’

5 Article 5 of Directive 96/71, which is entitled ‘Measures’, provides:

‘Member States shall take appropriate measures in the event of failure to comply with this Directive.

They shall in particular ensure that adequate procedures are available to workers and/or their representatives for the enforcement of obligations under this Directive.’

6 Article 6 of the directive, which is entitled 'Jurisdiction', is worded as follows:

'In order to enforce the right to the terms and conditions of employment guaranteed in Article 3, judicial proceedings may be instituted in the Member State in whose territory the worker is or was posted, without prejudice, where applicable, to the right, under existing international conventions on jurisdiction, to institute proceedings in another State.'

7 The Annex to Directive 96/71 establishes the list of activities referred to in the second indent of Article 3(1) of the directive. They include all building work relating to the construction, repair, upkeep, alteration or demolition of buildings, as specified in the annex.

Finnish law

8 Paragraph 7 of Chapter 2 of Law 55/2001 on employment contracts (Työsopimuslaki (55/2001)) provides:

'The employer shall observe at least the provisions of a national collective agreement considered representative in the sector in question (universally applicable collective agreement) on the terms and working conditions of the employment relationship which concern the work the employee performs or the nearest comparable work.

A term of an employment contract which is contrary to the corresponding stipulation in the universally applicable collective agreement shall be invalid and shall trigger the application, in its place, of the provision contained in the universally applicable collective agreement.

…'

9 Paragraph 2, fourth subparagraph, of Law 1146/1999 on posted workers (Laki lähetetyistä työntekijöistä (1146/1999)) provides:

'A posted worked must be paid the minimum wage, that is to say, remuneration determined on the basis of a collective agreement within the meaning of Paragraph 2(7) of the Employment Contracts Law ...'

10 The relevant collective labour agreements, for the purposes of Paragraph 7 of Chapter 2 of the Employment Contracts Law, are those for the electricity sector and for the area of electrical installation work in the building technology sector, and they concern activities referred to in the Annex to Directive 96/71. Those collective agreements are universally applicable, within the meaning of Article 3(8) of Directive 96/71. They contain terms providing for the categorisation of employees into pay groups, for the grant of a holiday allowance, for the payment of a daily allowance and of compensation for travelling time and include provisions concerning accommodation costs.

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

11 ESA, a company established in Poland, carries on business in the electricity sector. It has a branch in Finland.

12 In order to carry out electrical installation work at the construction site for the nuclear power station in Olkiluoto in the municipality of Eurajoki (Finland), ESA concluded, in Poland and under Polish law, employment contracts with 186 workers. The latter were posted to ESA's Finnish branch. They were assigned to the construction site at Olkiluoto and were provided with accommodation in Eurajoki,

some 15 kilometres from the site. The parties in the main proceedings disagree about how much time was spent each day by the posted workers on travelling from the place where they were living to the construction site and back again.

13 Maintaining that ESA did not pay them the minimum remuneration that was due to them under the Finnish collective agreements for the electricity sector and for the area of electrical installation work in the building technology sector, which they argued were applicable under EU law, the workers concerned individually assigned their pay claims to the Sähköalojen ammattiliitto so that it could recover those claims.

14 Before the referring court, the Sähköalojen ammattiliitto has submitted that the collective agreements concerned provide for a calculation of employees' minimum pay which is based on criteria that are more favourable to employees than those applied by ESA. Those criteria concern inter alia the way of categorising employees by pay groups, of classifying pay on the basis of time or piecework, of granting employees a holiday allowance, a daily allowance and compensation for travelling time and of covering their accommodation costs.

15 Thus, by two actions, brought on 8 August 2011 and 3 January 2012 respectively, the Sähköalojen ammattiliitto requested that ESA be ordered to pay it a total amount of EUR 6 648 383.15, plus interest, in respect of the claims that had been assigned to it.

16 ESA contended that those actions should be dismissed. It has argued, in particular, that the Sähköalojen ammattiliitto does not have standing to bring proceedings on behalf of the posted workers, on the ground that Polish law prohibits the assignment of claims arising from an employment relationship.

