# Alfred John Webb.

# (Case 279/80)

# Before the Court of Justice of the European Communities

# ECJ

# (The President, Mertens de Wilmars C.J.; Bosco, Touffait and Due PP.C.; Pescatore, Lord Mackenzie Stuart, O'Keeffe, Koopmans, Everling, Chloros and Grevisse JJ.) Sir. Gordon Slynn Advocate General.

# 17 December 1981 [FN1]

Reference from the Netherlands by the Hoge Raad (Supreme Court) under Article 177 EEC.

**Services. Contract labour.**

An activity whereby an enterprise provides to a client, against remuneration, labour which remains in the employment of that enterprise without a contract of employment being concluded with the client, constitutes a commercial activity which satisfied the conditions laid down in Article 60 (1) EEC and is therefore a 'service' covered by Article 59 et seq. [9], [11]

FN1 The Court's judgment (but not its ruling on the questions referred by the Hoge Raad nor the Advocate General's opinion) has been translated by us since the Court's translation was not available to us when this report went to press.--Ed.

**Constitutional law. Direct effect. National courts. Services.**

**Article 59** EEC took direct, unconditional effect on expiry of the transitional period. [13]

**Services. Discrimination. Nationality. Establishment.**

Freedom to supply services under Article 59 EEC involves the elimination of any

discrimination against the provider of services by reason of his nationality or the circumstance that he is established in a member-State other than that where the service must be provided. [14]

**Services. Community law and national law. National regulation. Contract labour.**

A member-State which requires enterprises providing contract labour to hold a licence may, compatibly with Article 59 EEC, require a person established in another member-State and who provides such a service in the former State's territory to obtain such a licence, even if he already holds an equivalent licence issued by his home State. But the State where the service is supplied, when granting licences, must make no distinction related to nationality or place of establishment of the*720 applicant and must take into account justifications and safeguards which the applicant has already produced in order to pursue the the same activity in his home State. [21]
The Court *interpreted* Articles 59 and 60 EEC *in the context of* an English firm established in Britain which carried on the trade of supplying contract labour and held a British licence to do so, but did not hold an equivalent Dutch licence although it supplied contract labour to Dutch clients, *to the effect that* supply of contract labour is a 'service' covered by **Article 59,** that in view of its social peculiarities the U.K. licence-holder may be required to take out a Dutch licence as well, but that in deciding whether to grant a Dutch licence authorities must take into account the extent to which grant of the U.K. licence covers the same ground as the Dutch licence.

**Representation**

G. M. Borchardt and Mme. De Bruin for the Dutch Government as *amicus curiae.*
Alexandre Carnelutti for the French Government as *amicus curiae.*
Martin Seidel and Hans Heinrich Boie for the German Government as *amicus curiae*.
Laurids Mikaelsen for the Danish Government as amicus curiae.
Robert Caspar Fischer for the E.C. Commission as *amicus curiae*.

The following cases were referred to by the Court in its judgment:
1. Van Binsbergen v. Bestuur Van de Bedrijfsvereniging voor de Metaalnijverheid (33/74), 3 December 1974: [1974] E.C.R. 1299, [1975] 1 C.M.L.R. 298.
2. Ministere Public v. Van Wesemael (110-111/78), 18 January 1979: [1979] E.C.R. 35, [1979] 3 C.M.L.R. 87.

The following further cases were referred to by the Advocate General:
3. Coenen v. Sociaal-Economische Raad (39/75), 26 November 1975: [1975] E.C.R. 1547, [1976] 1 C.M.L.R. 30.
4. Societe Generale Alsacienne de Banque SA v. Koestler (15/78), 24 October

1978: [1978] E.C.R. 1971, [1979] 1 C.M.L.R. 89.
5. Procureur du Roi v. Debauve (62/79), 18 March 1980: [1980] E.C.R. 881, [1981] 2 C.M.L.R. 362.

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**Facts**

Dutch legislation subjects the provision of contract labour to a licensing scheme. *721 Section 1 (1) (b) of the Wet op het ter beschikking stellen van arbeidskrachten (Act on the provision of contract labour) of 31 July 1965, as amended by the Act of 30 June 1967, defines the provision of contract labour as follows:
'the provision of contract labour for another person, against remuneration, for the purpose of performing, in that person's enterprise and under conditions other than those of a contract of employment with that enterprise, work normally carried out in that enterprise.'
At the beginning of sub-section 1 and paragraph (*a*) of section 2 of the Act, provision is made for the possibility of setting up a licensing scheme in the following terms:
'If so required in the interest of good relations in the labour market or the market for the workers concerned, a royal decree may, either generally or for cases coming within categories which will be defined therein:
... prohibit the provision of contract labour without a licence issued by Our Minister.'
Section 6 (1) of the Act provides that:
'A licence will only be refused if there are reasons for fearing that the provision of contract labour by the applicant could damage good relations in the labour market or that the interests of the workers concerned will not be sufficiently protected as a result.'
The licensing system was in fact instituted by the Royal Decree of 10 September 1970, adopted in implementation of section 2 (1) (beginning and paragraph (*a*)) of the above-mentioned Act. Section 1 of the Decree is as follows:
'The provision of contract labour is prohibited without a licence issued by Our Minister for Social Affairs.'
The main action involves a criminal proceeding against Alfred John Webb who, on conviction by a judgment of 27 April 1978 by the Economische Politierechter of the Arrondissementsrechtbank of Amsterdam, was ordered to pay three fines of 6,000 florins each, with an alternative of 60 days' imprisonment, half of the sentence to be suspended for two years. This judgment was upheld by the decision of the economic division of the Gerechtshof Amsterdam of 14 February 1980. The Gerechtshof described the act as an 'offence under a regulation adopted by virtue of section 2 (1) of the Wet op het ter beschikking stellen van arbeidskrachten, committed by a legal person, whereas the accused gave the

