The editor's choice of *The Blind Leading the Blind* (Pieter Bruegel the Elder, 1568, Museo di Capodimonte, Naples) as the cover image is not intended as a provocation, but as a lens through which to read the contributions collected in this volume. In the well-known painting, a group of men, each dependent on the other yet unable to see, move inexorably towards a fall. It offers a powerful allegory of an age in which prejudice supplants critical judgement and ideology displaces any careful engagement with reality. Bruegel appears to give literal form to the verse from the Gospel of Matthew: "When one blind man leads another, both will fall into a pit".

Much the same has happened, in Italy, with staff leasing. Introduced by the Biagi Act to provide stability, modern protections and a framework for skilled professional work within the labour market, it has too often been conflated with precarious employment, as though it were merely a more sophisticated variant of it. A hasty, overly ideological reading has obscured both its true nature and its considerable potential, as this volume seeks to show: not insecure work or the outsourcing of labour, but rather a continuous, open-ended form of internalisation that supports the worker's professional development; not a diminution of rights, but their reconfiguration within new productive and organisational models.

This book invites the reader to break that chain of blindness – to consider the institution for what it is, rather than what it is feared to be. Only by disentangling ideology from reality can one begin to appreciate how staff leasing, in its legal and organisational form, may represent for many workers one of the most advanced expressions of protection in the contemporary world of work.

Collana ADAPT University Press
Materiali per una cultura del lavoro

STAFF LEASING

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THE OPEN-ENDED SUPPLY OF LABOUR BETWEEN PREJUDICE AND REALITY

edited by
MICHELE TIRABOSCHI

ADAPT UNIVERSITY PRESS

ADAPT is a non-profit association founded in 2000 by Professor Marco Biagi, with the aim of promoting a new way of carrying out research, through innovative teaching and integrated pathways of study and research on labour-related issues. Inspired by the European Employment Strategy – and in particular by the principle of 'adaptability' of workers and firms in response to the challenges posed by modern transitional labour markets – ADAPT has, among its many initiatives, contributed to the establishment of the School of Higher Education in '*Occupational Transitions and Labour Relations*'.

All proceeds from the sale of this volume will be used to fund scholarships for ADAPT's School.

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PREFACE

by Francesco Seghezzi

In Italy, staff leasing is one of those employment arrangements that has attracted a debate conducted more at a symbolic than at a substantive level. For years, it has been invoked as a paradigm of 'bad' flexibility, epitomising labour externalisation as incompatible with the traditional understanding of employment stability. Yet once the ideological lens is set aside and the arrangement is examined for what it is – through its regulatory framework, empirical evidence, and implementation practices – the picture that emerges is far less linear and, in many respects, counterintuitive.

The trajectory of staff leasing tells a story that extends well beyond a single regulatory device. It reflects a distinctly Italian difficulty in discussing labour without turning instruments into symbols, and symbols into banners. Too often, particular segments of labour law have been assessed not for what they produce in practice, but for what they are taken to represent. The instrument is judged before it is properly understood, and a narrative is constructed which, over time, acquires greater solidity than the underlying reality.

The first misconception concerns the very nature of staff leasing. It is not a form of 'precarious' employment, but a mechanism whose architecture revolves around an open-ended contract of employment. Its core is therefore not temporariness, but stability. This is not a trivial distinction. It is culturally and politically significant, because it shifts the terms of the debate. It compels us to acknowledge that not all forms of flexible work organisation are

synonymous with precariousness.

The relevant question, then, is not whether staff leasing is flexible – it is, as are many contemporary organisational models – but whether that flexibility is governed, regulated and accompanied by an adequate level of protection. Here lies a second misconception: the assumption that the separation between the formal employer and the user undertaking necessarily entails fewer safeguards. Such an assumption is understandable within Italian legal and trade union culture, where protection has long been associated with the coincidence of workplace, employer identity and managerial authority. Yet this assumption must today be tested against empirical reality rather than reiterated as dogma. Viewed substantively, staff leasing presents a noteworthy feature: during assignments with the user undertaking, equal treatment with directly employed workers operates as a structural constraint. There is, at least at the level of formal regulation, no 'second-class' employment. Pay, working time, grading and employment rights must be equivalent. Organisational flexibility does not automatically translate into inequality of status.

It is, however, in moments of discontinuity that the distinctive character of staff leasing becomes most apparent. Contemporary labour market vulnerability lies not only in wages or contractual form, but in the risk of rapid exclusion when economic conditions deteriorate or undertakings restructure their workforce. It is in such moments that stability is truly tested. In a conventional employment relationship, an organisational crisis may lawfully result in dismissal. In the case of open-ended staff leasing, by contrast, the conclusion of an assignment does not automatically terminate the employment relationship. The worker may leave the assignment without losing employment status. A different conception of

protection thereby emerges – one that is not confined to a particular post within a single undertaking, but seeks to ensure continuity over time, including through mechanisms of outplacement and transitional support.

An aspect frequently overlooked in public debate is that staff leasing is not merely a means of reallocating labour. It also structures an additional layer of responsibility. The agency is not a mere intermediary; it is a genuine employer, entrusted with managing career trajectories, skills development and occupational transitions. The tripartite relationship, long portrayed primarily as a source of ambiguity, may instead – if appropriately regulated – function as a mechanism of employment continuity and professional development.

Over time, this framework has been reinforced by a system of collectively agreed protections established through sectoral collective bargaining. These arrangements have progressively consolidated a model of protection during periods of availability, including income support, outplacement procedures, training pathways and jointly administered funds. This is not a mere technical detail but a matter of institutional culture. It indicates that, in this domain at least, flexibility has not been left to market discretion but embedded within collectively negotiated rules. What emerges is a form of structured flexibility, in which assignment mobility and variability are counterbalanced by protective and transitional mechanisms not invariably present in other formally 'standard' employment relationships. This does not suggest that staff leasing constitutes a universal solution to labour market challenges. It does suggest that it cannot be meaningfully assessed through simplified ideological categories.

The central issue is therefore not primarily legal but cultural. In

Italy, stability has often been equated with the singularity of the employer and the coincidence between the user undertaking and the holder of the employment contract. Yet in a labour market characterised by complex value chains, productive specialisation, outsourcing and the integration of internal and external labour markets, stability may assume different institutional forms. The separation between formal and substantive employer becomes problematic only when unaccompanied by regulation and oversight. Where it is anchored in public authorisation, equal treatment and bilateral governance mechanisms, it may constitute a regulated response to genuine organisational needs. Significantly, staff leasing expanded during the very years in which its legitimacy was publicly contested. This fact alone invites reflection. It suggests that, beyond prevailing narratives, the arrangement responded to concrete organisational demands and to the management of labour market transitions. It also indicates that labour market practice often evolves independently of public discourse.

Equally significant are the employment outcomes. A substantial proportion of workers leaving staff leasing secure, within a relatively short period, a standard open-ended employment contract. This evidence challenges the widespread definition of staff leasing as a cul-de-sac. *It may instead form part of employment trajectories culminating in direct stabilisation.*

A further, frequently underestimated dimension concerns the role of staff leasing within contexts of fragmented or opaque outsourcing. In sectors traditionally characterised by subcontracting chains, spurious cooperatives and organisational fragmentation, staff leasing may offer a regulated and transparent mode of professional labour supply. Although this function has not always been acknowledged, in certain contexts an arrangement grounded in

stable employment contracts and subject to public and collective oversight could – and still can – serve as a factor of formalisation, qualification and reduction of genuine precariousness.

This volume proceeds from the conviction that the time has come to discuss staff leasing seriously. Not to deny the existence of potential distortions or abuses – which must be addressed rigorously – but to move beyond the dichotomy between 'stable' and 'flexible' work. Contemporary labour markets require instruments capable of reconciling organisational adaptability with worker protection, continuity with transition, flexibility with security. The task is not to privilege one term over the other, but to determine which regulatory arrangements are capable of achieving an effective balance.

Ultimately, staff leasing is a legal framework. Like any framework, its operation depends upon the rules and practices that sustain it. In Italy, it has progressively been anchored in open-ended employment contracts, the principle of equal treatment, statutory limits and oversight mechanisms, and an articulated system of bilateral governance and outplacement. To assess it while disregarding this architecture is to debate a construct that bears little resemblance to its actual configuration.

If any lesson can be drawn from its development, it is that labour law does not modernise through slogans but through the gradual consolidation of rules, the adaptation of industrial relations and the empirical evaluation of outcomes. Staff leasing has been – and remains – one of the arenas in which the capacity of the Italian system to reconcile productive transformation with worker protection is tested, without recourse to ideological simplification. The papers collected in this volume seek to advance precisely this form

of analysis – grounded in evidence, regulation and practice – not in order to close the debate, but to place it on firmer foundations.

Francesco Seghezzi

Part I
STAFF LEASING IN ITALY

STAFF LEASING IN ITALY: A HISTORICAL AND LEGAL FRAMEWORK

by Michele Tiraboschi

1. The Origins of Staff Leasing in Italy

Staff leasing, as an advanced form of work provided through an agency, entered the Italian political and trade union debate exactly twenty-five years ago. Highlighting the positive experience of temporary labour provision – introduced in Italy by the Treu Act of 1997, with a significant delay compared to nearly all other industrialised countries – the *White Paper on the Labour Market in Italy* of October 2001 suggested, on the basis of contemporary studies by Marco Biagi, the possibility of "experimenting with other forms of modernisation capable of producing similarly significant employment effects". In the section of the *White Paper* devoted to policy proposals aimed at promoting an active society and quality employment, it is stated: "The rigidities in workforce utilisation introduced by Act No. 1369/1960 have no parallel in the legislation of other countries and disadvantage Italian companies in the globalised context. Outsourcing practices, widely adopted elsewhere (for example, in the United States and the United Kingdom), remain prohibited in Italy. In particular, reference is made to the *leasing* mechanism: an innovative personnel management technique based on

relationships with specialised agencies providing, *on a continuous basis and through open-ended contracts* (and not fixed-term, as in temporary work), part of the workforce that a company requires to sustain its production processes. Agencies, it should be noted, would operate in a far more transparent manner and with greater legal and collective bargaining safeguards than is currently the case under restrictive constraints. Even with regard to labour outsourcing processes, the Government therefore deems it necessary to initiate a comprehensive reform, so that the protection of workers – which must be maintained against parasitic exploitation of others' labour – does not prejudice the modernisation of labour market functioning". It was with the Biagi Act of 2003 that this reform path began to take concrete form. This Act authorised the Government to repeal the now obsolete Act No. 1369 of 23 October 1960, which imposed a general, rigid, and anachronistic prohibition on unlawful intermediation and labour interposition, and for the first time established in Italian law "the admissibility of labour provision, including *on an open-ended basis*, in the presence of technical, productive, or organisational reasons identified by law or by national or territorial collective agreements concluded by comparatively most representative employers' and workers' associations" (Article 1(2), Act No. 30 of 14 February 2003, emphasis added).

2. The Influence of International Experiences

The proposals contained in the *White Paper* drew upon

international and comparative experience, referenced in what was effectively a typical benchmarking exercise of the 'project jurists', intended to overcome what Pietro Ichino had aptly described as the last of the taboos.

Comparison with the experience of other countries demonstrated that the deeply entrenched Italian legal doctrine, which insisted on the necessary coincidence between the entrepreneur formally holding the employment contract and the entrepreneur actually using the labour to which that contract entitled, did not correspond to an objectively rational principle of labour law. On the contrary, from a comparative law perspective, it had only a relative theoretical and practical significance, confined to the reality of a limited number of legal systems.

In other words, the legal arrangements of other jurisdictions clearly showed that the 'sacred' rule enshrined in Act No. 1369 of 23 October 1960 did not respond to indispensable systematic requirements, but rather constituted a formalistic and largely ineffective technique of labour protection. Countries open to regulated professional labour provision recorded significantly lower rates of undeclared work and unemployment, and a far less extensive fraudulent use of cooperative schemes – practices which, in Italy, had been used to meet emerging needs of the productive system neglected by the lawmakers due to restrictive prohibitions and prejudices, and without reference to empirical labour market data.

The relevance of comparative legal analysis for the

normalisation of agency work extends further. At the time of the difficult and protracted introduction of professional labour provision into the Italian legal system, the political and trade union debate was polarised around what was then considered a sharp and defining regulatory dichotomy: the 'German model' *versus* the 'French model'. The former was characterised by an open-ended employment relationship between the agency and the worker, placing the risk of work scarcity on the professional labour supplier as employer. The latter, by contrast, involved a temporary contractual link between agency and worker, assigning labour provision a function akin to job placement, but subject to a rule of pay parity with the user undertaking's personnel, thereby precluding any speculative gain on the part of the agency as formal employer.

The weight of historical legacy – recurrent in the shadow economy and non-institutional labour markets – stemming from longstanding entrepreneurial practices of hiring or trading others' labour (the *marchandage du travail*, the sweating system, *caporalato*) inevitably influenced the Italian legislator's preference for the French model.

The Treu Act of 1997, in addition to establishing a highly restrictive regime for authorisation to operate as a labour supplier (requiring exclusivity in corporate purpose), limited the scope of agency work to meeting temporary needs or qualifications not provided for in standard organisational structures, or to cases envisaged by collective agreements. Nevertheless, a first compromise

with the German model was introduced by permitting agencies to hire workers not only on fixed-term contracts corresponding to the duration of the assignment with the user undertaking but also on open-ended contracts. In such cases, the worker received a monthly availability allowance, divisible into hourly quotas, as determined by a decree of the Minister of Labour and Social Security.

The Biagi Act represented a decisive step forward, informed by comparative analysis extending beyond the dominant European models of the time. Particular attention was given to the 'Japanese model', one of the most advanced industrial systems of the period, characterised by decentralised production and fraudulent intermediation practices similar in scale to those in Italy, and partly amenable – also due to the mixing of models and openness to Anglo-Saxon personnel management approaches – to indicate a possible evolutionary trajectory for public and private infrastructures serving labour market dynamics.

The Japanese legislation of 1985, based on a sophisticated legislative design, constituted a synthesis and development of the most advanced regulatory approaches, encompassing not only the French and German models but also the American staff leasing system. The Japanese system recognised and regulated two distinct types of labour supply agencies: general temporary work agencies and specialised labour provision agencies.

It is not the purpose here to examine the Japanese

legislation in detail or to trace its most recent evolution. It is sufficient to note, for its direct influence on the Biagi Act regarding labour provision, that specialist agencies employed workers on a stable basis, for continuous assignments, and in accordance with categories explicitly defined by the legislator according to sector, type of service, or worker skill – unlike general agencies, where employment was permitted solely for the duration of the assignment with the user undertaking.

3. The Revolution of the Biagi Act

The recourse to comparative law was thus intended to demonstrate that the professional supply of labour, far from representing a form of exploitation or commodification of work, did not in itself undermine the protection of workers or their dignity. In so doing, attention was shifted from ideology to concrete regulatory models, seeking a reasonable balance between flexibility and security, in line with the approach already advocated at the time by the European institutions. It was around the same period that the first attempts by the European legislator were made to regulate temporary agency work, explicitly excluding from the scope of application the permanent supply of labour.

In other words, agency work is a neutral working scheme: it does not designate the employment relationship itself, but rather the exchange between a provider and a user of certain work services. What matters, therefore, is not the contractual scheme per se, but the legal

safeguards established to protect the worker and their dignity. A clear safeguard in this regard was provided by the provisions of Legislative Decree No. 276 of 10 September 2003, implementing the Biagi Act, which precisely regulated cases of irregular or fraudulent labour supply, thereby essentially reaffirming a rule very similar to that established by Act No. 1369/1960.

Although some observers, radically challenging the proposals put forward in the *White Paper*, spoke of complete deregulation, the regulation of intermediated work, with the implementation of the Biagi Act, instead assumed a clear anti-fraud orientation. Its aim was to prohibit mediated use of labour designed to infringe workers' rights arising from mandatory statutory or collective bargaining provisions. Legislative Decree No. 276/2003, in fact, affected the removal of all mandatory legal provisions whose sole purpose was to rigidify the use of labour, even where there were no genuine protection needs.

This constitutes the true revolution of the Biagi Act in the field of labour supply regulation: overcoming the disapproval historically assigned by the dominant legal and trade union culture to legitimate processes of labour outsourcing, which, while respecting workers' rights, were beginning to play a central role in post-Fordism production.

The principle that labour supply should not be equated with the exploitation of others' work was, moreover, guaranteed by the principle of equal treatment provided in Legislative Decree No. 276/2003, between workers

engaged in labour supply and employees of equivalent rank within the client company. Where the rule of equal treatment applies, the agency's net profit cannot logically derive from the difference between what the client company pays and what the worker receives. With equality assured, the agency's margin depends on its ability to deliver work services promptly and professionally – services that would otherwise be excessively costly for a single undertaking, or which require specific skills or qualifications not easily sourced in the labour market. The profit earned by the work agency is therefore justified as entrepreneurial gain, reflecting the risk inherent in providing a service whose individual cost exceeds what the client company would incur if it were to hire directly.

Within this regulatory logic, it was therefore inevitable that such activities could be carried out not only by generalist labour supply agencies, but also, following the Japanese model, by specialist agencies holding specific public authorisation.

In seeking to structure and regulate work services previously provided in legally dubious forms – through pseudo-cooperatives or entirely informal arrangements – the Biagi Act codified a series of technical, productive, and organisational grounds which, alongside the regime governing service contracts, permitted by law, without further specification, indefinite-term agency work. These included cleaning, security, and concierge services; plant-related transport of people, machinery, and goods; management of libraries, parks, museums,

archives, warehouses, and procurement services; construction within industrial plants, installation or dismantling of machinery, or particular production activities, including shipyard and building work requiring sequential processing; and employment of labour with skills different from those usually deployed in the undertaking. Additional, particularly innovative grounds were recognised to support productive systems and undertakings: specialist consultancy, certification assistance, resource planning, organisational development and change management, personnel management, recruitment and selection; IT consultancy and support, including design and maintenance of intranet/extranet networks, websites, IT systems, and application software development; marketing, market analysis, commercial function organisation, call-centre management; as well as all activities connected with the start-up phase of new projects in Objective 1 areas under Council Regulation (EC) No. 1260/1999 on the Structural Funds.

Alongside statutory classification, collective bargaining – at the national or territorial level – was tasked with identifying further instances of indefinite-term agency work, even in relation to non-marginal activities within the client company's production cycle.

Thus, social oversight was entrusted with the expansion of this working scheme beyond activities already subject to widespread but semi-legal outsourcing. The new regime therefore represented not only an opportunity for undertakings in response to growing insourcing demands, but also a significant enhancement of worker

protections, particularly for those who had previously carried out these activities under simple service contracts with minimal regulation – whereas the staff leasing scheme provided stable employment with an indefinite-term employment contract.

4. An Italian Case

What followed the *White Paper* and the Biagi Act is a well-known story, which it is unnecessary to recount in full here – from the abolition of staff leasing through the 2007 implementing law of the Welfare Protocol, championed by Cesare Damiano, to its subsequent and immediate reinstatement by Maurizio Sacconi, the Minister of Labour who succeeded Damiano following a change in government.

This story, it should be noted, extends far beyond the technical interests and knowledge of a narrow circle of specialists. More than many other contractual arrangements introduced by the legislator over the past three decades, it exemplifies the persistent difficulties of modernising Italian labour law, and, by extension, the broader challenges faced by the country as a whole.

Introduced to accompany the technological revolution and to promote the ongoing 'great transformation' in production processes and labour organisation – promoting more advanced specialisation and structural coordination between domestic and international labour markets – staff leasing has, in practice, been subject to a systematic boycott. This hindered, though did not

entirely prevent, its development (see the paper by Spattini in this volume), a trajectory reinforced by the 2015 Jobs Act. In the interim, this delay favoured unstructured forms of labour outsourcing, often operating in a zone of legal ambiguity, such as pseudo-cooperatives providing labour, and in some cases culminating in outright exploitation – the very conditions that staff leasing was pragmatically and realistically intended to counter.

The ongoing labour supply regime established by the Biagi Act also anticipated an increasingly marked trend towards the accumulation of human capital through highly skilled and adaptable labour. At that time, Italy was already significantly behind its international competitors in developing networked strategies and more or less sophisticated forms of contractual coordination between companies.

The purpose of the legislation was simply to overcome 'precarity' associated with assignments of relatively short duration to multiple clients, as envisaged in the draft of the Treu Act. Implicitly, agency work was traditionally conceived merely as temporary, low-skilled labour, serving primarily as a placement service towards the 'real' employer – especially in a country like Italy, where the client is often a small or medium-sized undertakings far smaller in scale than a modern labour agency. In contrast, staff leasing emphasised the principle of co-employment, recognising the agency as a genuine employer and positioning it as a strategic partner in the labour market. This allowed the provision of technology, know-how, and professional skills, which

necessitate continuous upskilling – feasible only for large, global-scale operators with sufficient commercial presence (offices) and financial resources (inter-professional funds) to provide ongoing training and professional development.

Thus, staff leasing represents a uniquely Italian story, illuminating the country's structural backwardness and the persistent difficulties of creating a modern system for matching labour demand and supply, centred on advanced skills, knowledge, and professionalism. Political and trade-union vetoes, alongside entrenched ideological maximalism, ultimately prevailed over the pressing need for reform – reforms that would have benefited not only the productive system and undertakings but also workers themselves, who, contrary to common assertion, enjoy one of the highest levels of protection under indefinite-term agency work in terms of both statutory safeguards and professional development.

The distinctive features of this story, and the new and, in some respects, unexpected challenges now facing the drive to modernise the Italian labour market, are the subject of the following papers. In considering the historical evolution of the relevant legislation, it is not insignificant to emphasise, in conclusion, how staff leasing has struggled to gain a foothold in Italian law – largely due to indifference, if not outright opposition (as in the paradoxical case of the logistics sector, historically characterised by precarious work and layers of contracting and subcontracting, which often undermined both worker protections and fair competition).

Social partners long preferred not to intervene, with all the appropriate adaptations through collective bargaining, in accordance with the specific needs of each production sector (see the paper by Bilancia and Tiraboschi in this volume).

From this perspective, the provision in the renewal of the metalworking collective agreement should be welcomed. Regardless of a technical assessment of its detailed content, it represents the first significant form of social legitimation for staff leasing, not least because of the symbolic importance this contract has historically held in Italian industrial relations. While the tertiary sector collective agreement is the most widely applied in terms of undertakings and workers, it is the metalworking agreement that serves as a benchmark for other collective agreements, particularly within manufacturing, testing the resilience of an entire contractual model against uncertain economic cycles and complex transformations in markets, production structures, and professional skills.

It is the view of the author that the social partners should ultimately determine the significance and utility of the various contractual instruments provided by law. The response now offered by actors in one of the most important and sensitive sectors of Italian industrial relations demonstrates that time is the ultimate arbiter: in practice, staff leasing has functioned effectively despite widespread scepticism and persistent ideological debate. This is a fact that both national and European jurisprudence should take into due account, especially

given that Directive 2008/104/EC of the European Parliament and Council of 19 November 2008 – relating to temporary agency work – explicitly recognises that "in the case of workers employed by a temporary-work agency under an indefinite contract, and taking into account the particular protection afforded by such a contract, it should be possible to derogate from the rules applicable in the user undertaking" (Recital 15).

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STAFF LEASING IN COLLECTIVE BARGAINING

by Simona Bilancia and Michele Tiraboschi

1. Staff Leasing and Work Culture in Italy: the Contribution of Social Partners and Collective Bargaining

Within the complex evolution of the Italian legal system, the operational development of staff leasing has been entrusted – albeit with varying intensity and conviction – to collective bargaining (see the paper by Tiraboschi in this volume). The 2003 Biagi Act itself, after codifying certain legitimate instances of continuous agency work through specialised agencies, delegated to national and local collective bargaining the task of identifying, with regard to non-marginal activities within the client's production cycle, additional cases of indefinite-term agency work. Subsequent legislative interventions have consistently referenced collective bargaining, directly or indirectly, employing the technique of referral and devolution of normative sources.

It is therefore of considerable theoretical and practical interest to examine how collective bargaining has interacted with the evolving statutory provisions on staff leasing, in order to understand not only the actual operational scope of this working arrangement over time, but also the attitude of social partners towards Italy's

well-documented backwardness in labour intermediation and interposition. Here, formal rigidity has historically coexisted with permissive practices in contracting and subcontracting, alongside the spread and entrenchment of fraudulent labour supply schemes. Continuous agency work, in fact, represents one of those areas where, echoing Gino Giugni's observations on the deregulation of labour law, "the normative system has almost never functioned in full. Evasions, erosions, and in more recent years, exceptions established by the law itself have almost dismantled its mechanism", so that "an adjustment of the law to the actual situation is now only prevented by rear-guard resistance" which persists even within collective bargaining.

Hence, interpreting the regulation of staff leasing through considering collective bargaining, rather than solely legislation or case-law, constitutes a significant test of the actual evolution of work culture in Italy. More broadly, it provides a measure of the contentious interaction between economic and social factors in the country over the past twenty-five years.

2. Investigating the Evolution of Staff Leasing in Collective Bargaining: a Methodological Premise

Scholarly reflection on labour law has thus far largely focused on the formal references made by legislation to the "contractual source", without systematically examining, except rarely, the actual legal reality – that is, what

collective agreements effectively provide on the matter.

This gap is not surprising, given both the continual evolution of the legal framework and the considerable number of sectoral collective agreements recorded in the National Archive of Collective Agreements and the CNEL database.

