JUDGMENT OF THE COURT (Second Chamber)

10 February 2011 (*)

(Freedom to provide services – Posting of workers – 2003 Act of Accession – Transitional measures – Access of Polish nationals to the labour market of States which were already Member States of the European Union at the time of the accession of the Republic of Poland – Requirement of a work permit for the making available of labour – Directive 96/71/EC – Article 1(3))

In Joined Cases C-307/09 to C-309/09,

REFERENCES for a preliminary ruling under Article 234 EC from the Raad van State (Netherlands), made by decisions of 29 July 2009, received at the Court on 3 August 2009, in the proceedings

Vicoplus SC PUH (C-307/09),

BAM Vermeer Contracting sp. zoo (C-308/09),

Olbek Industrial Services sp. zoo (C-309/09)

v

Minister van Sociale Zaken en Werkgelegenheid,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, A. Arabadjiev, A. Rosas, U. Lõhmus (Rapporteur) and A. Ó Caoimh, Judges,

Advocate General: Y. Bot,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 8 July 2010,

after considering the observations submitted on behalf of:

– Vicoplus SC PUH, by E. Vliegenberg, advocaat,

– BAM Vermeer Contracting sp. zoo and Olbek Industrial Services sp. zoo, by M. Lewandowski, advocaat,

– the Netherlands Government, by C. Wissels and B. Koopman, acting as Agents,

– the Czech Government, by M. Smolek and T. Müller, acting as Agents,

– the Danish Government, by C. Vang, acting as Agent,

– the German Government, by M. Lumma, N. Graf Vitzthum and J. Möller, acting as Agents,

– the Austrian Government, by E. Riedl and G. Hesse, acting as Agents,

– the Polish Government, by M. Dowgielewicz, J. Faldyga and K. Majcher, acting as Agents,

– the European Commission, by J. Enegren, I. Rogalski, W. Wils and E. Traversa, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 September 2010,

gives the following

Judgment

1 The present references for a preliminary ruling concern the interpretation of Articles 56 TFEU and 57 TFEU and of Article 1(3)(c) of 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).

2 The references have been made in proceedings between, on the one hand, the Polish companies Vicoplus SC PUH ('Vicoplus'), BAM Vermeer Contracting sp. zoo ('BAM Vermeer') and Olbek Industrial Services sp. zoo ('Olbek') and, on the other, the Minister van Sociale Zaken en Werkgelegenheid (Minister for Social Affairs and Employment) concerning fines imposed on those companies for posting Polish workers to the Netherlands without first having obtained work permits.

Legal context

European Union law

The 2003 Act of Accession

3 Article 24 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33) ('the 2003 Act of Accession') refers to a list of measures in Annexes V to XIV to that act which are to apply to the new Member States under the conditions laid down in those annexes.

4 Annex XII to the 2003 Act of Accession is entitled 'List referred to in Article 24 of the Act of Accession: Poland'. Chapter 2 of that annex, entitled 'Freedom of movement for persons', provides, in paragraphs 1, 2, 5 and 13, as follows:

'1. [Article 45 TFEU and the first paragraph of Article 56 TFEU] shall fully apply only, in relation to the freedom of movement of workers and the freedom to provide services involving temporary movement of workers as defined in Article 1 of Directive 96/71/EC between Poland, on the one hand, and Belgium, the Czech Republic, Denmark, Germany, Estonia, Greece, Spain, France, Ireland, Italy, Latvia, Lithuania, Luxembourg, Hungary, the Netherlands, Austria, Portugal, Slovenia, Slovakia, Finland, Sweden and the United Kingdom, on the other hand, subject to the transitional provisions laid down in paragraphs 2 to 14.

2. By way of derogation from Articles 1 to 6 of Regulation (EEC) No 1612/68 [of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ English Special Edition 1968 (II), p. 475)] and until the end of the two-year period following the date of accession, the present Member States will apply national measures, or those resulting from bilateral agreements, regulating access to their labour markets by Polish nationals. The present Member States may continue to apply such measures until the end of the five-year period following the date of the accession.

