



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

11 November 2021 *

(Reference for a preliminary ruling – Social policy – Temporary agency work – Directive 2008/104/EC – Article 1 – Scope – Concepts of ‘public undertaking’ and ‘being engaged in economic activities’ – European Union agencies – European Institute for Gender Equality (EIGE) as a ‘user undertaking’ within the meaning of Article 1(2) of that directive – Article 5(1) – Principle of equal treatment – Basic working and employment conditions – Concept of ‘the same job’ – Regulation (EC) No 1922/2006 – Article 335 TFEU – Principle of administrative autonomy of the EU institutions – Article 336 TFEU – Staff Regulations of Officials of the European Union and Conditions of Employment of Other Servants of the European Union)

In Case C-948/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania), made by decision of 30 December 2019, received at the Court on 31 December 2019, in the proceedings

UAB ‘Manpower Lit’

v

E.S.,

M.L.,

M.P.,

V.V.,

R.V.,

intervening party:

European Institute for Gender Equality (EIGE),

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the First Chamber acting as President of the Second Chamber, I. Ziemele, T. von Danwitz, P.G. Xuereb and A. Kumin (Rapporteur), Judges,

* Language of the case: Lithuanian.

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- E.S., M.L., M.P., V.V. and R.V., by R. Rudzinskas, advokatas,
- the Lithuanian Government, by V. Kazlauskaitė-Švenčionienė and V. Vasiliauskienė, acting as Agents,
- the European Commission, initially by J. Jokubauskaitė, B. Mongin and M. van Beek, subsequently by J. Jokubauskaitė, C. Valero and B. Mongin, and finally by J. Jokubauskaitė, D. Recchia and B. Mongin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 July 2021,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 1(2) and (3) and Article 5(1) of 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).
- 2 This request was made in proceedings between UAB ‘Manpower Lit’ and E.S., M.L., M.P., V.V. and R.V., concerning the remuneration agreed under contracts of employment concluded between Manpower Lit and each of the respondents in the main proceedings.

Legal framework

European Union law

Directive 2008/104

- 3 Article 1 of Directive 2008/104 provides:

‘1. This Directive applies to workers with a contract of employment or employment relationship with a temporary-work agency who are assigned to user undertakings to work temporarily under their supervision and direction.

2. This Directive applies to public and private undertakings which are temporary-work agencies or user undertakings engaged in economic activities whether or not they are operating for gain.

3. Member States may, after consulting the social partners, provide that this Directive does not apply to employment contracts or relationships concluded under a specific public or publicly supported vocational training, integration or retraining programme.’

4 Article 3 of that directive is worded as follows:

‘1. For the purposes of this Directive:

...

(d) “user undertaking” means any natural or legal person for whom and under the supervision and direction of whom a temporary agency worker works temporarily;

...

(f) “basic working and employment conditions” means working and employment conditions laid down by legislation, regulations, administrative provisions, collective agreements and/or other binding general provisions in force in the user undertaking relating to:

- (i) the duration of working time, overtime, breaks, rest periods, night work, holidays and public holidays;
- (ii) pay.

...’

5 Article 5 of that directive, entitled ‘The principle of equal treatment’, provides in the first subparagraph of paragraph 1 that:

‘The basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job.’

Regulation (EC) No 1922/2006

6 Article 2 of Regulation (EC) No 1922/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a European Institute for Gender Equality (OJ 2006 L 403, p. 9) provides:

‘The overall objectives of the Institute shall be to contribute to and strengthen the promotion of gender equality, including gender mainstreaming in all Community policies and the resulting national policies, and the fight against discrimination based on sex, and to raise EU citizens’ awareness of gender equality by providing technical assistance to the Community institutions, in particular the Commission, and the authorities of the Member States, as set out in Article 3.’

