JUDGMENT OF THE COURT (Second Chamber)

7 October 2010 *

In Case C-515/08,

REFERENCE for a preliminary ruling under Article 234 EC from the rechtbank van eerste aanleg te Antwerpen (Belgium), made by decision of 3 November 2008, received at the Court on 26 November 2008, in the criminal proceedings against

Vítor Manuel dos Santos Palhota,

Mário de Moura Gonçalves,

Fernando Luis das Neves Palhota,

Termiso Limitada,

* Language of the case: Dutch.

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, A. Rosas, U. Lõhmus (Rapporteur), A. Ó Caoimh and A. Arabadjiev, Judges,

Advocate General: P. Cruz Villalón,
Registrar: M.-A. Gaudissart, Head of Unit,

having regard to the written procedure and further to the hearing on 25 February 2010,

after considering the observations submitted on behalf of:

— Mr dos Santos Palhota, Mr de Moura Gonçalves, Mr das Neves Palhota and Termiso Limitada, by K. Stappers, advocaat,

— the Belgian Government, by L. Van den Broeck, acting as Agent, and by V. Pertry and H. Gilliams, advocaten,

— the Danish Government, by J. Bering Liisberg and R. Holdgaard, acting as Agents,

— the German Government, by M. Lumma and B. Klein, acting as Agents,

— the Greek Government, by K. Georgiadis, I. Bakopoulos and M. Michelogiannaki, acting as Agents,

— the French Government, by G. de Bergues and A. Czubinski, acting as Agents,

— the European Commission, by E. Traversa, W. Roels and I. V. Rogalski, acting as Agents,

— the EFTA Surveillance Authority, by B. Alterskjær and O. Einarsson, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 May 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 56 TFEU and 57 TFEU.

2 The reference has been made in criminal proceedings brought by the Public Prosecutor against Mr dos Santos Palhota, Mr de Moura Gonçalves, Mr das Neves Palhota and the company Termiso Limitada, established in Portugal (together 'the defendants in the main proceedings'), for failing, in particular, to draw up the individual accounts provided for under the Belgian legislation in respect of 53 Portuguese workers posted to Belgium.

Legal context

European Union legislation

3 Article 1(1) 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) reads:

'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.'

4 Article 3(1) of that directive reads:

'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, insofar as they concern the activities referred to in the Annex:

(a) maximum work periods and minimum rest periods;

(b) minimum paid annual holidays;

(c) the minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;

(d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;

(e) health, safety and hygiene at work;

(f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;

(g) equality of treatment between men and women and other provisions on non-discrimination.'

National legislation

5 Article 8 of the Law of 5 March 2002 transposing Directive 96/71 and establishing a simplified regime for the keeping of social documents by undertakings posting workers to Belgium (*Belgisch Staatsblad*, 13 March 2002, 'the Law of 5 March 2002') provides that employers satisfying the conditions referred to in Article 6b(2) of Royal Decree No 5 of 23 October 1978 concerning the keeping of social documents (*Belgisch Staatsblad*, 2 December 1978, 'Royal Decree No 5') are not required, during the period fixed on the basis of that paragraph, to draw up, inter alia, the pay slip referred to in Article 15 of the Law of 12 April 1965 on the protection of workersremuneration ('the payslip').

6 Article 9 of the Law of 5 March 2002 inserts in Royal Decree No 5 Chapter IIa containing, inter alia, Article 6b referred to, which sets out the simplified regime introduced by that law ('the simplified regime'). For the purposes of that chapter, Article 6b(1) defines employers, within the meaning of Royal Decree No 5, as those who employ within Belgian territory workers who either normally work in one or more countries other than the Kingdom of Belgium or were recruited in a country other than the Kingdom of Belgium.