…

5. A Member State maintaining national measures or measures resulting from bilateral agreements at the end of the five-year period indicated in paragraph 2 may, in case of serious disturbances of its labour market or threat thereof and after notifying the Commission, continue to apply these measures until the end of the seven-year period following the date of accession. In the absence of such notification, Articles 1 to 6 of Regulation (EEC) No 1612/68 shall apply.

…

13. In order to address serious disturbances or the threat thereof in specific sensitive service sectors on their labour markets, which could arise in certain regions from the transnational provision of services, as defined in Article 1 of Directive 96/71/EC, and as long as they apply, by virtue of the transitional provisions laid down above, national measures or those resulting from bilateral agreements to the free movement of Polish workers, Germany and Austria may, after notifying the Commission, derogate from the first paragraph of Article [56 TFEU] with a view to limit, in the context of the provision of services by companies established in Poland, the temporary movement of workers whose right to take up work in Germany and Austria is subject to national measures.

…'

Directive 96/71

5 Article 1 of Directive 96/71, entitled 'Scope', provides as follows:

'1. This Directive shall apply to undertakings established in a Member State which, in the framework of the transnational provision of services, post workers, in accordance with paragraph 3, to the territory of a Member State.

…

3. This Directive shall apply to the extent that the undertakings referred to in paragraph 1 take one of the following transnational measures:

(a) post workers to the territory of a Member State on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in that Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting;

or

(b) post workers to an establishment or to an undertaking owned by the group in the territory of a Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting;

or

(c) being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting.

…'

Directive 91/383/EEC

6 Article 1 of Council Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (OJ 1991 L 206, p. 19) provides:

'This Directive shall apply to:

…

(2) temporary employment relationships between a temporary employment business which is the employer and the worker, where the latter is assigned to work for and under the control of an undertaking and/or establishment making use of his services.'

National law

7 Under Article 2(1) of the Wet arbeid vreemdelingen (Law on the employment of foreign nationals) (*Stb*. 1994, No 959) ('the Wav'), an employer is prohibited from having work carried out by a foreign national in the Netherlands without a work permit.

8 Article 1e(1) of the Besluit uitvoering Wav (Decree on the implementation of the Wav) (*Stb*. 1995, No 406), as amended by the Decree of 10 November 2005 (*Stb*. 2005, No 577), ('the Implementing Decree') is worded as follows:

'The prohibition set out in Article 2(1) of the Wav does not apply to a foreign national temporarily employed within the framework of a transnational provision of services in the Netherlands by an employer established outside the Netherlands in another Member State of the European Union, provided that:

(a) the foreign national is entitled to perform work as a person employed by that employer in the country where the employer is established,

(b) the employer has notified the Central Employment and Income Agency in writing before the work in the Netherlands begins, and

(c) the service provided does not consist in the making available of workers.'

9 According to the referring court, the obligation to obtain a work permit imposed by Article 2(1) of the Wav was, as a temporary restriction on the free movement of Polish workers provided for in Annex XII to the 2003 Act of Accession, maintained up to 1 May 2007.

The disputes in the main proceedings and the questions referred for a preliminary ruling

10 With regard to Case C-307/09, it is apparent from the order for reference that, during a check carried out by the Labour Inspectorate, three Polish nationals were found to be working as employees of Vicoplus at Maris, a Dutch company engaged in the reconditioning of pumps for other undertakings. Under a contract concluded by Maris with another company, the work of those Polish nationals was to be carried out during the period between 15 August and 30 November 2005.

11 The facts in the main proceedings in Case C-308/09 concern a report drawn up by the Labour Inspectorate on 31 July 2006 according to which two Polish nationals had been working since 10 January 2006 as fitters in the garage of Flevoservice en Flevowash BV, a Dutch company. They were employed by BAM Vermeer, which had concluded a contract with that company for the repair and adjustment of trucks and trailers.

12 With regard to Case C-309/09, the order for reference states that, on 15 November 2005, the company which was Olbek's predecessor in title concluded a contract with HTG Nederveen BV, a Dutch company, for the purpose of supplying the latter with personnel to carry out waste-processing services over a period of several months. An inspection of the offices of HTG Nederveen BV carried out by the Labour Inspectorate revealed that those services were being carried out by, among others, 20 Polish nationals.

13 In the three abovementioned cases, the appellants in the main proceedings were fined for infringement of Article 2(1) of the Wav, in that they posted Polish workers to the Netherlands without having obtained work permits for that purpose.