7 Article 3 of that regulation, entitled ‘Tasks’, provides in paragraph 1:

‘To meet the objectives set in Article 2, the Institute shall:

- (a) collect, analyse and disseminate relevant objective, comparable and reliable information as regards gender equality, including results from research and best practice communicated to it by Member States, Community institutions, research centres, national equality bodies, non-governmental organisations, social partners, relevant third countries and international organisations, and suggest areas for further research;
- (b) develop methods to improve the objectivity, comparability and reliability of data at European level by establishing criteria that will improve the consistency of information and take into account gender issues when collecting data;
- (c) develop, analyse, evaluate and disseminate methodological tools in order to support the integration of gender equality into all Community policies and the resulting national policies and to support gender mainstreaming in all Community institutions and bodies;
- (d) carry out surveys on the situation in Europe as regards gender equality;
- (e) set up and coordinate a European Network on Gender Equality, involving the centres, bodies, organisations and experts dealing with gender equality and gender mainstreaming in order to support and encourage research, optimise the use of available resources and foster the exchange and dissemination of information;
- (f) organise ad hoc meetings of experts to support the institute’s research work, encourage the exchange of information among researchers and promote the inclusion of a gender perspective in their research;
- (g) in order to raise EU citizens’ awareness of gender equality, organise, with relevant stakeholders, conferences, campaigns and meetings at European level, and present the findings and conclusions to the Commission;
- (h) disseminate information regarding positive examples of non-stereotypical roles for women and men in every walk of life, present its findings and initiatives designed to publicise and build on such success stories;
- (i) develop dialogue and cooperation with non-governmental and equal opportunities organisations, universities and experts, research centres, social partners and related bodies actively seeking to achieve equality at national and European level;
- (j) set up documentation resources accessible to the public;
- (k) make information on gender mainstreaming available to public and private organisations; and
- (l) provide information to the Community Institutions on gender equality and gender mainstreaming in the accession and candidate countries.’

8 Article 5 of that regulation reads as follows:

‘The Institute shall have legal personality. It shall enjoy, in each of the Member States, the most extensive legal capacity accorded to legal persons under their laws. In particular, it may acquire or dispose of movable or immovable property and may be a party to legal proceedings.’

9 Article 14(3) of Regulation No 1922/2006 states:

‘The revenue of the Institute shall, without prejudice to other resources, comprise:

(a) a subsidy from the Community, entered in the general budget of the European Union (Commission section);

(b) payments received for services rendered;

...’

Lithuanian law

10 The Lietuvos Respublikos darbo kodeksas (Labour Code of the Republic of Lithuania) in the version applicable to the dispute in the main proceedings (‘the Labour Code’), provides as follows in Article 75(2):

‘A temporary-work agency must ensure that a temporary worker’s remuneration for work carried out for a user undertaking is at least as much as the remuneration that would be paid if the user undertaking had hired the temporary worker under an employment contract for the same job, except in cases where temporary workers employed under open-ended temporary agency employment contracts receive remuneration from the temporary-work agency between assignments to work and the level of this remuneration between assignments to work is the same as that received during assignments to work. The user undertaking shall bear subsidiary responsibility for fulfilling the duty to pay the temporary worker for work carried out for the user undertaking at least as much as the remuneration that would be paid if the user undertaking had hired the temporary worker under an employment contract for the same job. In the context of this obligation, the user undertaking must, at the request of the temporary-work agency, supply the latter with information concerning the remuneration provided to the user undertaking’s own employees in the category concerned.’

The dispute in the main proceedings and the questions referred

11 Manpower Lit provides temporary-work services. In 2012, it was a successful tenderer for the provision of temporary personnel services to the European Institute for Gender Equality (EIGE), an EU agency established in Vilnius (Lithuania).

12 The terms of the contract subsequently concluded between Manpower Lit and the EIGE provided that the services which the EIGE might need to use were aimed at supporting its statutory personnel; performing, on a temporary basis, tasks complementary to those arising ordinarily and resulting from specific projects; dealing with peak periods; and remedying staff shortages within the EIGE in the case of absences. It was also stated that the temporary personnel were to be non-statutory personnel of the EIGE.