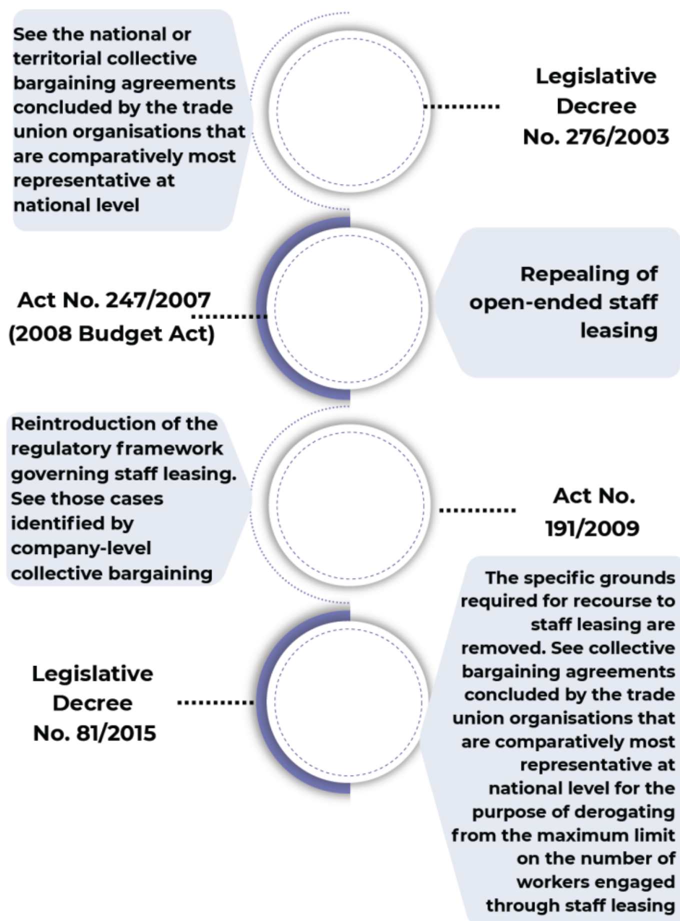
Progress in this direction therefore requires a precise methodological choice, allowing the vast corpus of contractual norms to be managed by cross-referencing the evolving statutory provisions governing staff leasing (see the paper by Failla on this topic) with the successive collective agreement renewals.

With respect to the legal framework (see Figure 1), it is first necessary to recall Article 20(3)(i) of Legislative Decree No. 276/2003, which allowed the use of indefinite-term agency work "in all other cases provided for by national or territorial collective labour agreements concluded by the comparatively most representative associations of employers and workers", applicable to the end-user.

Subsequently, the legislator, through Article 1(46) of Act No. 247/2007 (the 2008 Finance Act), abolished the institution, only to restore it with Act No. 191/2009. This statutory amendment allowed the use of staff leasing not only in cases identified by national and territorial collective bargaining conducted by the comparatively most representative employer and worker organisations, but also in instances provided for by company-level collective agreements concluded by the respective company-level representatives (for

workers, the *rappresentanze sindacali aziendali* (RSA) or *rappresentanze sindacali unitarie* (RSU).

Figure 1. Timeline of key stages in the legislative evolution of staff leasing



Legislative Decree No. 81/2015, while preserving the

various collective bargaining provisions applied by the user to derogate from the quantitative limit set by law for the use of indefinite-term agency workers (*i.e.*, 20% of the user's permanent workforce), subsequently restricted the possibility of indefinite-term agency work to workers employed by agencies under indefinite contracts (Article 31(1)) and removed all the initial statutory justifications previously provided under the Biagi Act for recourse to staff leasing.

With regard to the statutory provisions referring to qualified collective bargaining, it is therefore possible to narrow the study of the contractual-collective component to the provisions contained exclusively in NCLAs concluded by the comparatively most representative employer and trade union organisations at the national level from 2003 to the present. Empirically, this corresponds to the agreements signed by the sectoral trade unions CGIL, CISL, and UIL.

Restricting the analysis to the agreements of these historic trade unions, which as of 31 December 2025 are applied to more than 10,000 workers, yields a sample of 68 NCLAs.

Consequently, the analysis encompasses 354 contractual texts, as all renewal protocols of these 68 NCLAs from 2003 to the present were examined for the purpose of cross-referencing contractual provisions with the evolution of the relevant legal framework. This constitutes a highly representative sample of the entire contractual universe within the Italian system of industrial relations. According to the latest CNEL-INPS data on

the number of companies and employees covered, these 68 NCLAs account for nearly the entire universe of employees and firms in the private sector, with the sole exceptions of domestic work and agricultural labour, which are not recorded in the Uniemens reporting flows.

3. Taxonomy of Contractual Cases and Key Findings

A detailed analysis of the national sectoral collective agreements mapped in our study from 2003 to the present shows that NCLAs which, in one way or another, regulate the use of staff leasing represent a minority: only 13 NCLAs have included any regulation of staff leasing over the course of their historical evolution. This constitutes 19% of our sample base, to which should be added one further NCLAs – discussed below – in which this working scheme was provisionally regulated in a draft renewal, but subsequently omitted in the final text of the agreement.

The regulation of staff leasing within collective agreements is not always operational in nature, or oriented towards facilitating the institution. In almost half of the agreements that address it (6 out of the 13 NCLAs regulating staff leasing), the contractual provision relates to an explicit – albeit debatable – prohibition on the use of the institution, or establishes that undertakings may rely exclusively on fixed-term agency work.

Furthermore, there are two cases in which staff leasing

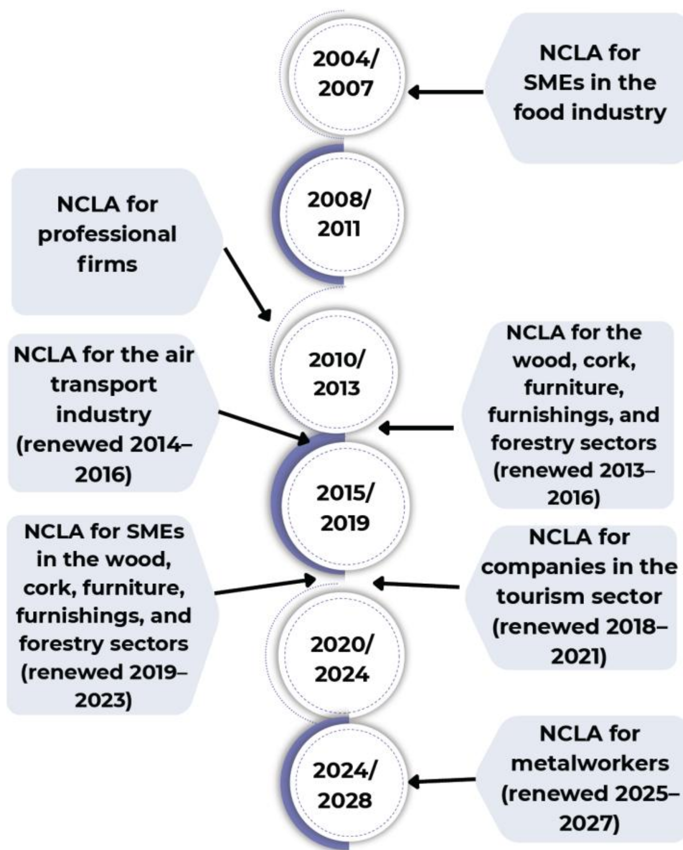
is not explicitly regulated but is mentioned in the table of contents or the headings of articles concerning agency work.

In other instances, the NCLAs have deferred the regulation of staff leasing either to second-level bargaining or to the legislative source, seemingly to confer a kind of 'political' legitimacy on the institution.

Finally, there are cases in which collective bargaining has specifically regulated this contractual arrangement, generally intervening to set a quantitative limit on the number of workers who may be employed via staff leasing (see Figure 2).

Only in one case – namely the Metalworking NCLA, with its most recent renewal on 22 November 2025 – was a form of social legitimation of staff leasing observed, going beyond the mere definition of a quantitative limit on workers.

Figure 2. NCLAs regulating staff leasing, by initial three-year contractual period of intervention



4. The Detailed Content of Contractual Provisions

Examining the matter in greater detail, among the collective agreements that have prohibited (and still prohibit) the use of staff leasing, particular reference can be made to the NCLA for the Logistics Sector (CNEL

code I100), the NCLA for Credit, Financial, and Instrumental Companies within the ABI system (CNEL code J241), and the NCLA for Cooperative Credit Banks, Rural and Artisan Credit Unions within the Federcasse system (CNEL code J271). In these contractual frameworks, an agreement was established whereby, during the term of the contract, the parties would not make use of indefinite duration agency work, with the clause typically placed either in the preamble to the section on the labour market (as in the Logistics NCLA) or in articles concerning active labour policies (as in the NCLA for Banking Employees within the ABI system or for Employees of Cooperative Credit Banks under Federcasse), and reiterated identically in subsequent renewals.

Some NCLAs did not include an explicit prohibition on the use of staff leasing but instead established the exclusive use of fixed-term agency work. These include the NCLA for Employees of Building Owners under the Confedilizia system (CNEL code H401), the NCLA for Private Security and Fiduciary Service Institutions (CNEL code HV17), and the NCLA for Employees Working in Early Childhood Services, Schools and Institutions represented by FISM (CNEL code T271).

In the case of the NCLA for Private Security and Fiduciary Services (CNEL code HV17), rather than expressly prohibiting staff leasing, the parties chose to regulate and limit the use exclusively to certain flexible contract types, such as fixed-term contracts, professional apprenticeships, and temporary agency work contracts for personnel assigned to fiduciary or

administrative duties, excluding indefinite-duration agency work. This was generally included in the preamble to the labour market section. Similarly, in the NCLA for FISM-affiliated entities and schools, Article 29 established that agency work could only occur on a fixed-term basis for tasks identified in the contract and explicitly prohibited its use for educational and teaching roles. Likewise, in the NCLA for Employees of Building Owners under Confedilizia (2005-2022), the parties agreed that "the agency work contract may only be concluded on a fixed-term basis".

A single exception emerged in the NCLA for Employees of Eyewear Manufacturing Companies (CNEL code D271). For the 2013-2015 triennium, staff leasing was provisionally permitted, specifically allowing indefinite-duration agency work if the supplier employed workers on apprenticeship contracts. This was contingent on the end-user stabilising at least 20% of the apprentices supplied over the preceding 36 months under indefinite contracts, a percentage adjustable by company-level agreements. However, this clause was not included in the final contract, which ultimately regulated only fixed-term agency work.

Several NCLAs did not explicitly regulate staff leasing but mentioned it in indexes or article headings. These include the NCLA for the Air Transport Industry (CNEL code I810) and the NCLA for Employees in Tourism Companies under Assoturismo and Confesercenti (CNEL code H058).

In the Air Transport NCLA (CNEL code I810), the

2013 national contract and the special section for ATM-related services (2014-2016 triennium) referenced both fixed-term and indefinite-duration agency work in the index, though only fixed-term agency work was operationally regulated. For airport operators, the maximum percentage of fixed-term agency work workers was calculated annually based on the monthly average of active indefinite-duration contracts and permanent employees as of 31 December of the prior year, on a regional and company-specific basis (Clause G12). Subsequent renewals restricted regulation to fixed-term agency work only.

For the Tourism Sector NCLA under Assoturismo and Confesercenti (2018-2021 triennium), only fixed-term agency work was regulated, with reference to Article 31(1) of Legislative Decree No. 81/2015, which establishes quantitative limits for staff leasing. The 2024-2027 renewal did not alter these provisions; thus, references to staff leasing remain indirect, without explicit legislative cross-references.

Some isolated cases involved specific regulation of staff leasing, with various techniques and temporal adjustments (see Figure 2). For instance, the NCLA for SMEs in the Food Industry (CNEL code E018) regulated indefinite-duration agency work under Legislative Decree No. 276/2003. The 2004 memorandum stipulated that national-level parties alone could delegate to local structures the identification of additional admissible cases of indefinite-duration agency work. The 2008-2010 renewal removed staff leasing regulation following

legislative changes. With the reintroduction via Act No. 191/2009, the 2010-2013 renewal allowed the identification of further admissible cases at the second-level collective bargaining stage. The 2016-2020 renewal incorporated modifications from the Jobs Act, limiting staff leasing to 20% of the end-user's permanent workforce, exclusively covering "workers hired indefinitely by the supplier", consistent with current law. The 2024-2028 renewal, effective 1 June 2026, increased the maximum share of workers in staff leasing and/or fixed-term agency work contracts to 25% of the permanent workforce per production unit, with the limit also applied proportionally to individual contract types. Pre-existing contracts would naturally expire according to prior NCLA terms.

In the case of the NCLA for the Wood, Cork, Furniture and Forestry Sectors (CNEL code F051), the 2013-2016 contract renewal abolished the previous Article 30 on fixed-term contracts and temporary agency work, establishing that "employment under fixed-term contracts and agency work contracts shall occur in accordance with current legal provisions". This provision thus allowed not only fixed-term agency work but also indefinite-duration agency work, effectively referring back to the law. A quantitative ceiling was also introduced, limiting the number of workers that could be employed under these contract types to 30% of the permanent workforce at the end-user company, calculated based on the number of permanent employees (excluding apprentices) as of 1 January of the year of employment and averaged over the course of the year (1 January-31

December).

In the subsequent 2016-2019 renewal, the parties reformulated the article on agency work to align it with current legislation, *i.e.*, the Jobs Act, thereby allowing agency work while not establishing any limits beyond those indicated in Article 31(1) of Legislative Decree No. 81/2015. Of particular note is the 2019-2022 renewal, in which the contracting parties established that workers employed under fixed-term contracts or under temporary and indefinite agency work contracts could not exceed 45% of the permanent workforce as of 31 December of the preceding year, with decimal values rounded up if equal to or above 0.5. They also stipulated that, in any case, the number of workers employed through staff leasing could not exceed the legal limit of 20% of the permanent workforce. This clause remained unchanged in the most recent 2023-2025 renewal, as the parties only intervened on the economic aspects of the NCLA.

Similarly, in the case of the NCLA for SMEs in the Wood, Cork, Furniture and Forestry Industries (CNEL code F058) for the 2019-2023 triennium, Article 28 established that the maximum percentage of workers employed under fixed-term or agency work contracts, whether temporary or indefinite, could not exceed 45% of the permanent workforce, with the number of staff-leased workers not exceeding the limits set by current law.

For the NCLA covering Professional Firms under the Confprofessioni system (CNEL code H442), the

triennia 2010-2013 (Article 71) and 2015-2018 (Article 55) allowed both fixed-term and indefinite-duration agency work, but simply referred to the provisions of Legislative Decree No. 276/2003 (Articles 20-28). Similarly, in the 2024-2027 renewal (Article 57), the parties incorporated the legislative modifications introduced by the Jobs Act without deviating from the limits set by Article 31(1) of Legislative Decree No. 81/2015, effectively maintaining the same legal framework for staff leasing.

Finally, the recent renewal of the NCLA for the Metalworking and Plant Installation Sector (CNEL code C011) for the 2025-2027 triennium introduced, in Section IV, Title I, Article 4, a substantial and historically significant provision on employment contract types, marking the first time that staff leasing was formally recognized in this national collective agreement. Specifically, after letter (C), which establishes the principle of equal treatment for agency workers and their entitlement to performance bonuses as determined by relevant company-level collective agreements, the parties inserted letter (D). According to this clause, while respecting the legal limits on staff leasing, from 1 January 2026 workers assigned under an indefinite-duration agency work contract for a total period exceeding 48 months – even if non-continuous – and performing tasks of equivalent level and legal category for the same company, will acquire the right to permanent employment with the end-user company. It is specified that periods of assignment completed up to 31 December 2025 will not be counted toward this total.

Although this provision does not define the procedural modalities for exercising the right to permanent employment with the end-user, it effectively confers a new form of social legitimisation on the staff leasing institution.

5. An Overall Assessment of Staff Leasing Regulation in Collective Bargaining

A direct and systematic study of collective bargaining clearly demonstrates Italy's lag in modernizing the regulatory framework of the labour market to ensure fair competition among companies. Prejudices against agency work – and staff leasing in particular – have not translated into improved working conditions. In fact, the lack of contractual regulation of staff leasing, and in some cases even explicit prohibitions, has effectively legitimized economic operators to seek alternative solutions, thereby expanding the scope of irregular work, the systematic use of subcontracting, and the abuse of cooperative work arrangements, to the detriment of both workers and legitimate companies. It should also be noted that the legal validity of collective clauses that go beyond statutory provisions and expressly prohibit the use of staff leasing has recently been questioned by the Court of Last Resort, ruling 13 November 2019, No. 29423, concerning intermittent work. The Court highlighted that the law does not recognize the social partners' authority to prohibit the use of a specific type of contract, nor can such a prohibition be inferred from the law's delegation to collective bargaining to define

the cases in which intermittent work may be used. Similar conclusions can be drawn with regard to staff leasing, since, as with intermittent work, the rationale behind statutory delegation to qualified collective bargaining lies in the proximity of social partners to the regulated sector, which enables them to identify specific needs that justify recourse to staff leasing.

Collective bargaining interventions in this area have been largely paralysed by general opposition from part of the labour world, not specifically against staff leasing, but against the statutory provisions introducing and regulating it, from the 2003 Biagi Act to the Jobs Act.

Of particular importance and symbolic value, however, is the fact that, after a complex and prolonged negotiation lasting over 17 months, the most significant contract in the Italian industrial relations system – that of Federmeccanica-Assistal and CGIL, CISL, UIL – ultimately recognized and socially legitimized the use of staff leasing. Given that this NCLA serves as the guiding agreement for the Italian collective bargaining system, it is easy to foresee how this development may foster a proper evolution of staff leasing according to the model of regulated flexibility. In the context of continuous agency work, such flexibility goes far beyond company-centred objectives, as it guarantees workers contractual stability with the employment agency and, depending on the specific contractual provisions analysed above, potentially also with the end-user company if the worker prefers this solution.

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On irregular and fraudulent practices in (including continuous) agency work and the attitude of social partners, see M. Tiraboschi, *Lavoro temporaneo e somministrazione di manodopera. Contributo allo studio della fattispecie lavoro intermittente tramite agenzia*, Giappichelli, 1999, and M. Tiraboschi, *«Agenzie di servizi» e cooperative di produzione e lavoro*, in *Il Lavoro nella Giurisprudenza*, 1994, No. 6, p. 559 ff. In this context, regarding structural and creeping deregulation phenomena, see G. Giugni, *Giuridificazione e deregolazione nel diritto del lavoro*, in G. Giugni, *Lavoro legge contratti*, Il Mulino, 1989 (originally 1986), p. 337 ff.

On the questionable legitimacy of contractual clauses aiming to prohibit the use of staff leasing, see A. Bottini, *Lo stop allo staff leasing nella logistica penalizza i lavoratori immagine non disponibile*, in *ntpluslavoro.ilsole24ore.com*, 9 July 2021. In case-law, with reference to the equally controversial case of on-call or intermittent work, see Court

of Last Resort 13 November 2019, No. 29423.

Finally, for the significant 'social legitimisation' of staff leasing following the renewal of the Metalworking NCLA on 22 November 2025, see I. Armaroli, G. Impellizzieri, M. Menegotto, M. Tiraboschi (eds.), *CCNL industria metalmeccanica (Codice CNEL C011). Primo commento al rinnovo del 22 novembre 2025. Aggiornato alle previsioni della legge di bilancio 2026 in materia di contrattazione collettiva*, ADAPT University Press, 2026.

STAFF LEASING IN ITALY: AN EMPIRICAL FRAMEWORK

by Silvia Spattini

1. Framing the Quantitative Reconstruction of Staff Leasing

Against a backdrop of a now well-established legal framework, albeit one marked by occasional phases of reform (see the paper by Tiraboschi in this volume) and extensively examined in the literature, more than twenty years after the introduction of staff leasing into the Italian legal system, the empirical picture of the phenomenon has yet to be reconstructed in an organised and systematic manner.

Information on agency work comes from multiple sources, each constructed for different administrative purposes. Continuous historical series covering the entire period from the introduction of this working scheme into the Italian legal system to the present are not publicly available. Despite certain limitations, the existing sources (and some primary analyses, specifically concerning permanent agency work) nevertheless allow for the identification of underlying trends and for the observation of the development and progressive consolidation of staff leasing over time, particularly over the last fifteen years, highlighting key periods of acceleration and potential connections with changes in the

regulatory framework.

2. Statistical Sources and Available Data

The INPS Labour Market Observatory provides monthly data on hirings, contract transformations, and terminations. Its reports include a "Focus on Agency Work", which consists of a table presenting the trends in agency employment – hirings, transformations, and terminations – disaggregated between permanent and fixed-term contracts. These data are available from 2015 to the present.

A historical series constructed from INAIL data, disseminated by Ebitemp, is available from January 2011 to January 2023. From that point onwards, subsequently published data no longer distinguish between workers employed on permanent *versus* fixed-term contracts.

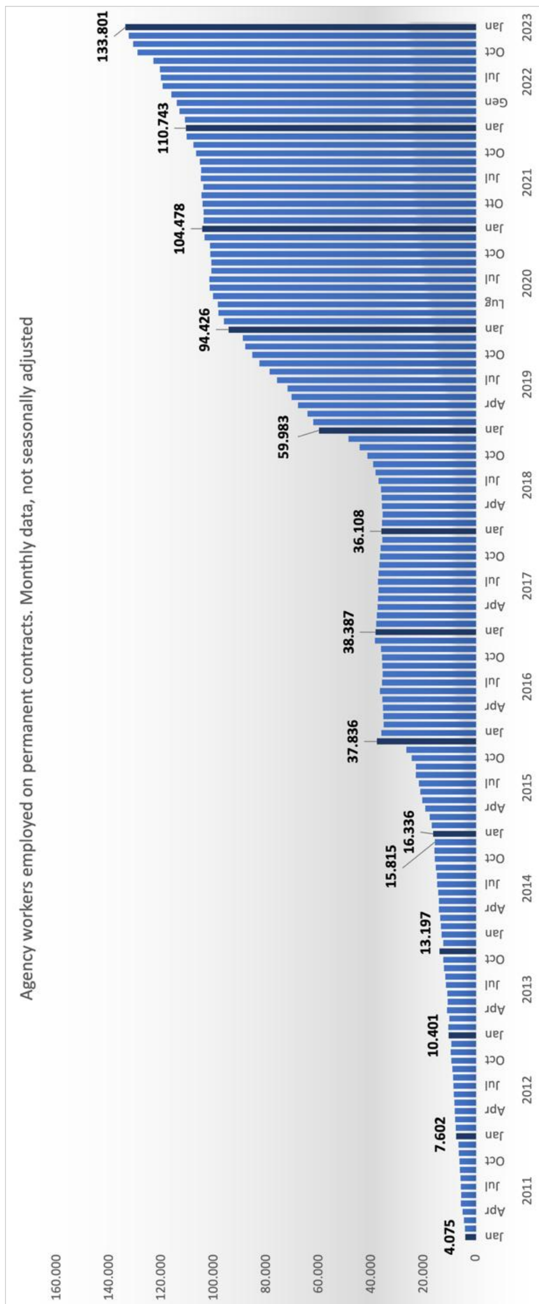
The Ministry of Labour's quarterly notes and annual reports on Mandatory Communications (*Comunicazioni obbligatorie*) provide information on agency work contracts activated and terminated, as well as on assignments commenced and concluded. These data refer to the phenomenon of agency work in general. They do not distinguish between permanent and fixed-term employment contracts, nor between temporary and permanent agency contracts, although such information is collected via the 'Unified Somm' form, through which employment agencies fulfil their reporting obligations concerning the establishment, extension, transformation,

and termination of work relationships pursuant to Article 9-*bis* of Decree-Law No. 510 of 1 October 1996, as amended, and Article 4-*bis* of Legislative Decree No. 181 of 21 April 2000, as amended. However, a processed analysis of these ministerial data is available in the most recent annual report on agency work published by the University of Roma Tre (Università degli Studi Roma Tre, *Il Lavoro in Somministrazione. Rapporto Annuale*, 2025).

3. The Development and Consolidation of Staff Leasing

The historical series of INAIL data disseminated by Ebitemp, available on a monthly basis from January 2011 to January 2023, pertains to workers employed on permanent, agency work contracts. Specifically, these figures refer to 'net employees', that is, workers counted only once within the reference period. Such data allow for a particularly clear observation of the evolution of permanent agency workers. As illustrated by the monthly trends, the number of workers involved increases almost continuously over the entire period, albeit with varying intensity in different phases (see Chart 1).

Chart 1. Agency workers employed on open-ended contracts (January 2011-January 2023)



Source: our elaboration based on INAIL data made available by Ebitemp (Monthly Note, February 2023)

In the period between 2011 and 2014, the hiring of permanent agency workers remained numerically limited, with the number of employees gradually rising from just over 4,000 to approximately 15,000. From 2015 onwards, a first phase of acceleration is evident (in January 2016 there was an increase of 121% compared to January 2015), leading during 2016 to a level approaching 38,000 workers, followed by a period of substantial stabilisation between 2016 and 2018.