order to commit this act, which was committed on three occasions.'
The file shows that the accused, who resides in the United Kingdom, is the manager of a firm called International Engineering Services Bureau, which is governed by English law and established in the United Kingdom and is referred to hereinafter as 'IESB (UK).'
This firm is particularly engaged in sending technical personnel to Holland after they have been recruited by IESB (UK), and supplying them, against payment, to enterprises situated in Holland for a*722 specified period, without any contract of employment being made with those enterprises. Therefore these personnel are and remain exclusively in the service of IESB (UK), which holds a licence in accordance with British legislation but carries on its activities without holding a Dutch licence.
In the present case, it was found by the court dealing with the main issue that IESB (UK) had, on three occasions during the period from 20 February 1978 to 24 February 1978, without holding a licence issued by the Minister for Social Affairs, provided workers, against remuneration, for Dutch enterprises with a view to performing ordinary tasks in those enterprises under conditions other than those laid down by a contract of employment with the enterprises.
The accused has appealed on a point of law and submits, in his grounds of appeal, *inter alia*, that Articles 59 to 62 of the EEC Treaty have been infringed by the Gerechtshof of Amsterdam. In this connection he states that, where the activity consisting in the provision of contract labour in a member-State is subject to the issue of a licence, that State cannot compel those who provide the services and who are established in another member-State, to comply with these conditions if they hold, in the member-State where they are established, a licence issued under conditions comparable to those of the State where such services are performed, and if those activities are properly supervised in the first State.
The Gerechtshof is said to have failed to recognise that there are comparable conditions in the sense stated above if licences such as those granted in Holland under the 'Wet op het ter beschikking stellen van arbeidskrachten' are granted in another member-State on the basis, firstly, of a concern to maintain good relations in the labour market and, secondly, an intention to secure the workers in question full social status.
The Hoge Raad found that a decision in the matter depended on questions concerning the interpretation of provisions of Community law, and therefore stayed the proceedings and referred the following questions to the European Court of Justice under Article 177 of the EEC Treaty:
1. Does 'services' in Article 60 of the Treaty [establishing the European Economic Community] include the service of providing manpower within the meaning of the opening words of the first sub-section of section 1 and sub-paragraph (b) thereof of the Wet op het ter beschikkingstellen van arbeidskrachten [Act on provision of manpower] [FN2]?

FN2 That Act reads as follows: '1. For the application of the provisions of this Law or those pursuant to this Law the following terms shall have the following meanings: (b) *The provision of manpower [ter beschikking stellen van*

*arbeidskrachten]:* For Consideration Providing Manpower to Another Otherwise Than In Pursuance of An Agreement Concluded with That other for the Performance of Work Usually Carried on In his Undertaking.'

*723 2. If Question 1 is answered in the affirmative, does Article 59 of the Treaty always or only under certain conditions preclude a member-State, in which the provision of that service is made dependent on the possession of a licence--that requirement being imposed in order that such a licence may be refused if there is reasonable cause to fear that the provision of manpower by the applicant could harm good relations in the labour market or that the interests of the workforce affected are insufficiently safeguarded--from compelling a person providing the service who is established in another member-State to fulfil those conditions?
3. To what extent does it make any difference to the answer to Question 2 if a foreigner providing the service possesses a licence to provide that service in the State in which he is established?

Opinion of the Advocate General (Sir Gordon Slynn)

Alfred John Webb resides in the United Kingdom and is the manager of an English company, International Engineering Services Bureau (U.K.) Limited. In February 1978 the company was engaged in the business of supplying technical personnel for fixed periods to businesses in the Netherlands. The staff so supplied remained employees of the English company and the latter was remunerated by the businesses for which their staff worked. At the material time International Engineering Services Bureau (UK) Limited held a licence issued in the United Kingdom under the Employment Agencies Act 1973. Neither the company nor Mr. Webb held a Dutch licence.
There was in force in the Netherlands the *Wet op het ter beschikking stellen van arbeidskrachten,* or Act on the Provision of Manpower of 31 July 1965. [FN3] Section 1 of that Act defined the provision of manpower as the supply of labour to another, for reward, other than in pursuance of an agreement concluded with that other for the performance of work usually carried out in his undertaking. Section 2 (1) (a) provides for the creation of a system of licences. An *algemene maatregel van bestuur*, or Royal Decree, dated 10 September 1970, [FN4] made in accordance with section 2 (1) (a) of the Act of 31 July 1965, prohibited the supply of manpower by any person other than the holder of a licence issued by the Minister for Social Affairs. Section 6 of the Act of 31 July 1965 provided that such licences may be refused only if there is reasonable cause to believe that the provision of manpower by the applicant might harm good labour relations or if the interests of the labour force were insufficiently safeguarded.