7 Under Article 6b(2), employers are relieved, during a specified period, of the requirement to draw up and keep the social documents provided for in Chapter II of Royal Decree No 5, including the individual account referred to in Article 4(1) thereof ('the individual account'), provided that, first, before the employees in question start work, the employers send the Belgian authorities a declaration of posting ('the prior declaration of posting') and, second, the employers keep available to those authorities copies of the documents provided for in the legislation of the country where they are established provided that those documents are equivalent to the individual account or to the pay slip ('the equivalent documents').

8 Under Article 2 of the Royal Decree of 29 March 2002 laying down rules for implementing the simplified regime for the drawing up and keeping of social documents for undertakings posting workers to Belgium and defining the activities in the field of construction referred to in the second paragraph of Article 6 of the Law of 5 March 2002 (*Belgisch Staatsblad*, 17 April 2002, 'the Royal Decree of 29 March 2002'), the period referred to in Article 6b(2) of Royal Decree No 5 is set at six months from the date on which the first worker posted to Belgium starts work.

9 Under Article 3 of the Royal Decree of 29 March 2002, employers who employ workers posted to Belgium must, before the workers posted start work, send to the Social Laws Inspectorate, by letter, email or fax, a declaration of posting in accordance with Article 4 of that decree. The inspectorate must certify receipt and approval of the declaration within five working days of the date on which it was received, sending, by

the same channels, a registration number to the employer, who may begin to employ the workers only after the date on which the registration number has been notified, failing which the employer will not be entitled to the dispensation from drawing up and keeping social documents provided for under the simplified regime.

10 Article 4 of the Royal Decree of 29 March 2002 provides that the declaration of posting, which must be in accordance with the model annexed to the decree, must include the following information:

‘1 with regard to the employer posting workers in Belgium: surname, first name, place of establishment or name or headquarters of the undertaking, the nature of its activity, the address, telephone number, fax number, email address and identification or registration number of the employer with the competent social security body in the State of origin[;]

2 with regard to the employer's servant or agent who is responsible for keeping available the equivalent documents in accordance with Article 5[(1)] of the present decree: the surname, first name, company name, address, telephone and fax numbers, and email address;

3 with regard to each employee posted to Belgium: the surname, name, domicile, date of birth, civil status, sex, nationality, address, telephone number, number and type of identity document, the date on which the employment contract was concluded, the date on which the employee began employment in Belgium and the work performed;

4 with regard to the terms and conditions of employment applicable to the employees posted: the length of the working week and the hours of work;

5 with regard to the posting: the type of services provided within the context of the posting, the starting date of the posting and its envisaged duration, and the place where the work is to be performed;

6 with regard to the equivalent documents: the place where they are kept and retained, in accordance with Article 5 of the present Decree.'

11 Article 5 of that decree concerns the detailed rules for the keeping available and retention of the equivalent documents during the period of employment of workers posted to Belgium. Article 5(1) provides that copies of the equivalent documents must be kept available to the designated inspection services for the period of six months referred to in Article 2. Those copies are to be kept either at the workplace to which the worker is assigned in Belgium or at the Belgian address of a natural person who retains them as an agent or servant of the employer. Should they fail to comply with that obligation, employers must draw up and complete the individual account and payslip. Article 5(2) provides that, after that period of six months has passed, employers must retain the copies for a period of five years and, in addition, draw up the social documents provided for under Chapter II of Royal Decree No 5 and also the pay slip.

12 Article 6 of the Royal Decree of 29 March 2002 concerns the detailed rules for the keeping available and retention of the equivalent documents after the period of employment of the workers posted to Belgium. It provides that, at the end of the period of employment, employers must send by registered letter or lodge, with an

acknowledgement of receipt, copies of the equivalent documents together with an inventory thereof at the Social Laws Inspectorate.

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

13 It is apparent from the documents before the Court and from the written observations of the Belgian Government that Termiso Limitada regularly posted Portuguese welders and fitters to the shipyard belonging to Antwerp Ship Repair NV to perform work on ships. During an inspection of that shipyard, carried out on 12 July 2004, the inspection services found that 53 Portuguese workers from Termiso Limitada were working there and that none of those workers had been the subject of a prior declaration of posting. In addition, the Portuguese foreman was unable to provide evidence of any Portuguese salary documents.