- 13 The respondents in the main proceedings concluded employment contracts with Manpower Lit and worked at the EIGE as assistants and IT support worker respectively. It was stipulated in those contracts and the annexes to them that the respondents in the main proceedings would work for the user undertaking, that is to say, the EIGE, which would indicate which members of its personnel were responsible for giving instructions concerning performance of the work. The contracts also stipulated their term, which was until the expiry date of the EIGE's order for the post corresponding to the functions concerned.
- 14 The employment relationships between Manpower Lit and the respondents in the main proceedings ended between April and December 2018. Taking the view that they were owed arrears of remuneration, they brought proceedings before the Valstybinės darbo inspekcijos Vilniaus teritorinio skyriaus Darbo ginčų komisija (Labour Disputes Commission of the Vilnius territorial section of the Employment Inspectorate, Lithuania) ('the Labour Disputes Commission'), seeking payment of those arrears.
- 15 That commission took the view that the respondents in the main proceedings did in fact perform the functions of permanent members of staff of the EIGE and that their pay conditions should correspond to those that the EIGE applied to its members of the contract staff. Having regard to Article 75(2) of the Labour Code, by decision of 20 June 2018, it held that Manpower Lit had discriminated against the respondents in the main proceedings by paying them wages lower than those that they would have received if they had been recruited directly by the EIGE under employment contracts to occupy the same jobs, and ordered the recovery of arrears of wages for six months in 2018.
- 16 Manpower Lit disagreed with the decision of the Labour Disputes Commission and brought proceedings before the Vilniaus miesto apylinkės teismas (District Court of the City of Vilnius, Lithuania), which dismissed the appeal by judgment of 20 February 2019.
- 17 In its judgment, that court dismissed as unfounded the argument put forward by the EIGE, intervener in the proceedings, that the provisions of Directive 2008/104 cannot apply to it.
- 18 It also noted that, having regard to the provisions of the employment contracts of the respondents in the main proceedings and the tasks they actually performed, they all carried out administrative functions, assisted the permanent staff of certain units of the EIGE and, in part, performed the functions of members of the contract staff working for that agency. That court accordingly found that, for the purposes of Article 75(2) of the Labour Code, the respondents in the main proceedings could be compared with those members of the contract staff.
- 19 The Vilniaus miesto apylinkės teismas (District Court of the City of Vilnius) noted in that context that the tasks performed by the respondents in the main proceedings and their functions were not particularly different from nor so untypical of those of the EIGE that they could not have been given to officials or members of the contract staff working for it on a permanent basis. According to that court, the fact that the agency chose to recruit staff through a temporary-work agency in order to reduce human resources costs and avoid longer and more complex procedures could not justify the wages paid to the respondents in the main proceedings being appreciably lower than those established for members of the contract staff.
- 20 In those circumstances, that court held that the remuneration conditions applicable to members of the contract staff should be applied to the respondents in the main proceedings.