FN3 Stb. 379 as amended by the Act of 30 June 1967, Stb. 377.

FN4 Stb. 410.

On 27 April 1978 Mr. Webb was convicted before the Economische Politierechter or commercial judge at the Arrondissementsrechtbank at Amsterdam on three

counts of being concerned in*724 the provision of labour to Dutch companies, for reward, without holding a licence issued by the Minister for Social Affairs. That Court imposed fines, with periods of imprisonment in default. His conviction and sentence were upheld by the Gerechtshof of Amsterdam whence he appealed to the Hoge Raad. Before that court (as before the Gerechtshof) he relied on Articles 59 to 62 of the EEC Treaty. He contended in particular that a person who holds a licence, issued in one member-State, for the provision of labour there, may not be required to meet the conditions for the award of a licence in another member-State, where he supplies labour, if his licence was issued in the first member-State on conditions comparable to those imposed in the State where the labour was provided, and if the first member-State exercises proper control over the carrying out of the activities.
In the light of this argument, the Hoge Raad posed three questions to the Court under Article 177 of the EEC Treaty. By the first, it asks:
1. Does 'services' in Article 60 of the Treaty include the service of providing manpower within the opening words of the first sub-section of ... section 1 and sub-paragraph (b) of the *Wet op het ter beschikking stellen van arbeidskrachten*?
By Article 60 of the EEC Treaty the term 'services' in the Treaty means those services which are normally provided for remuneration and are not governed by the provisions relating to the freedom of movement for goods, capital and persons. The International Standard Industrial Classification of all Economic Activities (ISIC) issued by the Statistical Office of the United Nations [FN5] includes employment agencies within group 839 under the heading ' business services not elsewhere classified.' That classification was adopted in the General Programme for the Abolition of Restrictions on Freedom to Provide Services, [FN6] It 'forms an integral part of the Community measures at issue' (see joined Cases 110 and 111/78 Ministere Public v. Van Wesemael). [FN7] Council Directive 67/43 of 12 January 1967, concerning the Attainment of Freedom of Establishment to provide Services in respect of specified activities, [FN8] sets out in Article 3 (2) (a) a list of business services not elsewhere classified falling within ISIC Group 839, to which the Directive applies. The first activity in the list is that of 'private employment agencies.' In Van Wesemael [FN9] the Court, in a case involving an employment agency for entertainers, stated that 'the activity at issue in these proceedings consists in the provision of services.'

FN5 Statistical Papers Series M No. 4 Rev. 1, New York, 1958.

FN6 O.J.Spec.Ed., Second Series IX, p. 3.

FN7 [1979] E.C.R. 35 At 50, [1979] 3 C.M.L.R. 87 At 107.

FN8 [1967] O.J.Spec.Ed. 3.

FN9 At para. [7].

It seems to me clear that 'services' in Article 60 of the Treaty*725 includes the

service of providing manpower as defined in the legislation referred to in the Hoge Raad's first question.
It was, however, submitted on behalf of the French Government that, notwithstanding the considerations referred to above, private employment agencies constitute services of an exceptional nature. I do not doubt that employment agencies, particularly those dealing with temporary labour, present certain characteristics which distinguish them from those of the other services listed in the ISIC, since their activities may have an important bearing on issues of national, regional or sectoral labour policy, on the function and operation of state employment services and on labour relations. These characteristics account for the maintenance, in all member-States of the Community, with the exception of Luxembourg and Greece, of legislation controlling the activities of such agencies or actually prohibiting them, as is the case in Italy. They also account for the terms of the Fee Charging Employment Agencies Convention (Revised) 1949 (I.L.O. Convention No. 96) which has been ratified by seven of the member-States of the Community which has been referred to by the French Government. The exceptional characteristics of private employment agencies do not, in my view, affect the answer to be given to the Hoge Raad's first question. They do, however, affect the answer to be given to that court's remaining questions.
In the light of the submissions made by the member-States intervening in this reference, and by the Commission, it seems to me convenient to deal with the second and third questions together. By these the Hoge Raad asks:
2. If question 1 is answered in the affirmative, does Article 59 of the Treaty always or only under certain circumstances preclude a member-State in which the provision of that service is made dependent on the possession of a licence, that condition being imposed in order that such a licence may be refused if there is reasonable cause to fear that the provision of manpower by the applicant could harm good relations in the labour market or that the interests of the work-force are insufficiently safeguarded, from compelling a person providing the services who is established in another member-State to fulfil that condition?
3. To what extent does it make any difference to the answer to question 2 if a foreigner providing the service possesses a licence to provide that service in the State in which he is established?
During the course of the hearing, it was contended on behalf of the German Government that the aim of Articles 59 to 66 of the EEC Treaty is not to remove all restrictions on freedom to supply services but simply to ensure that foreigners and nationals are treated in the same way. A similar argument was advanced on behalf of the Danish Government, whose counsel contended that Article 59 of the EEC Treaty applies, or at any rate produces direct effects, only in relation*726 to national rules which entail discrimination between providers of services on grounds of their nationality or place of establishment. If it were correct, this argument would provide a straightforward answer to the Hoge Raad's second and third questions; for the Act of 31 July 1965 does not appear to impose any restriction on the nationality of holders of licences as such. Nor, as was explained at the hearing, does it require the licensees to be established in the Netherlands

