

SUMMARY

# **ECJ 22 June 2023, case C-427/21 (ALB FILS Kliniken GmbH), Temporary Agency Work, Transfer of Undertaking**

## ***LD – v – ALB FILS Kliniken GmbH, German case***

### **Summary**

The Temporary Agency Work Directive does not apply to an employee who has used its right of refusal to transfer to another group entity and is consequently permanently assigned from the transferor to the transferee.

### **Question**

Must Article 1(1) and (2) of Directive 2008/104, read in conjunction with Article 3(1)(b) to (e) thereof, be interpreted as meaning that the directive applies to a situation in which, first, the duties performed by a worker are transferred definitively by his or her employer to a third-party undertaking and, second, that worker, whose employment relationship with that employer is maintained on account of the fact that that worker has exercised his or her right to object to the transfer of that employment relationship to that third-party undertaking, may be required, at the request of that employer, to perform, on a permanent basis, the work contractually due for that third-party undertaking and, in that context, be subject to the technical and organisational direction of the latter?

### **Ruling**

Article 1(1) of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, read in conjunction with Article 3(1)(b) to (e) thereof, must be interpreted as meaning that that directive does not apply to a situation in which, first, the duties performed by a worker are transferred definitively by his or her employer to a third-party undertaking and, second, that worker, whose employment

relationship with that employer is maintained on account of the fact that that worker has exercised his or her right to object to the transfer of that employment relationship to that third-party undertaking, may be required, at the request of that employer, to perform, on a permanent basis, the work contractually due for that third-party undertaking and, in that context, be subject to the technical and organisational direction of the latter.

---

**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2023-06-22

**Case number:** C-427/21