- 21 Manpower Lit appealed against that judgment to the Vilniaus apygardos teismas (Regional Court, Vilnius, Lithuania), which dismissed the appeal by judgment of 20 June 2019 and upheld the first-instance judgment.
- 22 Manpower Lit then brought an appeal on a point of law before the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania), the referring court.
- 23 That court states that the dispute before it concerns, in essence, the question whether the provision on equal treatment for temporary agency workers, contained in Article 5 of Directive 2008/104 and transposed into national law, applies to the situation at issue in the main proceedings, given that the user of temporary personnel services is the EIGE, an EU agency.
- 24 The referring court notes in that respect that, bearing in mind certain differences between the various language versions of Article 1(2) of Directive 2008/104, there is a certain lack of clarity as to the precise meaning of the term ‘public undertaking’ and whether it includes entities such as the EIGE. In its view, an interpretation of Article 1(2) is also necessary because there is some doubt as to which legal entities must satisfy the criterion of being ‘engaged in economic activities’, that is to say, the user undertaking, the temporary-work agency or both.
- 25 The referring court is also uncertain, in that context, as to the effect of Article 1(3) of Directive 2008/104, according to which Member States may provide that the directive does not apply to employment contracts or relationships concluded under a specific public or publicly supported vocational training, integration or retraining programme.
- 26 Lastly, the referring court reflects the view expressed by the EIGE, that, when applying the principle of equal treatment enshrined in Article 5(1) of Directive 2008/104 and the related provisions of national law, a court must determine whether or not applying the directive in respect of non-discriminatory remuneration infringes other rules of EU law. According to the EIGE, the lower courts’ interpretation of the principle of equal treatment and its application to an EU agency conflict with the financial rules of the Union, the Staff Regulations of Officials of the European Union and Articles 335 and 336 TFEU.
- 27 In those circumstances, the Lietuvos Aukščiausiasis Teismas (Supreme Court of Lithuania) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
 - ‘(1) What content should [be] given to the term “public undertaking” in Article 1(2) of Directive 2008/104? Are European Union agencies such as [the] EIGE to be regarded as “public undertakings” within the meaning of Directive 2008/104?
 - (2) Which entities (temporary-work agency, user undertaking, at least one of them, or possibly both) are subject, according to Article 1(2) of Directive 2008/104, to the criterion of being engaged in economic activities? Are the areas of activity and functions of [the] EIGE, as defined in Articles 3 and 4 of [Regulation No 1922/2006], to be regarded as economic activities as that term is defined (understood) within the meaning of Article 1(2) of Directive 2008/104?

- (3) Can Article 1(2) and (3) of Directive 2008/104 be interpreted as being capable of excluding from the application of [that] directive those public and private temporary-work agencies or user undertakings which are not involved in the relations referred to in Article 1(3) of the directive and are not engaged in the economic activities mentioned in Article 1(2) of the Directive?
- (4) Should the provisions of Article 5(1) of Directive 2008/104 concerning the rights of temporary agency workers to basic working and employment conditions, in particular as regards pay, apply in full to European Union agencies, which are subject to special EU labour-law rules and to Articles 335 and 336 TFEU?
- (5) Does the law of a Member State (Article 75 of the Lithuanian Labour Code) transposing the provisions of Article 5(1) of Directive 2008/104 for all undertakings using temporary workers (including EU institutions) infringe the principle of administrative autonomy of an EU institution established in Articles 335 and 336 TFEU, and the rules governing the calculation and payment of wages laid down in the Staff Regulations of Officials of the European Union?
- (6) In view of the fact that all posts (job functions) to which workers are directly recruited by [the] EIGE include tasks which can be performed exclusively by those workers who work under the Staff Regulations of Officials of the European Union, can the respective posts (job functions) of temporary agency workers be regarded as being “the same job[s]” within the meaning of Article 5(1) of Directive 2008/104?

The questions referred for a preliminary ruling

First to third questions

- 28 By its first to third questions, which can appropriately be examined together, the referring court asks, in essence, whether Article 1 of Directive 2008/104 must be interpreted as meaning that the assignment by a temporary-work agency of persons who have concluded an employment contract with that agency to the EIGE for the performance of work falls within the scope of that directive.
- 29 In order to answer that question, it must be borne in mind that, under Article 1(1) of Directive 2008/104, that directive applies to workers who have concluded a contract of employment or have an employment relationship with a temporary-work agency who are assigned to user undertakings to work temporarily under their supervision and direction.
- 30 Moreover, Article 1(2) of that directive states that the directive applies to public and private undertakings which are temporary-work agencies or user undertakings engaged in economic activities, whether or not they are operating for gain.
- 31 First of all, it is common ground that, on the facts, Manpower Lit and the respondents in the main proceedings can be regarded as a ‘temporary-work agency’ and as ‘workers’ respectively, within the meaning of the aforementioned provisions of Directive 2008/104.