The dynamic changes significantly from December 2018 and January 2019, when the number of permanent agency workers exhibits a marked increase (+10% in December 2018 compared to the previous month and +23% in January 2019 compared to the previous month), continuing thereafter in a sustained manner, rapidly approaching 100,000 employees in 2019 and surpassing that threshold during 2020. In the subsequent years, despite an adverse macroeconomic context due to the Covid-19 pandemic, growth persists, albeit at a more gradual pace, ultimately reaching over 133,000 workers by January 2023.

Overall, over the span of just over a decade, the number of permanent agency workers has increased more than thirtyfold compared to its initial value in 2011.

The pattern of growth and consolidation of permanent hires is further confirmed by data specifically relating to staff leasing. In particular, while the INAIL historical series analysed above pertains to all permanent workers employed by agencies and assigned to agency work, irrespective of whether the assignment was fixed-term or

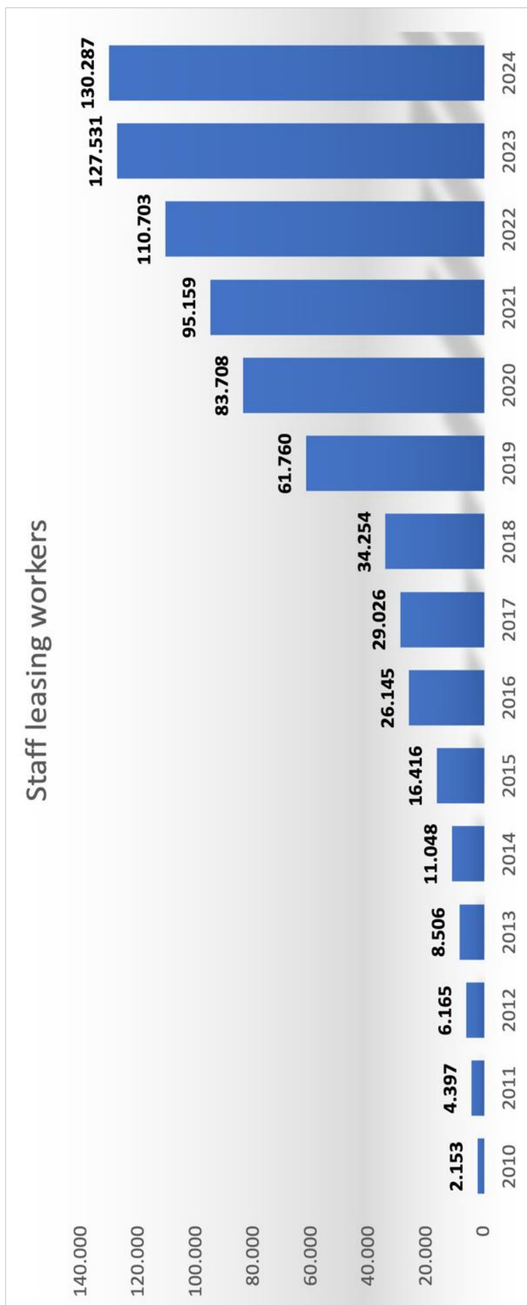
permanent, the processing of ministerial data (Università degli Studi Roma Tre, *Il Lavoro in Somministrazione. Rapporto Annuale*, 2025) provides figures for workers hired on permanent contracts and engaged in permanent assignments. This thus offers a more focused measure of the staff leasing phenomenon.

Despite the difference in the specific scope of measurement, the overall trend emerging from these data is broadly consistent with the patterns observed in the INAIL series, confirming the presence of progressive growth alongside a number of significant discontinuities over time (see Chart 2).

In the initial phase, between 2010 and 2014, the number of workers in staff leasing remained numerically modest but exhibited steady growth, increasing from just over 2,000 in 2010 to more than 11,000 by 2014. During this period, staff leasing still appeared as a relatively marginal contractual modality, albeit one gradually spreading.

From 2015 onwards, a first significant acceleration is observed, with a particularly pronounced increase between 2015 and 2016, when the number of staff leasing workers rose from 16,416 to 26,145, representing a 59% increase. In the subsequent years (2017-2018), growth continued, albeit at a more moderate pace, bringing the total to over 34,000 staff leasing employees.

Chart 2. Agency workers employed on open-ended contracts, annual average (2010-2024)



Source: our elaboration based on data processed by UniRomaTre using figures from the Ministry of Labour and Social Policies (Università Roma Tre, *Il Lavoro in Somministrazione. Rapporto Annuale*, 2025)

A second, more pronounced discontinuity emerged from 2019. Within a single year, the number of permanent staff leasing workers increased from 34,254 to 61,760, an increase of over 80%, signalling a step change in the scale of the phenomenon. Growth continued in the following years, surpassing 83,000 in 2020, with a further 38% increase relative to the previous year.

In the most recent period, between 2021 and 2023, growth continued in a significant but more gradual manner, with annual increases of around 15%. Permanent staff leasing workers exceeded 100,000 during 2022, reached over 127,000 in 2023, and surpassed 130,000 in 2024, although the increase compared to the previous year was only 2%.

4. The Evolution of Staff Leasing in Light of Legislative Reforms

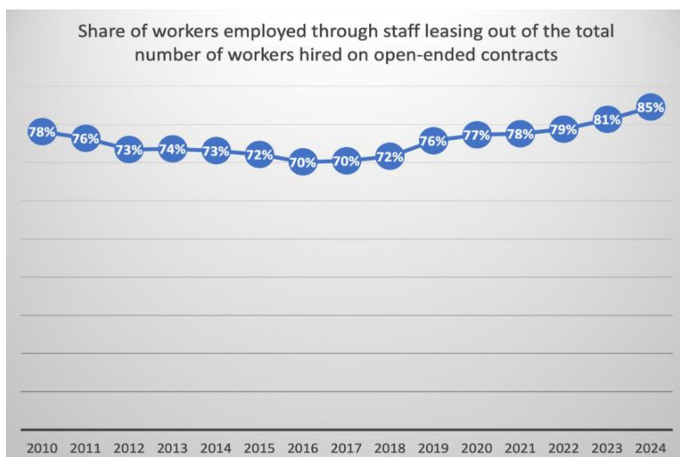
The trend in staff leasing, observed both in absolute terms and relative to the total number of permanent workers employed via temporary assignment, highlights several phases of accelerated growth that can be associated with key legislative reforms affecting staff leasing (see Failla's paper in this volume).

The first phase of significant growth, between 2015 and 2016, during which the number of staff leasing workers increased annually by 49% and 59% respectively, coincides with the reorganisation introduced by Legislative Decree No. 81/2015. This reform was characterised by

the elimination of the prior typification of staff leasing, whereby restrictions on its use were no longer determined by specific statutory causes but by quantitative limits established by law (20% of permanent employees) and by collective bargaining (Article 31, Legislative Decree No. 81/2015).

The second, more pronounced discontinuity, observed in 2019 with a particularly sharp increase in the number of staff leasing workers (+80% relative to the previous year), followed a legislative intervention not directly targeting temporary employment, but fixed-term contracts, enacted by the *Decreto Dignità* (Decree-Law No. 87/2018, converted with amendments into Act No. 96/2018). The reduction of the maximum duration of fixed-term contracts from 36 to 24 months, together with the reintroduction of contractual justifications (*causali*), indirectly affected temporary assignment. The increased rigidity in the use of fixed-term contracts and temporary assignments, combined with greater regulatory uncertainty for user firms, may have made permanent staff leasing more attractive as a mechanism capable of combining contractual stability with organisational flexibility. This can explain the marked growth in permanent workers employed via temporary assignment, particularly those in staff leasing, leading to a structural strengthening of the phenomenon. Correspondingly, a notable increase is observed in the share of staff leasing relative to the total number of permanent workers in temporary assignment, rising from 72% in 2018 to 76% in 2019 (see Chart 3).

Chart 3. Share of workers employed through staff leasing out of the total number of workers hired on open-ended contracts (2010-2024)



Source: our elaboration based on data processed by UniRomaTre using figures from the Ministry of Labour and Social Policies (Università Roma Tre, *Il Lavoro in Somministrazione. Rapporto Annuale*, 2025)

From this point onwards, the consolidation of staff leasing continued even in an adverse macroeconomic context. The share of staff leasing workers relative to the total workforce in temporary assignment grew steadily: from 8.10% in 2019 to 15.10%, reaching 26.70% by 2024. At the same time, there was a continuous increase in the proportion of staff leasing workers relative to all permanent employees, reaching 85% in 2024.

Overall, it appears that the dynamics affecting temporary employment have led to its increasingly stable and continuous use, thereby strengthening the role of staff leasing relative to fixed-term temporary assignments, also due to greater legal certainty arising from successive regulatory reorganisations and reforms.

Over the course of fifteen years, the number of workers employed through staff leasing has increased more than sixtyfold, signalling the transition of staff leasing – from a residual instrument to, albeit quantitatively limited in relation to overall employment, a structural element of the Italian labour market – fulfilling the function envisaged for it by the legislator (see the paper by Tiraboschi in this volume).

5. Employment Outcomes of Staff Leasing Workers

Alongside the quantitative reconstruction of workers employed through staff leasing, another important dimension of analysis concerns the employment outcomes of workers following the termination of their contracts, specifically for those who were employed on a permanent basis through staff leasing.

The most recent analyses (Assolavoro elaborations on Mandatory Communications data collected and processed by the University of Roma Tre) show that over half of the workers who terminate a permanent employment contract after being employed through staff leasing (54.7%) secure a standard permanent employment

contract – *i.e.*, no longer within the framework of temporary agency work – within 90 days of termination.

This finding is significant for several reasons. First, it suggests that staff leasing does not operate solely as a mechanism for stable externalisation of employment, but also serves as a channel for labour mobility towards direct employment with the user firm or another company. In this respect, staff leasing appears, for a substantial proportion of workers, to function as a bridge to stable forms of employment in the 'primary' labour market. Second, the transition rate to permanent employment within a relatively short period (90 days) indicates a high degree of occupational continuity, which challenges the portrayal of staff leasing as a segment characterised by high uncertainty or instability. On the contrary, the data suggest that experience in permanent staff leasing can constitute a professionalising and transferable pathway, enhancing the employability of the worker (see also the paper by Paternò in this volume).

Finally, these empirical findings are consistent with the evolutionary picture outlined in the preceding sections: the progressive numerical strengthening of staff leasing, its growing share of the total temporary employment framework, and the greater legal certainty resulting from legislative interventions appear to have contributed to consolidating staff leasing not only quantitatively, but also in terms of the quality of employment outcomes.

6. Essential Bibliography

In the Focus on temporary agency employment section of the INPS Labour Market Observatory's monthly reports, data are available on hirings, contract conversions, and terminations, disaggregated between permanent and fixed-term temporary agency contracts for the period 2015-2025.

The University of Roma Tre's report, *Il Lavoro in Somministrazione. Rapporto Annuale*, 2025, presents analyses of primary data from the Ministry of Labour and Social Policies derived from Mandatory Communications. These provide detailed information on permanent employment contracts, further disaggregated by workers assigned to permanent *versus* fixed-term assignments.

For a detailed examination of the dynamics of temporary agency work, its presence across different economic sectors, the characteristics of agency workers, and their remuneration, see Assolavoro, *Il mercato del lavoro in somministrazione. Rapporto annuale 2025*, 2025.

To explore empirical evidence on the performance of staff leasing – particularly regarding greater employment continuity, a higher likelihood of remaining in stable employment, and a reduced risk of labour market exit – see Assolavoro, *Lo staff leasing nell'ordinamento italiano*, 2025.

Part II
STAFF LEASING AND THE ITALIAN LEGAL FRAMEWORK

STAFF LEASING AND ITS LEGAL REGULATION IN ITALY

by Luca Failla

1. Staff Leasing as a Type of Agency Work: Overview of Its Legal Framework

As is well known, the tripartite relationship of agency work is founded upon the division between the formal and the substantive employer, whereby the actual performance of work by the agency worker is not rendered to the real and formal employer (the employment agency authorised at ministerial level pursuant to Legislative Decree No. 276/2003), but rather in the interest and under the direction of a user undertaking, which in turn is bound to the agency by a commercial supply contract.

Within the framework of agency work, one may distinguish, on the one hand, fixed-term agency work (which may be compatible either with a fixed-term contract or with an open-ended contract concluded with the agency, the 'stabilisation') and, on the other hand, open-ended agency work (staff leasing), which requires – as an essential condition – recruitment on an open-ended basis by the agency for the purpose of an assignment likewise of indefinite duration with the user undertaking.

This working scheme – originally introduced by

Legislative Decree No. 276/2003 and confined to certain exhaustively listed cases provided for by statute – has undergone a gradual process of legislative legitimisation (see the paper by Tiraboschi in this paper), culminating in its full recognition within the Italian legal system under the current provisions set out in Article 30 ff. of Legislative Decree No. 81/2015.

In light of its distinctive regulatory framework, staff leasing now constitutes an important instrument of labour market policy and is widely utilised within corporate organisations as a useful form of 'protected' flexibility, guaranteed by the existence, upstream, of an open-ended employment relationship with the agency, thereby capable of pursuing the objective of employment stability for the agency worker.

2. The Statutory Regulation of the Agency Work under Legislative Decree No. 81/2015

The primary legislative source governing open-ended agency work is Article 30 of Legislative Decree No. 81/2015, which provides that a contract for the supply of labour – namely, the commercial agreement between the employment agency and the user undertaking – may be concluded either for "a fixed term or on an open-ended basis".

Article 31(1) subsequently shifts the focus from the duration of the assignment to the regulation of the employment relationship itself, stipulating that only workers who have been recruited by the agency on an open-

ended contract may be supplied on an open-ended basis. The legislator thus identifies the existence of an open-ended employment relationship with the agency as the *conditio sine qua non* and legal prerequisite for an assignment of indefinite duration with the user undertaking.

With regard to the rules governing the employment relationship, it should be noted that in cases of fixed-term agency work – where the worker is engaged by the agency on a fixed-term contract – the provisions set out in Article 19 ff. of Legislative Decree No. 81/2015 apply. By contrast, in the case of staff leasing, Article 34 expressly refers to the general regime applicable to open-ended employment contracts, providing that: "where the worker is engaged on an open-ended basis, the employment relationship between the agency and the worker shall be governed by the rules applicable to open-ended employment relationships".

In the context of staff leasing, however, the ordinary framework governing open-ended employment contracts is supplemented by specific statutory provisions designed to safeguard the agency worker and to promote his or her employment stability.

2.1. Rights and Protections of the Agency Worker under an Open-Ended Employment Contract with the Agency

A worker engaged under a staff leasing arrangement – precisely by virtue of the open-ended employment

relationship with the agency – benefits from certain 'special protections', as encouraged by Recital 15 of Directive 2008/104/EC on temporary agency work (see, on this point, the paper by Treu in this volume).

As a preliminary matter, and as is the case for all agency workers, the employment relationship is established with a 'qualified' and 'accredited' employer, namely the employment agency. Such agencies are authorised by the Ministry of Labour subject to stringent financial and organisational requirements and are entered in a dedicated register pursuant to Legislative Decree No. 276/2003. This regulatory framework ensures prior scrutiny and ongoing public supervision in order to safeguard workers, with particular emphasis on verifying the professionalism and reliability of the operators involved.

Against this background, Article 35 of Legislative Decree No. 81/2015 enshrines a fundamental principle of equal treatment in terms of employment and pay. For the entire duration of the assignment with the user undertaking, the agency worker "is entitled to working and employment conditions which, taken as a whole, are not less favourable than those applicable to workers of the same grade employed by the user".

The most significant provisions concerning staff leasing are those specifically designed to protect the continuity of employment.

Agency workers recruited on an open-ended basis who, during periods in which they are not assigned to a user undertaking and are therefore awaiting reassignment,

remain “at the disposal of the agency” (Article 32 of the NCLA for Employment Agencies). During such periods they are entitled to receive a ‘availability allowance’ (*indennità di disponibilità*), which is also provided for at statutory level by Article 34(1) of Legislative Decree No. 81/2015, in “an amount determined by the collective agreement applicable to the agency and, in any event, not lower than that fixed by decree of the Minister of Labour and Social Policies”.

In addition, staff-leased workers enjoy special protections – without precedent or analogy within the Italian legal system – in the event of dismissal for objective economic reasons where no assignment is available.

Specifically, where an assignment comes to an end, a worker engaged on an open-ended contract who is ‘in availability’ may not be dismissed immediately by the agency, otherwise the latter can be considered unlawful. Instead, the worker must be placed, for a specified period, within a dedicated Relocation Procedure for Open-Ended Workers governed by Article 25 of the NCLA for Employment Agencies (most recently renewed on 21 July 2025). This procedure is intended to “facilitate the outplacement of workers […] by providing a range of training measures and income-support instruments aimed at enhancing their opportunities for outplacement”.

The procedure has an overall duration of 180 days (subject to certain specific exceptions) and entails the direct involvement of trade union representatives with a view to reaching an agreement concerning a specific ‘skills

redevelopment project', structured around tailored training activities based on the worker's professional profile.

Only at the conclusion of this period of remunerated training, retraining and outplacement – where it proves impossible to assign the worker to an alternative task – may the agency lawfully proceed with dismissal.

This distinctive dismissal procedure constitutes a *unicum* in terms of employment support, being absent from any other standard open-ended contractual arrangement. It serves to reinforce both the credibility of agency work and the protection afforded to agency workers at the most critical stage of their working lives.

In light of this special regulatory framework, the Court of last instance has properly delineated the particular notion of objective economic justification applicable to open-ended agency work, holding that "the lawful exercise of the agency's power of dismissal, for reasons unrelated to the worker's conduct, is conditional upon proof of the impossibility, over a reasonable period, of identifying work opportunities compatible with the worker's original or subsequently acquired professional skills, as well as the impossibility of maintaining the worker in a state of further availability" ([1]).

On the basis of this comprehensive system of protections, both academic commentators and, more recently, lower court case-law have observed that the open-ended employment relationship with the agency realises

([1]) Court of Last Resort 18 October 2019, No. 26607.

"to the highest degree that function of 'transitional' protection for the worker within the labour market" (S.P. Emiliani, *La somministrazione di lavoro*, in R. Pessi, G. Proia, A. Vallebona (eds.), *Approfondimenti di diritto del lavoro*, Giappichelli, 2021, p. 98 ff.; T. Zappia, *Lavoro interinale: l'effettiva temporaneità della missione quale «bussola» per la compatibilità della normativa nazionale con la direttiva 2008/104/CE*, in *Il Giuslavorista*, 4 January 2021). Where "the relationship with the agency is open-ended, such protection reaches its maximum expression – not only because of the financial support and training available during the intervals between assignments, but also, and above all, because the agency is incentivised to seek out new assignments on the market, thereby enhancing the worker's prospects of stable employment […]. Since an open-ended employment relationship subsists between the worker and the agency, there is no derogation from the protections associated with subordinate employment; rather, those protections continue to attach fully to the employment relationship with the agency" ([2]).

By virtue of these prerogatives, recruitment on an open-ended basis by the agency enjoys equal legal dignity to direct recruitment by the user undertaking, and offers workers guarantees which may be superior in terms of training and outplacement support. It thus represents an addition rather than a diminution, when compared with an ordinary open-ended contract of employment.

([2]) Court of Bari 17 September 2025, No. 3213.

2.2. Quantitative Limits and Statutory Obligations Incumbent upon the User Undertaking under the Agency Work Contract

Having examined the regulation of the employment relationship between the agency and the worker engaged under a staff leasing arrangement, it is also necessary to consider the parallel dimension characterising the tripartite structure – namely, the supply contract between the agency and the user undertaking, which entails, as noted, the stable and continuous assignment of the worker to the latter.

In this respect as well, the lawmakers have introduced specific limitations designed to ensure the proper use of the staff leasing mechanism and to prevent pathological or evasive recourse to this working scheme by the user undertaking.

The principal provision serving this purpose is Article 31 of Legislative Decree No. 81/2015. § 2 expressly establishes a quantitative percentage cap on the use of open-ended agency work by the user undertaking, providing that, unless otherwise stipulated by collective bargaining, "the number of workers supplied on an open-ended basis may not exceed 20 per cent of the workers employed on an open-ended contract by the user undertaking" (see the paper by Bilancia and Tiraboschi in this volume).

From the same preventive perspective must be read the obligation, laid down in Article 31(3), requiring the user

undertaking to inform agency workers of vacant posts within the organisation, including by means of a general notice displayed on its premises. Likewise, Article 35(8) provides a sanction in relation to restrictions on direct recruitment by the user undertaking, stipulating that "any clause intended to limit, even indirectly, the user undertaking's right to recruit the worker at the end of the assignment shall be null and void".

Furthermore, as a remedial safeguard, Article 38 of Legislative Decree No. 81/2015 provides that, in the event of breach of the limits and conditions described above, the agency worker may apply to the court seeking the establishment of an employment relationship directly with the user undertaking, with effect from the commencement of the supply arrangement. In such circumstances, the worker is also entitled to compensation determined in accordance with Article 39.

It is apparent that the objective pursued by the legislator through this regulatory framework is to delineate and circumscribe the scope of flexibility to which the user undertaking may legitimately resort, thereby preventing potentially unlimited reliance on open-ended agency work from adversely affecting the recruitment of permanent staff directly employed within the organisation.

Taken together, the provisions governing the supply relationship, read in conjunction with those regulating the open-ended employment relationship with the agency, complete a system of guarantees that appears both necessary and sufficient to ensure the legitimacy of the institution, viewed from the standpoint of comprehensive

protection of the agency worker.

3. Conclusions. Staff Leasing as a Form of Protected Flexibility Capable of Reconciling Worker Protection with Entrepreneurial Freedom

In light of the foregoing analysis of the key features of the regulatory framework governing staff leasing, it may be observed that the staff leasing represents the enhancement of a form of 'good' flexibility – regulated and safeguarded – which is capable, within both the national and European legal landscape, of constituting a legitimate alternative to other contractual models characterised by lower levels of protection, such as those adopted in the context of business process outsourcing.

Staff leasing – also pursuing, in certain respects, an objective of 're-internalisation' (P. Ichino, *La «legge Biagi» sul lavoro: continuità o rottura col passato?*, in *Il Corriere Giuridico*, 2003, n. 12, p. 1545; P. Ichino, *La disciplina della segmentazione del processo produttivo e dei suoi effetti sul rapporto di lavoro*, in Vv.Aa., *Diritto del lavoro e nuove forme di decentramento produttivo. Atti delle Giornate di studio di diritto del lavoro. Trento 4-5 giugno 1999*, Giuffrè, 2000, p. 3 ff.; M. Tiraboschi, *Esternalizzazioni del lavoro e valorizzazione del capitale umano: due modelli inconciliabili?*, in *Diritto delle Relazioni Industriali*, 2005, No. 2, p. 379 ff.; L. Calcaterra, *Lo staff leasing dall'ostracismo alla liberalizzazione*, in *Rivista Italiana di Diritto del Lavoro*, 2016, No. 4, I, p. 579) of productive and organisational segments of the undertaking,

as originally envisaged by Legislative Decree No. 276/2003 in relation to those exhaustively listed cases considered most at risk of unlawful contracting-out – stands, in comparison with the contract for services, as a more protective and reliable contractual alternative. It ensures continuity and stability of employment for the agency worker by virtue of the open-ended employment contract concluded with the agency, which – unlike a contractor – is a subject authorised and accredited by the Ministry of Labour on the basis of specific statutory requirements.

In this perspective, the contractual instrument of staff leasing now emerges as an effective mechanism for balancing two fundamental rights guaranteed at both supranational and constitutional level: on the one hand, the freedom to conduct a business (Article 16 of the Charter of Fundamental Rights of the European Union and Article 41 of the Italian Constitution); and, on the other, the worker's right to statutory protection (Articles 15 and 31 of the Charter and Article 4 of the Italian Constitution).

As has been shown, staff leasing is meticulously regulated by the legislator on the basis of a delicate system of checks and balances, whereby the company's need for flexibility – stemming from fluctuations in market demand – is necessarily counterbalanced by the objective of employment stability and the avoidance of precariousness, ensured by the open-ended employment relationship with the agency and by compliance with the quantitative limits imposed upon the user undertaking.

In conclusion, without prejudice to the legitimate debate concerning the extraneousness and/or compatibility of staff leasing with Directive 2008/104/EC on temporary agency work – traditionally characterised by the intrinsic requirement of the 'temporary' nature of assignments (see Paternò's paper in this volume) – staff leasing may properly be regarded as a virtuous and indispensable contractual instrument in today's labour market, capable of advancing the conciliatory – both promotional and protective – objective of *flexicurity* pursued by the European legislator.

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STAFF LEASING AND CASE-LAW

by Aldo Bottini

1. Scepticism (to Say the Least) Towards Staff Leasing

A preconceived hostility – both unfounded and stubborn – has accompanied staff leasing since its first appearance in Italian labour law in 2003 with the Biagi Act. Yet, as ought to be evident, this is a working scheme that scarcely lends itself to being labelled as 'precarious'; quite the contrary. The open-ended nature of the agency work contract is necessarily matched by an equally open-ended employment relationship with the agency, safeguarded by all the corresponding protections against dismissal. It benefits from additional guarantees: the mere termination of the assignment as a result of the user undertaking's withdrawal from the contract does not automatically and immediately constitute a justified ground for dismissal. Rather, it gives rise to an obligation on the part of the agency – established by the relevant sectoral collective agreement – to provide retraining and outplacement, in addition to paying the availability allowance for the period of unemployment.