17 At the request of the Sähköalojen ammattiliitto, the referring court ordered ESA's assets to be attached to the extent necessary for the trade union's claim to be secured to a maximum of EUR 2 900 000. Once the decision on the attachment became final, ESA provided the competent authority with a bank guarantee for that amount, which will be valid until 30 September 2015.

18 Since it had some doubts concerning the interpretation of EU law and, in particular, of Article 3 of Directive 96/71, in the light of Articles 56 TFEU and 57 TFEU, the Satakunnan käräjäoikeus (Satakunta District Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) May a trade union acting in the interests of workers rely directly on Article 47 of the Charter as an immediate source of rights against a service provider from another Member State in a situation in which the provision claimed to be contrary to Article 47 (Article 84 of the Polish Labour Code) is a purely national provision?

(2) Does it follow from EU law, in particular the principle of effective legal protection flowing from Article 47 of the Charter and Articles 5, second paragraph, and 6 of Directive 96/71, interpreted in conjunction with the freedom of association in trade union matters protected by Article 12 of the Charter, in proceedings concerning claims which have become due for the purposes of that directive in the State where the work is performed, that the national court must not apply a provision of the labour code of the workers' home State which prevents the assignment of a pay claim to a trade union of the State in which the work is performed, if the corresponding provision of the State in which the work is performed permits the assignment of a pay claim which has become due and hence the status of claimant to a trade union of which all the workers who have assigned their claims are members?

(3) Must the terms of Protocol (No 30) annexed to the FEU Treaty be interpreted as meaning that a national court situated in a country other than Poland or the United Kingdom must take them into account in the event that the dispute in question has a significant link with Poland, in particular where the law applicable to the contracts of employment is Polish law? In other words, does the Polish-UK Protocol preclude the Finnish court from determining that the Polish laws, regulations or administrative provisions, practices or measures are contrary to the fundamental rights, freedoms and principles proclaimed in the Charter?

(4) Must Article 14(2) of Regulation No 593/2008 be interpreted, having regard to Article 47 of the Charter, as prohibiting the application of national legislation of a Member State which contains a prohibition of the assignment of claims and demands arising from an employment relationship?

(5) Must Article 14(2) of Regulation No 593/2008 be interpreted as meaning that the law applicable to the assignment of claims arising from a contract of employment is the law which applies to the contract of employment in question under Regulation No 593/2008, regardless of whether the provisions of another law also affect the content of the individual claim?

(6) Is Article 3 of Directive 96/71, read in the light of Articles 56 TFEU and 57 TFEU, to be interpreted as meaning that the concept of minimum rates of pay covers basic hourly pay according to pay groups, guaranteed piecework pay, holiday allowance, flat-rate daily allowance and compensation for daily travelling time, as those employment and working conditions are defined in a collective agreement declared universally applicable and falling within the scope of the Annex to the directive?

(a) Must Articles 56 TFEU and 57 TFEU and/or Article 3 of Directive 96/71 be interpreted as precluding Member States in their capacity as "host State" from imposing, in their national legislation (a universally applicable collective agreement), on service providers from other Member States an obligation to pay compensation for travelling time and a daily allowance to employees posted to their territory, taking into account that under the national legislation referred to, all posted workers are regarded as travelling to work for the whole period of their posting, which entitles them to compensation for travelling time and daily allowances?

(b) Must Articles 56 TFEU and 57 TFEU and/or Article 3 of Directive 96/71 be interpreted as not permitting the national court to decline to recognise a pay classification created and used in its home State by a company from another Member State, if that has been done?

(c) Must Articles 56 TFEU and 57 TFEU and/or Article 3 of Directive 96/71 be interpreted as permitting an employer from another Member State to determine, validly and so as to bind the court of the country in which the work is performed, the categorisation of employees into pay groups in a situation in which a universally applicable collective agreement in the country in which the work is performed requires a categorisation into pay groups with a different end result to be made, or may the Member State which is the host State to which the employees of a service provider from another Member State have been posted lay down rules to be observed by the service provider on the criteria for categorisation of employees into pay groups?

