Court of Justice of the European Union
**PRESS RELEASE No 17/15**
Luxembourg, 12 February 2015

Press and Information

Judgment in Case C-396/13
Sähköalojen ammattiliitto ry v Elektrobudowa Spółka Akcyjna

# The Court clarifies the concept of 'minimum rates of pay' for posted workers

The Posted Workers Directive[1] provides that, as regards minimum rates of pay, the terms and conditions of employment guaranteed to posted workers are to be defined by the law of the host Member State and/or, in the construction industry, by collective agreements which have been declared 'universally applicable' in the host Member State.

Finnish law on posted workers provides that the minimum wage is to be determined on the basis of a universally applicable collective agreement.

Elektrobudowa Spółka Akcyjna ('ESA'), a Polish company, concluded employment contracts, in Poland and under Polish law, with 186 workers before posting those workers to its Finnish branch to carry out electrical installation work at the construction site of the nuclear power station at Olkiluoto in the municipality of Eurajoki in Finland.

The workers concerned claimed that ESA had not paid them the minimum remuneration due to them under the universally applicable Finnish collective agreements for the electricity sector and the building technology sector. They individually assigned their wage claims to the Sähköalojen ammattiliitto (the Finnish trade union for the electricity sector) so that it could recover those claims.

Before the Satakunnan käräjäoikeus (Satakunta District Court), the Sähköalojen ammattiliitto argued that the collective agreements provide for employees' minimum pay to be calculated on the basis of criteria that are more favourable to employees than those applied by ESA. Those criteria concern, amongst other things, the method of categorising employees by pay groups, of determining pay (on the basis of time or piecework) and of granting employees a holiday allowance, a daily allowance and compensation for travelling time as well as the coverage of their accommodation costs. ESA contended, in particular, that the Sähköalojen ammattiliitto does not have standing to bring proceedings on behalf of the posted workers, given that Polish law prohibits the assignment of claims arising from an employment relationship.

The Satakunnan käräjäoikeus has asked the Court of Justice whether the right to an effective remedy laid down by the Charter of Fundamental Rights prevents a rule of a Member State under which the assignment of claims arising from employment relationships is prohibited from barring a trade union from bringing an action before a court of the host Member State to recover claims that have been assigned to it by posted workers. It has also asked whether the Posted Workers Directive must be interpreted as meaning that the concept of 'minimum rates of pay' covers the various elements of pay at issue in the main proceedings, as they are defined in a universally applicable collective agreement.

In today's judgment, the Court finds that the standing of the Sähköalojen ammattiliitto to bring proceedings before the referring court is governed by Finnish procedural law and that the Posted

[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).

Workers Directive makes clear that questions concerning minimum rates of pay are governed, whatever the law applicable to the employment relationship, by the law of the host Member State, in this case, Finland. The Court notes that nothing in the present case gives any ground for calling into question the action which the Sähköalojen ammattiliitto has brought before the Satakunnan käräjäoikeus or, therefore, the right to an effective remedy guaranteed by the Charter.

The Court then recalls that the Directive pursues a dual objective: first it seeks to ensure a climate of fair competition between national undertakings and undertakings which provide services transnationally and, secondly, it aims to ensure that a nucleus of mandatory rules of the host Member State on minimum protection will apply to posted workers. The Court points out, however, that the Directive has not harmonised the material content of those rules, although it provides some information in that respect.

Accordingly, the Court observes that the Directive expressly refers to the national law or practice of the host Member State for the purpose of defining minimum rates of pay, in so far as that definition does not have the effect of impeding the freedom to provide services between Member States. The Court concludes that the method of calculating rates of pay and the criteria used in that regard are also a matter for the host Member State.

In the light of those considerations, the Court concludes that the Directive 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, provided that the 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 Court then notes that the daily allowance, which is intended to ensure the social protection of the workers concerned by compensating for the disadvantages that the posting entails, is not paid to the workers to reimburse expenditure actually incurred on account of the posting. Accordingly, it must be classified as an allowance specific to the posting and, in accordance with the Directive, is thus 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.

The Court also observes that, where compensation for travelling time is not paid in reimbursement of expenditure actually incurred by the worker on account of the posting, it must, under the Directive, be regarded as an allowance specific to the posting and thus be part of the minimum wage.

The Court further states that the coverage by ESA of the accommodation costs of the workers concerned and the issue to those workers of meal vouchers to compensate them for living costs they have actually incurred on account of their posting do not form part of the minimum wage.

As regards holiday pay, the Court observes that every worker has the right to an annual period of paid leave. Accordingly, the Directive must be interpreted as meaning that the minimum holiday pay which the posted worker must receive for the minimum period of paid annual leave corresponds to the minimum wage to which he is entitled during the reference period.

---



---



*Press contact: Christopher Fretwell ☎ (+352) 4303 3355*