14 The rechtbank van eerste aanleg te Antwerpen (Court of First Instance, Antwerp) observed that the inspection services had found that the conditions imposed by the Law of 5 March 2002 and by Directive 96/71 had not been complied with, so that it had become necessary to comply with the Belgian social legislation concerning the keeping of social documents, and in particular of individual accounts. The defendants in the main proceedings (the first, second, and third as branch managers and servants of Termiso Limitada, and Termiso Limitada as employer and legal person liable under criminal law) are charged with not having drawn up, between 31 May 2004 and 13 July 2004, individual accounts in respect of the 53 employees referred to, in breach, inter alia, of several provisions of Royal Decree No 5. They are also charged with a number of breaches of the Belgian legislation on the statutory minimum wage and additional payments for overtime.

15 The referring court considers that in order to be able to give judgment on the substance of the alleged breaches of the Belgian social legislation, it must be ascertained whether the Law of 5 March 2002, non-observance of which gives rise to the obligation to comply with the social legislation, is compatible with Articles 56 TFEU and 57 TFEU.

16 In those circumstances, the rechtbank van eerste aanleg te Antwerpen decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Do the provisions of Article 8 of the Law of 5 March 2002 and Articles 3, 4 and 5 of the Royal Decree of 29 March 2002 (implementation decree) infringe Articles [56 TFEU] and [57 TFEU], in that they impose on foreign employers who wish to post workers the prior obligation of sending a declaration of posting to the Social Laws Inspection Service and also of keeping documents which are comparable with the Belgian individual accounts or pay slips, as a result of which access to the Belgian services market is prevented or at least hampered?'

Consideration of the question referred

Admissibility

17 The Belgian Government submits that the question referred for a preliminary ruling is inadmissible, since it is based on the incorrect assumption that the simplified regime is compulsory, whereas foreign employers posting workers to Belgium may also opt to draw up and keep social documents in accordance with the Belgian legislation.

18 In that connection, even if that court considered that the simplified regime were compulsory, the Court of Justice has consistently held that the procedure laid down in Article 267 TFEU is based on a clear separation of functions between national courts and tribunals and the Court of Justice, and the latter is empowered to rule only on the interpretation or the validity of the acts of the European Union referred to in that article. In that context, it is not for the Court to rule on the interpretation of national laws or regulations or to decide whether the referring court's interpretation of them is correct (see, inter alia, Case C-220/05 *Auroux and Others* [2007] ECR I-385, paragraph 25 and case-law cited).

19 In addition, the Belgian and German Governments submit that there is no account, in the order for reference, of the legal framework or any explanation of the connection between the main proceedings and the question referred. In that connection, the Belgian Government submits that the question does not concern the interpretation of Directive 96/71, whose application is, however, contested in the present case. That government also doubts the value of interpreting Article 57 TFEU, since it is not disputed that the activities pursued in Belgium by Termiso Limitada and its workers constitute a provision of services.

20 It follows from well-established case-law that questions on the interpretation of European Union law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 61, and Case C-45/08 *Spector Photo Group and Van Raemdonck* [2009] ECR I-12073, paragraph 26).

21 In the present case, as evidenced by paragraphs 14 and 15 above, it is apparent from the account of the factual and legal framework of the main proceedings in the order for reference that, in the referring court's view, if national legislation such as the simplified regime is not compatible with the provisions on the freedom to provide services of the Treaty on the Functioning of the European Union, the defendants in the main proceedings cannot be penalised for failing to comply with the obligation, which is imposed only where that regime is not used, to draw up individual accounts for the employees in question. That account of the facts, while admittedly succinct, is sufficient to enable the Court to provide a useful answer to the question posed.

22 In addition, the absence of a request for interpretation of Directive 96/71 does not affect in any way the Court's jurisdiction to give a preliminary ruling, since the provisions of European Union law whose interpretation is sought are relevant to the resolution of the main proceedings.