Nevertheless, staff leasing has consistently been the object of controversy at various levels. First, within certain strands of labour law scholarship, which have never

fully reconciled themselves to the repeal of the prohibition on the hiring-out of labour, at times even expressing a preference for fixed-term direct employment over agency work arrangements. At trade union level, opposition to staff leasing has taken concrete form in prohibitions on its use introduced by certain collective agreements (for example, in the banking and logistics sectors). Political hostility has likewise manifested itself: it is well known that in 2007 open-ended agency work was repealed (the Minister of Labour at the time being Cesare Damiano, former General Secretary of the CGIL), only to be reintroduced two years later by a government of a different political orientation (see also the paper by Tiraboschi in this volume). It is therefore unsurprising that this process has also extended to case-law, or at least to part of it.

2. Case-Law Prior to the Jobs Act

Even under the legislation in force prior to the 2015 reform – which restricted recourse to staff leasing to specific activities provided for by statute or by collective bargaining – certain decisions (for example, the judgment of the Court of Turin of 26 July 2010, cited in *DRI*, 2012, No. 3, p. 755) sought to impose further limitations on the conditions governing access to this working scheme. These rulings maintained that the activities listed by the statutory provision had, in the specific case, to be ancillary in nature and not coincident with the principal activity carried out by the user undertaking.

This restrictive interpretation, however, was challenged by other decisions of the opposite tenor (for example, the judgment of the Court of Rome of 19 November 2010, ibid.), which emphasised the absence of any statutory prohibition on recourse to staff leasing for the performance of activities falling within the core business of the user company.

3. From the Jobs Act to Today

As is well known, the Jobs Act of 2015 (see also the paper by Failla in this volume) liberalised this working scheme, removing any requirement to state objective grounds and subjecting it solely to a quantitative limit of 20% of the number of employees on open-ended contracts in the workforce.

The simplicity and clarity of the statutory provision effectively reduced to nil the already limited volume of litigation concerning the permissibility of staff leasing. Hostility, however, has by no means disappeared. Like an underground river, it has recently resurfaced forcefully in a series of decisions which – unable to identify support in the clear and unequivocal provisions of domestic law – have conjectured its incompatibility with EU principles, in particular with Directive 2008/104/EC on temporary agency work.

These rulings, examined in detail below, rely primarily upon two judgments of the Court of Justice of the European Union which, unequivocally, concerned not open-ended agency work but rather successive fixed-

term assignments linked to fixed-term agency contracts, and which have been interpreted in a distorted and misleading manner. In its judgment of 14 October 2020 (Case C-681/18, *3H* v. *KG*), the Court of Justice held that Directive 2008/104 obliges Member States to adopt the necessary measures to prevent excessive recourse to successive fixed-term assignments capable of circumventing the temporary character of agency work.

A subsequent judgment (17 March 2022, Case C-232/20) reiterated the obligation upon Member States to prevent the assignment of successive missions that evade the provisions of Directive 2008/104, adding that, where national legislation does not establish a maximum duration for successive assignments of the same worker to the same user undertaking, it falls to national courts to determine such a limit on a case-by-case basis, in light of the specific circumstances.

An analysis of these two decisions makes it evident that they concern the repeated use of fixed-term assignments of the same worker with the same user undertaking, and thus a situation entirely distinct from open-ended agency work involving a worker employed on an indefinite contract by the agency – an arrangement which, properly speaking, does not even fall within the scope of Directive 2008/104, given its intrinsically non-temporary nature.

The first domestic echo of these CJEU rulings emerged in 2022 in two judgments of the Italian Court of Last Resort (21 July 2022, No. 22861; 11 October 2022, No. 29570). These decisions, too – like those of the Court

of Justice – concerned exclusively fixed-term agency work. The question of staff leasing and its compatibility, or otherwise, with EU principles was not even addressed.

Moreover, the cases examined arose entirely under a national legislative framework (that preceding the 'Dignity Decree' of 2018) which, unlike the legislation currently in force, imposed no limit on successive assignments of the same worker to the same user undertaking for the performance of the same duties. With specific reference to that framework, the Court of Last Resort, endorsing the guidance provided by the Court of Justice, held that a limit must be placed upon the repetition of fixed-term assignments, failing which the arrangement would be contrary to the Directive. In the absence of a statutory limit, the Court of Last Resort stated, it falls to the national court to verify, in the specific case, whether the repetition of assignments to the user undertaking constituted a means of circumventing the rule of temporariness. In making that assessment, the Court further observed, assignments in respect of which the limitation period for challenge had expired must also be considered, insofar as they are relevant factual circumstances in determining whether, taken as a whole, the worker's utilisation through repeated assignments exceeded a duration that may reasonably be regarded as temporary. Once such a breach of the principle of temporariness is established, the national court may, according to the Court of Last Resort, declare the agency contract null and void pursuant to Articles 1344 and 1418 of the Civil Code, on the ground that it is contrary to a mandatory

rule identified in the temporariness requirement derived from the Directive.

This is a bold and highly debatable conclusion which, as will be seen, has subsequently been extended by some lower courts to staff leasing. It is both well known and undisputed that the provisions of an EU directive are addressed to Member States and are not, in relations between private parties, capable of creating legal positions (rights or obligations) beyond those provided for by domestic law. This means that, even if the absence of a temporal limit on successive assignments were to constitute (for the Member State) a breach of EU law – specifically of the temporariness requirement deemed to be 'immanent' – such a breach cannot result in the nullity of a contract fully compliant with domestic legislation. The duty of consistent interpretation incumbent upon national courts cannot, as the Court of Justice has repeatedly affirmed, extend so far as to produce a *contra legem* outcome.

Up to that point, however, staff leasing had remained unaffected by the strictures of the higher courts. The lower courts, by contrast, did not hesitate to invoke the precedents of the Court of Justice and the Court of Last Resort in order to bring it within their sights.

In the first reported decision on the matter (Court of Taranto 7 February 2023), the court merely asserted – apodictically – the incompatibility of open-ended agency work with the "necessarily temporary character of temporary agency work". From this it inferred the nullity of the agency arrangement on grounds of fraud

on the law (in the case at hand lasting almost eight years, through a combination of fixed-term assignments and staff leasing), with the consequence – so the judgment states – of the establishment of an open-ended employment relationship between the agency worker and the user undertaking pursuant to Article 38(2) of Legislative Decree No. 81/2015, together with compensation for damage in the amount provided for by Article 39 of the same decree (between 2.5 and 12 months' pay). The bare reference to Article 38 of Legislative Decree No. 81/2015, without further explanation, is difficult to comprehend, since that provision sets out, in exhaustive terms, specific situations in which the establishment of a relationship with the user may be sought (exceeding quantitative limits, breach of prohibitions on recourse to agency work, formal defects in the contract), none of which arose in the case under consideration.

A subsequent judgment of the Court of Milan (9 May 2023, No. 882) revisited the issue of the legitimacy of staff leasing, reaching the same conclusions but on somewhat more extensive – and in part different – grounds. The starting point remained the aforementioned judgments of the Court of Justice, from which the temporary character of agency work was inferred as necessary in order to prevent the 'precarisation' of workers.

That principle was deemed applicable also to open-ended agency work, which, according to the Court of Milan, does not exclude the risk of precariousness.

The judgment maintained that a worker employed on an open-ended contract by the agency does not enjoy "a guarantee of continuity of work in economic and professional terms", since the assignment may be terminated at any time.

This was asserted without even acknowledging that the cessation of an assignment does not entail the automatic termination of the open-ended employment relationship with the agency, which remains subject to the ordinary statutory protections against dismissal, in addition to the specific guarantees of training and outplacement support provided by the collective agreement applicable to employment agencies.

In short, according to this decision, staff leasing too must be temporary, and the statutory maximum duration of fixed-term assignments – now set at 24 months – should also apply to it, lest a 'problem in the system' arise. Not only that.

Even where that maximum duration was not exceeded (as in the case examined), the continuation of the worker's services for the user undertaking beyond 12 months without indication of objective grounds was said to infringe §§ 1 and 4 of Article 19 of Legislative Decree No. 81/2015, with the consequence that the contract would be converted into an open-ended relationship directly with the user undertaking, accompanied by reinstatement.

This conclusion was reached notwithstanding that, under Article 19 itself, both the requirement to state objective grounds beyond 12 months and the conversion

sanction for failure to do so concern the employment contract with the agency – which, in the case of staff leasing, is already open-ended.

Above all, this line of reasoning effectively results in the judicial abrogation of open-ended agency work, going well beyond the limits of consistent interpretation delineated by the very judgments of the Court of Justice upon which it purports to rely.

Despite its evident deficiencies in reasoning, the Milan judgment has been followed uncritically by several subsequent decisions reaching the same conclusions (including, among those reported, Court of Trieste 14 November 2023; Court of Milan 11 January 2024, No. 90; Court of Milan 19 December 2025).

4. Protections Afforded to Agency Workers in Staff Leasing: Is Case-Law Contradicting Itself?

What is particularly striking in the decisions that assert the incompatibility of staff leasing with European Union principles is their repeated emphasis on the purportedly 'precarious' nature of these arrangements, contrasted with the stability allegedly guaranteed by a direct, open-ended employment relationship with the user undertaking.

It is repeatedly observed that an assignment of indefinite duration may be terminated by the user undertaking at any time, subject to the requisite notice, through withdrawal – even without stated reasons – from the

commercial supply contract. What is not, however, adequately considered is that the end of the assignment neither automatically entails the termination of the employment relationship nor, in itself, constitutes a justified ground for dismissal.

Even setting aside the (by no means negligible, in practical terms) fact that the agency has its own specific interest in securing the worker's outplacement – this being the very essence of its business model – it must be recalled that Article 25 of employment agencies' NCLA, in the event of termination of the assignment of a worker employed on an open-ended contract, provides for a mandatory outplacement procedure. This procedure, ordinarily lasting six months, includes training and job-search activities, during which the worker is entitled to receive a specific allowance.

This consideration alone would suffice to regard the agency worker employed on an open-ended basis as enjoying greater protection than a worker engaged directly (see the paper by Salimbene in this volume) in the event of loss of position. Yet this is not all.

Case-law has consistently interpreted in a particularly stringent manner the employing agency's obligation to seek new employment opportunities following the end of an assignment (Court of Last Resort 11 November 2019, No. 29105; Court of Last Resort 8 January 2019, No. 181; Court of Lecco 22 January 2024; Court of Rome 5 October 2017; Court of Rome 2 November 2016; Court of Velletri 29 July 2016), even going so far as to hold that mere compliance with the collective

procedure set out in Article 25 is insufficient (Court of Appeal of Milan 20 October 2024).

In essence, the very 'severity' with which the courts assess the existence of a justified ground for dismissing an agency worker employed on an open-ended contract constitutes the clearest refutation of the narrative advanced by a strand of case-law according to which open-ended agency work would amount to a form of 'precarious' employment.

As a result of these judicial orientations, the agency worker employed on an open-ended basis by an employment agency enjoys protection that is certainly no less extensive than that afforded to a worker employed directly by the user undertaking; in certain respects (and particularly in specific circumstances), such protection may be significantly greater.

It suffices to note that an agency worker, being employed by a duly authorised employment agency subject by law to specific regulatory requirements, always benefits from the highest level of protection against unfair dismissal. By contrast, a 'direct' employee may work for an employer (as is the case for the majority in Italy) which, by reason of its size, provides a substantially lower level of protection.

5. The Reference to the Court of Justice of the European Union

Recently, three different courts (Court of Reggio Emilia 7 November 2024; Court of Milan 14 January 2025;

Court of Modena 27 August 2025), in as many proceedings concerning open-ended agency work, have ordered references for a preliminary ruling to the Court of Justice of the European Union. They have requested clarification as to whether staff leasing is compatible with the principle of temporariness discernible in Directive 2008/104/EC (see the papers of Romei and Paternò in this volume).

The three referring courts question the conformity with the Directive of agency work arrangements lacking any time limit, yet acknowledge that they cannot resolve the alleged discrepancy by disapplying a provision of national law which expressly provides for and regulates staff leasing, as other courts of first instance have instead done.

Several of the arguments relied upon in the orders for reference in support of the alleged incompatibility are open to criticism. Chief among them is the inclusion of open-ended agency work within the scope of application of the Directive. By its very nature, such a form of employment cannot fall within the ambit of a Directive which expressly purports to regulate exclusively temporary agency work of a fixed-term character.

Nor is sufficient consideration given to the fact that the Directive itself, even were its applicability to be conceded, expressly permits derogations from its principles (including from the fundamental principle of equal treatment) where there exists an open-ended employment relationship with the agency, in light of "the particular protection afforded by such a contract" (Recital

15 and Article 5(2)).

Nonetheless, at the very least these decisions restore the assessment of compatibility between a mechanism governed nationally and European Union law to its proper forum, without venturing into convoluted – and, in certain respects, adventurous – interpretative constructions aimed at achieving the de facto abrogation of a national legislative provision.

One must therefore await the ruling of the Court of Justice, which may reasonably be expected, in the meantime, to lead to the suspension of decisions on the merits by the national courts.

6. A Dissenting Voice

There are, however, judicial voices that do not consider staff leasing to be in any way incompatible with European Union principles. In a judgment of 17 September 2025, the Court of Bari, following a thorough examination of Directive 2008/104/EC and of the judgments of the Court of Justice delivered in 2020 and 2022 (both concerning exclusively fixed-term agency work), concluded that open-ended agency work – necessarily accompanied by open-ended employment with the agency – “falls outside the scope of Directive 2008/104/EC precisely because the open-ended relationship is configured as the general form (Recital 15)”. Accordingly, staff leasing lies beyond the Directive’s scope, and the question of its compatibility with that instrument does not arise.

In support of this conclusion, the Court of Bari relied on a judgment of the Court of Justice of the European Union (CJEU 22 June 2023, Case C-427), which addressed the compatibility with the Directive of a German provision allowing a company to place one of its employees (engaged on an open-ended contract) at the disposal of another company on a permanent basis. The Court stated unequivocally that such a situation "cannot fall within the scope of Directive 2008/104, since [...] the assignment at issue was not temporary in character".

This was on the basis that, "according to the Court's case-law, that Directive concerns exclusively employment relationships that are temporary, transitional or limited in time, and not permanent employment relationships".

From a more substantive perspective, the judgment of the Court of Bari challenges the scepticism that surrounds staff leasing, observing that this working scheme "ensures an adequate level of protection, facilitates the matching of labour supply and demand in the labour market, enhances workers' skills and professional experience (and, with them, their employability), guarantees a certain continuity of employment, and reduces the social costs associated with persistent employment gaps".

Furthermore, the judgment recalls that "the termination of a commercial staff leasing contract [...] does not in itself justify dismissal, but merely results in the worker entering a period of availability (Article 34(1),

Legislative Decree No. 81/2015). Only after an appropriate period of availability, during which no further employment opportunities have arisen, may the employment relationship be lawfully terminated".

Consequently, "the position of a worker employed under a staff leasing arrangement is, with regard to dismissal, more favourable than that of a worker directly employed by the user undertaking, for whom the assessment of outplacement possibilities occurs at a specific point in time (and not over an appropriate period) and within a single organisational context – namely that of his or her employer".

The judgment further notes that "the agency's interest is ordinarily to re-assign the worker employed on an open-ended contract as swiftly as possible, both because outplacement forms part of its ordinary business activity – thereby generating profit without the need to incur additional costs (reducing expenditure on the availability allowance) – and because dismissal is not a risk-free solution in judicial proceedings and, in any event, is not cost-neutral when one considers the expenses associated with the procedure laid down by the collective agreement".

7. The Court of Last Resort Returns to the Question of Temporariness (with an Interesting Distinction as Regards Staff Leasing)

A recent judgment of the Court of Last Resort (7 November 2025, No. 29577) deserves particular attention.

Although it concerns a case of fixed-term agency work, it contains an interesting observation relating to open-ended agency work (staff leasing).

The judgment addresses a factual situation situated within a legal framework markedly different from that underpinning the Court of Last Resort's earlier decisions of 2022. Those earlier rulings concerned fixed-term agency assignments concluded prior to the 2018 legislative amendment (the *Decreto Dignità*), which introduced a maximum duration of 24 months (or such different limit as may be provided for by collective bargaining) for fixed-term employment between the same worker and the same employer in respect of the same duties. As previously noted, the absence of any statutory limit had led the Court of Last Resort to hold that the repeated renewal of fixed-term assignments without temporal restriction infringed the principle of temporariness derived, according to the Court of Justice of the European Union, from Directive 2008/104. This entailed the possibility for the national court to determine a reasonable maximum duration. Under the current legislative framework, however, a limit does exist – namely that of 24 months – even if, as drafted, the provision appears to refer to the employment contract rather than to the commercial supply contract.

In Judgment No. 29577/2025, the Court of Last Resort, relying upon what it describes as a 'contractual linkage' (*collegamento negoziale*) between the employment relationship (agency/worker) and the commercial relationship (agency/user undertaking), held that the

maximum limit must be extended also "to the duration of the assignment of the same worker on a fixed-term mission with the same undertaking, whether under one or more contracts, corresponding to 24 months".

Thus, while fixed-term agency work is, according to the Court of Last Resort, subject to a clear maximum duration, the same cannot be said of staff leasing.

The judgment states – albeit incidentally – that "the 24-month limit does not apply to workers employed on an open-ended basis by the agency, who, pursuant to Article 31(1), final sentence, of Legislative Decree No. 81/2015, may be supplied on an open-ended basis (two proceedings concerning this statutory provision are currently pending before the Court of Justice of the European Union following requests for a preliminary ruling by the Court of Reggio Emilia, order 7 January 2024, and by the Court of Milan, order 14 January 2025)".

Pending the ruling of the Court of Justice of the European Union, the Court of Last Resort thus appears to distance itself from certain first-instance decisions which, even within the current legislative framework, have considered themselves empowered to impose a temporal limit also upon staff leasing – notwithstanding the existence of a clear statutory provision permitting the open-ended supply of workers who are themselves employed on an open-ended basis by the agency.

8. A Further Pitfall: the Failure to Assess the 'Specific' Risks of Agency Work

In the meantime, a new judicial front of 'resistance' to agency work – both fixed-term and open-ended – appears to be emerging.

A recent order of the Court of Last Resort (15 December 2025, No. 32659) held that the principle of equal treatment between agency workers and the user undertaking's directly employed staff requires that, "in relation to those same workers, the risk assessment document (DVR) must, in advance – that is, bearing a 'certain date' – identify the specific risks 'connected with the particular contractual arrangement', and must also identify, again in advance and formally within the document, the individual and collective precautionary measures necessary to prevent them, as well as the procedures for their concrete implementation".

According to the Court of Last Resort, this conclusion follows "from the logic of prevention and the aggravation of risk deriving from the 'flexibilisation' of the employment relationship".

Agency workers, it is suggested, should be afforded a (not further specified) heightened level of protection, since "when they begin working for the user undertaking, they become part of a new work organisation to which they are external and often for short and fragmented periods".

The consequence drawn from the failure to assess the risks specific to this contractual form is particularly far-

reaching: breach of the statutory prohibition on recourse to agency work laid down in Article 32 of Legislative Decree No. 81/2015, with the attendant possibility of claiming the establishment of a direct employment relationship with the user undertaking from the outset of the assignment (Article 38(2) of the same provision).

Quite apart from the difficulty of understanding, from the standpoint of risk assessment, the distinction between directly employed workers and agency workers, it is noteworthy that no differentiation is made, in this respect, between fixed-term agency work and staff leasing – for which the reference to "short and fragmented periods" of employment would plainly not apply. In other words, it is unclear what distinguishes, in terms of risk assessment and the related preventive measures, an open-ended agency worker from a newly recruited employee directly engaged by the user undertaking.

Once again, the outcome is to furnish – on the basis of rather tenuous reasoning – fresh ammunition to those who, driven by a preconceived scepticism, seek to challenge agency work itself.

STAFF LEASING AND EMPLOYEE PROTECTION

by Rosario Salimbene

1. Introduction

Open-ended agency work, commonly referred to as staff leasing, periodically returns to the forefront of academic debate, often giving rise to divergent interpretative outcomes. It is therefore necessary to provide some clarification regarding this contractual arrangement. Let us begin by stating what staff leasing is not. It is not an employment relationship. Staff leasing is a commercial contract for the open-ended supply of labour, concluded between two undertakings: an employment agency authorised by the Ministry of Labour ([1]), and a company (the 'user undertaking').

A further point requiring emphasis is that, by law, whenever an agency work arrangement is concluded, the agency recruits and assigns to the user undertaking workers who are themselves employed on an open-ended contract (or under an apprenticeship contract).

It is therefore difficult to speak of 'precariousness' in this context, given the coexistence of two contractual

([1]) The regulatory framework that legitimises the operation of employment agencies in Italy is governed by Art. 4 of Legislative Decree No. 276/2003.

relationships – one commercial and one governed by labour law – both, by definition, open-ended (for the statutory framework, see also the paper by Failla in this volume).

Moreover, staff leasing cannot properly be included among 'precarious' forms of employment, also because of the range of protections and safeguards afforded to the workers involved. These protections are not even found in 'standard' employment relationships, including, in particular, fixed-term contracts and direct open-ended contracts of employment.

It is therefore appropriate to examine these safeguards more closely, distinguishing between protections applicable during the assignment, following the termination of the assignment, and upon termination of the employment relationship itself.

2. Protections During the Assignment

The first guarantees for workers engaged through agency work, including in the context of staff leasing, arise during the assignment, that is, when the worker is actually placed within the user company.

In this context, it is important to recall the principle of the 'dual employer relationship' inherent in agency work. The agency worker has two employers: they are formally employed by the employment agency (the 'formal employer'), but while on assignment they act 'in the

interest of, under the direction and control of' [2] the user company (the 'substantive employer'), exactly like the company's direct employees.

The effective equality between agency workers and direct employees within the same company is further reinforced by another principle that has characterised agency work in Italy since the introduction of 'temporary work' under the Treu Act (Act No. 196/1997): agency workers are entitled to the same economic and regulatory treatment as the direct employees of the user company to which they are assigned, for the same role (the principle of equal treatment) [3].

This represents the first and most important form of protection embedded in agency work: during the assignment, agency workers enjoy the same rights and remuneration as direct employees, with no discrimination based on the type of contract. From this fundamental principle, other protections specific to agency work, including in staff leasing, derive. These may be

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([2]) According to Art. 30(1) of Legislative Decree No. 81/2015: "An agency work contract, whether of indefinite or fixed duration, is a contract under which an authorised agency work provider, pursuant to Legislative Decree No. 276/2003, makes one or more of its employees available to a user undertaking. For the entire duration of the assignment, these employees carry out their activities in the interests of, and under the direction and supervision of, the user".

([3]) Pursuant to Art. 35(1) of Legislative Decree No. 81/2015: "For the entire duration of the assignment with the user undertaking, agency workers are entitled, for equivalent tasks, to terms and conditions of employment – both economic and regulatory – that are no less favourable than those enjoyed by employees of equivalent rank within the user undertaking".

summarised as follows.

Training: Responsibility for the training of agency workers, and for promoting their skills and reskilling, is entrusted to the bilateral fund Forma.Temp, established by law and financed through an additional 4% contribution as required by the legislation [4]. This represents the highest professional training contribution for workers in Europe. Training is, of course, free for workers and is accompanied by a placement obligation regulated by the NCLA, demonstrating both its effectiveness in terms of employment [5] and its core purpose: to train workers according to the concrete needs of companies, so that they can be deployed immediately.

Welfare: In addition to enjoying the same welfare

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[4] Pursuant to Art. 12 of Legislative Decree No. 276/2003: "Entities authorised to provide agency work are also required to contribute to the funds referred to in paragraph 4, in an amount equal to 4 per cent of the remuneration paid to employees engaged under permanent contracts". A similar provision applies with respect to remuneration paid to employees engaged under fixed-term contracts.

[5] See Art. 11 NCLA 2025, according to which "For the purposes of recognising, during reporting, the funding related to the present training activities, an annual average placement rate of at least 35% of the students involved in these activities is required for each agency work provider. Placement is considered achieved in the event of a full-time equivalent agency work assignment lasting at least 10 working days, even if this is composed of multiple assignments, within 180 days from the end of the course. From 1 January 2027, placement will be considered achieved in the event of a full-time equivalent agency work assignment lasting at least 12 working days, even if composed of multiple assignments, within 180 days from the end of the course".

benefits provided by the user company to direct employees, agency workers benefit from a contractual system administered by the bilateral body E.Bi.Temp, offering a range of protections and benefits that are unique in Europe and worldwide ([6]).

Social safety nets: Agency workers are protected in the event of a reduction or suspension of activity at the user company. In particular, the sectoral Bilateral Solidarity Fund provides a Wage Integration Allowance (*assegno di integrazione salariale*) ([7]) equivalent to the amount of the statutory wage guarantee.

Joint liability: The employment agency and the user company are jointly and severally liable to the worker for the payment of wages and the remittance of social security contributions ([8]).

([6]) See Annex – Performance Table, NCLA 2025.

([7]) See Art. 27 of Legislative Decree No. 148/2015, according to which "The funds referred to in paragraph 1 shall guarantee at least one of the following benefits: a) an allowance of the same duration and amount as the wage supplementation allowance referred to in Article 30(1)". According to Art. 10, point 7, NCLA 2025, "The Fund recognises, for employees engaged in agency work, in relation to the causes provided for by the legislation concerning the reduction or suspension of working activity – considered in relation to the user undertaking – as well as in the event of the activation by the same undertaking of any social safety-net instrument for its direct employees, an ordinary allowance equal to the wage supplementation. This benefit is recognised at 80% of the last remuneration received by the employee. The allowance, advanced to the employee by the agency, is fully reimbursed by the Fund".

