



Press and Information

Court of Justice of the European Union
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Judgment in Case C-549/13
Bundesdruckerei GmbH v Stadt Dortmund

The minimum wage fixed in the context of the award of public contracts may not be extended to employees of a subcontractor established in another Member State, where those employees perform the contract at issue exclusively in that State

It is incompatible with the freedom to provide services to require the payment of a minimum wage without any connection with the cost of living in that Member State

A Law of the *Land* of North Rhine-Westphalia (Germany) provides that certain public service contracts may be awarded only to undertakings which, at the time of the submission of the tender, have agreed to pay their staff a minimum hourly wage of €8.62 for the performance of the service. That law seeks to ensure that employees are paid a reasonable wage in order to avoid both 'social dumping' and the penalisation of competing undertakings which grant a reasonable wage to their employees.

The city of Dortmund, applying that law to a tender for a public contract relating to the digitalisation of documents and the conversion of data for its urban-planning service, required that the successful tenderer guarantee a minimum wage of €8.62 even for workers employed by a subcontractor established in another Member State (in this case, Poland) and who would carry out the work exclusively in that State. Since the competent German Public Procurement Board, hearing an action brought by Bundesdruckerei, a German undertaking concerned by that invitation to tender, has doubts as to the compatibility of the legislation at issue (as applied by the city of Dortmund) with European Union law and, in particular, with the freedom to provide services, it referred a question to the Court of Justice.

In today's judgment, the Court replies that, in a situation such as that at issue in the present case, in which a tenderer intends to carry out a public contract by having recourse exclusively to workers employed by a subcontractor established in a Member State other than that to which the contracting authority belongs, the freedom to provide services precludes the Member State to which the contracting authority belongs from requiring the subcontractor to pay a minimum wage to workers.

The Court declares first of all¹ that such legislation is capable of constituting a restriction of the freedom to provide services. The imposition of a minimum wage on a subcontractor established in another Member State in which minimum rates of pay are lower constitutes an additional economic burden that may prohibit, impede or render less attractive the provision of services in that other Member State.

The Court notes however that such legislation may, in principle, be justified by the objective of protecting employees.

However, in so far as it applies solely to public contracts, such legislation is not appropriate for achieving that objective if there is no information to suggest that employees working in the private sector are not in need of the same wage protection as those working in the context of public contracts.

¹ After holding that, in contrast to the Ruffert case, in particular (see the judgment of the Court of 3 April 2008 in Case [C-346/06](#) and press release No [20/08](#)), the present case does not concern the posting of workers.

In any event, the national legislation at issue, in so far as its scope extends to cover a situation such as that in the dispute, appears disproportionate.

By imposing a fixed minimum wage corresponding, to that required in order to ensure reasonable remuneration for employees in Germany in the light of the cost of living in that country, but which bears no relation to the cost of living in the Member State in which the services relating to the public contract at issue are performed (in this case, Poland) and thereby preventing subcontractors established in another Member State from deriving a competitive advantage from the differences between the respective rates of pay, that national legislation goes beyond what is necessary to ensure that the objective of employee protection is attained.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) text of the judgment is published on the CURIA website on the day of delivery.

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