23 It follows from the foregoing that the question referred for a preliminary ruling is admissible.

Substance

24 By its question, the referring court asks, in essence, whether Articles 56 TFEU and 57 TFEU preclude national legislation requiring an employer established in another Member State who posts workers to the territory of the first Member State to send a prior declaration of posting and also to keep available to the national authorities, during the posting, copies of documents equivalent to social or labour documents, such as an individual account or a pay slip, required under the law of the first Member State.

25 In its observations, the Belgian Government stated that the referring court did not request interpretation of Directive 96/71. In that connection, it is to be noted that, although, as the Belgian Government maintains, the simplified regime makes it possible to monitor the compliance of employers posting foreign workers to Belgium with the terms and conditions of employment set out in Article 3(1) of Directive 96/71, such control measures do not fall within the scope of that directive nor are they harmonised at European Union level.

26 Directive 96/71 seeks to coordinate the substantive national rules on the terms and conditions of employment of posted workers, independently of the ancillary administrative rules designed to enable compliance with those terms and conditions to be monitored.

27 It follows that those measures may be freely defined by the Member States, in compliance with the Treaty and the general principles of European Union law (see, to that effect, Case C-490/04 *Commission* v *Germany* [2007] ECR I-6095, paragraph 19, and Case C-341/05 *Laval un Partneri* [2007] ECR I-11767, paragraph 60).

28 In the present case, it is common ground that the main proceedings concern an undertaking established in one Member State which has posted its own workers for a fixed period to a site in another Member State for the purposes of providing services. The Court has already held that such a factual situation falls within the scope of Articles 56 TFEU and 57 TFEU (see Joined Cases C-49/98, C-50/98, C-52/98 to C-54/98 and C-68/98 to C-71/98 *Finalarte and Others* [2001] ECR I-7831, paragraph 20).

Whether there exists a restriction on the freedom to provide services

29 It is settled case-law that Article 56 TFEU requires not only the elimination of all discrimination on grounds of nationality against providers of services who are established in another Member State but also the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, which is liable to prohibit, impede or render less advantageous the activities of a provider of services established in another Member State where he lawfully provides similar services (see, inter alia, Joined Cases C-369/96 and C-376/96 *Arblade and Others* [1999] ECR I-8453, paragraph 33, and Case C-168/04 *Commission* v *Austria* [2006] ECR I-9041, paragraph 36).

30 Against that background, it should be noted that the Belgian Government submits that the simplified regime at issue in the main proceedings was introduced by the Law of 5 March 2002 in response to *Arblade and Others*. At point 3 of the operative part of that judgment, the Court held that Articles 56 TFEU and 57 TFEU preclude the imposition by a Member State on an undertaking established in another Member State, and temporarily carrying out work in the first State, of an obligation to draw up social or labour documents such as, inter alia, an individual account for each worker in the form prescribed by the rules of the first State, where the social protection of workers which may justify those requirements is already safeguarded by the production of social and labour documents kept by the undertaking in question in accordance with the rules applying in the Member State in which it is established.

31 It is apparent from that Law and from the Royal Decree of 29 March 2002 that, for a period of six months from the date on which the first worker posted starts work, the simplified regime relieves employers posting workers to Belgium of the requirement to draw up, inter alia, the individual account and pay slip required under the Belgian legislation, provided that, first, they send the Belgian authorities a prior declaration

of posting and, second, keep available to those authorities copies of the equivalent documents.

32 The issue as to whether the application of the dispensation is restrictive does not arise in the present case, since it is common ground that the posting at issue in the main proceedings was for less than six months.

33 As regards, first, the declaration of prior posting, it is apparent from Article 3 of the Royal Decree of 29 March 2002 and from the observations of the Belgian Government that, first, the Belgian authorities must certify receipt and approval of the declaration within five working days of the date on which it was received, by sending a registration number for the declaration to the employer of the workers who are to be posted. Second, workers may begin to be employed only after the date on which the registration number has been notified, failing which the employer will not be entitled to benefit from the simplified regime.