14 Dismissing the objections to those fines, the Staatssecretaris van Sociale Zaken en Werkgelegenheid (State Secretary for Social Affairs and Employment), in Case C-307/09, and the Minister van Sociale Zaken en Werkgelegenheid, in Cases C-308/09 and C-309/09, took the view that the provision of services by Vicoplus, BAM Vermeer and Olbek had consisted in the making available of workers within the meaning of Article 1e(1)(c) of the Implementing Decree.

15 Following the dismissal by the Rechtbank 's-Gravenhage (District Court, The Hague) of their appeals against those decisions, the appellants in the main proceedings appealed to the Raad van State (Council of State).

16 That court states that it is common ground that the obligation, laid down in Article 1e(1) of the Implementing Decree, to obtain a work permit in order to make workers available constitutes a restriction on the freedom to provide services. However, it takes the view that it follows from the judgments in Case C-113/89 *Rush Portuguesa* [1990] ECR I-1417, Case C-43/93 *Vander Elst* [1994] ECR I-3803, Case C-445/03 *Commission* v *Luxembourg* [2004] ECR I-10191, Case C-244/04 *Commission* v *Germany* [2006] ECR I-885 and Case C-168/04 *Commission* v *Austria* [2006] ECR I-9041 that such a restriction may be justified by, inter alia, the general-interest objective of protecting the domestic labour market, against, among other things, circumvention of the restrictions on the free movement of workers.

17 In that regard, the referring court explains that the retention of that obligation to obtain a work permit is based on, inter alia, the judgment in *Rush Portuguesa*, but observes that the Court did not, in the later judgments cited above, reproduce the view expressed in paragraph 16 of *Rush Portuguesa*. The question therefore arises as to whether European Union law now precludes the making available of workers from being made subject to the obtaining of a work permit in the circumstances of the cases in the main proceedings.

18 The referring court accordingly asks whether, with a view to protecting the domestic labour market, the requirement of a work permit under Article 2(1) of the Wav for the provision of a service consisting in making workers available is a proportionate measure in the light of Articles 56 TFEU and 57 TFEU, in view also of the reservation set out in Chapter 2, paragraph 2, of Annex XII to the 2003 Act of Accession with regard to the free movement of workers. If so, the referring court raises the question of the scope of the concept of 'making available of workers' and, in particular, of the significance to be attached to the nature of the main activity which the undertaking providing the services in question carries on in the Member State in which it is established.

19 In those circumstances the Raad van State decided, in each of the cases pending before it, to stay the proceedings and to refer the following questions, which are formulated in identical terms, to the Court of Justice for a preliminary ruling:

'(1) Must Articles [56 TFEU] and [57 TFEU] be interpreted as precluding a national arrangement, as set out in Article 2 of the [Wav], read in conjunction with Article 1e(1)(c) of the [Implementing Decree], under which a work permit is required for the hiring-out of workers as referred to in Article 1(3)(c) of Directive 96/71/EC?

(2) On the basis of what criteria should it be determined whether workers have been hired out within the meaning of Article 1(3)(c) of Directive 96/71/EC?'

20 By order of the President of the Court of 2 October 2009, Cases C-307/09 to C-309/09 were joined for the purposes of the written and oral procedures and of the judgment.

Consideration of the questions referred

The first question

21 By its first question the referring court asks, in essence, whether Articles 56 TFEU and 57 TFEU preclude legislation of a Member State under which the hiring-out, within the meaning of Article 1(3)(c) of Directive 96/71, in the territory of that State, of workers who are nationals of another Member State is made subject to the obtaining of a work permit.

22 The fact that a national court has, formally speaking, worded a question referred for a preliminary ruling with reference to certain provisions of European Union law does not preclude the Court from

providing to the national court all the elements of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. It is, in this context, for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of European Union law which require interpretation, regard being had to the subject-matter of the dispute (see, inter alia, Case C-115/08 *ČEZ* [2009] ECR I-10265, paragraph 81 and the case-law cited).