- 32 As regards whether that directive applies in circumstances where the beneficiary of the temporary work is an EU agency, such as the EIGE, it is apparent from the wording of Article 1(2) of that directive that the beneficiary must satisfy three conditions for it to apply, that is to say, the beneficiary must fall within the definition of ‘public and private undertakings’, must be a ‘user undertaking’ and must be engaged in ‘economic activities’.
- 33 As regards the question whether an EU agency, such as the EIGE, can be regarded as a ‘user undertaking’ within the meaning of Article 1(2) of Directive 2008/104, which it is appropriate to examine first, it should be noted that that term is defined, in Article 3(1)(d) of the directive, as any natural or legal person for whom and under the supervision and direction of whom a temporary agency worker works temporarily.
- 34 In the present case, it is clear from the order for reference that the respondents in the main proceedings worked temporarily, as temporary agency workers, for the EIGE and under its supervision and direction. Furthermore, since Article 5 of Regulation No 1922/2006 provides that the EIGE has legal personality and enjoys, in each of the Member States, the most extensive legal capacity accorded to legal persons under their laws, it must be regarded as a ‘legal person’ within the meaning of Article 3(1)(d) of Directive 2008/104. Accordingly, in a context such as that of the case in the main proceedings, the EIGE is a ‘user undertaking’ within the meaning of Article 1(2) of that directive.
- 35 As regards ‘public and private undertakings’ and ‘economic activities’ within the meaning of Article 1(2), it should be borne in mind that those concepts are not defined in Directive 2008/104 and that no reference is made to the law of the Member States in order to determine their meaning and scope.
- 36 It should be recalled in that respect that, in the context of competition law, the Court has, first, defined the term ‘undertaking’ as encompassing every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed (judgments of 18 June 1998, *Commission v Italy*, C-35/96, EU:C:1998:303, paragraph 36, and of 6 May 2021, *Analisi G. Caracciolo*, C-142/20, EU:C:2021:368, paragraph 55 and the case-law cited). Secondly, it has held that any activity consisting in offering goods or services on a given market is an ‘economic activity’ (see judgments of 25 October 2001, *Ambulanz Glöckner*, C-475/99, EU:C:2001:577, paragraph 19, and of 11 June 2020, *Commission and Slovak Republic v Dóvera zdravotná poisťovňa*, C-262/18 P and C-271/18 P, EU:C:2020:450, paragraph 29 and the case-law cited).
- 37 The Court transposed the latter finding to the context of Directive 2008/104 in its judgment of 17 November 2016, *Betriebsrat der Ruhrlandklinik* (C-216/15, EU:C:2016:883), since it is clear from paragraph 44 of that judgment that ‘economic activities’ within the meaning of Article 1(2) of that directive must be understood as referring to any activity consisting in offering goods or services on a given market.
- 38 In those circumstances, in order to examine whether that directive applies where the user undertaking, within the meaning of Article 1(2) of that directive, is an EU agency such as the EIGE, it is necessary to determine whether that agency is engaged in activities consisting of offering goods or services on a given market.