but only requires them to maintain an administrative office or address in that country where documents may be examined. It is true that the principle of non-discrimination is mentioned expressly in the third paragraph of Article 60 of the EEC Treaty and in Article 65. The Court has repeatedly referred to such a principle in its decisions on the subject, notably in Case 33/74, Van Binsbergen v. Bedrijfsvereniging Metaalnijverheid, [FN10] Case 39/75, Coenen v. Sociaal Economische Raad, [FN11] Case 15/78, Societe Generale Alsacienne de Banque v. Koestler, [FN12] Joined Cases 110 and 111/78, Van Wesemael [FN13] and Case 52/79, Procureur du Roi v. Debauve. [FN14] Furthermore, the General Programme for the Abolition of Restrictions on Freedom to Provide Services envisages the abolition of 'measures which ... prohibit or hinder the person providing services ... by treating him differently from nationals of the State concerned.'

FN10 [1974] E.C.R. 1299 At 1309, [1975] 1 C.M.L.R. 298 At 312.

FN11 [1975] E.C.R. 1547 At 1555, [1976] 1 C.M.L.R. 30 At 38-39.

FN12 [1978] E.C.R. 1971 At 1980, [1979] 1 C.M.L.R. 89 At 102.

FN13 [1979] E.C.R. 35 At 52, [1979] 3 C.M.L.R. 87 At 109.

FN14 [1980] E.C.R. 833 At 856, [1981] 2 C.M.L.R. 362 At 393-394.

In my opinion, however, the scope of Article 59 is not to be so limited. An examination of Articles 59 to 66 of the EEC Treaty discloses that while discrimination on grounds of nationality or place of establishment constitutes, in the absence of justification on such grounds as public policy, conclusive evidence of 'restriction' such as is envisaged by Article 59, it is not an essential or the exclusive element of such a restriction. This much is implied in Article 65, which provides that 'as long as restrictions on freedom to provide services have not been abolished, each member-State shall apply such restrictions without distinction on grounds of nationality or residence ...' As Warner A.G. observed in Debauve, [FN15] it is difficult to hold that Article 59 is concerned only with discrimination, for there would then be little, if anything, left to be abolished under its provisions that was not specifically abolished by Article 65.

FN15 At p. 872 (E.C.R.), 382 (C.M.L.R.).

This conclusion is, to my mind, reinforced by the wording of the Court's judgments in Van Binsbergen and in Coenen, where it stated that the restrictions to be abolished pursuant to Articles 59 to 60 include 'all requirements imposed on that person providing the service by reason *in particular* of his nationality or of the fact that he does not habitually reside in the State where the service is provided, which do not apply to persons established within the*727 national territory *or which may prevent or otherwise obstruct the activities of the person providing the*

*service* (emphasis added). It is further reinforced by the judgment in Van Wesemael [FN16] in which the Court ruled that 'when the pursuit of the activity of fee-charging employment agencies for entertainers is made subject in the State in which the service is provided to the issue of a licence, that State may not impose on the persons providing the service who are established in another member-State any obligations ... to satisfy that requirement ... when the person providing the services holds in the member-State in which he is established a licence issued under conditions comparable to those required by the State in which the service is provided and his activities are subject in the first State to proper supervision covering all employment agency activity whatever may be the member-State in which the service is provided.' The comparability of the conditions for the issue of a licence in the State in which the provider of services is established and the State in which the services are supplied and an examination of the adequacy of supervision would be irrelevant if the only proper consideration were the presence or absence of discrimination, on grounds of nationality or place of establishment, in the relevant national rule.

FN16 At pp. 52-55 (E.C.R.), 109-111 (C.M.L.R.).

Counsel for the Danish Government further submitted that in Debauve, this Court rejected the argument, advanced in that case by Warner A.G. and in this case by the Commission, that Article 59 embraces not only those restrictions which entail discrimination but also others which may obstruct the activities of the supplier of the services. This submission seems to me to involve placing too broad an interpretation on the Court's words in Debauve. In that case the company claimed the right to supply a service (consisting in the transmission by cable of television programmes containing advertisements) in a member-State in which that service was prohibited, on the ground that it was lawful to provide that service in the State in which the supplier was established and from which the advertisements were transmitted. It was in this context that the Court ruled that the prohibition in force in the State in which the programmes were received was unaffected by Articles 59 and 60 of the EEC Treaty, so long as it was applied without distinction on grounds of nationality or place of establishment. In the present case, however, there is claimed the right to supply a service in one member-State, where the activity is subject to a licence, on the ground that the supplier of the service holds a licence issued in the State in which he is resident. It involves, in effect, the assertion that there should be a mutual recognition of statutory licences, just as there is to be a system of mutual recognition of qualifications under Articles 57 and 66 of the EEC Treaty; or in other words, that an agency wishing to have a Community-wide business should not be subjected to similar administrative regulation andcontrol in a plurality of States. Such an argument cannot be dismissed on the basis of the Court's ruling in Debauve, which was not concerned with the duplication of administrative controls. Counsel for the Danish Government cited in support of his submission several of this Court's judgments in cases concerned with freedom of establishment. As Mayras A.G. pointed out, however, in Van Binsbergen, [FN17] there is a