(d) When interpreting Article 3 of Directive 96/71, read in the light of Articles 56 TFEU and 57 TFEU, are accommodation paid for by an employer who is obliged under a collective agreement mentioned in Question 6 to do so and meal vouchers provided in accordance with a contract of employment by a service provider from another Member State to be regarded as compensation for expenses caused by being a posted worker or as part of the concept of minimum rates of pay within the meaning of Article 3(1)?

(e) May Article 3 of Directive 96/71 in conjunction with Articles 56 TFEU and 57 TFEU be interpreted as meaning that a universally applicable collective agreement of the State in which the work is performed must be regarded as justified on the ground of requirements of public policy, when interpreting the question of piecework pay, compensation for travelling time and daily allowances?'

Consideration of the questions referred

Questions 1 to 5

19 By questions 1 to 5, which it is appropriate to consider together, the referring court is, in essence, uncertain about whether, in circumstances such as those of the case before it, Directive 96/71, read in the light of Article 47 of the Charter, prevents a rule of the Member State of the seat of the undertaking that has posted workers to the territory of another Member State — under which the assignment of claims arising from employment relationships is prohibited — from barring a trade union, such as the Sähköalojen ammattiliitto, from bringing an action before a court of the second Member State, in which the work is performed, to recover pay claims which have been assigned to it by those posted workers.

20 In that regard, it is apparent not only from the information provided to the Court by the referring court, but also from the answers to the questions raised at the hearing before the Court, that the standing of the Sähköalojen ammattiliitto to bring proceedings before the referring court is governed by Finnish procedural law, which is applicable according to the principle of *lex fori*. Nor is it disputed that, under Finnish law, the applicant has standing to bring proceedings on behalf of the posted workers.

21 Thus, the rules set out in the Polish Labour Code, to which ESA refers, are irrelevant with regard to the *locus standi* of the Sähköalojen ammattiliitto before the referring court and do not prevent that trade union from bringing an action before the Satakunnan käräjäoikeus.

22 Moreover, the subject-matter of the main proceedings relates to the determination of the scope of the concept of 'minimum rates of pay', within the meaning of Directive 96/71, to which the Polish workers posted to Finland are entitled.

23 The second subparagraph of Article 3(1) of Directive 96/71 makes absolutely clear that questions concerning 'minimum rates of pay' within the meaning of the directive are governed, whatever the law applicable to the employment relationship, by the law of the Member State to whose territory the workers are posted in order to carry out their work: in this case, Finland.

24 Furthermore, it is apparent in particular from the wording of the second question raised by the referring court that the assignment of pay claims to the Sähköalojen ammattiliitto with a view to their recovery for the posted workers is in conformity with Finnish law and that, moreover, the Polish undertaking which engaged those workers has a branch in Finland to which they were posted.

25 That being so, there is nothing in the present case, contrary to what was argued by ESA before the referring court, which gives any ground for calling in question the action which the Sähköalojen ammattiliitto has brought before the Satakunnan käräjäoikeus.

26 The answer to questions 1 to 5 is therefore that, in circumstances such as those of the case before the referring court, Directive 96/71, read in the light of Article 47 of the Charter, prevents a rule of the Member State of the seat of the undertaking that has posted workers to the territory of another Member State — under which the assignment of claims arising from employment relationships is

prohibited — from barring a trade union, such as the Sähköalojen ammattiliitto, from bringing an action before a court of the second Member State, in which the work is performed, in order to recover for the posted workers, pay claims which relate to the minimum wage, within the meaning of Directive 96/71, and which have been assigned to it, that assignment being in conformity with the law in force in the second Member State.

Question 6

27 By question 6, the referring court asks, in essence, whether Article 3 of Directive 96/71, read in the light of Articles 56 TFEU and 57 TFEU, must be interpreted as meaning that it precludes the exclusion from the minimum wage of certain elements of pay, such as those at issue in the main proceedings, which arise from the concept of basic hourly pay or guaranteed piecework pay, according to pay groups, from the grant of a holiday allowance, daily allowances and compensation for daily travelling time, and from reimbursement of accommodation costs, those elements being defined in a collective agreement within the scope of the Annex to Directive 96/71, which is universally applicable in the Member State to which the workers concerned are posted, or, as regards the grant of meal vouchers, provided under a contract of employment between the posted workers and their employer in the home Member State.