23 The referring court states that, by maintaining up to 1 May 2007 the obligation to obtain a work permit set out in Article 2(1) of the Wav in respect of Polish nationals wishing to work in the Kingdom of the Netherlands, that Member State applied the derogation relating to the free of movement of workers in Chapter 2, paragraph 2, of Annex XII to the 2003 Act of Accession. The referring court is unsure, however, as is apparent from paragraphs 16 to 18 of the present judgment, whether the maintenance, pursuant to Article 1e(1)(c) of the Implementing Decree, of such an obligation in respect of a provision of services consisting in the making available of Polish workers in the territory of the Kingdom of the Netherlands can be justified in the light of that derogation.

24 In that regard, if national legislation is justified pursuant to one of the transitional measures referred to in Article 24 of the 2003 Act of Accession, in this case the measure provided for in Chapter 2, paragraph 2, of Annex XII to that act, the question of the compatibility of that legislation with Articles 56 TFEU and 57 TFEU can no longer arise (see, to that effect, Case C-140/05 *Valeško* [2006] ECR I-10025, paragraph 74).

25 It is therefore necessary to examine whether legislation such at that at issue in the main proceedings is covered by that transitional measure.

26 In the first place, it is important to bear in mind that Chapter 2, paragraph 2, of Annex XII to the 2003 Act of Accession derogates from the free movement of workers by not applying, on a temporary basis, Articles 1 to 6 of Regulation No 1612/68 to Polish nationals. Chapter 2, paragraph 2, of Annex XII to the 2003 Act of Accession provides that, for a period of two years from 1 May 2004 – the date of the Republic of Poland's accession to the European Union – the Member States are to apply national measures, or those resulting from bilateral agreements, regulating access to their labour markets by Polish nationals. That provision also provides that the Member States may continue to apply such measures until the end of the five-year period following the date of the accession of the Republic of Poland to the European Union.

27 In the second place, it follows from the case-law of the Court that where an undertaking hires out, for remuneration, staff who remain in the employ of that undertaking, no contract of employment being entered into with the user, its activities constitute an occupation which satisfies the conditions laid down in the first paragraph of Article 57 TFEU and must accordingly be considered a 'service' within the meaning of that provision (see Case 279/80 *Webb* [1981] ECR 3305, paragraph 9, and order of the Court of 16 June 2010 in Case C-298/09 *RANI Slovakia*, not published in the ECR, paragraph 36).

28 However, the Court has acknowledged that such activities may have an impact on the labour market of the Member State of the party for whom the services are intended. First, employees of agencies for the supply of manpower may in certain circumstances be covered by the provisions of Articles 45 TFEU to 48 TFEU and the European Union regulations adopted in implementation thereof (see *Webb*, paragraph 10).

29 Secondly, owing to the special nature of the employment relationships inherent in the making available of labour, pursuit of that activity directly affects both relations on the labour market and the lawful interests of the workforce concerned (*Webb*, paragraph 18).

30 In that regard, the Court held, in paragraph 16 of *Rush Portuguesa*, that an undertaking engaged in the making available of labour, although a supplier of services within the meaning of the FEU Treaty, carries on activities which are specifically intended to enable workers to gain access to the labour market of the host Member State.

31 That finding is justified by the fact that a worker who has been hired out pursuant to Article 1(3)(c) of Directive 96/71 is typically assigned, during the period for which he is made available, to a post within the user undertaking which would otherwise have been occupied by a person employed by that undertaking.

32 It follows that legislation of a Member State such as that at issue in the main proceedings must be considered to be a measure regulating access of Polish nationals to the labour market of that State within the meaning of Chapter 2, paragraph 2, of Annex XII to the 2003 Act of Accession.

33 Consequently, that legislation, by which, during the transitional period provided for in Chapter 2, paragraph 2, of Annex XII to the 2003 Act of Accession, the hiring-out, within the meaning of Article 1(3)(c) of Directive 96/71, of Polish nationals in the territory of that State continues to be subject to the obtaining of a work permit, is compatible with Articles 56 TFEU and 57 TFEU.