([8]) According to Art. 35(2) of Legislative Decree No. 81/2015, "The user undertaking is jointly and severally liable with the agency

Guarantee protection: To safeguard the wage and social security entitlements of agency workers, the agency is required, during its first two years of operation, to maintain a cautionary deposit of €350,000, and from the third calendar year onwards, a bank guarantee ([9]).

Preferential credit: In the event of the employment agency's insolvency, agency workers, like direct employees, are entitled to assert preferential claims. This privilege extends to all outstanding remuneration, including severance pay ([10]).

User company crisis: In the event of a crisis at the user

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work provider to pay employees their remuneration and to remit the corresponding social security contributions, without prejudice to the right of recourse against the agency work provider".

([9]) According to Art. 5(2)(c) of Legislative Decree No. 276/2003: "To secure the claims of employed workers and the corresponding social security contributions due to social security institutions, a cash deposit of €350,000 must be placed with a credit institution with its registered office or branch in the national territory or in another Member State of the European Union for the first two years. From the third calendar year onwards, instead of the cash deposit, a bank or insurance guarantee must be provided, in an amount not less than 5 per cent of the turnover, net of value-added tax, achieved in the previous year, and in any event not less than €350,000".

([10]) See Art. 2751-*bis*, No. 1, of the Italian Civil Code, according to which: "General privilege on movable property is granted to claims concerning: 1. Remuneration due, in any form, to employees, and all allowances due as a result of the termination of the employment relationship; as well as the worker's claim for damages arising from the employer's failure to pay mandatory social security and insurance contributions, and the claim for compensation for damage suffered as a result of ineffective, null, or voidable dismissal".

company, the agency worker is still guaranteed remuneration/availability allowances and the continuation of social security contributions by the employment agency.

3. Protections in the event of Termination of Assignment

A further issue requiring careful consideration – and one which has given rise, in both scholarly work and case-law, to interpretations not always closely aligned with the statutory framework – concerns the termination of a commercial staff leasing agreement. The cessation of such an agreement brings the worker's assignment with the user undertaking to an end; however, it cannot, as an immediate consequence, entail the termination of the employment relationship itself and, thus, the dismissal of the worker.

This constitutes a significant distinguishing feature when compared with the 'standard' open-ended employment contract. For example, a business crisis resulting from a reduction in orders, necessitating a downsizing of the workforce, entitles an undertaking to terminate employment relationships in accordance with the procedures prescribed by law.

In the case of a worker supplied under an open-ended agency contract, this cannot occur in the same manner. If, in the example above, the user undertaking terminates its commercial relationship with the agency, this does not legitimise the dismissal of the worker. This is also because the agency has no objective interest in

effecting such dismissal; on the contrary, its aim is to re-assign the worker without delay.

Hence the dual protection afforded to agency workers. First, statutory protection: the worker's assignment may end, but the employment relationship cannot be terminated on that ground alone. Secondly, protection inherent in the tripartite relationship characteristic of agency work – aptly described as a 'win-win' contractual model – where it is in the mutual interest of both the agency and the worker that outplacement occurs as swiftly as possible.

Within this framework operates a system of collectively agreed safeguards applicable exclusively to open-ended agency workers in the event of the termination of an assignment. Where an assignment ceases, an open-ended agency worker – including those engaged under staff leasing arrangements – has access to a protection scheme established by the recently-renewed NCLA ([11]). In particular, the following measures may be identified:

Availability Allowance. Pending reassignment, the open-ended agency worker remains at the disposal of the agency and is legally entitled to receive an availability allowance. Under the applicable collective agreement, this amounts to €1,000 per month for periods not worked ([12]). During such periods, the agency is required

([11]) The renewal of the NCLA was signed on 21 July 2025 by Assolavoro and the most representative trade union organisations.

([12]) According to Art. 34(1) of Legislative Decree No. 81/2015: "In the event of recruitment on an open-ended contract, the employment relationship between the temporary work agency and the

to ensure the maintenance and, where possible, the enhancement of the worker's skills, with a view to facilitating outplacement.

Outplacement Procedure. This is a pathway agreed with both the worker and the trade union, aimed at professional retraining to facilitate outplacement. It entails a training-focused agreement, concluded with the trade union organisations, with a minimum duration of six months. During this period, the worker is entitled to an increased availability allowance of at least €1,150 per month ([13]).

'Basket CV' System. In order further to expand outplacement opportunities, after a maximum of 120 days from the activation of the Outplacement Procedure, the agency enters the details of workers not yet re-assigned

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worker shall be governed by the rules applicable to open-ended employment relationships. The employment contract shall specify the monthly availability allowance, divisible into hourly portions, paid by the agency to the worker for the periods during which he or she remains available pending assignment to a placement, in the amount provided for by the collective agreement applicable to the agency and in any event not less than the amount determined by decree of the Minister of Labour and Social Policies". According to Art. 32 of the NCLA 2025: "Workers engaged under an open-ended employment contract, for periods during which they do not perform their duties with user undertakings, or are not subject to the outplacement procedures referred to in Articles 25 and 25-*ter*, shall remain at the disposal of the Agency and shall be entitled to receive an availability allowance of €1,000 per month, gross of statutory deductions and inclusive of severance pay (TFR), paid directly by the Agency".

([13]) Art. 25 NCLA 2025.

into a bilateral sectoral database known as the 'Basket CV'. This database is accessible to all agencies, which may therefore engage workers who are in availability status. In such cases, both the worker and the engaging agency may benefit from a financial incentive ([14]).

Suitable Assignment Proposal. During the outplacement procedure, the agency must propose assignments that are 'suitable' in relation to the worker's most recent employment ([15]). Suitability is calibrated by reference to the distance from the worker's domicile and to the worker's most recent remuneration.

Geographical Mobility. This measure seeks to facilitate, including through financial support, the outplacement of workers in availability status who accept employment offers at a distance from their home ([16]).

Financial Incentives. Economic benefits, financed through the bilateral system, are provided in order to promote employment continuity and outplacement. In particular, open-ended agency workers are entitled to an incentive of €1,500 in the event of a new assignment of at least twelve months' duration, which may be increased up to a maximum of €3,000.

Finally, a notable innovation introduced by the most recent renewal of the collective agreement is the multiple outplacement procedure. This mechanism is designed, where possible, to manage multiple terminations or

([14]) Art. 25-*bis* NCLA 2025.

([15]) Art. 50 NCLA 2025.

([16]) See Annex – Performance Table NCLA 2025.

non-renewals of assignments involving open-ended agency workers. The procedure lasts seven months, during which the worker receives a monthly allowance of €1,150. The agency and the territorially competent trade union organisations are required to meet, where appropriate, to conclude an agreement concerning training projects aimed at professional retraining, with a view to broadening outplacement opportunities ([17]).

4. Protections Following the Termination of an Open-Ended Employment Relationship

Only upon completion of the procedures outlined above, and in the event that the worker has not been re-assigned, may the agency dismiss the worker on grounds of *objective justification* (*giustificato motivo oggettivo*). It is only at this stage that the general employment protection provided by Italian labour law – applicable to the workforce at large – is implemented.

Nevertheless, even where the employment relationship is terminated, agency workers continue to benefit from additional safeguards as compared with workers engaged under standard employment contracts. In addition to entitlement to unemployment benefit (*Nuova prestazione di Assicurazione Sociale per l'Impiego* (NASpI)), sectoral collective bargaining has introduced supplementary income-support and training measures designed to facilitate the professional requalification of

([17]) See Art. 25-*ter* NCLA 2025.

individuals who have become unemployed. In particular, they can be granted: Income Support Allowance. A one-off payment financed by the Bilateral Solidarity Fund, amounting to € 1,000 ([18]); Targeted Vocational Training Entitlement. Access to structured professional retraining pathways specifically designed for formerly employed agency workers who are unemployed, with the aim of enhancing their employability and supporting reintegration into the labour market ([19]).

5. Conclusion

Staff leasing constitutes an open-ended commercial contract for the professional supply to undertakings of workers themselves employed on an open-ended basis.

It is accompanied by a wide range of protective measures, varying according to the worker's status. During an assignment, a worker engaged under a staff leasing arrangement enjoys the same rights as a directly employed worker of equivalent grade within the user undertaking.

Staff leasing represents the only lawful form of professional supply of labour on an open-ended basis within the Italian legal system.

Workers engaged under staff leasing arrangements cannot be dismissed as an immediate consequence of a 'crisis' affecting the user undertaking. Moreover, compared

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([18]) See Art. 10(6) NCLA 2025.
([19]) See Art. 12 NCLA 2025.

with directly employed workers, staff-leased workers may have greater opportunities to be re-assigned under a standard open-ended employment contract.

The purpose of this contribution has been to reconstruct the dense network of statutory and collectively agreed protections that accompanies staff leasing in Italy. In the author's view, a broader understanding of the legal framework outlined above may help to moderate the debate surrounding a contractual scheme that bears little relation to precarious employment and which, on the contrary, represents one of the most extensively protected legal arrangements within the Italian system – at least for those prepared to engage with the normative framework beyond deeply rooted yet unfounded ideological preconceptions.

Part III
STAFF LEASING: THE INTERNATIONAL AND COMPARATIVE REGULATORY FRAMEWORK

STAFF LEASING IN EUROPE: THE COMPARATIVE PERSPECTIVE

by Francesco Rotondi

1. Staff Leasing and Temporary Agency Work: an Imperfect Dichotomy

Staff leasing – known in Italian as '*affitto di personale*' – emerged in the 1980s in the United States, before spreading in the following decade first to other Common Law countries, and finally, on the threshold of the new millennium, to Central Continental Europe and, to a lesser extent, Southern Europe. In all cases, it developed as a broadly neoliberal response to a specific demand for labour market flexibility among companies.

This specificity becomes evident when we compare staff leasing with another form of employment, known by various terms across different countries but sharing two characteristics: tripartite contractual structure and some form of temporariness (*e.g.*, temporary agency work, *travail temporaire*, *travail intérimaire*, *lavoro interinale*, or *somministrazione di lavoro a tempo determinato*).

This imperfect polarity between staff leasing and temporary agency work – accentuated in Italy by the dichotomy between fixed-term and open-ended contracts within a single legal form of agency work – has generated a mutual attraction, observable to some degree across all European countries and within EU legislation

itself.

Our comparative analysis will focus primarily on three European countries (Spain, France, Germany), with the European Union and Italy serving as points of comparison, at the base and apex of the hierarchy of sources, in order to determine whether, and to what extent, the problem of this 'imperfect polarity' between temporary agency work and staff leasing arises and is addressed in the continent.

This approach aligns with the fundamental canon of comparative law studies, which does not consist in applying the non-existent rules of a non-existent legal system, but rather in comparing the methods and techniques with which different legal systems address similar problems. The problem must therefore be identified before the legal forms and rules themselves.

From this methodological perspective, comparative studies observe that the original contractual structure of temporary agency work has progressively evolved into a highly complex set of relationships, significantly diversified among EU Member States and often far removed from short-term temporary work, approaching the form of staff leasing.

In the original conception of agency work, the relationship is tripartite: the agency holds the employment contract with the worker, the user undertaking benefits from the worker's services, and the supplied worker performs the work. This arrangement was originally designed to meet the temporary and contingent needs of undertakings; therefore, in this model, temporariness

was a substantive element, not merely a formal one. Assignments were brief and non-continuous, and the function of the temporary worker was clearly distinct from that of permanent employees.

This model corresponds to the form closest to fixed-term agency work under Italian law and, according to a school of thought, represents the most authentic form of temporary agency work.

However, the contractual structure of agency work has evolved over time, due to oscillating and diverse interpretations in national and European case-law. Most importantly, in many Member States, the absence of clear criteria on the maximum duration of assignments in Directive 2008/104/EC (see Treu's contribution in this volume) has allowed practices to develop in which temporariness no longer represents a limit.

This gives rise to the aforementioned phenomenon of imperfect polarity, which in practice manifests as prolonged or repeated assignments, and the gradual erosion of the distinction between temporary agency work and long-term employment, resulting in a lasting employment relationship characterised by organisational continuity and the ongoing presence of the agency worker within the undertaking.

The decisive issue concerns the notion of temporariness, which remains ambiguous both at the EU level and within national law. Limiting our investigation to staff leasing, the key questions for comparative legal analysis are twofold: whether staff leasing involves any form of temporariness; and, if it does, whether this

temporariness corresponds to that which, at least in some jurisdictions, case-law attributes to temporary agency work.

Moreover, it is unclear whether temporariness should be understood chronologically or causally – that is, as a necessity for a time limitation, or as a legal prerequisite justifying the contractual arrangement. The European directive on temporary agency work provides no maximum duration nor uniform criteria for determining when an assignment ceases to be temporary. The Court of Justice has further clarified, in the *Daimler* and *LD ALB FILS* rulings, that temporariness concerns the relationship rather than the content of the task. This implies that even a stable or permanent task may be assigned to agency workers, provided the assignment is formally temporary. Consequently, a paradox emerges: formal temporariness in temporary agency work corresponds to substantive temporariness in staff leasing.

The result is that in some European countries, temporary agency work effectively becomes a stable form of outsourced employment; in others, it is staff leasing that converges towards the characteristics of temporary agency work.

2. The Spanish Case

In Spain, temporary agency work is regulated through the system of *Empresas de Trabajo Temporal* (ETTs), *i.e.*, authorised agencies operating in the temporary work sector. This framework is established by Act No.

14/1994 of 1 June, subsequently amended, most recently in 2023.

The legislation provides that the assignment contract concluded between an authorised temporary work agency and the user undertaking aims to place a worker with the latter, who will perform their duties under the direction of the user undertaking.

Temporary work contracts may be concluded between a temporary work agency and the user undertaking under the same circumstances, conditions, and requirements as those governing fixed-term contracts that the client could otherwise conclude, in accordance with Article 15 of the *Estatuto de los Trabajadores* (Workers' Statute).

A point of distinction from the Italian system lies in the impossibility, under Italian law, of concluding a temporary work contract in the context of apprenticeship, due to the inadmissibility of staff leasing.

As in Italy, the temporary work contract may be either fixed-term, corresponding to the duration of the assignment contract, or open-ended.

The law allows the agency to conclude a contract covering multiple successive assignments across different user undertaking, provided these assignments are predetermined at the time of contracting and correspond to a legitimate objective in each case.

The Spanish system broadly mirrors the Italian model of temporary work, but places greater emphasis on the ETT. The agency is not merely an intermediary but a

full employer: in addition to concluding assignment and employment contracts, it manages recruitment, hiring, training, and personnel administration. In practice, this creates a hybrid model of staff provision combined with HR services, akin to arrangements commonly found in the United Kingdom.

The Spanish system is also grounded in alignment between the commercial assignment contract concluded between the ETT and the user undertaking and the productive rationale justifying the placement, which must be reflected in the employment contract between the ETT and the worker.

From these essential observations, it can be concluded that in Spain, the temporary purpose is not merely chronological but constitutes a substantive requirement. The employment contract itself is also substantive, as reflected in the legal requirement that it specifies numerous elements, including the specific reason for temporariness, the precise or estimated duration of the assignment, and remuneration equivalent to the user undertaking's wage schedule (although not imposing joint liability between ETT and client).

As in Italy, the justifications for fixed-term temporary assignments correspond to those for direct fixed-term contracts (recently reformed in Italy in a more liberal direction). Similarly, the temporariness of fixed-term temporary work is causal and justificatory in nature, rather than purely temporal. The system enforces this temporariness with prohibitions on misuse of temporary work, which are no less strict than those in Italy.

In line with the strict causal approach to temporary work and the absence of statutory provisions on staff leasing, Spanish law does not permit unlimited renewals in the absence of a specific and legitimate reason. Consequently, staff leasing is not permitted.

The only form of mediated employment allowed is through ETTs, based on causal temporariness; any continuous or non-causal use of ETTs, even if formally split into temporary assignments, is considered fraudulent and triggers conversion into a permanent contract with the user undertaking.

Similarly to Italy, the principal remedy for substantive or formal defects in the assignment contract is the civil law conversion of the temporary contract into a permanent employment contract with the client.

This approach reflects Spain's long history of prohibiting intermediation, during which the Workers' Statute deemed any delegation of employer authority to an intermediary unlawful. The 1994 legalisation did not remove this caution but structured it within a highly regulated system: the ETT is permitted, but must be authorised, supervised, and strictly delimited. The functioning of ETTs relies on two contracts: the employment contract with the temporary worker, and the assignment contract with the user undertaking, which exercises day-to-day direction of the work. This dual structure is the backbone of the system, separating the formal legal relationship from functional organisational control. The worker is legally dependent on the ETT but operates under the supervision and command of

the user undertaking, which determines working hours, shifts, duties, and operational procedures.

In the Spanish system, the contractual form carries substantive significance. It is not sufficient that the employment contract merely states the justificatory reason; the reason for the assignment must be real, specific, and consistent with the undertaking's productive circumstances. This is crucial: temporariness cannot be a pretext or a generic contractual category. The contract must specify why the assignment is temporary, what needs it addresses, its duration, the duties to be performed, and the associated professional risks. Failure to correspond to these criteria results in immediate conversion of the assignment into a permanent contract with the client, including recognition of seniority and wage differentials. The system also provides a robust framework for equitable remuneration, grounded in the principle of parity and inspired by what is commonly referred to today as dual employment, a key interpretive concept in tripartite employment relationships.

Comparative analysis further shows how legal systems respond differently to fragmentation of employer authority. Continental systems, such as Italy and Spain, tend to regulate temporary work rigidly through formal limits, causal requirements, and ex ante sanctions. The United Kingdom, by contrast, adopts a more contractual approach, leaving courts to determine the actual employer, prioritising substantive over formal criteria. This divergence explains why, in continental systems, requalification is the main corrective mechanism,

whereas in common law systems, disputes focus on identifying the responsible employer based on factual reality.

In conclusion, the Spanish ETT system is highly rigorous and rests on four pillars: strict causality, formal guarantees, substantive limitation of assignments, and automatic conversion as a sanction. Above all, it effectively prevents any form of employment analogous to staff leasing, prohibiting continuity of assignments and penalising any abuse.

3. The French Case

In France, the regulation of temporary agency work is contained in the *Code du travail*, Article L1251-1 ff., pursuant to which *travail temporaire* consists in the temporary assignment of a worker by a temporary work agency (*entreprise de travail temporaire*) to a user undertaking (*entreprise utilisatrice*) for the performance of an assignment of limited duration.

The French system is founded upon a tripartite structure analogous to that provided under Italian law for fixed-term agency work and under Spanish law through the ETT system.

Each assignment entails the conclusion of two distinct contracts: a supply contract (*contrat de mise à disposition*) between the temporary work agency and the user undertaking, and an employment contract (*contrat de mission*) between the temporary work agency and the temporary worker. In the absence of a different provision

in a collective agreement, the duration of the assignment contract may not exceed eighteen months.

This framework seeks to preserve the temporary nature of the employment relationship and to prevent the use of agency work from becoming a form of stable and continuous employment within the user undertaking.

French law also recognises a more recent working scheme, which departs in certain respects from the traditional model of *travail temporaire* and even from standard subordinate employment: *portage salarial.* This arrangement is based on a tripartite relationship involving, on the one hand, a *portage* company, which provides professional services to a user undertaking through a commercial service contract, and, on the other hand, an employment contract between the *portage* company and the 'ported' worker, who is formally employed and remunerated by the *portage* company. The distinctive feature of this model lies in the fact that the worker is 'carried' by the *portage* company rather than selected and assigned by a temporary work agency. The worker must therefore demonstrate qualifications, professional expertise, and a degree of autonomy sufficient to enable them independently to identify user undertakings and negotiate with them the terms and price of the service. The company is not obliged to provide work to the employee.

The hybrid nature of *portage salarial* is evident: it combines characteristics of UK payroll administration companies and Spanish HR service providers, yet remains situated within the broader framework of *travail*

temporaire.

Portage salarial is also subject to a causal requirement: the user undertaking may resort to it only for occasional activities falling outside its normal and permanent business operations, or for one-off services requiring expertise not available internally. It may not be used to replace an employee whose contract is suspended due to a collective labour dispute, nor for particularly hazardous work. The maximum duration of a *portage salarial* arrangement may not exceed thirty-six months.

Turning specifically to the question of temporariness, it must first be observed that the French system recognises both traditional temporary agency work (*travail temporaire*) and a form akin to staff leasing (*contrat d'intérim à durée indéterminée*). However, it is characterised by the decisive relevance – also for classificatory purposes – of the duration of the employment contract rather than that of the *contrat de mise à disposition*.

In France, traditional temporary agency work may be used only for specific needs (replacement of absent employees, peaks in activity, seasonal work) and is subject to strict duration limits. By contrast, the *intérim à durée indéterminée*, introduced between 2013 and 2015, provides for an open-ended employment contract between the agency and the worker. It thereby allows assignments without predetermined overall temporal limits, offering the worker the maximum stability compatible with the intermediary structure of the relationship, and the user undertaking the maximum flexibility compatible with the worker's non-waivable statutory rights.

French law, like Italian law, therefore imposes strict limits on recourse to temporary agency work. At the core of these limits lies the dialectic between temporariness and employment stability, which also affects staff leasing. The principle is causal and justificatory: recourse to this contractual model is permitted only in exhaustively defined cases, all linked to the temporary needs of the user undertaking. Corollaries of this principle include the prohibition on using temporary agency workers to fill permanent posts and the obligation to resort to open-ended contracts (including the *contrat d'intérim à durée indéterminée*) where the need is stable.

The French system thus erects a regulatory barrier preventing undertakings from substituting stable employment with precarious work.

This gives rise to a strict formalism, requiring written form and the inclusion of a number of elements corresponding to essential terms or mandatory obligations, such as the indication of the legitimate ground for recourse to temporary work, a declaration that the hiring of the temporary worker by the user undertaking is not prohibited, and the provision of financial guarantees by the agency.

Consistently with the causal-temporal premise, the French system also provides a stringent system of sanctions, based – similarly to Italy – on requalification (*requalification*) of the relationship.

Requalification may affect all aspects of the temporary agency relationship: it may transform a series of assignments into an open-ended employment contract with

the user undertaking; require payment of wages for periods between assignments; generate entitlement to reinstatement; and impose wage differentials and compensatory damages.

As Italian employers are well aware, this constitutes the most powerful civil sanction conceivable: an undertaking that makes unlawful use of temporary agency work is effectively ‘punished’ by being required to assume precisely what it sought to avoid – namely, a stable employment relationship.

In summary, within the French legal order, *travail intérimaire* represents a rigid model designed to keep agency work distinct from the core workforce; whereas the *travail intérimaire à durée indéterminée* serves to reconcile the intermediary structure of the relationship with employment stability by incorporating open-ended employment within that structure.

It is in light of the foregoing considerations that the meaning and scope of the term ‘temporarily’ must be defined, for it is in this notion that the Court appears to identify the true crux of the case. The question that seems genuinely necessary for the resolution of the main proceedings is whether, in the present circumstances, the assignment of the agency worker may still be regarded as temporary within the meaning of the Directive, or whether, in view of the multiple renewals, it instead amounts to an abusive recourse to successive assignments within the meaning of Article 5(5) of the Directive (which requires Member States to adopt measures to prevent successive assignments designed to

circumvent its provisions).

Since the Directive does not expressly lay down a maximum duration beyond which an assignment can no longer be regarded as temporary, the Court has held that this assessment falls within the exclusive competence of the national court.

4. The German Case

In Germany, the working scheme comparable to open-ended agency work is *Arbeitnehmerüberlassung* (AÜG), that is, the supply of labour through authorised agencies which assign workers to user undertakings.

The matter is governed by the *Gesetz zur Regelung der Arbeitnehmerüberlassung* (Act on the Regulation of Temporary Agency Work), most recently amended by the *Gesetz zur befristeten krisenbedingten Verbesserung der Regelungen für das Kurzarbeitergeld*.

Pursuant to Section 1 of the AÜG, employers who, in their capacity as temporary work agencies, intend to carry out this economic activity must obtain a specific administrative authorisation.

In the German system, causal temporariness and chronological temporariness coexist: the assignment of workers is permitted only on a temporary basis, and in any event within a maximum limit of eighteen consecutive months.

Where that limit is exceeded, the employment contract between the temporary work agency and the worker

becomes ineffective, with the consequence that an employment relationship is deemed to have been established directly between the worker and the user undertaking, with effect from the date on which the assignment commenced.

This effect may be avoided only if the agency worker expressly declares in writing, within one month of the maximum period being exceeded, that they wish to maintain the employment relationship with the temporary work agency.

The German case is particularly significant, however, with regard to the requirement of temporariness. The Court of Justice of the European Union observed that the national legislation implementing Directive 2008/104 had initially provided merely that assignments must be of a 'temporary' nature. Subsequently, the legislator introduced a maximum duration for assignments, while allowing collective agreements to derogate from that limit. The principal question referred by the German court concerned whether an assignment lasting as long as fifty-five months could still be regarded as temporary.

In the Court's view, the concept of temporariness must be interpreted as referring not to the post occupied by the worker within the user undertaking, but rather to the assignment itself, that is, to the duration of the assignment. Since the Directive does not expressly lay down a maximum duration beyond which an assignment can no longer be regarded as temporary, the Court held that it falls within the exclusive competence of the

national court to determine – having regard to the legislative framework and the factual circumstances – whether the provisions of the Directive have been circumvented.

