SUMMARY

ECJ 17 November 2016, case C-216/15 (Ruhrlandklinik), Temporary agency work

<p>The definition of 'worker' in Directive 2008/104 on temporary agency work includes those who are similar to employees, without having employee status under domestic law.</p>

Summary

The definition of 'worker' in Directive 2008/104 on temporary agency work includes those who are similar to employees, without having employee status under domestic law.

Facts

This case concerns the interpretation of Directive 2009/104 on temporary agency work. It applies to, on the one hand, 'workers' employed by a temporary work agency and, on the other hand, "undertakings which are temporary-work agencies or user undertakings engaged in economic activities whether or not they are operating for gain". The German Law on the supply of temporary staff provides that the assignment of agency workers to a user undertaking shall be of a temporary nature.In 2010, Ruhrlandklinik (the 'clinic') concluded an agreement with a non-profit association affiliated to the German Red Cross (the 'association'). Under this agreement, the association undertook to supply nursing staff to the clinic at cost price plus 3%. The nursing staff in question consisted entirely of members of the association. Although those members had to follow the association's instructions and were paid for their work by the association, German law does not consider them to have the status of employee. The legal basis of their obligation to work for the association lies in their membership.Management of the clinic requested its works council to consent to the secondment of Ms K to the clinic, a member of the association. The works council withheld consent on the grounds that Ms K's secondment was not designed to be temporary. The clinic

took the view that the law on the supply of temporary staff did not apply to members of an association who are not employees. It applied to the local court for authorisation of the secondment of Ms K for an indefinite period.

National proceedings

The courts of first and second instance granted the clinic's application. The works council appealed to the Bundesarbeitsgericht. It referred a question to the ECJ. It noted that Ms K did not have the status of 'worker' under German law, but that it was unsure whether she might nonetheless be regarded as having that status under the Directive. The court was also uncertain as to whether the assignment of Ms K to the clinic by the association constituted an 'economic activity' within the meaning of the Directive.

ECJ's findings

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The essential feature of an employment relationship is that, for a certain period of time, a person performs services for and under the direction of another person, in return for which he or she receives remuneration. The legal characterisation under national law and the form of that relationship, as well as the nature of the legal relationship between those two persons, is not decisive in that regard. The Directive applies not only to workers who have concluded a contract of employment with a temporary-work agency, but also to those who have an 'employment relationship' with such an undertaking. Therefore, a person, such as Ms K, cannot be excluded from the concept of 'worker' within the meaning of the Directive, and thus from the scope of the Directive, on the sole ground that she does not have a contract of employment with the temporary-work agency and that she therefore does not have the status of 'worker' under German law (§25-29).

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This conclusion cannot be called into question by the fact that Article 3(2) of the Directive provides that the Directive is "without prejudice to national law as regards the definition of [...] worker". That provision means that the EU legislature intended to preserve the power of Member States to determine who falls within the scope of the concept of 'worker' for the purposes of national law and who must be protected under their domestic legislation. This is something that the Directive 2008/104 does not aim to harmonise. Article 3(2) cannot be

interpreted as a waiver on the part of the EU legislature of its power to determine the scope of that concept for the purposes of Directive 2008/104, and accordingly the effect on particular individuals of that directive. The EU legislature did not leave it to the Member States to define that concept unilaterally, but specified its contours in Article 3(1)(a). It also specified the contours of the definition of 'temporary agency worker' in Article 3(1)(c) (§30-32).

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This interpretation is supported by the purpose of the Directive, which was to ensure the protection of temporary agency workers and improve the quality of temporary agency work by ensuring equal treatment is applied to those workers. The aim was to recognise temporary-work agencies as employers, while taking into account the need to establish a suitable framework for them so as to contribute to the creation of jobs and develop flexible forms of working. To restrict the concept of 'worker' as referred to in the Directive to those falling within that concept under national law – in particular, to those who have a contract of employment with the temporary-work agency – is liable to jeopardise the attainment of that purpose and, therefore, to undermine the effectiveness of the Directive by unjustifiably restricting its scope (§34-37).

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The relationship between Ms K and the association does not appear to be substantially different to the relationship between salaried employees of a temporary-work agency and the agency. The association's members benefit from mandatory employment law protection and are subject to the Social Security Code in the same way as those characterised as workers under German law. Further, according to the clinic, members benefit from the statutory rules applicable to workers as regards paid leave, sick leave, maternity and parental leave. They enjoy the same protection as the clinic's own employees as far as participation in decision-making within the clinic is concerned, and they receive the same remuneration as, and are subject to the same working conditions as those employees. Lastly, they may be excluded from the association only on serious grounds. In the light of those factors, it appears that the members of the association are protected in Germany by virtue of the work they carry out. However, this is a matter for the referring court to determine (§38-42).

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As regards the interpretation of the concept of 'economic activities' as referred to in Article 1(2) of Directive 2008/104, it should be noted that, in accordance with the settled case-law of the ECJ, any activity consisting in offering goods or services inn a given market is economic in

nature. In the present case, the association offers services in the market for the supply of nursing staff to medical and health care institutions in Germany in return for financial compensation covering personnel costs and administrative costs. The fact that the association does not operate for gain is not relevant. The legal form of the association is likewise not relevant, as it has no bearing on the economic nature of the activities pursued. Consequently, it must be held that an association, such as the one at issue, which assigns nursing staff to medical and health care institutions in return for financial compensation covering personnel costs and administrative costs, is engaged in economic activities within the meaning of Article 1(2) of the Directive (§44-47).

Judgment

Articles 1(1) and (2) of Directive 2008/104/EC on temporary agency work must be interpreted as meaning that the scope of that Directive covers the assignment by a not-for-profit association, in return for financial compensation, of one of its members to a user undertaking for the purpose of that member carrying out work, as his or her main occupation under the direction of the user undertaking, in return for remuneration, where that member is protected on that basis in the Member State concerned. This is a matter for the referring court to determine, even if the member does not have the status of worker under national law on the grounds that he or she has not concluded a contract of employment with the association.

Creator: European Court of Justice (ECJ)
Verdict at: 2016-11-17
Case number: C-216/15 (Ruhrlandklinik)