34 Such a finding also necessarily follows from the purpose of that provision, which is intended to prevent, following the accession to the European Union of new Member States, disturbances on the labour market of the existing Member States due to the immediate arrival of a large number of workers who are nationals of those new States (see, to that effect, Case 9/88 *Lopes da Veiga* [1989] ECR 2989, paragraph 10, and *Rush Portuguesa*, paragraph 13). That purpose is apparent from, inter alia, Chapter 2, paragraph 5, of Annex XII to the 2003 Act of Accession in so far as that paragraph provides the possibility for a Member State, in case of serious disturbances of its labour market or threat thereof, to continue to apply the measures referred to in Chapter 2, paragraph 2, until the end of the seven-year period following the date of accession of the Republic of Poland.

35 As the Advocate General stated at point 51 of his Opinion, it seems artificial to draw a distinction with regard to the influx of workers on the labour market of a Member State according to whether they gain access to it by means of the making available of labour or directly and independently because in both cases that potentially large movement of workers is capable of disturbing that labour market. To exclude the making available of labour from the scope of Chapter 2, paragraph 2, of Annex XII to the 2003 Act of Accession would therefore be liable to deprive that provision of much of its effectiveness.

36 The finding set out in paragraph 33 of the present judgment corresponds, moreover, to what the Court held in *Rush Portuguesa*, in respect of Article 216 of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ 1985 L 302, p. 23). Having found, in paragraph 14 of that judgment, that that article applied when, inter alia, access by Portuguese workers to the employment market of other Member States was at issue, the Court held, in paragraph 16 of that judgment, that that article would preclude the making available of workers from Portugal by an undertaking providing services.

37 In that regard, although, as the Raad van State has pointed out, the Court did not refer expressly in its subsequent judgments to paragraph 16 of *Rush Portuguesa*, it did, however, refer to paragraph 17 thereof, which makes explicit the consequence arising out of paragraph 16, namely that a Member State must be in a position to ascertain, subject to observance of the limits imposed by European Union law, that a provision of services is not, in actual fact, intended to make available labour which is not covered by the free movement of workers (see *Commission* v *Luxembourg*, paragraph 39, and *Commission* v *Austria*, paragraph 56).

38 It is true that Chapter 2, paragraph 1, of Annex XII to the 2003 Act of Accession sets out transitional provisions which relate not only to the free movement of workers but also to the freedom to provide services involving temporary movement of workers as defined in Article 1 of Directive 96/71. Paragraph 13 of that chapter, however, allows only the Federal Republic of Germany and the Republic of Austria to derogate, under the conditions set out in that paragraph, from Article 56 TFEU in respect of the transnational provision of services thus defined.

39 In that regard, it must be stated that Article 1 of Directive 96/71 relates to two situations involving the making available of transnational labour. First, Article 1(3)(c) covers the hiring-out of a worker, by an undertaking established in a Member State, whether a temporary employment undertaking or a placement agency, to a user undertaking established or operating in the territory of another Member State. Secondly, Article 1(3)(b) concerns the posting, to the territory of a Member State, of a person

employed by an undertaking owned by a group to an establishment or undertaking owned by that group.

40 However, as the Danish and German Governments have pointed out, Chapter 2, paragraph 13, of Annex XII to the 2003 Act of Accession was the result of negotiations initiated by the Federal Republic of Germany and the Republic of Austria with a view to providing for a transitional scheme in respect of all the provisions of services referred to in Article 1(3) of Directive 96/71. That result cannot, however, be considered to have had the consequence of making it impossible for the other States which already belonged to the European Union at the time of the accession of the Republic of Poland to apply their national measures in respect of the hiring-out, within the meaning of Article 1(3)(c) of Directive 96/71, of workers who are Polish nationals. Such a consequence would run counter to the purpose of paragraph 2 of that chapter, as described in paragraph 34 of the present judgment.

41 In view of all of the foregoing considerations, the answer to the first question is that Articles 56 TFEU and 57 TFEU do not preclude a Member State from making, during the transitional period provided for in Chapter 2, paragraph 2, of Annex XII to the 2003 Act of Accession, the hiring-out, within the meaning of Article 1(3)(c) of Directive 96/71, on its territory, of workers who are Polish nationals subject to the obtaining of a work permit.

The second question

42 By its second question, the referring court seeks to identify the criteria which make it possible to determine whether a service which has been provided constitutes a hiring-out of workers within the meaning of Article 1(3)(c) of Directive 96/71.