28 It should be recalled in that regard that the EU legislature adopted Directive 96/71 with a view, as is clear from recital 6 in the preamble to that directive, to laying down, in the interests of the employers and their personnel, the terms and conditions governing the employment relationship where an undertaking established in one Member State posts workers on a temporary basis to the territory of another Member State for the purposes of providing a service (judgments in *Laval un Partneri*, C-341/05, EU:C:2007:809, paragraph 58, and *Isbir*, C-522/12, EU:C:2013:711, paragraph 33).

29 Thus, in order to ensure that a nucleus of mandatory rules for minimum protection are observed, the first subparagraph of Article 3(1) of Directive 96/71 provides that Member States are to ensure that, whatever the law applicable to the employment relationship, in the framework of the transnational provision of services, undertakings guarantee workers posted to their territory the terms and conditions of employment covering the matters listed in that provision (judgment in *Laval un Partneri*, EU:C:2007:809, paragraph 73).

30 In that context, the first subparagraph of Article 3(1) of Directive 96/71 pursues a dual objective. First, it seeks to ensure a climate of fair competition between national undertakings and undertakings which provide services transnationally, inasmuch as it requires the latter to afford their workers, as regards a limited list of matters, the terms and conditions of employment laid down in the host Member State. Secondly, that provision aims to ensure that posted workers will have the rules of the host Member State for minimum protection as regards the terms and conditions of employment relating to those matters applied to them while they work on a temporary basis in the territory of that Member State (judgment in *Laval un Partneri*, EU:C:2007:809, paragraphs 74 and 76).

31 It is, however, important to point out that Directive 96/71 has not harmonised the material content of those mandatory rules for minimum protection, even though it provides certain information concerning that content.

32 Thus, the second subparagraph of Article 3(1) of Directive 96/71 expressly refers, for the purposes of that directive, to the national law or practice of the Member State to whose territory the worker is posted for the definition of the minimum rates of pay referred to in the first subparagraph of Article 3(1) (judgment in *Isbir*, EU:C:2013:711, paragraph 36).

33 The second subparagraph of Article 3(7) of the directive makes clear, as regards allowances specific to the posting, the extent to which those elements of pay are regarded as being part of the minimum wage for the purposes of the terms and conditions of employment laid down in Article 3 of the directive.

34 Thus, subject to the provision made in the second subparagraph of Article 3(7) of Directive 96/71, the task of defining what are the constituent elements of the minimum wage, for the application of that directive, is a matter for the law of the Member State of the posting, but only in so far as that definition, as it results from the relevant national law or collective agreements or from the interpretation thereof by the national courts, does not have the effect of impeding the freedom to provide services between Member States (judgment in *Isbir*, EU:C:2013:711, paragraph 37).

35 In that regard, the Court has already had occasion to classify certain elements of pay as outwith the minimum wage.

36 Thus, according to the Court's settled case-law, allowances and supplements which are not defined as being constituent elements of the minimum wage by the law or practice of the Member State to whose territory the worker is posted, and which alter the relationship between the service provided by the worker, on the one hand, and the consideration which he receives in return for that service, on the other, cannot, under the provisions of Directive 96/71, be considered to be elements of that kind (judgments in *Commission* v *Germany*, C-341/02, EU:C:2005:220, paragraph 39, and *Isbir*, EU:C:2013:711, paragraph 38).

37 The various elements of pay referred to by the national court must be examined in the light of the foregoing considerations in order to ascertain whether they are part of the minimum wage within the meaning of Article 3 of Directive 96/71.

Guaranteed pay for hourly work and/or piecework in accordance with the categorisation of employees into pay groups

38 In order to resolve the dispute before it, the referring court asks the Court whether Article 3(1) of Directive 96/71, read in the light of Articles 56 TFEU and 57 TFEU, must be interpreted as meaning that it precludes a calculation of the minimum wage for hourly work and/or for piecework which is based on the categorisation of employees into pay groups, as provided for by the relevant collective agreements in the host Member State.