fundamental difference between establishment and the supply of services. This consists in the fact that a professional man established in a member-State other than his own is, by the fact of his establishment, subject to the law of his host country, which may impose on him the same conditions and supervision as is imposed on its own subjects, whereas the supplier of services remains subject to the control of the State in which he is established and may himself avoid control by the national authorities of the country where the services are provided. Furthermore, an obligation to obtain a licence, on equal terms with nationals or residents of the State concerned, may constitute a greater obstacle to the supply of services than to establishment, as for example when the cost of the procedure makes it uneconomic for a person or company established in another member-State to supply, other than on a regular basis, the needs of clients in the State imposing that obligation. I do not consider that the cases on establishment conclude the present questions.

FN17 At pp. 1316-1317 (E.C.R.), 305 (C.M.L.R.).

Accordingly in my opinion the abolition of the restrictions on the freedom to supply services within the Community entails more than the abolition of discrimination on the grounds of nationality or place of establishment and extends to the removal of all obstacles to the freedom to supply services across the Community's internal borders, save to the extent that they are preserved by Articles 55 to 58 and 66.
On the other hand it is clear from the Court's previous decisions that Article 59 properly construed does not impose an absolute bar on the rights of the member-State to impose conditions on those wishing to provide services in its territory and who are already established in another member-State. Such conditions may be imposed by the requirement that a licence shall be obtained subject to the qualifications which the Court has already indicated. That there should be a narrowly-defined limit on the power of the member-State to impose such conditions, and to require that a licence be obtained, is self-evident since otherwise the freedom to provide services within the Community could become illusory.
The decisions previously referred to seem to me to lay down that a member-State may require a person established in another member-State to obtain a licence before services are provided within the first-mentioned State if, but only if, two requirements are satisfied. In the first place the conditions for the grant of the licence must be the same, *mutatis mutandis*, as those in force for the grant of a licence to*728 persons established or resident in the member-State who wish to provide such services. In the second place the conditions for the grant of a licence must be conditions which 'have for their purpose the application of professional rules justified by the general good' and which are 'objectively justified by the need to ensure observance of the professional rules of conduct,' [FN18] or which are objectively necessary to protect those affected by the supply of the services. To the extent that these objectives are already achieved by conditions imposed on the provider of the services, and by adequate supervision,

in the member-State in which he is established, to impose conditions on him by way of a licence in another member-State is neither necessary nor objectively justified.

FN18 Van Wesemael at p. 52 (E.C.R.), 109 (C.M.L.R.).

In considering whether the imposition of conditions and the grant of a licence are necessary and objectively justified so as to be compatible with the Treaty (and not to be regarded as obstacles to the supply of services between member-States) it is right to look at what is necessary in the member-State concerned, since what is necessary in one member-State (which lays down its own conditions for the supply of services) may not be appropriate or justified, or even relevant, to the needs of another member-State. The submissions of the member-State in the present case reveal the economic, social and political factors involved in the supply of temporary services, and the different problems which arise in present circumstances in the various member-States. Of particular relevance are the explanations given by the Government of the Netherlands as to why the system in force in that country was adopted.
It is in this context that it becomes relevant to consider the special characteristics of the service of supplying temporary labour, to which the agent for the French Government drew attention. As is demonstrated in the report by Professor Blanpain and M. Drubigny, *Le travail temporaire dans les pays de la CEE,* [FN19] there are very considerable divergencies between national laws on this issue. There appears to be a total ban on such activities in Italy, under Act 1369 of 23 October 1960 whereas in Luxembourg and Greece there is no specific legislation; in France a temporary employment agency is required to be registered with the authorities and to obtain a surety-bond as a form of guarantee of the remuneration of the workers whereas in the remaining six States the activity is subject to a licence (or *agreation* in Belgium). According to that report, the conditions for the issue of licences vary widely: in some cases they are issued automatically, or issued when objective conditions are fulfilled; in others, there is an element of discretion on the part of the administrative authority. There are, furthermore, significant differences between the national rules affecting the consequences of issuing a licence. In some member-States, the use of temporary labour is permitted only in certain*729 sectors of the economy (as in the case of Denmark, which permits its use in commerce and in office work) whereas in other member-States, or parts of such States, the use of temporary labour is prohibited in certain sectors (such as in the building trade in Belgium and in parts of the Netherlands).

FN19 Commission Study No. 79/52, April 1980.

It is for the national court to decide whether the conditions sought to be imposed, over and above those imposed in the State of establishment, and the requirement of a licence, are objectively justified within the meaning of the Van Wesemael case.