43 In the first place, as has been pointed out in paragraph 27 of the present judgment, it follows from paragraph 9 of the judgment in *Webb* that the making available of labour is a service provided for remuneration, within the meaning of the first paragraph of Article 57 TFEU, in respect of which the worker made available remains in the employ of the person providing the service, no contract of employment being entered into with the user.

44 In that regard, it must be pointed out that Article 1(3)(c) of Directive 96/71 also specifies that there must be an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting.

45 In the second place, it is important to draw a distinction between, on the one hand, the making available of workers and, on the other, a temporary movement of workers who are sent to another Member State to carry out work there as part of a provision of services by their employer (see, to that effect, *Rush Portuguesa*, paragraph 15), a movement for those purposes being referred to also in Article 1(3)(a) of Directive 96/71.

46 As the Advocate General stated at point 65 of his Opinion, in the latter case, the posting of workers by their employer to another Member State is ancillary to a provision of services undertaken by that employer in that State. Consequently, the view must be taken that workers are hired out, within the meaning of Article 1(3)(c) of Directive 96/71, where, in contrast to a temporary movement, such as that described in the preceding paragraph, the movement of workers to another Member State constitutes the very purpose of a transnational provision of services.

47 In the third place, as has been noted by all of the Governments which have submitted observations to the Court and also by the Commission, a worker who is hired out, within the meaning of Article 1(3)(c) of Directive 96/71, works under the control and direction of the user undertaking. That is the corollary of the fact that such a worker does not carry out his work in the context of a provision of services undertaken by his employer in the host Member State.

48 That characteristic is also mentioned in Article 1(2) of Directive 91/383, which provides that an employee of a temporary employment business is assigned to work for and under the control of an undertaking and/or establishment making use of his services.

49 By contrast, the fact that the worker returns to his Member State of origin at the end of the posting cannot preclude that worker from having been made available in the host Member State. Although it is true that a worker posted for the purpose of carrying out work as part of a provision of services by his employer, within the meaning of Article 1(3)(a) of Directive 96/71, returns, in general, to his State of origin after the completion of that service (see, to that effect, *Rush Portuguesa*, paragraph 15, and *Vander Elst*, paragraph 21), there is nothing to prevent a worker who has been hired out, within the meaning of Article 1(3)(c) of Directive 96/71, from leaving the host Member State and also returning to his Member State of origin after having carried out his work within the user undertaking.

50 Likewise, although the absence of correspondence between the tasks carried out by the worker in the host Member State and the main activity of his employer could give the impression that that worker has been made available by the employer, the possibility cannot, however, be ruled out, inter alia, that that worker is carrying out a provision of services for his employer which relates to a secondary or new field of activity of that employer. Conversely, the fact that those tasks correspond to the main activity of the posted worker's employer cannot rule out the possibility that that worker has been made available, as such a situation could, inter alia, arise in respect of an intra-group posting, such as that referred to in Article 1(3)(b) of Directive 96/71.

51 Consequently, the answer to the second question is that the hiring-out of workers, within the meaning of Article 1(3)(c) of Directive 96/71, is a service provided for remuneration in respect of which the worker who has been hired out remains in the employ of the undertaking providing the service, no contract of employment being entered into with the user undertaking. It is characterised by the fact that the movement of the worker to the host Member State constitutes the very purpose of the provision of services effected by the undertaking providing the services and that that worker carries out his tasks under the control and direction of the user undertaking.

Costs

52 Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national court, the decisions on costs are a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Articles 56 TFEU and 57 TFEU do not preclude a Member State from making, during the transitional period provided for in Chapter 2, paragraph 2, of Annex XII to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, the hiring-out, within the meaning of Article 1(3)(c) of 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, on its territory, of workers who are Polish nationals subject to the obtaining of a work permit.**

2. **The hiring-out of workers, within the meaning of Article 1(3)(c) of Directive 96/71, is a service provided for remuneration in respect of which the worker who has been hired out remains in the employ of the undertaking providing the service, no contract of employment being entered into with the user undertaking. It is characterised by the fact that the movement of the worker to the host Member State constitutes the very purpose of the provision of services effected by the undertaking providing the services and that that worker carries out his tasks under the control and direction of the user undertaking.**

[Signatures]

* Language of the cases: Dutch.