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On wage and working conditions for temporary agency workers and posted workers

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Hiring in workers from temporary agencies in other EU/EEA-states

- Hiring in workers from national or foreign temporary agencies – two different legal frameworks?
- Transnational hiring of workers
 - Which rules do apply?
 - Does it matter?
 - An attempt to explain the reasons behind the rules
- The topic the next 17 minutes!

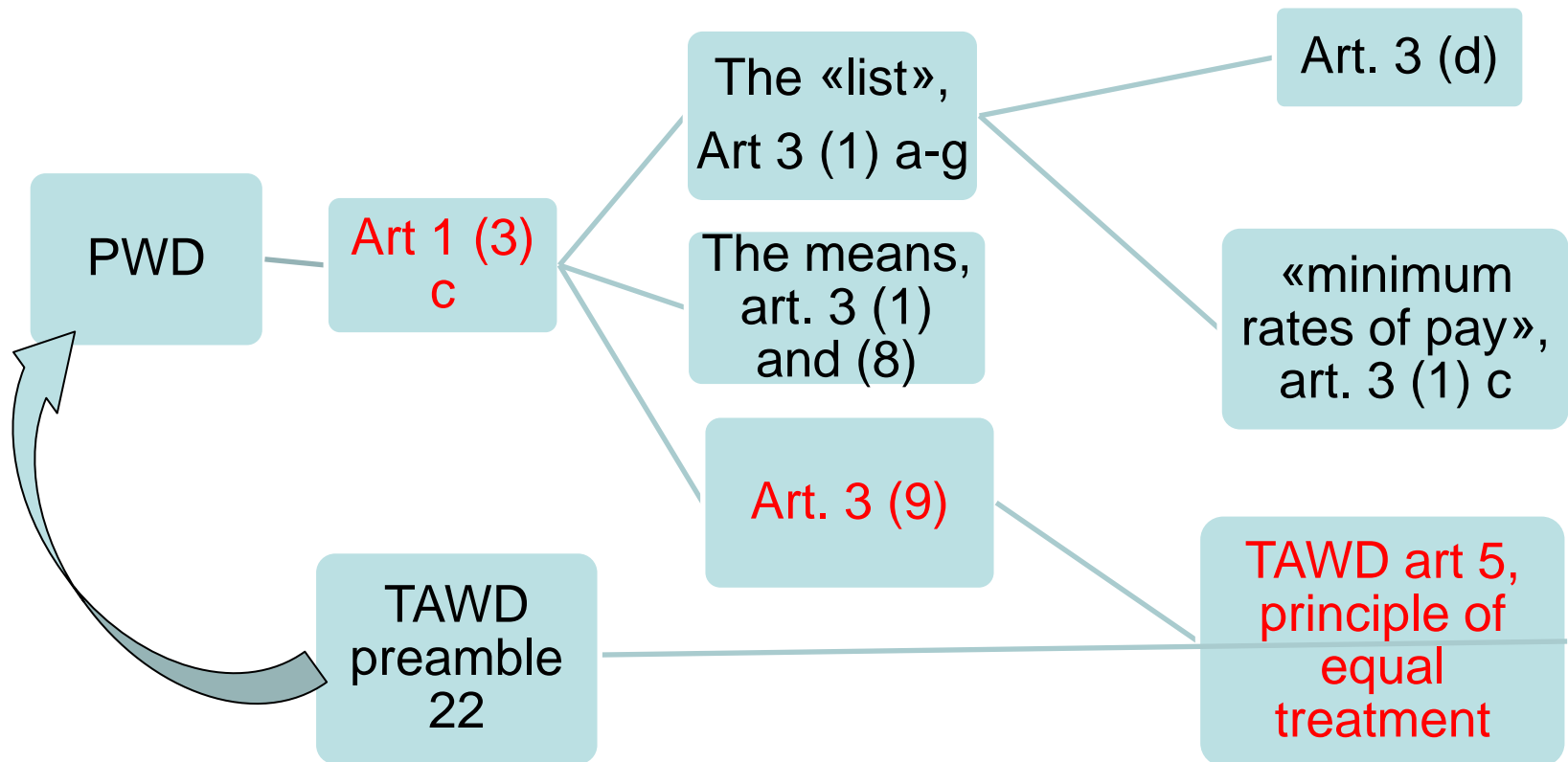
Posting of agency workers – initial approach and background

- Posting of agency workers is covered by the Posting of Workers Directive
 - Article 1 (3) c: Cross border hiring-out of workers included in the scope of the directive
- Default regulation for posted agency workers
 - The «list» and the means of regulation
 - Article 3 (1) d: «the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings» – part of the «list»
- Article 3 (9) – terms and conditions for temporary agency workers

Article 3 (9) – the exception from the «list» and the means

- Member States *may* provide that temporary agencies must guarantee temporary agency workers «**the terms and conditions**» which apply to temporary workers in the Member State where the work is carried out».
- These «**terms and conditions**» are established in the principle of equal treatment in the temporary agency work directive – as implemented in the Member States

Legal framework at EU/EEA-level for posted temporary agency workers



Differences between to two directives

	Posting of workers directive	Temporary agency work directive
Concept of pay	«minimum rates of pay»	«pay»
Legal basis for the means which may establish (minimum) pay	Minimum wage can only be determined by certain means, article 3 (1) and (8)	Minimum wage may be established with various means, article 3 (f)
The means	law, regulation or administrative provision	legislation, regulations, administrative provisions
Types of collective agreements	collective agreements declared universally applicable	collective agreements (no further requirements)
	collective agreements with general applicability	
Other kinds of means		and/or binding general provisions ... in the user undertaking

An example – collective agreement at company level as the only regulation

The situation	Without article 3 (9)	With article 3 (9)
Posted workers working for a sub-supplier of Company X, collective agreement at company level in X	Not entitled to any minimum wage	Not entitled to any minimum wage
Posted agency workers hired out to Company X	Not entitled to any minimum wage	Entitled to the wage level in the collective agreement

Reasons for the exception in article 3 (9)

- Different interpretations of the provisions on free movement for services
 - Rush Portuguesa (1990)
 - «*the concept of the provision of services as defined by Article 60 of the Treaty covers very different activities, the same conclusions are not necessarily appropriate in all cases*»
- The line in the CJEU case law
 - From Webb (1981) to Vicoplus (2011) and AKT (2015)

The line in the CJEU case law

- Webb (C-279/80)
 - The «...special nature of the employment relationship inherent in that kind of activity...»
- Vicoplus (Joined cases C-307/09, C-308/09 and C-309/09) confirms Webb
- AKT (C-533/13)
 - The Advocate General and the judgement – two different solutions

Freedom to provide services and article 3 (9) – requirements to «transparency»

- Both directives should be interpreted in compliance with the freedom to provide services
- The freedom to provide services requires transparent rules
- The principle of equal treatment – which is the specification of the «terms and conditions» in article 3 (9) – transparent rules?