39 In that regard, the Court observes that the wording of the second subparagraph of Article 3(1) of Directive 96/71 makes quite clear that minimum rates of pay are to be defined by the national law and/or practice of the Member State to whose territory the worker is posted. It is implicit in that wording that the method of calculating those rates and the criteria used in that regard are also a matter for the host Member State.

40 It follows from the foregoing, first, that the rules in force in the host Member State may determine whether the calculation of the minimum wage must be carried out on an hourly or a piecework basis. However, if they are to be enforceable against an employer which posts its employees to that Member State, those rules must be binding and must meet the requirements of transparency, which means, in particular, that they must be accessible and clear.

41 Thus, by virtue of those criteria, the minimum wage calculated by reference to the relevant collective agreements cannot be a matter of choice for an employer who posts employees with the sole aim of offering lower labour costs than those of local workers.

42 In the case in the main proceedings, the national court must ascertain whether the rules for calculating the minimum wage that are applicable under the relevant collective agreements are binding and transparent.

43 It also follows, secondly, that the rules for categorising workers into pay groups, which are applied in the host Member State on the basis of various criteria including the workers' qualifications, training and experience and/or the nature of the work performed by them, apply instead of the rules that are applicable to the posted workers in the home Member State. It is only where a comparison is made between the terms and conditions of employment, referred to in the first subparagraph of Article 3(7) of Directive 96/71, applied in the home Member State and those in force in the host Member State that the categorisation made by the home Member State must be taken into account when it is more favourable to the worker.

44 However, if they are to be enforceable against an employer posting workers, the rules on the categorisation of those workers into pay groups which are applied in the host Member State must also be binding and meet the requirements of transparency, which means, in particular, that they must be accessible and clear. It is for the national court to ascertain whether those conditions are met in the case before it.

45 Having regard to all the foregoing considerations, the Court concludes that Article 3(1) of Directive 96/71, read in the light of Articles 56 TFEU and 57 TFEU, must be interpreted as meaning that it does not preclude a calculation of the minimum wage for hourly work and/or for piecework which is based on the categorisation of employees into pay groups, as provided for by the relevant collective agreements of the host Member State, provided that that calculation and categorisation are carried out in accordance with rules that are binding and transparent, a matter which it is for the national court to verify.

The daily allowance

46 As regards the question whether a daily allowance such as the one at issue in the main proceedings is part of the minimum wage, for the purposes of Article 3 of Directive 96/71, the Court notes that, according to the documents before it, the relevant collective labour agreements in Finland provide for the payment of a daily allowance to posted workers. Under those agreements, the allowance takes the form of a flat-rate daily payment, the amount of which, during the period concerned, was between EUR 34 and EUR 36.

47 It is apparent, having regard to the documents in the case, that that allowance is not paid in reimbursement of expenditure actually incurred on account of the posting, as referred to in the second subparagraph of Article 3(7) of Directive 96/71.

48 In fact, the allowance is intended to ensure the social protection of the workers concerned, making up for the disadvantages entailed by the posting as a result of the workers being removed from their usual environment.

49 It follows that such an allowance must be classified as an 'allowance specific to the posting' within the meaning of the second subparagraph of Article 3(7) of Directive 96/71.

50 That provision of the directive states that such an allowance is part of the minimum wage.

51 Accordingly, the daily allowance at issue must be paid to posted workers such as those concerned in the main proceedings to the same extent as it is paid to local workers when they are posted within Finland.

52 In view of the foregoing, a daily allowance such as that at issue in the main proceedings must be regarded as part of the minimum wage on the same conditions as those governing the inclusion of the allowance in the minimum wage paid to local workers when they are posted within the Member State concerned.

Compensation for daily travelling time

53 It must be noted as a preliminary point that, in so far as it relates to compensation for daily travelling time, the question raised does not concern compensation for the costs incurred by the workers concerned in travelling to and from their place of work but solely the question as to whether Article 3 of Directive 96/71 must be interpreted as meaning that compensation for daily travelling time is to be regarded as an element of those workers' minimum wage.