34 It is clear that the procedure set out in the previous paragraph cannot be considered to be merely a declaratory procedure. As the Advocate General noted at paragraph 70 of his Opinion, the mere transmission of information to the authorities of the Member State of destination and the certification of receipt are potentially capable of becoming mechanisms for verification and authorisation prior to commencement of the work. Since the notification must be issued before the posting can be carried out by an employer and is made only after verification by the national authorities of the conformity of the prior declaration of posting, a procedure of that kind must be regarded as an administrative authorisation procedure (see, by analogy, *Commission* v *Austria*, paragraph 41).

35 A procedure which makes the provision of services through the posting of workers on national territory by an undertaking established in another Member State subject to the issue of such an administrative licence is likely to constitute a restriction on the freedom to provide services within the meaning of Article 56 TFEU (see, by analogy, Case C-43/93 *Vander Elst* [1994] ECR I-3803, paragraph 15, and Case C-244/04 *Commission* v *Germany* [2006] ECR I-885, paragraph 34).

36 Such a procedure may, in particular by reason of the period laid down for issuing the notification, impede the planned posting and, consequently, the provision of services by the employer of the workers who are to be posted, in particular where the services to be provided necessitate a certain speed of action (see, to that effect, *Commission* v *Germany*, paragraph 35, and *Commission* v *Austria*, paragraph 39).

37 In that connection, the defendants in the main proceedings emphasise in their written observations, without being contradicted on that point, that the work to be carried out for Antwerp Shiprepair NV was urgent, requiring the employment to begin as soon as possible after the relevant contract had been concluded. The Belgian Government stated, in reply to a question posed by the Court at the hearing, that the simplified regime allows no exception to the procedure set out at paragraph 33 above for urgent postings.

38 It is irrelevant, as that government also pointed out at the hearing, that the notification of registration is in practice sent to the employer of the posted workers two or three days after the prior declaration of posting has been received, since the employer cannot rule out in advance having to wait at least the five working days provided for sending notification of registration, laid down in the simplified regime, before he may carry out the posting. The possibility of such a wait is, both for that employer and the recipient of the services consisting in the secondment of workers, liable to hamper

or to render less attractive such a provision of services, in particular when they are urgent.

39 In addition, the procedure set out at paragraph 33 above is an essential component of the simplified procedure, since, as is apparent from Article 3 of the Royal Decree of 29 March 2002, an employer who posts workers to Belgium without having received notification of the registration number for its prior declaration of posting may not simply keep equivalent documents for that posting, as provided for under the simplified regime, but must draw up Belgian social documents such as the individual account and the payslip.

40 It follows that the requirement to send a prior declaration of posting and for notification of the registration number for that declaration, as provided for under the simplified regime, constitutes a restriction on the freedom to provide services within the meaning of Article 56 TFEU.

41 That conclusion cannot be called into question by the Belgian Government's statement that the simplified regime is optional, in that an employer intending to post workers to Belgium may choose not to be subject to that regime and must, in that case, draw up and keep the Belgian social documents referred to above. As recalled at paragraph 30 above, the Court has already held, in *Arblade and Others*, that such an obligation is not itself consistent with the freedom to provide services. What is more, it is apparent from the documents before the Court that, in the case of the Belgian legislation at issue in the main proceedings, the failure to comply with such an obligation is subject to criminal penalties.

42 As regards, second, the obligations under Articles 5 and 6 of the Royal Decree of 29 March 2002 imposed on the employers of workers posted to Belgium, first of all, to keep copies of the equivalent documents available to the Belgian authorities, either at the workplace in Belgium, or at the Belgian address of the employer's agent or servant, then, to send, at the end of the posting, those copies and an inventory of

the equivalent documents to the Belgian authorities and, lastly, to keep available to those authorities, after a period of six months, copies of those equivalent documents at one of the designated locations for a period of five years, it cannot be ruled out at the outset that those obligations give rise to additional expenses and administrative and economic burdens for undertakings established in another Member State, with the result that such undertakings may not be on an equal footing, from the standpoint of competition, with undertakings employing persons normally working in Belgium.