Equally important is the Court's conclusion concerning the reclassification of the relationship. The Court denied that an agency worker assigned for a period which can no longer reasonably be regarded as temporary enjoys a subjective right to the establishment of an employment relationship with the user undertaking. A contrary interpretation, according to the Court, would undermine the discretion afforded to Member States in designing an appropriate national system of sanctions.

5. The Gordian Knot of Staff Leasing

In Italy, staff leasing emerged in the face of strong opposition from trade union and political forces on the left. This explains why Act No. 196/1997, which – by way of derogation from the then prevailing prohibition on the interposition of labour – introduced labour supply, confined itself to permitting only 'temporary' supply, while leaving open-ended labour supply in the limbo of unlawful intermediation until the moderate liberalisation brought about by the Biagi Reform. That liberalisation, however, was accompanied by certain conceptual ambiguities which have marked this working scheme ever since. These concern, respectively, the distinction between fixed-term and open-ended agency work, and the link between the commercial

supply/assignment contract and the employment contract of the agency worker. A number of major European legal systems have been examined in order to assess whether Italy is aligned or misaligned on this point – at times with EU law itself, at times with other Member States.

As regards the distinction between fixed-term and open-ended supply, despite the literal wording of the statute, it was never truly based on the mere duration of the commercial contract. Rather, it turned on the causal justification of fixed-term agency work: causation understood, as in fixed-term contracts generally, as the temporary nature of the undertaking's productive needs. In the French case, the relevant factor was instead the open-ended nature of the agency worker's employment contract.

In short, as emerges from the comparative overview outlined above, staff leasing differed conceptually from temporary agency work in that the latter was justified by causality – namely, the need to satisfy the temporary requirements of the user undertaking – whereas staff leasing was, and has always been, a-causal, and historically confined to marginal productive sectors (at least from the Biagi Reform until the Jobs Act).

This conceptualisation of agency work ought to have suggested a clear separation between the supply contract and the agency worker's employment contract. Instead, the legislator established a continuing link between the commercial supply/assignment contract and the employment contract. One may recall, for instance,

the provision that “only workers employed by the agency on an open-ended contract may be supplied on an open-ended basis”. It is not readily apparent why an agency should not be permitted to undertake, on an open-ended basis, to supply to a user undertaking workers engaged on fixed-term contracts, provided that each individual assignment satisfies the requirement of temporariness.

The framing of agency work in terms of staff leasing has generated lively debate, and over the past fifteen years this form of employment has been subject to more than one legislative ‘reconsideration’.

The most significant ambiguity, however, is the one which prompted the Court of Reggio Emilia to refer to the Court of Justice a preliminary question concerning Italian legislation on agency work, in so far as it permits – or does not prohibit – the possibility that a worker employed on an open-ended contract by a temporary work agency may be assigned on a likewise open-ended or structurally non-temporary basis to the same user undertaking.

In reality, Directive 2008/104/EC provides that temporary agency work must be temporary; it does not require that staff leasing be temporary. The requirement of temporariness is not referable to staff leasing as such.

That conclusion was recently reaffirmed by the Court of Bari in relation to alleged abuse of fixed-term contracts in temporary agency work and the purported abuse of assignments under staff leasing. In the model of open-ended agency work, there is no circumvention

of protective standards: on the contrary, the employment relationship is reinforced by the stability of the open-ended contract, the availability allowance, and the outplacement opportunities offered.

In conclusion – and once again highlighting the interpretative entanglement surrounding open-ended agency work – the latent ambiguity of the current framework suggests caution in advancing legislative reform proposals. It would be prudent, at the very least, to await the judgment of the Court of Justice.

Nevertheless, it is worth recalling a proposal advanced and approved in March 2005 by Armando Tursi within the Study Commission for the Drafting of a Workers' Statute, established in March 2004 at the initiative of the Ministry of Labour and chaired by Michele Tiraboschi. The proposal stated: "The distinction between fixed-term and open-ended agency work is equivocal: whether the supply contract is fixed-term or open-ended is of little or no significance. Nor can the distinction concern the duration of the employment contract, which ought to be capable of being either fixed-term or open-ended irrespective of the duration of the supply contract. If the intention had been to introduce staff leasing, it would have sufficed to empower collective agreements to remove the requirement of temporary productive needs, in exchange for a quantitative limitation clause. Beyond the theoretical issue, however, a necessary corrective measure would be to provide that

the open-ended or indefinitely repeated assignment of the same worker to the same undertaking should not be permitted".

DIRECTIVE 2008/104/EC

by Tiziano Treu

1. The Background

Directive 2008/104/EC of 19 November 2008 constitutes the regulatory source governing temporary agency work in the European Union.

The lengthy and complex drafting process of the text reflects the distrust with which labour intermediation has traditionally been regarded under international law and in many countries, not only within Europe.

Such an assessment was grounded in the fundamental ILO principle that "labour is not a commodity", and in the long-standing view, present in many legal systems, that the separation between the formal employer and the user undertaking of the worker's services was both unacceptable and potentially dangerous.

The original prohibition of employment agencies, established by ILO Convention No. 34 of 1933, was mitigated by Convention No. 96 of 1 July 1949, which subjected the operation of such agencies to a licensing requirement. It was subsequently superseded by Convention No. 181 of 19 June 1997, which recognised the freedom of national States to determine the legal status of private employment agencies, while laying down specific guidelines for the protection of agency workers.

Notwithstanding this recognition, and despite the early development of temporary agency work in the United States, this form of mediated employment was slow to establish itself in Europe. In several Member States it remained prohibited until relatively recently, including Spain, which recognised its admissibility in 1994, and Italy, which regulated it only in 1997.

The difficulty in introducing a European framework for this working scheme stemmed not only from ideological divergences among the social partners, but also from the considerable diversity of national regulatory models, which extended to the very classification of temporary agency work itself (as recalled in Recital 10 of Directive 2008/104/EC).

These obstacles also hindered attempts within the framework of European social dialogue, which took considerable time to reach a common position. This was despite the fact that the European Commission had already submitted a proposal in 2002 and that the Kok Report on the Lisbon Strategy (2003) had reiterated the usefulness of employment agencies as new intermediaries capable of supporting flexibility and mobility for both undertakings and workers, while simultaneously offering workers security.

It was not until 2008 that a joint declaration (28 May) was adopted by the leading European social partner organisations, Eurociett and UNI Europa. In that declaration, the parties mutually acknowledged the positive role that temporary agency work could play in the implementation of active labour market policies and

reaffirmed the need to remove restrictions imposed on this form of employment.

This declaration paved the way for the political agreement reached by the EU Employment Council on 10 June 2008 concerning the regulation of temporary agency work. That agreement laid down the fundamental principles of the Directive, which was subsequently adopted by the European Parliament on 19 November 2008.

2. Analysis of Directive 2008/104/EC

Directive 2008/104/EC, adopted on the basis of Article 153(2) TFEU, does not endorse any of the different structural models of temporary agency work existing within the legislation of the Member States, notably the German and the French models.

It does not, in particular, reproduce the definition of temporary agency work contained in Directive 91/383/EEC on fixed-term employment, which defines it as the "relationship between a temporary work agency, which is the employer, and the worker, where the latter is assigned to work for and under the control of a user undertaking and/or establishment".

That definition explicitly refers to the tripartite nature of the temporary agency employment relationship – a feature also present in Italian legislation – while making no reference to the temporary character of the assignment, which is instead inferred from the subject matter of the Directive on fixed-term employment.

Rather than selecting a particular structural model, the European legislator was primarily concerned with affording workers engaged in this form of employment a set of fundamental safeguards.

In this respect, it drew upon the principles set out in the above-mentioned joint declaration of the European social partners of 10 June 2008, beginning with the principle of equal treatment between temporary agency workers and workers directly employed by the user undertaking (albeit subject to significant exceptions, as will be examined below).

3. Scope and Objectives (Articles 1 and 2)

Article 1 provides that the Directive applies to workers who have an employment relationship with a temporary work agency and who are assigned to user undertakings in order to work temporarily under their supervision and direction (see also the paper by Failla and Falasca in this volume).

Thus, although it does not formally characterise the two contractual relationships involved, the provision effectively confirms the triangular structure already identified in Directive 91/383/EEC, while making explicit reference to the temporary duration of the work.

Particularly significant is § 3, which states that, following consultation with the social partners, the Directive does not apply to employment relationships of a specific training nature. This clarification is intended to prevent the educational objectives of such

arrangements from being undermined by the temporary character of the assignment and by the triangular structure of the relationship itself.

The temporary nature of agency work is already emphasised in Article 1 (see also the paper by Paternò), and is reiterated in the definitions set out in Article 3.

Article 3(1)(c) specifies that a ‘temporary agency worker’ is a worker who concludes a contract of employment or enters into an employment relationship with a temporary work agency in order to be assigned to a user undertaking to work temporarily under its supervision and direction.

Correspondingly, an ‘assignment’ is defined in Article 3(1)(e) as the period during which the temporary agency worker is placed at the disposal of a user undertaking in order to work temporarily under its supervision and direction.

It has been observed that the Court of Justice of the European Union has adopted a broad interpretation of the Directive’s scope, considering as a temporary agency worker even a member of an association assigned to a user undertaking, irrespective of the legal classification of the employment relationship under national law and of the legal nature of the link between the individual and the association.

Article 2 reiterates the objectives of the Directive, repeatedly highlighted during the preparatory debates, including those concerning flexicurity, which has often been invoked in connection with this form of

employment.

The provision clarifies that the Directive aims to ensure the protection of workers and to improve the quality of temporary agency work by guaranteeing compliance with the principle of equal treatment laid down in Article 5, while recognising temporary work agencies as employers. At the same time, it takes into account the need to establish an appropriate framework governing recourse to such work, in order to contribute to job creation and to the development of flexible forms of employment.

In regulating this form of temporary work, Recital 15 – echoing a formula already used in the Directive on fixed-term work – reiterates that contracts of employment of indefinite duration constitute the general form of employment relationship.

The preference for stable employment is further confirmed by the right of temporary agency workers to be informed of vacancies within the user undertaking, so that they may apply, on equal terms with the undertaking's own employees, for permanent posts (Article 6(1)). It is also reflected in the prohibition of clauses which either prohibit or have the effect of preventing the conclusion of a contract of employment between the user undertaking and the temporary agency worker at the end of the assignment (Article 6(2)).

4. Prohibitions and Restrictions

Article 4, echoing themes that had already emerged

during the debates preceding the Directive's adoption, provides that prohibitions and restrictions on temporary agency work are justified only on grounds of general interest, in particular the protection of workers, health and safety requirements, the need to ensure the proper functioning of the labour market, and the prevention of abuses.

To that end, the provision required Member States, following consultation with the social partners, to review by 5 December 2011 the restrictions and prohibitions laid down in national legislation and collective agreements, in order to assess their compatibility with the criteria set out in Article 4 itself.

Nevertheless, Article 4(4) makes clear that "national requirements relating to registration, authorisation, certification, financial guarantees or monitoring of temporary work agencies" remain unaffected. Likewise unaffected are "national legislation or practices prohibiting the replacement of workers who are on strike by temporary agency workers".

The Court of Justice of the European Union has had occasion to clarify the addressees of the obligation laid down in Article 4. In its judgment of 17 March 2015, Case C-533/13, *AKT*, the Court held that the provision is addressed solely to the Member States, requiring them to review their domestic legislation. It does not confer upon national courts the power to disapply national rules imposing restrictions or prohibitions that are not justified by reasons of general interest.

In fact, the Italian legal system, like others, had already

undertaken a review of the restrictions contained in the original legislation on temporary agency work (Act No. 196/1997), thereby anticipating, to some extent, the re-assessment later required under Article 4 of the Directive.

5. The Principle of Equal Treatment

Article 5 enshrines the principle – central to the Directive – of equal treatment for temporary agency workers. It provides that such workers must enjoy basic working and employment conditions at least equivalent to those which would apply if they had been recruited directly by the user undertaking to perform the same job.

The concept of 'basic working and employment conditions' is defined in Article 3(1)(f), which includes those laid down by legislation or collective agreements in force within the user undertaking concerning: (a) working time and overtime, breaks, rest periods, night work, annual leave and public holidays; (b) pay, the definition of which is left to national legal systems.

The Court of Justice of the European Union clarified in its judgment of 12 May 2022, Case C-426/20, *Luso Temp*, that the number of days of annual leave – together with the corresponding allowance in lieu where leave has not been taken – forms part of the basic working conditions and must therefore be at least identical to those granted by the user undertaking to its own employees.

With regard to health and safety, the Directive refers to the rules laid down in Directive 91/383/EEC.

The principle of equal pay with employees of the user undertaking – to be assessed by reference to equivalent qualifications and job positions – is of particular significance. However, it has not been recognised in identical terms across all Member States.

In any event, the principle must be applied in compliance with rules protecting pregnant workers, children and young persons, as well as with prohibitions of discrimination. Furthermore, unless objective reasons justify different treatment, it must be extended to cover access by temporary agency workers to collective facilities and amenities, such as canteen services, childcare facilities and transport services (Article 6(4)).

As regards collective rights, the Directive confines itself to providing that temporary agency workers are to be counted either within the workforce of the temporary work agency or, alternatively, of the user undertaking, for the purposes of the workforce thresholds established under national law for the creation of workers' representative bodies (Article 7).

Moreover, Article 8 requires the user undertaking to provide appropriate information on its use of temporary agency workers when presenting data on its employment situation to workers' representatives.

Finally, Article 6(5) calls upon Member States to adopt appropriate measures or to promote dialogue between the social partners in order to improve temporary

agency workers' access to training opportunities and to childcare facilities, including during the intervals between assignments, as well as more generally to the training opportunities available to workers employed by user undertakings.

6. Derogations and Limitations to Equal Treatment

The principle of equal treatment for temporary agency workers is subject to a number of limitations, framed in terms that leave room for potentially wide-ranging derogations.

A specific derogation concerns the particular situation of agency workers employed on a contract of indefinite duration by the temporary work agency who "continue to be paid in the period between assignments" (Article 5(2)).

This scenario occurs frequently in Italy, as it relates to a relatively widespread contractual arrangement, which may be justified precisely in light of the enhanced protection afforded to such workers.

More generally, in Member States where there is no system ensuring the *erga omnes* effect of collective agreements, the Directive allows States to entrust the social partners with the option of maintaining or concluding collective agreements that provide for alternative arrangements concerning working and employment conditions, provided that the overall protection of temporary agency workers is respected (Article 5(3)(4)).

Similarly, Member States may derogate from the principle of equal treatment, for example by establishing a 'qualifying period' before entitlement to equal treatment arises, subject always to the requirement that temporary agency workers are guaranteed an adequate level of protection.

The conditions accompanying both forms of derogation are framed in rather indeterminate terms, thereby giving rise to serious doubts as to their effectiveness in safeguarding temporary agency workers against a deterioration in their working conditions and treatment.

The inclusion of these derogations reflects the difficult compromises that were necessary in order to secure acceptance of the principle of equal treatment within the regulation of temporary agency work, particularly on the part of certain Member States.

However, the case-law of the Court of Justice of the European Union has strengthened the protective framework established by the Directive. In its judgment of 14 October 2020, Case C-681/18, *JH*, the Court interpreted Article 5(5) as imposing two distinct obligations upon Member States. First, they must adopt the necessary measures to prevent abusive recourse to the derogations from equal treatment authorised under Article 5. Secondly, they must prevent successive assignments designed to circumvent the provisions of the Directive as a whole, thereby requiring States to adopt measures capable of "preserving the temporary nature of temporary agency work".

Within the Italian legal system, the equal treatment

principle was enshrined from the outset in the original legislation on temporary agency work (Act No. 196/1997) and did not encounter resistance, at least not explicitly.

Moreover, it does not appear that collective bargaining has made use of the possibilities for derogation provided by the Directive. On the contrary, the representative organisations of temporary agency workers and of temporary work agencies have, over time, developed forms of protection exceeding those required by statute.

In particular, collective agreement renewals in recent years have introduced innovative welfare measures and fringe benefits, significantly improving the overall conditions of temporary agency workers.

DIRECTIVE 2008/104/EC AND THE CASE-LAW OF THE COURT OF JUSTICE

by Roberto Romei

1. The Objectives of Directive 2008/104/EC

Since its entry into force in the latter half of the 1990s, temporary agency work (then referred to as 'temporary work') has been characterised by a dual nature: on the one hand, the promotion of a degree of flexibility in the utilisation of labour; on the other, its function as an active labour market policy instrument capable of triggering mechanisms for job creation.

The breach in the wall of the prohibition on labour intermediation, as Pietro Ichino famously observed, was made possible by the stringent framework devised by the legislator. This framework operated on a dual level: first, by subjecting temporary work agencies to a system of authorisations and controls; and secondly, by establishing a set of safeguards designed to ensure that the dissociation between the formal employer and the entity benefiting from the worker's services would not result in an evasion of worker protections.

The Court of Justice had, moreover, already addressed the issue of the State monopoly over employment placement services, censuring the prohibition – then in force in the legislation of certain Member States

(including Italy and Germany) – on the involvement of private operators (*Job Centre II*, judgment of 11 December 1997).

This dual nature of temporary agency work finds full confirmation in Directive 2008/104/EC (see the paper by Treu in this volume), whose objective, as stated in Article 2, is to "ensure the protection of temporary agency workers", to improve the quality of agency work, and to contribute to the creation of jobs and to the development of flexible forms of work.

The distinct role attributed by the European legislator to temporary agency work as an instrument for the promotion of employment – when compared with the fixed-term employment contract – is evident. The regulatory framework governing fixed-term contracts has not been regarded as applicable to temporary agency work (see, among many judgments, *Della Rocca*, judgment of 11 April 2013).

Unlike the directive concerning fixed-term contracts, the objective of Directive 2008/104/EC is not merely – or not primarily – to prevent abuse. Rather, it seeks to establish a framework of protection for temporary agency workers *vis-à-vis* employees directly engaged by the user undertaking.

Consistently with the aims of the flexicurity policy approach, the Directive therefore seeks to support temporary agency work as a flexible form of employment capable of contributing to job creation. The intention is not to hinder agency work but, rather, subject to the assurance of certain guarantees, to promote its use.

Accordingly, Article 4(1) provides that prohibitions or restrictions on the use of temporary agency work are justified "only on grounds of general interest", namely the protection of workers, health and safety requirements, the need to ensure the proper functioning of the labour market, and the prevention of abuses.

It should be emphasised that, according to the Court of Justice (judgment of 15 March 2015, *Shell Aviation*), Article 4(1) of the Directive is addressed solely to the Member States, requiring them to review, by 5 December 2011, any prohibitions or restrictions laid down in national legislation in order to assess their compatibility with the principle set out therein. It does not, however, impose upon national courts an obligation to disapply domestic provisions providing for restrictions or prohibitions that may be regarded as inconsistent with Article 4(1) of the Directive.

2. Temporary Agency Work

A recent application of this principle may be found in the judgment of the Court of Justice of 24 October 2024 (*Microsoft Iberica*). The case concerned a worker employed by a consultancy undertaking who had been assigned by that undertaking to carry out marketing activities for a third company.

The worker maintained that the situation in question constituted temporary agency work, notwithstanding the fact that the consultancy undertaking did not possess the authorisation required under Spanish law for

temporary work agencies.

The Court held that, in accordance with Article 3(b) of Directive 2008/104/EC, the status of temporary work agency must be attributed to "any natural or legal person who, in accordance with national law, concludes employment contracts or establishes employment relationships with temporary agency workers with a view to assigning them to user undertakings to work temporarily under their supervision and direction".

It follows that the possession of a specific administrative authorisation is not a necessary condition. The objective of the Directive is to establish a protective framework for workers that is non-discriminatory, transparent and proportionate, and that respects the principle of equal treatment. To confine the scope of application of the Directive solely to situations in which the undertaking assigning the worker holds the requisite authorisation would jeopardise the attainment of those objectives and, consequently, undermine worker protection.

The judgment is also noteworthy for the definition it provides of a 'user undertaking'. Such status cannot be attributed to an undertaking that merely issues general instructions to the worker. Rather, it is necessary that the undertaking "exercise powers of supervision and direction over the temporary agency worker. In that capacity, it may require compliance with internal rules and working methods and may also supervise and monitor the manner in which the worker performs his or her duties".

The ruling is consistent with earlier case-law (see, *inter alia*, *LM*; *Eige*; *Rhurlandklinik*), and in particular with the judgment delivered approximately one year earlier in *ALB FILS*. In that case, the Court addressed a similar situation in which a worker, employed by one undertaking, had been permanently assigned to a third undertaking.

On that occasion, the Court excluded the applicability of Directive 2008/104/EC, while making a number of significant observations. It clarified that the Directive applies only to "workers who have an employment contract or employment relationship with a temporary work agency and who are assigned to user undertakings to work temporarily under their supervision and direction" (§ 40), since the relationship with the user undertaking must necessarily be temporary in nature (§ 42).

The Court concluded that "an employment relationship such as that at issue in the main proceedings cannot fall within the scope of Directive 2008/104, since, first, ALB FILS Kliniken had no intention of making LD available to a user undertaking and, secondly, the assignment in question was not temporary in character" (§ 48). The Directive, by contrast, concerns only relationships that are temporary in nature (§ 49).

This statement is of considerable importance, since it may be inferred from it that staff leasing arrangements – given their character as open-ended employment relationships – fall outside the scope of application of the Directive.

3. The Principle of Equal Treatment

Among the instruments designed to safeguard temporary agency workers, the principle of equal treatment plays a central role. Under this principle, temporary agency workers are entitled, for the entire duration of their assignment, to conditions "at least equivalent to those which would apply if they were recruited directly by the user undertaking to perform the same job" (Article 5(1) of Directive 2008/104/EC).

Similarly, Article 6(4) guarantees temporary agency workers access to "collective facilities and amenities", in particular "canteen services, childcare facilities, and transport services". Both provisions aim to ensure that the recourse to temporary agency work is not motivated solely by cost-containment objectives, thereby guaranteeing that temporary workers receive treatment broadly comparable to that of the user undertaking's employees. The Directive, however, provides for two exceptions: (a) collective agreement exceptions – Member States may introduce derogations from the principle of equal treatment, provided these are negotiated with the social partners and do not compromise the adequate protection of agency workers; (b) open-ended contracts – where workers are employed by the agency under permanent contracts, they are normally ensured continuity of income during periods between assignments, thus providing a justification for differentiated arrangements.

The principle of equal treatment has been interpreted broadly, encompassing not only pay but also the overall

regulatory framework governing the employment relationship, including "working time, overtime, breaks, rest periods, night work, annual leave, and public holidays" (*Time Partner*, judgment of 15 December 2022, § 32).

In assessing the conformity of German law – which allowed collective bargaining agreements to provide for less favourable conditions for agency workers than for directly employed staff – the Court distinguished between permanent and fixed-term agency workers: (a) permanent agency workers – Article 5(2) allows Member States, following consultation with social partners, to derogate on pay conditions; (b) fixed-term agency workers – since they are not typically paid between assignments, Member States may set their remuneration at a lower level than that of directly employed staff, provided collective agreements confer "a substantial compensatory advantage […] in terms of basic working and employment conditions sufficient to offset the difference in treatment" (§ 42).

In short, the remuneration of agency workers may be lower than that of directly employed staff, provided adequate compensations are ensured in other employment conditions.

A slightly stricter approach is evident in an earlier ruling (*Luso Temp*, judgment of 24 October 2022), which held that Article 3(1)(f) "precludes national legislation under which the entitlement of agency workers to payment for unused annual leave and corresponding holiday pay upon termination of their assignment is lower than that

of directly employed workers performing the same work for the same duration".

4. The Requirement of Temporariness and Staff Leasing

Legislative Decree No. 87/2018 has ensured the conformity of Italian legislation on temporary agency work with the provisions of Directive 2008/104/EC, anchoring its duration to a maximum limit of 24 months.

This limit, following the emergency legislation of the post-Covid period – which had removed any temporal restriction on fixed-term agency work provided that the worker was employed on a permanent contract – must, in the wake of Act No. 203/2024, be considered always applicable in all cases where the worker is assigned on a fixed-term basis to the user undertaking, regardless of the nature – fixed-term or permanent – of the contract between the worker and the agency.

The temporary nature of agency work, and, where applicable, its maximum duration (see also the paper by Paternò in this volume), represent matters on which the Court of Justice, after years of relative silence, has intervened with two recent judgments (*KG*, 14 October 2020, and *Daimler*, 17 March 2022). These judgments have prompted domestic case-law, albeit with some dissenting opinions, to argue the incompatibility of staff leasing – that is, the assignment of a worker to a user undertaking on a permanent basis – with the principle of temporariness of the assignment derived from the Directive and the Court's case-law. Three rulings from

the Courts of Reggio Emilia, Milan and Modena have referred the matter to the Court of Justice (see the paper by Bottini in this volume).

The two recent judgments concern solely the case of 'excessive repetition' of assignments, an eventuality which, by definition, is excluded in the case of staff leasing.

In the first of the two cited judgments, at § 62, the Court clarifies that the "Directive concerns temporary, transitory or limited-duration employment relationships, and not permanent employment relationships", thus resolving any doubts regarding its scope of application.