- 39 On that point, it is apparent from established case-law that activities falling within the exercise of public powers are prima facie excluded from classification as economic activities. In contrast, services which, without falling within the exercise of public powers, are carried out in the public interest and without a profit motive and are in competition with those offered by operators pursuing a profit motive have been classified as economic activities (judgment of 6 September 2011, *Scattolon*, C-108/10, EU:C:2011:542, paragraph 44 and the case-law cited). The fact that such services are less competitive than comparable services provided by operators operating for gain cannot prevent the activities concerned from being regarded as economic activities (see, to that effect, judgment of 25 October 2001, *Ambulanz Glöckner*, C-475/99, EU:C:2001:577, paragraph 21).
- 40 In the present case, it should be noted that, according to Article 2 of Regulation No 1922/2006, the objectives of the EIGE are to contribute to and strengthen the promotion of gender equality, to contribute to the fight against discrimination based on sex and to raise EU citizens' awareness of gender equality by providing technical assistance to the EU institutions and the authorities of the Member States.
- 41 In addition, Article 3(1) of that regulation lists the tasks of the EIGE intended to meet the objectives referred to in Article 2 thereof.
- 42 On that basis, first of all it should be noted that, as indeed is not disputed, the EIGE's activities do not fall within the exercise of public powers.
- 43 Next, as regards certain activities of the EIGE, listed in Article 3(1) of Regulation No 1922/2006, it must be noted that there are markets in which commercial undertakings operate in competition with the EIGE. It is worth mentioning, in particular, the collection, analysis and dissemination of objective, comparable and reliable information as regards gender equality (Article 3(1)(a)); the development, analysis, evaluation and dissemination of methodological tools (Article 3(1)(c)); the carrying out of surveys on the situation in Europe as regards gender equality (Article 3(1)(d)); the organisation of conferences, campaigns and meetings at European level (Article 3(1)(g)); the setting up of documentation resources accessible to the public (Article 3(1)(j)); and the making available to public and private organisations of information on gender mainstreaming (Article 3(1)(k)).
- 44 The fact that, when it is engaged in those activities, the EIGE is not operating for gain is, according to the express wording of Article 1(2) of Directive 2008/104, irrelevant (see judgment of 17 November 2016, *Betriebsrat der Ruhrlandklinik*, C-216/15, EU:C:2016:883, paragraph 46 and the case-law cited). Indeed, as the Advocate General stated, in point 70 of his Opinion, what matters is the existence of services in competition with other undertakings on the relevant markets, who do operate for gain.
- 45 Lastly, it should also be noted that although, under Article 14(3) of Regulation No 1922/2006, the EIGE's activities are to be funded primarily by EU resources, according to Article 14(3)(b) its revenue is to include 'payments received for services rendered', thereby confirming that the EU legislature envisaged that the EIGE would act, in part at least, as a market player. That view is corroborated by the fact that, according to consistent case-law, the essential characteristic of remuneration lies in the fact that it constitutes consideration for the service in question and is normally agreed upon between the provider and the recipient of the service (judgment of 17 March 2011, *Peñarroja Fa*, C-372/09 and C-373/09, EU:C:2011:156, paragraph 37 and the case-law cited).

- 46 Having regard to the foregoing, it should be found that the EIGE must be regarded as being engaged, at least in part, in an activity consisting in offering goods or services on a given market.
- 47 Moreover, there is nothing to suggest that, when it benefits from the assignment of temporary workers by a temporary-work agency, an EU agency, such as the EIGE, is inherently excluded from the scope of Directive 2008/104.
- 48 Indeed, since the wording of Article 1(2) of that directive refers to ‘public and private’ undertakings, the fact that an EU agency, such as the EIGE, was created on the basis of EU law, in this case Regulation No 1922/2006, is, as the Lithuanian Government correctly notes, irrelevant.
- 49 Lastly, as regards the referring court’s question concerning Article 1(3) of Directive 2008/104, it need only be noted that that article does not apply in the present case.
- 50 In the light of the foregoing, the answer to the first to third questions is that Article 1 of Directive 2008/104 must be interpreted as meaning that the assignment by a temporary-work agency of persons who have concluded an employment contract with that agency to the EIGE for the performance of work falls within the scope of that directive.

Fourth to sixth questions

- 51 By its fourth to sixth questions, which can appropriately be examined together, the referring court asks, in essence, whether Article 5(1) of Directive 2008/104 must be interpreted as meaning that the job occupied by a temporary worker assigned to the EIGE can be regarded as being ‘the same job’ within the meaning of that provision, even on the assumption that all the jobs for which the EIGE recruits workers directly include tasks that can only be performed by workers employed under the Staff Regulations of Officials of the European Union, or whether such an interpretation infringes Article 335 TFEU, enshrining the principle of administrative autonomy of an EU institution, Article 336 TFEU or those regulations.
- 52 Under the first subparagraph of Article 5(1) of Directive 2008/104, the basic working and employment conditions of temporary agency workers are to be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking to occupy the same job.
- 53 In that respect, the expression ‘basic working and employment conditions’ within the meaning of the first subparagraph of Article 5(1) is defined in Article 3(1)(f) of Directive 2008/104 and refers to the duration of working time, overtime, breaks, rest periods, night work, holidays, public holidays and pay.
- 54 It needs to be recalled at the outset that the case in the main proceedings concerns a dispute between Manpower Lit and five of its former employees, and that the EIGE is only an intervener in these proceedings. It is also clear from the order for reference that, according to the factual findings of the Vilniaus miesto apylinkės teismas (District Court of the City of Vilnius), the respondents in the main proceedings, at least in part, performed the functions of members of the contract staff working at the EIGE and that that court accordingly found, first, that they could be compared with those members of the contract staff and, secondly, that the remuneration conditions applicable to member of the contract staff should be applied to them, under Article 75(2) of the Labour Code, which transposed Article 5(1) of Directive 2008/104 into Lithuanian law.

