Court of Justice of the European Union
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Press and Information

Judgment in Case C-784/19
'TEAM POWER EUROPE' EOOD v Direktor na Teritorialna direktsia na Natsionalna agentsia za prihodite - Varna

In order for it to be considered that it 'normally carries out its activities' in a Member State, a temporary-work agency must carry out a significant part of its activities of assigning temporary agency workers for the benefit of user undertakings established and carrying out their activities in the territory of the same Member State.

The performance of the activities of selecting and recruiting temporary agency workers in the Member State in which the temporary-work agency is established is insufficient for it to be considered that that undertaking 'substantial activities' there

In 2018, a Bulgarian national concluded a contract of employment with Team Power Europe, a company established in Bulgaria, whose commercial purpose is the provision of temporary work and work placement services in Bulgaria and in other countries. Pursuant to that contract he was assigned to a user undertaking established in Germany. From 15 October to 21 December 2018, he was required to work under the direction and supervision of that German undertaking.

Taking the view, first, that the direct relationship between Team Power Europe and the worker in question had not been maintained and, second, that that undertaking did not carry out substantial activity in the Bulgarian territory, the revenue service for the City of Varna rejected Team Power Europe's application for an A1 Certificate certifying that the Bulgarian social security legislation was applicable to the worker in question during the period of his assignment. According to that service, that worker's situation did not therefore fall within the scope of application of Article 12(1) of Regulation No 883/2004, [1] pursuant to which Bulgarian legislation would apply. The administrative complaint brought by Team Power Europe against the revenue service's decision was rejected.

In those circumstances, the Administrativen sad – Varna (Administrative Court, Varna, Bulgaria), seised of a court action seeking the annulment of the decision rejecting that administrative complaint, decided to ask Court of Justice as to the criteria to be taken into account in order to assess whether a temporary-work agency ordinarily performs 'substantial activities other than purely internal managerial activities' in the Member State in which it is established, within the meaning of Article 14(2) of the Regulation No 987/2009, [2] which defines Article 12(1) of Regulation

[1] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1), as amended by Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012 (OJ 2012 L 149, p. 4) ('Regulation No 883/2004'). More specifically, pursuant to Article 12(1) of the regulation, 'a person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed 24 months and that he/she is not sent to replace another posted person'

[2] Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1). According to Article 14(2) of the Regulation, 'For the purposes of the application of Article 12(1) of the basic Regulation, the words 'which normally carries out its activities there' shall refer to an employer that ordinarily performs substantial activities, other than purely internal management activities, in the territory of the Member State in which it is established, taking account of all criteria characterising the activities carried out by the undertaking in question. The relevant criteria must be suited to the specific characteristics of each employer and the real nature of the activities carried out.'

No 883/2004. The application of that latter provision to this case depends on Team Power Europe satisfying that requirement.

In its judgment, pronounced by the Grand Chamber, the Court clarifies, as regards temporary-work agencies, the meaning of the concept, laid down in that provision and defined in Article 14(2) of the Regulation No 987/2009, of an employer that 'normally carries out its activities' in the Member State.

Findings of the Court

The Court carries out, first of all, a literal interpretation of the latter provision and found that a temporary-work agency is characterised by the fact that it performs a set of activities consisting in the selection, recruitment and assignment of temporary agency workers to user undertakings. In that regard, the Court states that, even though the activities of selecting and recruiting temporary agency workers cannot be regarded as 'purely internal management activities' within the meaning of that provision, the performance of those activities in the Member State in which such an undertaking is established is insufficient for it to be regarded as performing 'substantial activities' there. The sole aim of the activities of selecting and recruiting temporary agency workers is the subsequent assignment of those workers by it to user undertakings. The Court observes in that regard that, although the selection and recruitment of temporary agency workers contribute to generating the turnover achieved by a temporary-work agency, since those activities constitute an essential prerequisite for the subsequent assignment of such workers, it is only the assignment of those workers to user undertakings, in performance of the contracts concluded with those undertakings for that purpose, that actually generates that turnover. Indeed, the income of such an undertaking depends on the amount of remuneration paid to temporary agency workers who have been assigned to user undertakings.

As regards, next, the context of the provision at issue, the Court recalls that the situation of a worker posted to perform work in another Member State remains subject to the legislation of the first Member State constitutes a derogation from the general rule that a person who pursues an activity as an employed or self-employed person in a Member State is subject to the legislation of that Member State. [3] Consequently, the provision governing such a situation must be subject to a strict interpretation. In those circumstances, that derogatory rule cannot apply to a temporary-work agency which, although it carries out, in the Member State in which it is established, the selection and recruitment of temporary agency workers, it either does not – or, at most, does so to a negligible extent – assign such workers to user undertakings which are also established there. In addition, the definitions of the concepts of 'temporary-work agency' and 'temporary agency worker', laid down in Directive 2008/104, [4] by making apparent the purpose of the activity of a temporary-work agency undertaking, also support the interpretation that such an undertaking cannot be regarded as carrying out, in the Member State in which it is established, 'substantial activities' unless it performs there, to a significant extent, activities of assigning workers for the benefit of user undertakings established and performing their activities in the same Member State.

As regards, lastly, the aim pursued by the provision in question, the Court states that the derogation contained in Article 12(1) of Regulation No 883/2004, which represents an advantage offered to undertakings that exercise the freedom to provide services, cannot benefit temporary-work agencies that orient their activities of assigning temporary agency workers exclusively or mainly to one or more Member States other than that in which they are established. The contrary solution would be likely to encourage those undertakings to engage in forum shopping by establishing themselves in the Member States with the social security legislation that is the most favourable to them. Ultimately, such a solution might lead to a reduction in the level of protection offered by the Member States' social security systems. Furthermore, the Court noted that to grant such a benefit to those undertakings would have the effect of creating a distortion of competition between the various possible modes of employment in favour of recourse to temporary agency

[3] Laid down in Article 11(3)(a) of Regulation No 883/2004.
[4] Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ 2008 L 327, p. 9).

work as opposed to undertakings directly recruiting their workers, who would be affiliated to the social security system of the Member State in which they work.

The Court concludes that such **a temporary-work agency established in a Member State must, in order for it to be considered that it 'normally carries out its activities' in that Member State, carry out a significant part of its activities of assigning temporary agency workers for the benefit of user undertakings established and carrying out their activities in the territory of that Member State**.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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