The fact that a licence has been obtained from the State in which the person wishing to supply services in another member-State is established (the subject-matter of the third question) is, it seems to me, but one facet of the general problem. That licence is the vehicle by which conditions are imposed, and control exercised, by the member-State in which the person is established. The relevant question is then whether such conditions and control adequately safeguard what is objectively necessary in the conditions obtaining in the second member-State. The test remains one of necessity and not convenience or desirability. On the one hand the mere fact that the person holds a licence issued in one member-State authorising him to provide services in that member- State (or even in another member-State on the same conditions as in the State in which the licence is issued) is not conclusive. Otherwise such a ruling could produce an element of discrimination against locally-established agencies in the way to which Counsel for the Danish Government referred. On the other hand if the conditions which it is justifiably wished to impose by a licence in the State in which services are to be provided are sufficiently covered in a licence granted by the State of establishment (and capable of adequate supervision and enforcement) then it is not justified to require that a further licence be obtained in the State in which services are to be provided. If the conditions imposed by the two licences are 'the same' or if the licences are ' comparable,' to use the term used in the Van Wesemael case, then the requirement of a second licence is not justified. Being exempted from the need to obtain such a second licence does not produce discrimination against locally-established agencies.
Whether the conditions are the same or comparable will depend on an examination of all the circumstances. The national judge must ask of each individual or company wishing to supply services, whether he or it is able to demonstrate, by producing a licence issued in another member-State, that he meets each of the conditions imposed in the State in which the services are to be supplied for the issue of any licence required for the supply of labour in the relevant sector or region of that State at the material time.
In the present case, the grounds on which a licence may be refused are set out explicitly in the Hoge Raad's second question. The Dutch licensing authorities may refuse the licence if the provision of manpower*730 by the applicant could harm good relations in the labour market or if the interests of the work-force are insufficiently safeguarded. Those seem as a matter of law to be objectives capable of falling within the 'general good' to which the Court referred in the Van Wesemael case. The national judge must consequently determine as a question of fact whether the issuance of a licence to Mr. Webb or to his company in the United Kingdom demonstrates that the applicant meets the conditions set by Dutch law, and whether those conditions are in fact made necessary by the demands of the 'general good'. Subject to any rules of evidence, it will be for him to assess the different considerations involved in the grant of a licence in the United Kingdom such as the suitability of the applicant, the persons to be involved in the activities of the agency and the suitability of the agency premises, and to consider the effect of the observation made by the Government of the United Kingdom that considerations of the kind set out in the Act of 31 July 1965

'would not allow the United Kingdom licensing authority, namely the Secretary of State, to depart from the requirement to license since it would not fall within one of [the] grounds for refusal listed in section 2 (3) of the Employment Agencies Act 1973'.

Before the Hoge Raad, Mr. Webb challenged the view taken by the Gerechtshof that licences in the United Kingdom must be granted or refused, or granted on conditions, according to the requirements of the labour market in that country, so that such licences are in no sense necessarily issued on conditions comparable to those which may be decisive in the Netherlands. Mr. Webb maintained that the freedom to supply services means in a case such as this that there may no longer be any assumption of a national market. Leaving aside the question whether the grant of licences in the United Kingdom is based on the requirements of the labour market in that country, it seems to me that his argument amounts to an assertion that a member-State may not subject the issue of a licence to conditions relating to a national labour market, since there is now a Community-wide market in labour and in services. The argument appears to have even more wide-ranging implications, since it will be difficult to find any justification for the maintenance of member-States' power to prohibit the supply of temporary labour, wholly or in particular areas or sectors, in the light of local conditions, if those States could not take the lesser step of restricting that activity by licence, in the light of the same conditions. A national measure which is not discriminatory may be described as an obstacle to that freedom when it constitutes a particular hindrance to the supply of services between member-States (as in the case of a duty to obtain a licence, which subjects a supplier of services to costs or inconvenience when he provides services in a member-State other than his own, and then the licence duplicates one already held by the same supplier in another member-State). A mere difference between national laws governing the circumstances in which*731 services of a particular kind may be supplied, having its origin in differences between the labour markets in all or part of those States, does not necessarily constitute a hindrance of that kind.

For these reasons I am of the opinion that the questions posed by the Hoge Raad should be answered as follows:

1. The term 'services' in Article 60 of the EEC Treaty includes the service of providing labour to another, for reward, other than in pursuance of an agreement concluded with that other for the performance of work usually carried on in that other's undertaking.

2. Article 59 of the EEC Treaty does not preclude a member-State ('that State') from maintaining a rule whereby services of the kind described in the foregoing paragraph may be supplied by a person established in another member-State only if he holds a licence issued by the competent authorities of that State (which licence may be refused if there is reasonable cause to fear that the provision of manpower by the applicant could harm good relations in the labour market or that the interests of the workforce are insufficiently safeguarded) provided (a) that an identical requirement is imposed on persons established in that State and (b) that a person established in another member-State is relieved of the obligation to obtain such a licence whenever he is able to demonstrate, by producing a licence

issued in the member-State in which he is established or otherwise, that he meets each of the requirements that otherwise would be imposed in the State in which the services are to be supplied and that these requirements are adequately capable of enforcement.

**JUDGMENT**

[1] By a decision of 9 December 1980, which was received by the Court on 30 December 1980, the Hoge Raad of the Netherlands requested a preliminary ruling, pursuant to Article 177 of the EEC Treaty, on three questions concerning the interpretation of Articles 59 and 60 of the Treaty with reference to the Dutch legislation governing the provision of contract labour.
[2] These questions have been raised in the course of criminal proceedings relating to an offence under section 1 of the Royal Decree of 10 September 1970, [FN20] which prohibits the provision of contract labour without a licence issued by the Minister for Social Affairs.