43 Although the Belgian Government has stated that the obligation to keep copies of the equivalent documents available to its authorities for a period of five years after the posting does not apply to postings of less than six months, such as that at issue in the main proceedings, the fact remains that it has not put forward any arguments in relation to the two other obligations. It even acknowledged that the provisions at issue might constitute a restriction on the freedom to provide services within the meaning of Article 56 TFEU.

44 In those circumstances, it must be found that those two obligations constitute a restriction on the freedom to provide services.

Justification for the restrictions on the freedom to provide services

45 According to settled case-law, where national legislation falling within an area which has not been harmonised at European Union level is applicable without distinction to all persons and undertakings operating in the territory of the Member State concerned, it may, notwithstanding its restrictive effect on the freedom to provide services, be justified where it meets an overriding requirement relating to the public

interest and that interest is not already safeguarded by the rules to which the service provider is subject in the Member State in which he is established and in so far as it is appropriate for securing the attainment of the objective which it pursues and does not go beyond what is necessary in order to attain it (see *Arblade and Others*, paragraphs 34 and 35, and *Commission* v *Austria*, paragraph 37).

46 As stated at paragraph 25 above, the Belgian Government submits that the simplified regime makes it possible to monitor compliance by employers posting foreign workers to Belgium with, inter alia, the terms and conditions of employment set out in Article 3(1) of Directive 96/71. Thus, it pursues the public interest objective of the social protection of workers.

47 In that connection, the Court has repeatedly held that overriding reasons relating to the public interest capable of justifying a restriction on the freedom to provide services include the protection of workers (see, in particular, *Arblade and Others*, paragraph 36, *Finalarte and Others*, paragraph 33, and Case C-445/03 *Commission* v *Luxembourg* [2004] ECR I-10191, paragraph 29).

48 Similarly, the Court has recognised that the Member States have the power to verify compliance with the national and European Union provisions in respect of the provision of services, and it has accepted the justification for the control measures necessary to verify compliance with requirements themselves justified by grounds of public interest (see, to that effect, *Arblade and Others*, paragraph 38, and *Commission* v *Germany*, paragraph 36).

49 It is therefore necessary to consider whether measures, such as those included in the simplified regime, are appropriate for attaining the objective of protecting workers and do not go beyond what is necessary in order to attain that objective.

50 As regards, first, the prior declaration of secondment, the Belgian Government submits that the declaration enables the authorities to monitor effectively wages and working conditions in the context of the posting of workers to Belgium. At the hearing, that government explained that, in the absence of such a declaration, the Belgian authorities would be unable to determine the date of commencement of the posting to Belgium, since the equivalent documents do not provide such information.

51 In that connection, the Court has already held that a measure which would be just as effective whilst being less restrictive than a work licensing mechanism, prior checks or a confirmation of posting, would be an obligation imposed on an employer established in another Member State to report beforehand to the local authorities on the presence of one or more deployed workers, the anticipated duration of their presence and the provision or provisions of services justifying the deployment. Such an obligation would enable those authorities to monitor compliance with the social welfare and wages legislation of the host Member State during the deployment while at the same time taking account of the obligations by which the employer is already bound under the social welfare legislation applicable in the Member State of origin (see *Commission* v *Luxembourg*, paragraph 31; *Commission* v *Germany*, paragraph 45, and *Commission* v *Austria*, paragraph 52).

52 It follows that, although sending a prior declaration of posting is a suitable means of communicating the information referred to at paragraph 50 above to the Belgian authorities, a registration and notification procedure, by virtue of which, as noted in paragraph 34 above, the declaration in question assumes the nature of an administrative authorisation procedure, goes beyond what is necessary in order to ensure that posted workers are protected.