54 According to the relevant provisions of the Finnish collective agreements, compensation for travelling time is paid to workers if their daily commute to and from work is of more than one hour's duration.

55 It should be made clear in that regard that, for the purposes of calculating the duration of that commute, it is necessary to determine the time which has actually been spent, in the specific circumstances of the present case, by the posted workers concerned in travelling between the place where they are accommodated in Finland and their place of work, which is located at the construction site in Finland. It is for the referring court to decide, in the light of the facts at issue in the main proceedings, whether the condition as to duration, which the rules applicable in Finland lay down for the payment of compensation for travelling time, is met by the workers concerned.

56 With that in mind, it must be held that, since such compensation for travelling time is not paid in reimbursement of expenditure actually incurred by the worker on account of the posting, it must, in accordance with the second subparagraph of Article 3(7) of Directive 96/71, be regarded as an allowance specific to the posting and thus be part of the minimum wage.

57 It must therefore be held that compensation for travelling time, such as that at issue in the main proceedings, which is paid to the workers on condition that their daily journey to and from their place of work is of more than one hour's duration, must be regarded as part of the minimum wage of the posted workers, provided that that condition is fulfilled, a matter which it is for the national court to verify.

Coverage of the cost of accommodation

58 As regards the question whether Article 3 of Directive 96/71, read in the light of Articles 56 TFEU and 57 TFEU, must be interpreted as meaning that coverage of the cost of the accommodation of the workers concerned is to be regarded as an element of their minimum wage, the Court finds that, on the wording of Article 3(7) of the directive, that cannot be the case.

59 Even though that wording excludes only the reimbursement of expenditure on accommodation which has actually been incurred on account of the posting and ESA has, according to the information available to the Court, defrayed the accommodation costs of the workers concerned without the latter having first to pay them and then seek to have them reimbursed, the method which ESA has chosen to cover such expenditure has no bearing on the legal classification thereof.

60 Furthermore, as the Advocate General has observed in point 111 of his Opinion, the very purpose of Article 3(7) of Directive 96/71 does not permit expenditure connected with the posted workers' accommodation to be taken into account in the calculation of their minimum wage.

Meal vouchers

61 Turning to the interpretation of Article 3 of Directive 96/71, read in the light of Articles 56 TFEU and 57 TFEU, so far as concerns the concept of minimum wage with regard to the taking into account of meal vouchers, the Court observes that the provision of those vouchers is based neither on any law, regulation or administrative provision of the host Member State nor on the relevant collective agreements invoked by the Sähköalojen ammattiliitto, but derives from the employment relationship established in Poland between the posted workers and their employer, ESA.

62 Furthermore, like the allowances paid to offset accommodation costs, these allowances are paid to compensate for living costs actually incurred by the workers on account of their posting.

63 Accordingly, it is clear from the actual wording of paragraphs 1 and 7 of Article 3 of Directive 96/71 that the allowances concerned are not to be considered part of the minimum wage within the meaning of Article 3 of the directive.

Holiday pay

64 As regards payment in respect of holidays, it must be recalled at the outset that, under Article 31(2) of the Charter, every worker has the right to an annual period of paid leave.

65 That right, which is set out in Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9) from which that directive permits no derogation, provides that every worker is entitled to a period of paid annual leave of at least four weeks. The right to paid annual leave which, according to settled case-law, must be regarded as a particularly important principle of EU social law, is thus granted to every worker, whatever his place of employment (see, to that effect, judgments in *Schultz-Hoff and Others*, C-350/06 and C-520/06, EU:C:2009:18, paragraph 54, and *Lock*, C-539/12, EU:C:2014:351, paragraph 14).

66 The Court's case-law also makes clear that the term 'paid annual leave' in Article 31 of the Charter and Article 7(1) of Directive 2003/88 means that, for the duration of annual leave within the meaning of those provisions, remuneration must be maintained and that, in other words, workers must receive their normal remuneration for that period of rest (see judgments in *Robinson-Steele and Others*, C-131/04 and C-257/04, EU:C:2006:177, paragraph 50, and *Lock*, EU:C:2014:351, paragraph 16).

