



The award of public contracts may be made subject by law to a minimum wage

EU law does not preclude the exclusion from a procedure for the award of a contract of a tenderer who refuses to undertake to pay staff concerned the minimum wage

In July 2013, the municipality of Landau (Rhineland-Palatinate, Germany) excluded the German undertaking RegioPost from participation in a public procurement procedure relating to postal services in that municipality,¹ on the grounds that that undertaking had not declared, contrary to the provisions of the contract notice and despite a reminder letter, that it undertook, if awarded the contract, to pay a minimum wage to staff called upon to perform the services.

Both the contract notice and the specifications referred to a Law of the Land of Rhineland-Palatinate² under which public contracts may be awarded in that Land only to undertakings (and subcontractors) which, at the time of submitting their tender, undertake to pay staff responsible for performing the services a minimum wage of €8.70 gross per hour (rate of pay applicable at the material time). At the time of the facts, there was no collective agreement setting a mandatory minimum wage for the postal services sector in Germany. It was only at a later stage that a general minimum wage was introduced in that country.³

RegioPost brought proceedings before the Oberlandesgericht Koblenz (Higher Regional Court, Koblenz, Germany), which has asked the Court of Justice whether the legislation of the Land of Rhineland-Palatinate is compatible with EU law and, in particular, with Directive 2004/18 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.⁴ Under that directive, contracting authorities may impose special conditions relating to the performance of a contract provided that these are compatible with EU law and are indicated in the contract notice or in the specifications. Those conditions may, in particular, concern social considerations.

In today's judgment, the Court holds that **Directive 2004/18 does not preclude legislation that requires tenderers and their subcontractors to undertake, by means of a written declaration enclosed with their tender, to pay staff called upon to perform the services a predetermined minimum wage.**

According to the Court, the obligation at issue constitutes a special condition in principle acceptable under the directive, since it relates to the performance of the contract and concerns social considerations. The Court observes, furthermore, that that obligation is, in the present case,

¹ The public contract concerned, in particular, the conclusion of a framework agreement for the collection, carriage and delivery of letters, parcels and packages. The planned duration of the contract was two years, extendable for one year up to a maximum of two extensions. The value of the public contract far exceeding €200 000, a EU-wide call for tender was issued.

² By that law, the Land aims to (i) combat distortions of competition that may arise in the award of public contracts because of the use of cheap labour and (ii) alleviate the burdens resulting therefrom for social protection systems.

³ Another Law provides that, from 1 January 2015, workers are, in principle, entitled to a minimum wage of €8.50 gross per hour.

⁴ Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114, and corrigendum OJ 2004 L 351, p. 44), as amended by Commission Regulation (EU) No 1251/2011 of 30 November 2011 (OJ 2011 L 319, p. 43).

both transparent and non-discriminatory. It is, moreover, compatible with another directive of the EU, Directive 96/71 on the posting of workers,⁵ in so far as it derives from a 'law' laying down a minimum rate of pay within the meaning of that directive. The minimum wage in question is thus part of the level of protection that must be guaranteed by undertakings established in other Member States to workers posted for the purposes of performing the public contract.

While observing that the minimum wage in question applies to public contracts only and not to private contracts, the Court states that that limitation stems in reality from the simple fact that there are rules of EU law specific to that field (in this case, those laid down in Directive 2004/18). That fact does not mean that the minimum wage in question, to the extent that it may restrict the freedom to provide services,⁶ may not, in principle, be justified by the objective of protecting workers. The Court distinguishes in that regard the present case from the case in Rüffert.⁷

The Court holds, furthermore, that **Directive 2004/18 does not preclude legislation that provides for the exclusion from participation in a public procurement procedure of tenderers and their subcontractors who refuse to undertake, by means of a written declaration enclosed with their tender, to pay staff called upon to perform the services a predetermined minimum wage.**

Just as it does not preclude a written undertaking as to compliance with an obligation in respect of a minimum wage being required, the directive permits the exclusion from participation in a public procurement procedure of a tenderer who refuses to give such an undertaking.

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](#) of the judgment is published on the CURIA website on the day of delivery.

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⁵ 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).

⁶ Case: [C-549/13](#) Bundesdruckerei, see also Press Release [No 129/14](#).

⁷ Case: [C-346/06](#) Rüffert, see also Press Release [No 20/08](#). In that judgment, the Court held that the rate of pay fixed by a collective agreement which had not been declared to be universally applicable, where the Member State recognises such a system, may not be imposed by a legislative measure of that Member State applicable to public contracts on providers of cross-border services who post workers to that Member State. In the present judgment, the Court states that the judgment in Rüffert concerned a collective agreement that applied solely to the construction sector (and not to private contracts) and had not been declared universally applicable. Moreover, the Court had observed in that judgment that the rate of pay set by the collective agreement exceeded the minimum rate of pay applicable to that sector under the German Law on the posting of workers. The minimum rate of pay imposed by the measure at issue in the present case is laid down in a legislative provision which, as a mandatory rule for minimum protection, in principle applies generally to the award of all public contracts in the Land of Rhineland-Palatinate, irrespective of the sector concerned. Furthermore, that legislative provision confers a minimum social protection since, at the time of the facts, the German Law on the posting of workers did not impose, nor did any other national legislation impose, a lower minimum wage for the postal services sector.