53 It follows from the case-law referred to at paragraph 51 above that since a prior declaration enables compliance with the social welfare and wages legislation of the host

Member State to be monitored during the posting, it constitutes a more proportionate means of attaining that objective than such authorisation or a prior check. In that connection, the Belgian Government itself does not state that the simplified regime has any purpose other than monitoring effectively the wages and working conditions of posted workers during the posting.

54 However, since a prior declaration requirement remains an appropriate measure for enabling the necessary checks to be carried out and preventing fraud, the authorities should allow employers posting workers to Belgium the opportunity to provide evidence that they have made a declaration containing all the information required.

55 As regards, second, the documents equivalent to the individual account and payslip, the Belgian Government explains, in its written observations, that the individual account gives details of the services provided by a worker and also of the related remuneration, and that the payslip states the method used to calculate that remuneration taking into account the number of hours worked and days' leave, and also the deductions made.

56 In addition, as stated at paragraph 42 above, it is apparent from Articles 5 and 6 of the Royal Decree of 29 March 2002 that employers of workers posted to Belgium must keep copies of the equivalent documents available to the Belgian authorities either at the workplace in Belgium or at the Belgian address of the employer's agent or servant. At the end of the posting, those copies and an inventory of the equivalent documents must be sent to the Belgian authorities.

57 It is clear that keeping copies of the equivalent documents, as set out at paragraph 55 above, is appropriate to enable the authorities to monitor compliance with the terms and conditions of employment of posted workers as set out in Article 3(1) of Directive 96/71 and, therefore, to ensure that the latter are protected.

58 In addition, it is settled case-law that in so far as the information provided by the documents relating to posted workers which are required under the rules of the Member State of establishment is adequate, as a whole, to enable the controls needed in the host Member State to be carried out, the production, within a reasonable time, of originals or copies of those documents or, failing that, keeping the originals or copies of those documents available on site or in an accessible and clearly identified place in the territory of the host Member State constitutes a less restrictive means of ensuring the social protection of workers than drawing up documents complying with the rules of that Member State (see, to that effect, *Arblade and Others*, paragraphs 64 to 66, and *Finalarte and Others*, paragraph 74).

59 Similarly, the Court has held that the obligation to send, at the end of the period of employment, originals or copies of the documents which an employer is required to draw up under the legislation of the Member State of establishment, to the national authorities of the host Member State which may check them and, if necessary, retain them, is a less restrictive measure for monitoring compliance with rules concerning the protection of workers than an obligation on the employer to keep those documents in the territory of the host Member State after that period (see, to that effect, *Arblade and Others*, paragraph 78).

60 In the light of the foregoing, it is clear that such measures are proportionate to the aim of protecting workers.

61 The answer to the question referred is therefore that:

— Articles 56 TFEU and 57 TFEU preclude national legislation requiring an employer, established in another Member State and posting workers to the territory of the first Member State, to send a prior declaration of posting, in so far as the employer must be notified of a registration number for the declaration before the planned posting may take place and the national authorities of that first State have a period of five working days from receipt of the declaration to issue that notification.

— Articles 56 TFEU and 57 TFEU do not preclude national legislation requiring an employer, established in another Member State and posting workers to the territory of the first Member State, to keep available to the national authorities of the latter, during the posting, copies of documents equivalent to the social or labour documents required under the law of the first Member State and also to send those copies to the authorities at the end of that period.

Costs

62 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 (Second Chamber) hereby rules:

Articles 56 TFEU and 57 TFEU preclude national legislation requiring an employer, established in another Member State and posting workers to the territory of the first Member State, to send a prior declaration of posting, in so far as the employer must be notified of a registration number for the declaration before the planned posting may take place and the national authorities of that first State have a period of five working days from receipt of the declaration to issue that notification.

Articles 56 TFEU and 57 TFEU do not preclude national legislation requiring an employer, established in another Member State and posting workers to the territory of the first Member State, to keep available to the national authorities of the latter, during the posting, copies of documents equivalent to the social or labour documents required under the law of the first Member State and also to send those copies to the authorities at the end of that period.

[Signatures]