67 According to that case-law, Directive 2003/88 treats entitlement to annual leave and to a payment on that account as being two aspects of a single right. The purpose of requiring payment to be made in respect of that leave is to put the worker, during such leave, in a position which is, as regards his salary, comparable to periods of work (see *Lock*, EU:C:2014:351, paragraph 17 and the case-law cited).

68 Thus, as the Advocate General has observed in point 89 of his Opinion, the pay which the worker receives during the holidays is intrinsically linked to that which he receives in return for his services.

69 Accordingly, Article 3 of Directive 96/71, read in the light of Articles 56 TFEU and 57 TFEU, must be interpreted as meaning that the minimum pay which the worker must receive, in accordance with point (b) of the second indent of Article 3(1) of the directive, for the minimum paid annual holidays corresponds to the minimum wage to which that worker is entitled during the reference period.

70 It follows from all the foregoing considerations that the answer to question 6 is that Article 3(1) and (7) of Directive 96/71, read in the light of Articles 56 TFEU and 57 TFEU, must be interpreted as meaning that:

— it does not preclude a calculation of the minimum wage for hourly work and/or for piecework which is based on the categorisation of employees into pay groups, as provided for by the relevant collective agreements of the host Member State, provided that that calculation and categorisation are carried out in accordance with rules that are binding and transparent, a matter which it is for the national court to verify;

— a daily allowance such as that at issue in the main proceedings must be regarded as part of the minimum wage on the same conditions as those governing the inclusion of the allowance in the minimum wage paid to local workers when they are posted within the Member State concerned;

— compensation for daily travelling time, which is paid to the workers on condition that their daily journey to and from their place of work is of more than one hour's duration, must be regarded as part of the minimum wage of the posted workers, provided that that condition is fulfilled, a matter which it is for the national court to verify;

— coverage of the cost of those workers' accommodation is not to be regarded as an element of their minimum wage;

— an allowance taking the form of meal vouchers provided to the posted workers is not to be regarded as part of the latter's minimum salary; and

— the pay which the posted workers must receive for the minimum paid annual holidays corresponds to the minimum wage to which those workers are entitled during the reference period.

Costs

71 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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. **In circumstances such as those of the case before the referring court, 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, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, prevents a rule of the Member State of the seat of the undertaking that has posted workers to the territory of another Member State — under which the assignment of claims arising from employment relationships is prohibited — from barring a trade union, such as the Sähköalojen ammattiliitto, from bringing an action before a court of the second Member State, in which the work is performed, in order to recover for the posted workers, pay claims which relate to the minimum wage, within the meaning of Directive 96/71, and which have been assigned to it, that assignment being in conformity with the law in force in the second Member State.**

2. Article 3(1) and (7) of Directive 96/71, read in the light of Articles 56 TFEU and 57 TFEU, must be interpreted as meaning that:

— it does not preclude a calculation of the minimum wage for hourly work and/or for piecework which is based on the categorisation of employees into pay groups, as provided for by the relevant collective agreements of the host Member State, provided that that calculation and categorisation are carried out in accordance with rules that are binding and transparent, a matter which it is for the national court to verify;

— a daily allowance such as that at issue in the main proceedings must be regarded as part of the minimum wage on the same conditions as those governing the inclusion of the allowance in the minimum wage paid to local workers when they are posted within the Member State concerned;

— compensation for daily travelling time, which is paid to the workers on condition that their daily journey to and from their place of work is of more than one hour's duration, must be regarded as part of the minimum wage of posted workers, provided that that condition is fulfilled, a matter which it is for the national court to verify;

— coverage of the cost of those workers' accommodation is not to be regarded as an element of their minimum wage;

— an allowance taking the form of meal vouchers provided to the posted workers is not to be regarded as part of the latter's minimum salary; and

— the pay which the posted workers must receive for the minimum paid annual holidays corresponds to the minimum wage to which those workers are entitled during the reference period.

[Signature]