The same clarification is found in another judgment, of 22 June 2023 (*ALB FILS*), in which the Court excluded the applicability of the Directive to a case of unlimited-duration assignment of a worker to an undertaking other than the employer of record.

The *KG* and *Daimler* judgments specify that the employment relationship with a user undertaking has "by its nature, a temporary character", although this does not mean that the Directive requires Member States to identify "the cases justifying recourse" to agency work (*AKT*, 17 March 2015), but only that they, in applying Article 5(5), "adopt the necessary measures […] to prevent successive assignments aimed at circumventing the provisions of the Directive".

It follows – and this is an important clarification – that "a temporary worker may be assigned to a user undertaking to cover, temporarily, a post of a permanent nature, which he or she could continue to occupy on a

permanent basis".

At the same time, both judgments specify that the duration of the assignment, pursuant to Article 1(1) of the Directive, "must necessarily have a temporary character", that is, it must be "limited in time", with the judge, in the absence of applicable national legislation, being responsible for defining the duration "in light of all relevant circumstances, including, in particular, the specific characteristics of the sector" (*Andersen*, 18 December 2008).

The reference to sector-specific characteristics can be interpreted as a reference to provisions in collective agreements regarding the duration of agency assignments, not only as recognition of conformity with Article 19(2) of Legislative Decree No. 81/2015 (also applicable to temporary agency work), which allows collective agreements to modify, including by extending, the 24-month maximum duration for fixed-term assignments. It is also an invitation to national judges, when called upon to assess the existence of the temporariness requirement, to consider the applicable collective bargaining provisions.

Temporariness, therefore, constitutes a necessary characteristic of temporary agency work, but it concerns only the duration of the assignment, not the nature of the need being met, which may be permanent.

In other words, the two judgments consider only fixed-term agency work, prescribing that its duration must not exceed what can reasonably be considered temporary.

Neither judgment addresses the question of the compatibility of staff leasing with the Directive, although they acknowledge that a permanent need may be met through fixed-term agency work. The Directive intervenes solely on the duration of the assignment, which, as the judgments clarify, must not exceed the limits of temporariness.

This means that the Directive does not refer to staff leasing and does not establish a principle that agency work must necessarily and exclusively have a temporary duration, nor that such temporariness extends to the commercial assignment contract between the user undertaking and the agency.

While the Court, already in *KG*, stated that the Directive requires Member States to "ensure that temporary agency work at the same user undertaking does not become a permanent situation for a temporary agency worker", this statement was made in the context of a referral concerning the existence of limits to repeated fixed-term assignments.

The Directive, and only in this regard, to which the Court has always referred, concerns fixed-term assignments. Only in Article 5(2) does the Directive refer to permanent employment, to allow derogations from the principle of equal treatment, as noted above.

The EU legislator appears to have made a deliberate abstentionist choice, neither prohibiting nor requiring Member States to regulate permanent agency assignments, leaving staff leasing to the discretionary regulation of individual Member States.

This approach is consistent with the fact that, at the time of the Directive's adoption, some Member States (*e.g.*, the United Kingdom) allowed the assignment of a worker on a permanent basis.

The objective of preventing abuse by limiting successive assignments beyond what can reasonably be considered temporary is, by definition, irrelevant to staff leasing, which presupposes the permanent employment of the worker and permanent assignment to the user undertaking.

Article 9 of the Directive preserves Member States' right to introduce more favourable provisions for workers. In Italy, these include staff leasing, which is subject to the same rules as temporary work, with the distinction that the worker is employed on a permanent contract.

If the Directive aims to give priority to permanent employment, the permanent assignment of a permanently employed worker to a user undertaking already fully satisfies that objective.

Furthermore, Article 2(1) identifies the creation of jobs and the development of flexible forms of work as objectives of the Directive. Staff leasing meets both criteria, being objectively a more flexible form of employment than ordinary employment and, according to recent empirical studies, within three months, 64.4% of workers employed under staff leasing contracts have entered into direct permanent contracts.

An opposite interpretation would require that all agency

work necessarily meets the temporariness requirement. No provision of the Directive supports such a principle.

Article 1 of the Directive clearly specifies that it applies to temporary agency work, in which workers are assigned 'temporarily' to another employer, to prevent (Article 5(5)) abusive use, and in particular to prevent "successive assignments aimed at circumventing" the Directive.

Article 4(1) allows prohibitions or restrictions on agency work only if justified by "grounds of general interest".

From all these perspectives, staff leasing falls outside the scope of the Directive: because the worker is clearly employed and assigned on a permanent basis, making temporary assignments impossible; because Italian legislation is fully consistent with the protective provisions of the Directive; because staff leasing workers are subject to the same protective rules, particularly regarding the principle of equal treatment; because the Italian legislator has not used the option, recognised by the Directive (Recital 15 and Article 5(2)), to introduce a derogatory regime for permanent contracts; because staff leasing workers enjoy strong protection upon termination of employment, avoiding the precarity faced by their fixed-term counterparts.

Under Italian law, the termination of the commercial assignment contract does not automatically terminate the worker's employment with the agency, which is instead obliged to initiate an outplacement process aimed

at finding alternative employment; only if this process fails can dismissal be justified.

THE CLASSIFICATION OF STAFF LEASING WITHIN THE SCOPE OF DIRECTIVE 2008/104/EC: EXCLUSION

by Luca Failla e Giampiero Falasca

1. The Interpretative Issue: Staff Leasing and the Scope of the Directive

The European regulation of temporary agency work is now defined, almost exclusively, by Directive 2008/104/EC (see the paper by Treu in this volume). Around this working scheme, a sort of 'minimum constitution' for agency work has been constructed over the years within the European Union, designed to harmonise, from a protective standpoint, the various national traditions.

From the outset, however, the Directive was conceived with a specific model in mind: that of agency work characterised by the temporary nature of the assignment to the user undertaking.

In Italy, as is well known, the regulation of agency work has developed in a distinctive manner. Alongside the traditional fixed-term form – compatible with both a fixed-term and an open-ended contract of employment between the agency (hereinafter also 'employment agency') and the worker – there soon emerged the open-ended form of agency work, known as staff leasing. This arrangement requires, as an essential

precondition, that the worker be employed on an open-ended contract by the agency and assigned to a user undertaking under a mission likewise intended to be of indefinite duration.

This model, introduced by Legislative Decree No. 276/2003 and currently governed by Article 30 ff. of Legislative Decree No. 81/2015, has become in many sectors a key component of corporate employment strategies, representing a form of 'guaranteed' flexibility. Such flexibility is underpinned by the existence, upstream, of an open-ended employment relationship with the agency, capable of pursuing the objective of employment stability for the agency worker.

Hence the question arises: does a form of agency work which, by definition, is not temporary and is necessarily based on an open-ended employment contract fall within the scope of Directive 2008/104/EC – with the protective limits it establishes in favour of temporary agency workers – or is it inherently excluded from that scope because it lacks the defining characteristics of 'temporary' agency work, which as such is considered susceptible to abuse?

The answer is not merely of theoretical interest. It determines, in principle, whether the Italian legislator would be required to amend its regulatory framework on agency work by reshaping staff leasing in accordance with the European model, together with all the constraints and limitations that this would entail.

An analysis of positive law, both at European and domestic level, indicates that the Directive governs only

agency work in which the assignment to the user undertaking is temporary, transitional, and limited in duration – that is, non-permanent. Staff leasing, by contrast, is structured around an assignment of indefinite duration and rests on the indispensable premise – unlike fixed-term agency work – of an open-ended employment relationship with the agency. It therefore lies outside the perimeter delineated by the European legislator.

As will be shown, this exclusion is not merely the result of a national legislative policy choice; rather, it derives directly from the logical and legal structure of the Directive itself.

2. Objectives and Structure of Directive 2008/104/EC

In order to understand the scope of the Directive, one must begin with its declared objectives, namely the pursuit of a balance between flexibility and employment security – the flexicurity model.

Article 2 provides that the Directive aims to "ensure the protection of temporary agency workers and to improve the quality of temporary agency work by ensuring that the principle of equal treatment is applied", while at the same time contributing "to the proper functioning of the labour market and to flexible forms of work".

The Directive thus represents a compromise between two requirements that are only apparently opposed: on the one hand, the protection of a category of workers potentially exposed to forms of exploitation; on the

other, enabling undertakings to make use of a flexible instrument capable of fostering employment.

This logic of compromise is clearly reflected in the recitals. Recital 9 acknowledges the need for "new forms of organisation of work and greater differentiation in contracts of employment" in order to allow undertakings to adapt to changes in the market, while Recital 11 emphasises the importance of reconciling working and private life, including through flexible working arrangements.

Recital 15 adds a decisive element, stating that "open-ended contracts of employment should be the general form of employment relationship" and that, where workers are bound to the agency by an open-ended contract, the Directive allows certain derogations precisely in view of the 'particular protection' afforded by such contracts.

The general principle set out in Recital 15 is given concrete expression in Article 5 of the Directive. This provision expressly establishes the principle of equal treatment, whereby "the basic working and employment conditions of temporary agency workers shall be at least those that would apply if they had been recruited directly by that undertaking to occupy the same job". However, a derogation is permitted "where temporary agency workers who have a permanent contract of employment with a temporary-work agency continue to be paid in the time between assignments".

It is important to note that, whenever the European legislator refers to an open-ended contract, it does so

exclusively in relation to the employment relationship between the worker and the agency, and never in relation to the assignment with the user undertaking.

The paradigm underlying the Directive is therefore clear: the worker may be stably employed by the agency, while the element of flexibility – and potential precariousness – lies in the temporary assignment to user undertakings. It is in this context, and not elsewhere, that the Directive intervenes in order to prevent abuse.

Consistently with this approach, Article 4 permits Member States to maintain or introduce "prohibitions or restrictions on the use of temporary agency work" only where such measures are justified "on grounds of general interest relating in particular to the protection of temporary agency workers, the requirements of health and safety at work or the need to ensure that the labour market functions properly and abuses are prevented".

The core of the regulatory framework is thus the prevention of the improper use of temporary assignments, rather than the regulation of forms of employment that are stable.

Moreover, as is well known, an express recognition of the value of an open-ended employment relationship with the agency can be found in the Opinion of the Advocate General in Case C-681/18, delivered on 14 October 2020, where it was observed that abusive recourse to agency work arises only in cases of successive assignments exceeding a reasonably temporary duration and "not linked to a contract of employment of indefinite

duration" between the worker and the temporary-work agency (see also the paper by Romei in this volume).

The open-ended contract with the agency thus assumes the role of a safeguard which, in itself, is capable of preventing abusive recourse to the instrument.

The attention of the European legislator is therefore directed at the risk of precariousness potentially stemming from the improper use of fixed-term agency assignments, rather than at the open-ended employment relationship with the agency, which by its very nature embodies the 'particular protection' referred to in Recital 15.

3. The European Concept of Temporary Agency Work: the Role of Temporariness

The most delicate interpretative issue concerns the definition of 'temporary agency worker' and, above all, the characterisation of the relationship with the user undertaking.

Article 3(1)(c) defines a temporary agency worker as a worker who has a contract of employment or an employment relationship with a temporary-work agency "with a view to being assigned to user undertakings to work temporarily under their supervision and direction".

Similarly, Article 3(1), letters (d) and (e), in defining the notions of 'user undertaking' and 'assignment', emphasises the temporary nature of the work performed by

the agency worker for the benefit of the user undertaking.

Article 1(1) reiterates that the Directive applies to workers who have a contract of employment with a temporary-work agency "with a view to being assigned to user undertakings to work there temporarily".

Temporariness is not an incidental adjective. Within the Directive, it constitutes the element that distinguishes temporary agency work from any other form of outsourcing or decentralisation of productive activities. An agency assignment is, by definition, time-limited, intended to cease upon the expiry of the agreed term or upon the disappearance of the need for which it was arranged. It is precisely this temporariness that justifies the strengthening of protective measures, since it exposes the worker to the risk of precariousness – periods of inactivity, income discontinuity and diminished bargaining power – while enabling the user undertaking to adjust its workforce with considerable rapidity (on the notion of temporariness, see also the paper by Paternò in this volume).

Article 5(5) completes this framework by requiring Member States to adopt "appropriate measures to prevent misuse of this Directive and, in particular, to prevent successive assignments" where such practices might result in a deterioration of the worker's conditions or in circumvention of the legislation on fixed-term contracts.

The European legislator clearly has in mind situations in which the same worker is repeatedly engaged by the

same user undertaking through a sequence of assignments of limited duration, possibly interspersed with short intervals of suspension. It is here that the risk of excessive flexibility in the employment relationship arises – a risk which the Directive properly seeks to address.

If this scheme is adhered to, it is difficult to maintain that it may also apply to arrangements in which the assignment to the user undertaking is not subject to any predetermined temporal limit and does not take the form of one among several assignments, but rather of a structurally stable placement, underpinned – as an essential and indispensable requirement – by an open-ended employment relationship with the agency.

In the absence of temporariness, one of the defining elements of temporary agency work as delineated by European Union law falls away. In the absence of successive assignments, the logical premise for the application of the anti-abuse provisions equally disappears, particularly given that employment stability is already guaranteed upstream by virtue of the open-ended contract between the worker and the agency.

4. The Italian Model of Agency Work and Staff Leasing

In order fully to appreciate this incompatibility, it is necessary to examine more closely the Italian model of open-ended agency work.

Following the reforms introduced by the Jobs Act, the

regulation of agency work is now contained in Legislative Decree No. 81/2015. Article 30, which opens the chapter devoted to agency work, provides that the contract may be concluded "for a fixed term or for an indefinite term". Article 31 lays down the fundamental rule governing staff leasing, stipulating in § 1 that "only workers hired by the agency on an open-ended contract may be supplied on an open-ended basis". The provision thus creates an inseparable link between the open-ended nature of the employment relationship with the agency and the possibility of an assignment of indefinite duration to the user undertaking, thereby constructing a system in which stability resides not only in the employment contract but also in the assignment itself.

Article 31(2) further introduces a quantitative limit, providing that – unless otherwise stipulated by collective bargaining – "the number of workers supplied on an open-ended basis may not exceed 20 per cent of the number of open-ended employees employed by the user undertaking". The Italian legislator therefore characterises staff leasing as a structural yet quantitatively contained instrument of 'guaranteed' flexibility, designed to complement – and certainly not to replace – the stable workforce of the user undertaking.

The position of the worker engaged under staff leasing is further defined by Article 34, which regulates periods of availability. § 1 provides that, during periods in which the worker is not assigned to a user undertaking, he or she is entitled to an 'availability allowance' of an amount not less than that established by decree of the Ministry

of Labour, subject to supplementation by sectoral collective bargaining.

The worker retains the status of an open-ended employee of the agency, is required to remain available for new assignments, and at the same time benefits from training and outplacement pathways which agencies are obliged to activate, often with the involvement of sectoral bilateral bodies.

Article 35, finally, enshrines the principle of equal treatment, providing in § 1 that "for the entire duration of the assignment to the user undertaking, the worker shall be entitled to overall working and employment conditions not less favourable than those of workers of the same grade employed by the user undertaking". The same provision establishes the joint and several liability of the user undertaking for remuneration and social security contributions, as well as information obligations regarding vacancies within the undertaking, precisely in order to facilitate the worker's potential direct recruitment.

Viewed as a whole, this legislative framework reveals a system in which the staff-leased worker holds an open-ended employment relationship with a subject – the agency – that is strictly regulated and subject to authorisation and supervision; enjoys economic and normative treatment not inferior to that of the user undertaking's direct employees; is protected during periods of non-assignment by an allowance and outplacement measures; and operates within a system in which the assignment is, by definition, intended to be stable. The

underlying logic is one of continuous and supported employment, rather than intermittent and fragmented engagement.

To this must be added the special protections afforded to staff-leased workers in the event of dismissal for objective economic reasons where no assignment is available.

In this regard, Article 25 of the NCLA for Employment Agencies (most recently signed on 21 July 2025) establishes a specific outplacement procedure for open-ended workers, ordinarily lasting 180 days. Where an assignment comes to an end, a worker employed on an open-ended basis may not be dismissed immediately by the agency; rather, he or she enters an 'availability period', remunerated by means of a specific allowance, which is intended to facilitate the identification of an alternative assignment with another user undertaking. During this procedure, the agency is under an obligation to take active steps to identify alternative assignments and thus to offer the worker in availability concrete prospects of outplacement.

The procedure provides a further form of 'particular protection' (Recital 15), including the direct involvement of trade union representatives in reaching an agreement concerning a specific 'skills requalification project', structured around training activities tailored to the individual agency worker.

Only upon completion of this period of training, requalification and outplacement – which may therefore last several months – and in the absence of any

possibility of assigning the worker to an alternative mission, may the worker lawfully be dismissed by the agency.

This overall and highly distinctive framework of protection in the field of dismissal constitutes an exception in terms of employment support, one that is absent from any other standard form of open-ended employment contract.

By virtue of these characteristics, staff leasing does not in any way represent a lesser form of protection when compared with direct open-ended employment by the user undertaking; rather, it constitutes a key characteristic in comparison with an ordinary open-ended contract. This working scheme guarantees the agency worker a high level of protection not only by virtue of the financial support and training received during periods of availability, but above all by reason of the objective of employment continuity inherent in the agency's outplacement function.

5. Comparison between the Directive Framework and Staff Leasing: a Structural Incompatibility

In the light of the foregoing considerations, a comparison between the scheme of the Directive and the Italian model of staff leasing reveals an immediately apparent structural distance – and incompatibility – between the two.

The Directive constructs temporary agency work on the

premise of a temporary assignment, potentially subject to repetition and, for that very reason, subject to specific anti-abuse measures. As noted above, Directive 2008/104/EC applies solely and exclusively in cases of 'temporary' agency work carried out through fixed-term assignments to user undertakings (Articles 1(1) and 3(1), letters (c), (d) and (e)).

It follows that the Directive cannot readily apply to situations involving permanent and open-ended assignments to a user undertaking.

The Italian legal system, by contrast, has introduced a form of agency work which is conceived as stable both in respect of the open-ended employment relationship with the agency and in respect of the open-ended assignment to the user undertaking. The worker is hired – as an indispensable requirement – under an open-ended contract; the assignment has no predetermined expiry date; and continuity of employment is ensured through a dual level of protection, statutory and collectively agreed.

If the provisions designed for fixed-term temporary agency work were to be applied to staff leasing, a normative short circuit would ensue.

Article 5(5) of the Directive, for example, calls upon Member States to monitor the repeated use of short assignments, possibly by imposing limits on the overall maximum duration of assignments or on the number of renewals. Such a logic presupposes the possibility of fragmenting the relationship into a series of distinct assignments.

In staff leasing, however, this does not occur: the assignment is, by definition, of indefinite duration. It makes little sense to speak of a 'succession of assignments' where there is no interruption or renewal of the relationship with the user undertaking, save in exceptional circumstances. Even where an assignment comes to an end, the employment relationship retains its stability and an outplacement pathway is activated with a view to securing a new assignment – a situation far removed from the risk which the Directive seeks to prevent.

The issue of the 'temporary nature of the need' likewise loses its significance, since staff leasing is expressly designed to cover positions that are structurally integrated into the undertaking's organisation.

A relevant precedent may be found in the case-law of the Court of Justice of the European Union (Judgment of 22 June 2023, Case C-427/21), in which the Court examined the compatibility with the Directive of a working scheme under German law that – although different from Italian staff leasing – allowed for the permanent hiring-out of workers to a third undertaking. The Court held that such a situation "cannot fall within the scope of the Directive", since "the hiring-out at issue was not temporary in character" and, "according to settled case-law, the Directive concerns exclusively employment relationships that are temporary, transitional or limited in time, and not permanent employment relationships".

More recently, the Court of Bari (17 September 2025,

No. 3213) likewise held that staff leasing "falls outside the scope of the Directive", on the ground that "EU legislation concerns exclusively fixed-term assignments" and that "it is not the permanence of the assignment, as such, which is prohibited, but rather permanence concealed behind mechanisms circumventing the Directive, where the relationships formally display characteristics of temporariness".

The same reasoning applies to the issue of *causali* (objective grounds). The Directive does not require Member States to make recourse to agency work conditional upon the indication of specific technical, organisational or replacement reasons; nor does it prohibit national legislation from doing so. In Italy, with regard to fixed-term agency work, the legislator has opted for a system which, at least in part, mirrors that applicable to fixed-term contracts, including rules on objective grounds, duration limits and quantitative caps. By contrast, for open-ended agency work, the legislator has excluded the need for such grounds precisely because the core of the relationship is stable employment, supported by a level of protection such as to place it outside the sphere of precariousness which the Directive is intended to counter.

In other words, to apply the Directive's framework to staff leasing would mean transforming a structurally stable working scheme into a contract which would paradoxically become more constrained and less functional than direct open-ended employment, without any genuine advantage for the worker. For this reason, the

exclusion of staff leasing from the scope of the Directive is not only consistent with the literal wording of the instrument, but also systemically coherent and reasonable.

6. Staff Leasing and the Principle of Flexicurity

A further argument in favour of excluding staff leasing from the scope of the Directive derives from the principle of flexicurity, expressly invoked in its recitals.

In promoting the use of temporary agency work, the Directive is careful to ensure that flexibility does not degenerate into mere precariousness. For this reason, it emphasises that open-ended contracts should constitute the general form of employment relationship and that equal treatment must be guaranteed, at least for the duration of the assignment. From this perspective, the Italian model of staff leasing represents one of the most advanced applications of the principle of flexicurity expressly endorsed by the Directive, as well as an instrument of business policy capable of reconciling freedom to conduct a business and the protection of workers (Articles 15 and 16 of the Charter of Fundamental Rights of the European Union).

Flexibility for undertakings is ensured by the possibility of engaging workers who are formally employed by the agency, thereby enabling the undertaking to modulate over time the presence of particular professional skills without directly recruiting new staff and without bearing the full administrative and legal burdens associated

with a potential subsequent workforce reduction. Security for workers is ensured by the open-ended contract with the agency, equal treatment in comparison with directly employed staff, the availability allowance during periods of non-assignment, structured training and outplacement pathways, and the involvement of sectoral bilateral bodies.

Significantly, when the Directive contemplates the possibility of derogating from the principle of equal treatment, it does so precisely in the case where the worker is bound to the agency by an open-ended contract and continues to receive remuneration between assignments. Article 5(2) provides that Member States may stipulate that equal treatment does not apply where the worker "has a permanent contract of employment with the temporary-work agency and continues to be paid in the time between assignments". The European legislator thus recognises that the open-ended contract with the agency constitutes, in itself, a particularly strong form of protection, capable of offsetting the greater flexibility inherent in successive temporary assignments.

An express acknowledgement of the open-ended employment relationship with the agency as a decisive criterion supporting the exclusion of staff leasing from the scope of the Directive may also be discerned in the aforementioned judgment of the Court of Bari (17 September 2025, No. 3213). Having noted the 'particular position' occupied, within the Directive's framework, by fixed-term agency work supported by an open-ended

contract with the agency, the court observed that, where the assignment itself is of indefinite duration, "the objective of obtaining stable employment with the user undertaking is irrelevant", since "stable employment already exists and remains in being"; accordingly, "there is no issue of precariousness, and the protective requirements addressed by secondary EU law are absent".

In the case of staff leasing, the Italian legislator has gone a step further: it has not merely recognised the stability of the contract with the agency, but has grafted upon that relationship an open-ended assignment to the user undertaking. From this standpoint, staff leasing is not a minimal corrective to the precariousness of temporary agency work, but a genuine instrument of stabilisation, rendering the worker less exposed to market fluctuations than many workers engaged directly on fixed-term or other non-standard contracts.

Through open-ended agency work the user undertaking effectively brings in segments of the production process that might otherwise be outsourced through contractual arrangements such as service contracts. In this respect, staff leasing constitutes a more protective and transparent contractual alternative to outsourcing, since – in addition to preserving the entrepreneur's managerial authority over production processes – it guarantees the agency worker continuity and stability of employment by virtue of the contract with the agency (which, unlike an ordinary contractor, is subject to authorisation and accreditation by the Ministry of Labour on the basis of

specific statutory requirements).

7. Concluding Observations: Exclusion as a Logical and Coherent Choice

The considerations examined thus far permit a clear conclusion to be drawn. Directive 2008/104/EC was conceived in order to regulate temporary agency work characterised by assignments of a limited duration with user undertakings, which are not invariably underpinned by an open-ended employment relationship with the agency, unlike what occurs in the case of staff leasing.

The temporary nature of the assignment constitutes a defining requirement, expressly indicated in Articles 1 and 3. The anti-abuse measures laid down in Article 5 are directed at scenarios involving a succession of short assignments, in which repetition may result in de facto precariousness. The entire structure of the Directive rests upon this distinction between an employment relationship with the agency, which may be stable, and an assignment with the user undertaking, which nevertheless remains time-limited.

Italy's open-ended agency work, namely staff leasing, falls outside this framework. It is established as an open-ended employment relationship with the agency, accompanied by an assignment to the user undertaking which, pursuant to Article 31 of Legislative Decree No. 81/2015, is likewise of indefinite duration. The assignment is not temporary, is not intended to be repeated,

and does not lend itself to the forms of abuse that the Directive seeks to prevent. On the contrary, it constitutes a form of stable employment, supported by a system of statutory and collective protections ensuring continuity of income, training, equal treatment, and genuine opportunities for outplacement.

