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## Press and Information

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Judgment of the Court of Justice in Case C-346/06

*Dirk Rüffert v. Land Niedersachsen*

### **THE COMMUNITY DIRECTIVE ON THE POSTING OF WORKERS MAY PRECLUDE MAKING A PUBLIC CONTRACT SUBJECT TO COMPLIANCE WITH THE WAGES UNDER A COLLECTIVE AGREEMENT IN FORCE IN THE PLACE WHERE THE SERVICES IN QUESTION ARE PERFORMED**

*Where a Member State recognises a system for declaring the rate of pay fixed by a collective agreement to be universally applicable but fails to make such a declaration, a legislative measure of that Member State applicable to public contracts cannot impose a requirement on providers of cross-border services who post workers to that Member State to comply with that rate of pay*

The Law of Land Niedersachsen (the *Land* of Lower Saxony) on the award of public contracts states, amongst other things, that public works contracts may be awarded only to undertakings which undertake in writing to pay their employees at least the remuneration prescribed by the applicable collective agreement. The contractor must also undertake to impose that obligation on subcontractors and to monitor their compliance with it. Non-compliance with that undertaking triggers the payment of a contractual penalty.

In the light of those provisions, the company Objekt und Bauregie undertook to pay employees employed on the Göttingen-Rosdorf prison building site the wages laid down in the 'Buildings and public works' collective agreement, which applied to this case.

It emerged that a Polish subcontractor of Objekt und Bauregie was paying its 53 workers engaged on the building site only 46.57% of the prescribed minimum wage and a formal finding to that effect was made in a notice issued against the person primarily responsible at the Polish company.

The works contract was terminated following a criminal investigation and proceedings commenced between Land Niedersachsen and the liquidator of the assets of Objekt und Bauregie to determine whether Objekt und Bauregie was required to pay a contractual penalty amounting to EUR 84 934.31 (1% of the amount of the contract) for breach of its undertaking concerning rates of pay.

The case was appealed to the Oberlandesgericht Celle (Higher Regional Court, Celle). Uncertain as to the lawfulness of the provision laying down a contractual penalty, that court has asked the

Court of Justice to decide whether the freedom to provide services precludes a statutory obligation requiring a contractor in a public works contract to undertake to pay its employees at least the remuneration prescribed by the applicable collective agreement.

**In its judgment delivered today the Court finds that the provisions at issue are incompatible with the Community directive concerning the posting of workers.**

In that respect, it states that the rate of pay provided for by the ‘Buildings and public works’ collective agreement was not fixed according to one of the procedures laid down by the directive. Although Germany has a system for declaring collective agreements to be of universal application, no such declaration appears to have been made in respect of the collective agreement here in question. Moreover, the binding effect of the ‘Buildings and public works’ collective agreement covers only a part of the construction sector, since, first, the relevant law applies only to public contracts, to the exclusion of private contracts, and, second, the collective agreement has not been declared universally applicable. Therefore, **the legislation of the *Land* does not comply with the provisions of the Community directive on the posting of workers, which provide, subject to certain conditions, that Member States are entitled to impose minimum rates of pay on undertakings established in other Member States in the framework of the transnational provision of services.**

Further, the Court adds that such an interpretation of the directive is confirmed by reading it in the light of the principle of the freedom to provide services. More specifically, it considers that **the restriction on the freedom to provide services** resulting from the obligation to pay employees the remuneration laid down by the applicable collective agreement **is not justified in this case by the objective of ensuring the protection of workers.**

It has not been established that the protection resulting from such a rate of pay – which, moreover, exceeds the minimum rate of pay applicable pursuant to the German law on posting of workers – is necessary for a construction sector worker only when he is employed in the context of a public works contract and not when he is employed in the context of a private contract.

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: CS DA DE EN EL FI FR HU IT PJ RO SK SL SV*

*The full text of the judgment may be found on the Court’s internet site*  
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-346/06>

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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*Pictures of the delivery of the judgment are available on EbS “Europe by Satellite”,  
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