55 However, the Commission submits that, in circumstances such as those of the main proceedings, the principle of equal treatment under Article 5(1) means that the working conditions of temporary workers must be compared with the conditions applicable to temporary workers recruited directly by the EIGE, in accordance with national law. In contrast, those conditions should not be compared with those applicable to staff employed under the Staff Regulations of Officials of the European Union, such as members of the contract staff, since that interpretation of Article 5(1) of Directive 2008/104 would infringe Articles 335 and 336 TFEU and would effectively confer the status of EU official on the respondents in the main proceedings.

56 That line of argument cannot be accepted.

57 First of all, Article 335 TFEU provides that, in each of the Member States, the Union enjoys the most extensive legal capacity accorded to legal persons under their laws. Granting temporary workers the basic working and employment conditions enjoyed by staff employed under the Staff Regulations of Officials of the European Union does not limit that capacity.

58 Next, under Article 336 TFEU, the EU legislature adopts the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants. Neither those regulations nor the conditions of employment applicable to other servants govern the working conditions of temporary workers assigned to EU agencies by temporary-work agencies. Accordingly, in the absence of specific rules, where those agencies use temporary workers under contracts concluded with temporary-work agencies, the principle of equal treatment, provided for in Article 5(1) of Directive 2008/104, applies in full to those workers during their assignments within such an EU agency.

59 Lastly, although application of the national legislation transposing Article 5(1) has the effect that the working and employment conditions of temporary workers are compared with those of staff employed under the Staff Regulations of Officials of the European Union, that fact does not in any respect confer the status of official on those temporary workers.

60 Indeed, as noted in paragraphs 52 and 53 of this judgment, Article 5(1) of Directive 2008/104 merely requires the ‘basic working and employment conditions’ of temporary workers to be equal, that concept being defined in Article 3(1)(f) of that directive as referring in essence to the conditions laid down by binding general provisions in force in the user undertaking relating to working time and pay. There is therefore no question of treating temporary workers as having the status of permanent staff during or beyond the period of employment.

61 The circumstances of the present case confirm that to be so, since, as the Advocate General observes in point 75 of his Opinion, the respondents in the main proceedings are not in any way seeking the conversion of their temporary work contracts and are merely claiming from Manpower Lit payment in arrears of remuneration they allege is owed to them. Accordingly, no question arises in terms of prejudice to either the autonomy of the EIGE or to the Staff Regulations of Officials of the European Union.

62 In those circumstances, the answer to the fourth to sixth questions is that Article 5(1) of Directive 2008/104 must be interpreted as meaning that the job occupied by a temporary worker assigned to the EIGE can be regarded as being ‘the same job’ within the meaning of that provision, even on the assumption that all the jobs for which the EIGE recruits workers directly include tasks that can only be performed by workers employed under the Staff Regulations of Officials of the European Union.

Costs

- 63 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

- 1. Article 1 of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work must be interpreted as meaning that the assignment by a temporary-work agency of persons who have concluded an employment contract with that agency to the European Institute for Gender Equality (EIGE) for the performance of work falls within the scope of that directive.**
- 2. Article 5(1) of Directive 2008/104 must be interpreted as meaning that the job occupied by a temporary worker assigned to the European Institute for Gender Equality (EIGE) can be regarded as being ‘the same job’ within the meaning of that provision, even on the assumption that all the jobs for which the EIGE recruits workers directly include tasks that can only be performed by workers employed under the Staff Regulations of Officials of the European Union.**

[Signatures]