Moreover, even were the purpose of the Directive to be identified in the promotion of an open-ended employment relationship through the direct engagement of the worker by the user undertaking, it must be observed, on the one hand, that an open-ended employment relationship with the agency possesses equal legal dignity to direct employment by the user undertaking. It represents a distinctive arrangement and a *quid pluris* in comparison with an ordinary open-ended contract, inasmuch as it is characterised by the 'particular protections' (Recital 15) afforded in terms of support for outplacement and continuity of employment. On the other hand, the right of the user undertaking to avail itself of this form of 'guaranteed' flexibility is in any event counterbalanced by the Italian legislator through the mandatory quantitative limits set out in Article 31 of Legislative Decree No. 81/2015.

In this sense, the exclusion of staff leasing from the scope of the Directive does not constitute an interpretative device designed to remove the working scheme from the reach of Union law, but rather the natural consequence of a structural difference. To apply to staff leasing the rules devised for fixed-term agency work would entail distorting the rationale of the Directive

and, paradoxically, might weaken a working scheme which, within the Italian legal system, has frequently operated as a channel of access to stable and quality employment.

This does not detract from the fact that the national legislator remains fully bound by the general principles of Union law and by the guarantees enshrined in the Charter of Fundamental Rights, particularly with regard to protection against arbitrary dismissal, equal treatment, and the freedom to conduct a business.

Within those parameters, however, the Italian legislative choice to construct a form of open-ended agency work falling outside the scope of Directive 2008/104/EC appears – absent, at present, any contrary indication in the case-law of the Court of Justice of the European Union, and pending the Court's ruling on the preliminary references submitted by the Italian courts – to be entirely legitimate, systematically coherent, and consistent with that balance between flexibility and security which European labour law has, for more than two decades, identified as a fundamental objective of employment policy.

STAFF LEASING AND THE TEMPORARY NATURE OF THE PRODUCTIVE NEED: SYSTEMATIC AND INTERPRETATIVE ISSUES IN THE LIGHT OF EUROPEAN UNION LAW

by Federica Paternò

1. Introduction

Open-ended agency work, more commonly referred to as staff leasing, is not merely a form of employment whose evolution has been particularly complex; above all, it represents one of the principal crossroads between traditional and emerging models of labour market organisation.

Staff leasing has been marked by a troubled development, characterised by reconsiderations, restrictions, apparent abolitions and subsequent revivals, to such an extent as to perplex even experienced practitioners and to fuel predominantly ideological controversies which, cyclically, place its reputation at risk. It has repeatedly become the object of speculative interpretative constructions and of legislative interventions that have at times been difficult to comprehend and, in any event, inclined towards fragmentation and lack of systematic coherence (see the contributions of Tiraboschi and Failla in this volume).

It should also be emphasised that this ferment has largely been confined to courtrooms, academic debate, and legislative agendas. Within the lived reality of the labour market, by contrast, the working scheme has taken root, developed steadily and, in practice, facilitated the employment of thousands of individuals, generally with constructive trajectories and outcomes. Empirical data and statistical evidence suggest that staff leasing today constitutes one of the innovative driving forces of the labour market: a successful model through which flexibility of employment and worker protection have been reconciled without significant disruption.

1.1. The Emergence of Litigation and the Question of Temporariness

Notwithstanding the fact that, in recent years, staff leasing appeared to have reached institutional consolidation – also facilitated by the convergences codified within sectoral collective bargaining – its more recent expansion has generated a significant rebound. It has thus become the subject of litigation which, while quantitatively negligible in terms of the number of proceedings, has produced outcomes so potentially destabilising as to attract attention beyond specialised legal journals.

A process of renewed 'demonisation' has thereby been set in motion, primarily through judicial channels, and with the support – at times not devoid of ambiguity – of certain segments of the trade union movement. Most recently, this has led, in no fewer than three sets of

proceedings (for an account of domestic case-law, see Bottini in this volume), to the referral of questions concerning the compatibility of the working scheme with European Union law to the Court of Justice of the European Union.

In particular, the issue raised concerns the alleged infringement of the principle of temporariness which, according to certain interpretative approaches, is said to be inferable – as an intrinsic limitation applicable to every form of agency work – from Directive 2008/104/EC.

1.2. Judicial Polarisation and Competing Interpretations

The proceedings are currently pending and their outcome remains uncertain. They have given rise to a marked polarisation within the domestic debate, structured around two opposing camps, to which must be added the position of that strand of case-law which considers engagement with European Union law to be unnecessary.

This latter field is itself sharply divided. On the one hand, there are those who regard any further inquiry as superfluous in light of what they consider the self-evident exclusion of staff leasing from the scope of Directive 2008/104/EC. On the other hand, there are those who, proceeding on the assumption that the European principle of necessary temporariness is immediately binding and directly applicable also to open-ended

agency work, maintain that no preliminary disapplication of the national legislation is required. According to this view, the national court may intervene directly in individual cases, assessing whether the principle has been complied with and, consequently, determining the lawfulness or otherwise of the agency arrangement.

To speak of mere confusion or interpretative uncertainty would therefore amount to a considerable understatement. It is thus necessary to examine the arguments and conclusions underpinning the various positions, in an attempt to clarify the matter – or at least to offer an analytical framework capable of situating the ongoing debate against a number of stable points of reference.

2. What Is at Stake: the Survival of This Working Scheme and the Underlying Question

A preliminary observation appears unavoidable: the very survival of this working scheme depends upon the outcome of the above-mentioned debate, as it will ultimately be interpreted by the Court of Justice of the European Union. In essence, this represents a return to the origins of agency work. The issue of temporariness constitutes merely the legal veil behind which lies the fundamental question: whether our national legal order, and the European Union legal order before it, is politically willing and legally able – consistently with the principles governing the protection of labour and workers – to accept, as legitimate in its aims and operational

rules, a model of contractual organisation and utilisation of labour that structurally dissociates, and thus does so for an indefinite and indeterminable period, the formal employer from the user undertaking.

All other aspects, however significant in delineating this form of employment, are secondary. No degree of legislative ingenuity or interpretative creativity can suffice without first addressing this central question: may the legal order legitimise a situation, potentially permanent in nature, in which an undertaking elects to fill a position that is 'in principle open-ended' by engaging workers with whom it has no direct employment relationship, but who are assigned to it by another entity selected through an institutionalised accreditation mechanism, which assumes responsibility and bears the burden of ensuring continuity of employment?

Put differently, may the provision of labour – subject to certain conditions and safeguards (training, health and safety protection, equal treatment in economic and normative terms, and so forth) – form the object of an open-ended commercial contract, where the worker has made his or her labour capacity stably available to the agency?

Is this a lawful model – subject, naturally, to verification of the effectiveness of the protections afforded – or, as has been argued, does the social concern historically associated with labour intermediation require that this working scheme be confined within the temporally limited boundaries inherent in the concept of temporariness?

2.1. Inadequacy of the 'Balancing Approach'

As a general matter, it cannot be denied that agency work, in whatever form or configuration, conflicts with – or, more precisely, stands alongside – the classical model of the employment relationship. It generates a degree of ideological unease, and the natural mistrust that follows has frequently manifested itself in, at times, 'clumsy' attempts to curtail its scope and, with it, its systemic coherence and rationality.

Equally unproductive are the attempts, discernible even in recent case-law, to avoid confronting the issue directly by providing a clear and principled response. Rather than engaging squarely with the unequivocal intention of the legislator, certain decisions have embarked upon a precarious balancing exercise. Sheltering behind the narrow confines of the individual case, they refrain from addressing the underlying question of principle and instead assert that staff leasing too is subject to the principle of temporariness and that, consequently, the maximum overall duration limits laid down by the legislator for fixed-term assignments with the same user undertaking must also apply to open-ended assignments.

Such an assertion is, self-evidently, tautological. Those who advance it do not delineate its contours, but confine themselves, in the case at hand, to observing that the 'excessive' duration of the assignment or assignments – where 'excessive' is again defined apodictically,

by reference to a period exceeding that provided for fixed-term contracts – conflicts with the requirement of temporariness and therefore constitutes an abuse. This, in turn, is said to empower the court to declare the existence of a direct, open-ended employment relationship with the user undertaking.

In these decisions, which marked the beginning of the trajectory that has ultimately led staff leasing before the Court of Justice, the central difficulty is not confronted openly: there can be no abuse where a legal working scheme is applied in full compliance with the legislation governing it, and where, in the present instance, that legislation identifies open-ended duration – and thus its continuation beyond what may be regarded as temporary – as the very essence of the institution.

This judicial solution, therefore, far from representing a compromise, amounts to a de facto disapplication of the statutory framework. It implicitly presupposes an assessment of the unlawfulness of the legislative provision itself – an evaluation which, as is well known, does not fall within the remit of the ordinary courts – and consequently gives rise to serious reservations.

Consistently with this assessment, greater approval must be accorded to the alternative approach adopted by those judges who, proceeding from the same premise – one which, as will be argued in these pages, the present author does not consider to be supported by European legislation – have concluded that it is for the Court of Justice to determine whether staff leasing as such, rather than its individual applications, is

incompatible with the principles of European Union law, and in particular with the principle of temporariness (see the paper by Romei in this volume).

3. Staff Leasing and 'Dual Temporariness'

It must be acknowledged that staff leasing and temporariness – understood in its dual dimension as both the duration of the assignment and the objective temporal limitation of the underlying productive need – are mutually irreconcilable. There is no viable means of making them coexist unless one were to re-label as staff leasing a merely 'extended' fixed-term agency assignment, which would in reality amount to nothing more than a duplication – an unnecessary one – of fixed-term agency work involving a worker engaged by the agency on an open-ended contract.

If agency work must, by its very nature, be temporary, it is scarcely necessary to emphasise that the very definition of staff leasing disintegrates, given that it contains, in two distinct respects, the notion of indefinite duration. Staff leasing is, in fact, the open-ended supply of a worker who is himself or herself employed by the agency on an open-ended contract.

According to what may be described as the theory of 'dual temporariness', the principles immanent in the European Union legal order and expressed in Directive 2008/104/EC require that every instance of agency work, in order to be lawful, must have a predetermined end date and that, correspondingly, the productive need

or position to be filled through agency work must be ontologically temporary. A limited – and, it must be said, scarcely persuasive – concession within this rigid framework is the suggestion that the two forms of temporariness need not necessarily coincide. On this view, in relation to a given productive need that is objectively temporary, the undertaking would remain free to deploy, in succession, several workers through different contractual models: for example, first recruiting a worker directly on a fixed-term contract; then engaging a worker supplied on a fixed-term basis within the statutory limits; and finally covering any residual period of the temporary need with yet another worker.

In essence, this approach might be encapsulated in the formula: agency work, yes – but 'with moderation'.

This interpretation is supported by reference to certain judgments of the Court of Justice of the European Union which, in construing Directive 2008/104/EC, have made observations that have been received, with a degree of interpretative latitude, by national courts and applied by default to staff leasing. Yet it should be recalled that staff leasing has few close equivalents in other European legal systems. The result has been, in substance, to cast doubt upon the very existence of the institution. As already observed, temporariness and open-ended agency work – whatever formulation of the former is adopted – are conceptually incompatible, thereby prompting doubts as to whether this working scheme is capable of withstanding scrutiny in light of the principles deriving from European Union legislation.

4. The Source of the Principle of Temporariness: Directive 2008/104/EC and the Case-Law of the Court of Justice

In order to clarify whether the principles of temporariness – whether in their dual formulation or in only one of the two dimensions outlined above – are genuinely binding, including in respect of staff leasing, it is necessary to begin with their alleged source: Directive 2008/104/EC, as interpreted by the Court of Justice of the European Union.

As is well known, in construing a European directive, the recitals carry interpretative weight comparable to that of the operative provisions themselves. It is therefore from the recitals that one must begin in order to understand what is subsequently specified and regulated in the articles. The Directive pursues a clear overarching objective: to promote the use of temporary agency work as a lever to foster employment growth – within the specificities of national labour markets – and to provide the flexibility required by undertakings, within a regulatory framework capable of ensuring full protection for workers, with particular emphasis on health and safety and on equal treatment with direct employees.

Within this framework, agency work is identified as one of the new forms of contractual organisation and differentiation capable of contributing to the attainment of these objectives. Hence the invitation addressed to the Member States to remove distrust and obstacles *vis-*

à-vis this model and to introduce only such restrictions (Article 4) as are justified by overriding reasons of general interest, namely the protection of workers, the proper functioning of the labour market, and the prevention of abuses.

For interpretative purposes, it is of fundamental importance to recall that the Directive was adopted – after considerable controversy and contradiction – with the aim of legitimising the model characterised by the dissociation between the formal employer and the user of the labour. In most European legal systems this model had long been subject to marked suspicion, codified in significant restrictions and, in some cases, as in Italy, in outright prohibitions reinforced by stringent sanctions. It may be objected that this reconstruction appears partially undermined by the chronology: the Directive dates from 2008, by which time most, if not all, European States had already introduced what was then termed 'temporary agency work' (including Italy). In reality, the apparent lateness of the European intervention is explained by the protracted gestation of the Directive, due in part to the clash between those who advocated leaving Member States entirely free in the absence of European regulation; those who considered the matter to be wholly entrusted to collective bargaining; and those who opposed its implementation outright.

Confirmation that the objectives and intentions of the European legislator were to encourage recourse to alternative forms of labour utilisation – thereby

responding to new labour market needs, while establishing only a framework of worker protection and leaving Member States to devise solutions best suited to their national contexts – may be found, with specific reference to Italy, in the fact that shortly after the Directive entered into force the national legislator intervened to remove the limitations previously imposed on staff leasing as to the object of the assignment and the sectors in which it could operate. This was hardly coincidental and appears to have been encouraged by the supportive stance towards agency work expressed at European level.

It may therefore be argued that, also in light of the guidance emanating from the European legislator, the Italian legislator – more than a decade ago – came to regard the dissociation between formal employer and user undertaking as a contractually neutral solution. It is neither inherently virtuous nor inherently problematic; it does not, in itself, conflict with fundamental principles of labour protection. Rather, it is one model among others, whose merits or shortcomings depend upon the regulatory framework – both statutory and collective – which delineates its contours and establishes the safeguards for workers.

Accordingly, the requirement of equal treatment in economic and normative terms between direct employees and agency workers has been reaffirmed – now also mandated by the Directive; quantitative limits on the use of agency work have been introduced; and collective bargaining has been entrusted with defining, for

example, the obligations incumbent upon the agency during periods of non-assignment. In the interest of the worker and as a safeguard of employment stability, this has entailed the introduction of more complex procedures and timeframes governing the eventual termination of the employment relationship for lack of assignments, conceived as a measure of last resort. For all other aspects, the employment relationship is governed by the general rules applicable to open-ended subordinate employment.

4.1. Scope of the Directive: Focus on Fixed-Term Agency Work

In essence, particularly in the period immediately following the adoption of the Directive, it appeared uncontroversial among commentators that it promoted agency work in general terms, while addressing itself specifically – and exclusively – to the form of agency work that was both the most widespread and the most susceptible to abusive use to the detriment of workers, such as to generate precariousness: namely, fixed-term agency work.

5. Precariousness, Stability and Empirical Evidence

It should also be observed that the European legislator had, and to a large extent continues to have, only limited familiarity with the model of open-ended agency work,

which is adopted in relatively few Member States. By contrast, it clearly contemplated – albeit in general terms – the possibility that fixed-term assignments might be carried out by workers employed by the agency on an open-ended contract. This likely explains why the Directive refers to the open-ended employment relationship with the agency, yet contains no explicit reference to staff leasing as such.

Once the underlying prejudice concerning the inherent unlawfulness of the dissociation between the formal employer and the user undertaking has been overcome, it becomes apparent that the employment relationships which are intrinsically more vulnerable – and which therefore require a denser regulatory framework – are fixed-term arrangements. By their nature, such arrangements are capable of fragmenting a worker's employment trajectory and placing the individual in a condition of 'precariousness', which constitutes the central concern of prevention and control for the European legislator.

By contrast, a worker engaged by an agency on an open-ended contract – and assigned on an open-ended basis to a user undertaking – cannot be regarded as precarious, or at least not more so than any holder of a contract of indefinite duration. Such a worker benefits from a dual guarantee arising from the commitment assumed by two undertakings – the agency and the user – based on a productive need which, at least in principle, is intended to endure *sine die*. The relationship is designed to continue indefinitely and not merely for so long as the

immediate need subsists, as is typically the case in direct employment relationships. Moreover, even where the assignment ends, the agency remains both legally obliged and commercially incentivised to secure the worker's prompt assignment to another position.

Recent statistical data indicate that this is not merely a theoretical construct. In practice, staff leasing in Italy today affords workers a level of stability – measured in terms of average duration of employment, as well as outplacement prospects – that exceeds that enjoyed by directly employed open-ended workers. No employment relationship is perpetual, and employment stability is inevitably shaped by market dynamics and entrepreneurial decisions. However, being engaged on an open-ended basis by an agency in practice entails entrusting one's employment stability – including continuous training, reskilling and professional development – to an undertaking whose core business is labour market intermediation and whose commercial interest coincides with the sustained employability and occupational continuity of its own employees.

6. Interpreting the Directive between Temporariness and Precariousness

The foregoing conclusions – namely, that the Directive and the related case-law of the Court of Justice concerning necessary temporariness do not extend to open-ended assignments – have recently been called into question by certain national courts. However, on the

only occasion, to the best of current knowledge, in which the Court of Justice has examined a national legislative framework – namely the German system, which permits open-ended agency work under a model comparable to that provided for in Italy – the Court held unequivocally that Directive 2008/104/EC and its principles were not applicable to that specific arrangement, and therefore identified no incompatibility between that model and European Union law.

6.1. No Specific EU Regulation of Staff Leasing and Framework of Protections

It therefore appears reasonable to conclude, in response to the initial question, that at present there exists no specific European regulation governing staff leasing, to which Directive 2008/104/EC makes no express reference.

Nevertheless, staff leasing remains a form of agency work. Accordingly, even if the Directive does not apply to it directly, the protective principles that may be derived from the Directive must still be regarded as constituting the normative framework within which – so far as compatible with the particular characteristics of the model – the national legislator must shape the relevant discipline. It follows that equal treatment, the removal of obstacles to direct recruitment by the user undertaking, the establishment of all necessary safeguards to ensure health and safety, and the protection of workers' freedom to exercise their rights, including trade union

rights, are all principles that national legislators are required to respect. Italy has done so, and these principles may properly be regarded as immanent within the European legal order and, as such, incapable of being disregarded by domestic legislation.

If, by contrast, one were to maintain that the Directive applies directly to every form of agency work, then – given the clear wording of Article 1, according to which agency work presupposes the temporary nature of the assignment – even where a worker is employed on an open-ended contract by the agency, his or her deployment within the organisation of a user undertaking would need to be structured in such a way that appropriate measures – though not necessarily a predetermined end date – ensure protection against occupational precariousness.

Precariousness, which is conceptually distinct from temporariness, has been clarified in the case-law of the Court of Justice. According to that case-law, precariousness arises where a worker is subjected, over an extended period, to repeated – often very short – successive fixed-term assignments. A straightforward line of reasoning therefore leads to the conclusion that such reiterations – rightly targeted by the Directive, as emphasised by the Court – are abstractly possible, and represent the endogenous risk of the fixed-term agency work model. This is so because, unlike the regulation of fixed-term employment contracts – where international bodies have long recommended that recourse to fixed-term contracts be justified only where open-ended

employment is objectively precluded – agency work entails not merely a temporal choice but a contractual model of intermediation between the worker and the user undertaking. In that context, the temporary or permanent nature of the productive need is not, in itself, determinative.

6.2. Systematic Coherence: Distinguishing Fixed-Term Direct Contracts from Agency Work

Essentially, at least one of the two aspects of temporariness is entirely extraneous to the agency work model in general and does not constitute a limit, not even for fixed-term assignments. This interpretation emerges clearly from the entirety of EU case-law and, moreover, is the only reading consistent with the distinctions evidently codified by the European legislator between fixed-term direct contracts and fixed-term agency work.

For direct fixed-term contracts, strict rules are required to establish legitimacy, obliging Member States to adopt at least one of the measures suggested by the framework agreement implemented by Directive 199/70/EC to prevent abuse. By contrast, for agency work, the Directive serves a promotional purpose, requiring Member States to remove excessive constraints on its use while imposing only two firm obligations: equal treatment and the prohibition of barriers to the direct recruitment of the agency worker. As regards duration, Member States retain wide discretion, provided that

measures – clarified by the Court of Justice – are adopted that do not necessarily impose fixed or causal time limits but are nonetheless adequate to prevent abuses that give rise to worker precariousness.

6.3. Admissibility of Agency Work for Stable Needs

In other words, contrary to what is asserted in some national court decisions, the European legislator considers it possible – and takes for granted – that agency work may be used, even in the fixed-term model (which, as noted, is the only one directly addressed), to meet stable or tendentially stable labour needs.

7. EU Case-Law and National Corroboration

In Case C-232/20, the EU Court stated that the term '*temporarily*' does not serve to restrict the use of agency work to positions that are inherently non-permanent or filled only as replacements. The term characterises not the post to be occupied within the user undertaking, but rather the modalities by which the worker is made available to that undertaking. The Court further emphasised that "no provision of Directive 2008/104/EC concerns the nature of the work or the type of position to be filled at the user undertaking. Likewise, the Directive does not enumerate the cases justifying recourse to such work, as Member States retain, as noted by the Advocate General […], significant discretionary power to

define the situations warranting agency work".

In other words, the second meaning attributed to the principle of temporariness by some national courts – most recently in a December 2025 ruling of the Court of Milan – is clearly refuted by EU case-law. While such decisions rightly require measures to prevent excessive repetition of assignments, and therefore worker precariousness, they impose no objective limit on the nature of the productive need itself. The user undertaking remains free to organise work according to its assessments and operational requirements, provided that the worker's rights are respected. The emphasis is on flexibility – a legitimate concern, recognised by the Directive – which must be balanced with worker protection to ensure that temporary employment does not result in sustained uncertainty or precariousness.

Uncertainty and precariousness are mitigated by a general principle of reasonable temporariness, applied to each individual worker. This balance is inherently delicate and cannot be defined in general, a priori terms; the Directive leaves Member States responsible for calibrating it through appropriate rules, which, as repeatedly emphasised by the Court, need not impose rigid, legally prescribed timeframes – even if a maximum temporal limit remains the simplest and clearest option.

This interpretation has also been affirmed in a recent decision of the Court of Bari, in which the judge, with particularly clear and structured reasoning, concluded that the principle of temporariness does not apply to staff leasing in any of its forms. Specifically, the decision

reflects, by way of contrast, that the argument requiring the user undertaking to directly employ the worker if its need is 'indefinite' cannot withstand systematic and teleological scrutiny. The Bari judge identifies a misreading – possibly ideological – of the agency work model, which fails to recognise its unique organisational and legal characteristics that distinguish it from direct employment contracts, whether fixed-term or open-ended.

Agency work is a tool for managing and utilising labour, allowing the employer, in exchange for a fee, to transfer part of operational risk to a specifically authorised third party, while benefiting from the functions of an 'industrial partner'. Far from undermining worker stability, particularly when both the contract and the assignment are open-ended, staff leasing can reinforce employment continuity. The key point for staff leasing, therefore, is not to impose arbitrary limits on the duration of an assignment or to scrutinise the reasons for a user undertaking's choice of this model, but solely to ensure that the worker enjoys, in accordance with EU principles, protection at least equivalent to that of a direct employee.

8. Conclusions

In practice, the current structure of staff leasing – encompassing both statutory obligations and collective contractual provisions – ensures, in addition to equal treatment for all agency workers and the prohibition of restrictions on direct recruitment, that the worker is

protected against the loss of the assignment or its cessation. This protection is implemented through the payment of the *indennità di disponibilità* (recently revised upwards), the training and reskilling obligations borne by the agency, and an outplacement procedure conducted in cooperation with trade unions. Consequently, the principle that dismissal for objective reasons is legitimate only as a measure of last resort is effectively guaranteed, and any such dismissal occurs only after extensive attempts at outplacement – a temporal framework unparalleled in any form of direct employment contract.

It is unnecessary to elaborate further, but the natural conclusion of the foregoing analysis aligns with the premises outlined at the outset: subjecting staff leasing to the principle of temporariness constitutes a contradiction in terms. Therefore, no interpretation of this principle – whether focused on the specific assignment or the overall duration of the mission with the same user undertaking – can validly be applied to the institution.

Should one nonetheless maintain, contrary to the arguments advanced here, that temporariness is a necessary legal corollary of agency work per se, the only avenue to verify the correctness of such an assertion would be to refer the matter to the Court of Justice. The Court would then clarify the actual scope of the Directive and, in particular, whether temporariness is a constitutive element of the very notion of agency work or, as seems preferable, merely one of several instruments – perhaps the most practical and straightforward – for ensuring

that agency work does not equate to precariousness and for preventing its abuse.

This would imply that the Court should make explicit what is already suggested between the lines of existing judgments: that the true adversary against which the EU institutions urge Member States to act is occupational uncertainty and the fragmentation of work continuity. In parallel, it is recognised that a worker's employment relationship with the agency, from the perspective of rights, is not inherently subordinate or inferior to a direct contract with the user undertaking.

Ultimately, it is a question of confirming that an open-ended employment contract with the agency is fully equivalent to any other permanent employment contract and, as such, merits the same *favor* accorded by EU and national institutions to open-ended employment as the standard form of labour relationship.

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