

C-113/89 Rush Portuguesa [1990] ECR I-01417

Facts: The applicant undertaking, established in Portugal and specialising in construction and public works, sub-contracted a French company to help with the building of a railway line in France. As part of the exclusive rights laid down by the French Labour Code, only a particular authority in France was permitted to employ third-party nationals, but the Portuguese undertaking had done so without authorisation. The question was whether Art. 56-57 TFEU meant that a person, when exercising his freedom to move, was entitled to moving his staff with him in order to provide its particular services.

Held: Arts. 56-57 TFEU worked to prevent a Member State from prohibiting a person providing services established in another Member State from moving freely on its territory with all his staff and preclude that Member State from making the movement of staff in question subject to restrictions such as a condition as to engagement in situ or an obligation to obtain a work permit. To require such conditions on the person providing services established in another Member State would effectively discriminate against that person in relation to his competitors established in the host country who would, in normal circumstances, be entitled to use their own staff without restrictions.