

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.

ECJ 6 July 2023, case C-404/22 (Ethnikos Organismos Pistopoiisis Prosonton & Epangelmatikou Prosanatolismou), Information and Consultation

Ethnikos Organismos Pistopoiisis Prosonton & Epangelmatikou Prosanatolismou (Eoppep) – v – Elliniko Dimosio, Greek case

Summary

Directive 2002/14 also applies to private companies exercising public powers, if they also compete with other market operators. The information and consultation obligation does not apply to changes in post of a small number of interim managers.

Question

1. Must Article 2(a) of Directive 2002/14 be interpreted as meaning that that provision refers to a legal person governed by private law which acts as a legal person governed by public law and exercises public powers whilst also providing, for remuneration, services which are in competition with those provided by market operators?
2. Must Article 4(2)(b) of Directive 2002/14 be interpreted as meaning that the information and consultation obligation laid down therein applies in the event of a change of post for a small number of employees appointed on an interim basis to management roles, where that change is not capable of affecting the situation, structure or probable development of employment within the undertaking concerned, or place employment more generally under threat?

Ruling

1. Article 2(a) of Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the Europe-

an Community must be interpreted as meaning that that provision may refer to a legal person governed by private law which acts as a legal person governed by public law and exercises public powers where it also provides, for remuneration, services which are in competition with those provided by market operators.

- Article 4(2)(b) of Directive 2002/14 must be interpreted as meaning that the information and consultation obligation laid down therein applies in the event of a change of post for a small number of employees appointed on an interim basis to management roles, where that change is not capable of affecting the situation, structure or probable development of employment within the undertaking concerned, or placing employment more generally under threat.

ECJ 13 July 2023, case C-134/22 (G GmbH), Collective Redundancies

MO – v – SM as liquidator of G GmbH, German case

Summary

The requirement to notify a public authority about upcoming collective redundancies is not intended to grant individual protection on the workers affected.

Question

Must the second subparagraph of Article 2(3) of Directive 98/59 be interpreted as meaning that the employer's obligation to forward to the competent public authority a copy of, at least, the elements of the written communication which are provided for in the first subparagraph of Article 2(3), point (b), subpoints (i) to (v) of that directive is intended to confer individual protection on the workers affected by collective redundancies?

Ruling

The second subparagraph of Article 2(3) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as meaning that the employer's obligation to forward to the competent public authority a copy of, at least, the elements of the written communication which are provided for in the

first subparagraph of Article 2(3), point (b), subpoints (i) to (v) of that directive is not intended to confer individual protection on the workers affected by collective redundancies.

ECJ 13 July 2023, case C-765/21 (Azienda Ospedale-Università di Padova), Other Fundamental Rights

D.M. – v – Azienda Ospedale-Università di Padova, Italian case

Summary

Questions regarding COVID 19-vaccination requirement in order to be granted access to the workplace found inadmissible.

Question

- Are the conditional marketing authorisations granted for vaccines intended to prevent infection with and the spread of COVID-19 and the severity of the symptoms of that pathology valid, in the light of Article 4 of Regulation No 507/2006, read in the light of Articles 3 and 35 of the Charter, available at the date of the reference for a preliminary ruling, on the ground that alternative treatments which were effective against COVID-19 and less harmful to health had, at that date, already been approved in several Member States?
- Must Regulation No 507/2006 be interpreted as precluding the use, for the purposes of satisfying an obligation to vaccinate health professionals against COVID-19 imposed by national legislation, of vaccines which have been the subject of a conditional authorisation granted under Article 4 of that regulation, even in a situation where those professionals have developed immunity to the virus causing that disease and the health authority has not specifically established that there are no contraindications to that vaccination. Secondly, it wishes to ascertain whether the penalty incurred by those professionals in the event of non-compliance with that obligation may, in view of Article 41 of the Charter, consist of suspension from their duties without remuneration rather than a graduated scale of penalties in accordance with the principle of proportionality and the adversarial principle?