



**During a transitional period of up to five years following Bulgaria's accession to the EU, the conditions of access by Bulgarian students to the labour market of another Member State may not be more restrictive than those applicable to students who are third-country nationals**

The Protocol concerning the conditions and arrangements for admission of Bulgaria and Romania to the EU<sup>1</sup> provides that access of Bulgarian nationals to the labour markets of the Member States is to be regulated, during a transitional period which may run until the end of the five year period following the date of accession, by national measures, or measures resulting from bilateral agreements. Nonetheless, that Protocol also enshrines the principle of preference for citizens of the EU. Thus, the Member States are required, with the exception of measures taken during the transition period, to give preference, for access to their labour markets, to nationals of the Member States over workers who are nationals of third countries.

In January 2008, Mr Sommer, an Austrian national, applied for a work permit on behalf of a Bulgarian national, who was studying in Austria and who had already been resident there for over a year. Mr Sommer wished to hire the student as a driver for 10.25 hours per week for a gross monthly salary of €349. The student was to carry out night-time deliveries in Vienna.

The Landesgeschäftsstelle des Arbeitsmarktservice Wien (Regional Agency of the Department of Employment, Vienna, Austria) rejected that application on the ground that the maximum number of foreign workers, fixed at 66 000 for the region of Vienna, had already been exceeded by 17 757 additional foreign workers.

The Verwaltungsgerichtshof (Administrative Court, Austria), hearing the case, stated that, according to the Austrian legislation on the employment of foreign nationals, a work permit could be issued only if the situation of and developments in the labour market permitted employing the foreign worker and if such employment was not precluded by important public or macroeconomic interests. In addition, where the maximum numbers of foreign workers fixed by legislation had been exceeded, the issuing of a work permit was subject to certain additional conditions. In the same way, that court observes that the examination of the situation of and developments in the labour market must be carried out systematically and not merely in exceptional circumstances. Thus, it asks the Court of Justice whether such legislation is compatible with EU law.

In today's judgment, the Court emphasises first that the conditions of access to the labour market by Bulgarian students, at the time of the events in the main proceedings, may not be more restrictive than those applicable to students who are third-country nationals. According to the preference clause stipulated in the Admission Protocol, Bulgarian nationals must not merely enjoy the same conditions of access to the labour markets of the Member States as third-country nationals, but must receive preferential treatment.

<sup>1</sup> Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union (OJ 2005 L 157, p. 29).

Second, the Court states that the Austrian legislation provides for a more restrictive treatment of Bulgarian nationals than that given to third-country nationals.

According to EU law<sup>2</sup>, after the first year of residence of a student who is a third-country national, the host Member State may invoke the situation of its labour market only in exceptional circumstances and provided that any planned measures to that effect are justified and proportionate with regard to the aim being pursued.

The Austrian legislation requires a systematic examination of the labour market and states that the issuing of a work permit is allowed only if neither an Austrian national nor a foreign national available on the labour market is available for the vacant position to be filled by the foreign national. Therefore, that legislation requires that the situation of the labour market be taken into account without it being necessary to establish the existence of exceptional circumstances which justify it being taken into account.

As regards the provision of Austrian legislation which states that where the fixed regional maximum number of foreign nationals employed has been exceeded, the issuing of a work permit to third-country nationals is subject, not only to the systematic examination of the situation of and developments in the labour market, but also to the application of additional conditions, the Court states that, since EU law precludes such systematic examination, it *a fortiori* precludes more restrictive national measures.

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**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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<sup>2</sup> Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service (OJ 2004 L 375, p. 12).