FN20 Stb. 410.

[3] The above-mentioned Royal Decree was adopted in implementation of section 2 (1) (beginning and paragraph (1)) of the Wet op het ter beschikking stellen van arbeidskrachten (Act on the provision of hired labour) of 31 July 1965, [FN21] as amended by the Act of 30 June 1967. [FN22] Under this section the provision of contract*732 labour without a licence may be prohibited by a Royal Decree if this is necessitated in the interest of good relations in the labour market or in the interest of the workers concerned. However, section 6 (1) of the Act provides that a licence will only be refused if there are reasons for fearing that the provision of contract labour by the applicant will damage good relations in the labour market or that the interests of the workers concerned will not be sufficiently protected.

FN21 Stb. 379.

FN22 Stb. 377.

[4] Section 1 (1) (b) of the Act defines the activity in question as being the provision of contract labour for another person, against remuneration, for the purpose of performing, in that person's enterprise and under conditions other than those of a contract of employment with that enterprise, work normally carried out in that enterprise.
[5] The accused in the main action, Mr. Alfred John Webb, is a manager of a firm governed by English law and established in the United Kingdom, and he holds a licence to provide contract labour under English law. The firm is engaged particularly in sending technical personnel to Holland. These personnel are recruited by the firm and supplied temporarily, against remuneration, to enterprises situated in Holland, without a contract of employment being made

between the personnel and the enterprises. In the present case it was found by the court dealing with the issue that the said firm had, on three occasions in February 1978 in Holland, without holding a licence issued by the Dutch Minister for Social Affairs, supplied workers, against remuneration, to Dutch enterprises for the purpose of performing normal tasks otherwise than by virtue of a contract of employment made with those enterprises.
[6] The Hoge Raad, to which the matter was submitted on appeal, found that the decision to be given depended on whether the Dutch legislation in question was compatible with the rules of Community law with regard to the freedom to provide services, and in particular with Articles 59 and 60 of the EEC Treaty, and consequently the Hoge Raad has referred the following questions to the Court of Justice:
1. Does 'services' in Article 60 of the Treaty [establishing the European Economic Community] include the service of providing manpower within the meaning of the opening words of the first subsection of section 1 and sub-paragraph (b) thereof of the Wet op het ter beschikkingstellen van arbeidskrachten [Act on provision of manpower] [FN23]?

FN23 That Act reads as follows: '1. For the application of the provisions of this Law or those pursuant to this law the following terms shall have the following meanings: (b) *The provision of manpower [ter beschikking stellen van arbeidskrachten]:* For Consideration Providing Manpower to Another Otherwise Than In Pursuance of An Agreement Concluded with That other for the Performance of Work Usually Carried on In his Undertaking.'

*733 2. If Question 1 is answered in the affirmative, does Article 59 of the Treaty always or only under certain conditions preclude a member-State, in which the provision of that service is made dependent on the possession of a licence--that requirement being imposed in order that such a licence may be refused if there is reasonable cause to fear that the provision of manpower by the applicant could harm good relations in the labour market or that the interests of the workforce affected are insufficiently safeguarded--from compelling a person providing the service who is established in another member-State to fulfil those conditions?
3. To what extent does it make any difference to the answer to Question 2 if a foreigner providing the service possesses a licence to provide that service in the State in which he is established?

*The first question*

[7] In its first question, the national court is asking in essence whether the definition of 'services' in Article 60 of the Treaty includes the provision of contract labour within the meaning of the Dutch legislation referred to.
[8] In the words of **Article 60 (1)** of the Treaty, services are considered to be 'services' within the meaning of the Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. Paragraph **(2)** lists by way

of example certain activities which come within the definition of ' services.'
[9] An activity whereby an enterprise provides, against remuneration, labour which remains in the employment of that enterprise without a contract of employment being concluded with the user, constitutes a commercial activity which satisfies the conditions laid down in **Article 60 (1).** It must therefore be considered to be a 'service' within the meaning of that provision.
[10] In this connection the French Government has drawn attention to the special nature of the activity in question which, although covered by the definition of 'services' given in **Article 60** of the Treaty, should receive special treatment in so far as it could also be covered by the provisions concerning social policy and freedom of movement for persons. Although it is true that workers employed by employment agencies may, as the case may be, come within the provisions of Articles 48 to 51 of the Treaty and Community regulations adopted to implement them, this circumstance does not mean that the enterprises which employ these workers are not enterprises providing services which come within the ambit of Articles 59 et seq. of the Treaty. Therefore, as the Court has already held, particularly in the judgment of 3 December 1974 (Case 33/74 Van Binsbergen), [FN24] the special nature of certain services*734 cannot remove these activities from the ambit of the rules concerning freedom of movement for services.

FN24 [1974] E.C.R. 1299, [1975] 1 C.M.L.R. 298.

[11] Accordingly, the reply to the first question should be that the definition of 'services' in Article 60 of the Treaty includes the provision of contract labour within the meaning of the 'Wet op het ter beschikking stellen van arbeidskrachten.'

*The second and third questions*

[12] The second and third questions ask in essence, whether Article 59 of the Treaty prohibits a member-State from requiring an enterprise established in another member-State to hold a licence for the provision of contract labour in its territory, particularly if the enterprise holds a licence issued by the other member-State.
[13] According to **Article 59 (1)** of the Treaty, restrictions on freedom to provide services within the Community shall be progressively abolished during the transitional period in respect of nationals of member-States of the Community. As the Court stated in the judgment of 18 January 1979 (Cases 110 and 111/78 Van Wesemael) [FN25] this provision, interpreted in the light of Article 8 (7) of the Treaty, lays down an obligation to achieve a specific result the achievement of which must be facilitated, but not conditional upon, the implementation of a programme of gradual measures. Consequently the requirements of Article 59 of the Treaty took direct, unconditional effect on expiry of the said period.

FN25 [1979] E.C.R. 35, [1979] 3 C.M.L.R. 87.

[14] These requirements involve the elimination of any discrimination against the provider of services by reason of his nationality or the circumstances that he is established in a member-State other than that where the service must be provided.
[15] The German and Danish governments point out that the legislation of the State where the service is provided must, as a general rule, be applied in full to any person providing services, whether he is established in that State or not, having regard to the principle of equality and particularly Article 60 (3) of the Treaty, whereby the person providing a service may, in order to do so, pursue his activity in the member-State where the service is provided, under the same conditions as are imposed by that State on its own nationals.
[16] The primary object of **Article 60 (3)** is to make it possible for the person providing a service to pursue his activity in the member-State where the service is provided, without discrimination by comparison with nationals of that State. This does not imply, however, that any national legislation applying to nationals of that State and normally covering a permanent activity by enterprises established in that State, can be applied in full in the same way to activities of a temporary nature pursued by enterprises established in other member-States.
*735 [17] In the judgment of 18 January 1979 referred to above, the Court held that, taking account of the special nature of certain services, it cannot be considered as incompatible with the Treaty if specific requirements, motivated by the application of rules governing that type of activity, are imposed on the person providing the service. Nevertheless, the freedom to provide services, as a fundamental principle of the Treaty, can only be restricted by regulations justified in the general interest and imposed on every person or enterprise pursuing an activity in the territory of the said State, in so far as such interest is not secured by the rules to which the person providing the service is subject in the member-State where he is established.
[18] In this connection it should be acknowledged that the provision of contract labour is a field which is particularly sensitive from the commercial and social point of view. Because of the special nature of employment relationships inherent in this type of activity, it has a direct effect both on relations in the employment market and on the lawful interests of the workers concerned. This is shown, moreover, by the legislation of certain member-States on this subject which aims, firstly, to eliminate possible abuses and, secondly, to limit the scope of this activity or even to prohibit it entirely.
[19] In particular, it follows that it is open to member-States and constitutes for them a legitimate political choice made in the general interest, to subject the provision of contract labour in their territory to a licensing scheme, so that a licence can be refused if there are reasons for fearing that the activity will damage good relations in the employment market, or that the interests of the workers concerned will not be sufficiently protected. In view, firstly, of the differences which may exist between the conditions of the labour market in one member-State and another and, secondly, of the diversity of the criteria for assessment which apply to activities of this kind, it cannot be denied that the member-State where the service is provided has a right to require the holding of

a licence issued in accordance with the same criteria as for its own nationals.
[20] However, this measure would go beyond the professed purpose if the requirements to which the issue of a licence is made subject duplicated the justifications and safeguards required in the State of establishment. Respect for the principle of freedom to provide services requires, first, that the member-State where the service is provided shall make no distinction by reason of the nationality or place of establishment of the person providing the service, when examining applications for licences and when granting them, and, secondly, that it shall take into account justifications and safeguards already produced by the person in question in order to pursue his activity in the member-State of establishment.
[21] The reply to be given to the second and third questions of the Hoge Raad should therefore be that Article 59 does not prevent a member-State, which requires enterprises providing contract labour to*736 hold a licence, from compelling a person providing a service who is established in another member-State and pursues his activity in its territory, to comply with this condition, even if he holds a licence issued by the State of establishment, providing however, first, that the member-State where the service is provided makes no distinction by reason of the nationality or place of establishment of the person providing the service, when examining applications for licences and when granting them, and, secondly, that it takes into account justifications and safeguards already produced by the applicant in order to pursue his activity in the member-State of establishment.

**Costs**

The costs incurred by the Dutch, German, British, French and Danish governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, a decision on costs is a matter for that court.

**Order**

On those grounds, THE COURT, in answer to the questions referred to it by the Hoge Raad der Nederlanden, by judgment of 9 December 1980.
HEREBY RULES:
1. The expression 'services' in Article 60 of the EEC Treaty includes the provision of manpower within the meaning of the Wet op het ter Beschikkingstellen van Arbeidskrachten.
2. Article 59 does not preclude a member-State which requires agencies for the provision of manpower to hold a licence from requiring a provider of services established in another member-State and pursuing activities on the territory of the first member-State to comply with that condition even if he holds a licence issued by the State in which he is established, provided, however, that in the first

place when considering applications for licences and in granting them the member-State in which the service is provided makes no distinction based on the nationality of the provider of the services or his place of establishment, and in the second place that it takes into account the evidence and guarantees already produced by the provider of the services for the pursuit of his activities in the member-State in which he is established.

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[1982] 1 C.M.L.R. 719

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