ECLI:EU:C:2021:438

Provisional text

JUDGMENT OF THE COURT (Seventh Chamber)

3 June 2021 (1)

(Reference for a preliminary ruling – Social policy – Directive 1999/70/EC – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Clause 5 – Successive fixed-term employment contracts or relationships – Misuse – Preventive measures – Fixed-term employment contracts in the public sector – University researchers)

In Case C-326/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), made by decision of 28 November 2018, received at the Court on 23 April 2019, in the proceedings

EB

v

Presidenza dei Consiglio dei Ministri,

Ministero dell'Istruzione, dell'Università e della Ricerca – MIUR,

Università degli Studi 'Roma Tre',

intervening parties:

Federazione Lavoratori della Conoscenza – CGIL (FLC-CGIL),

Confederazione Generale Italiana del Lavoro (CGIL),

Anief – Associazione Professionale e Sindacale,

Confederazione Generale Sindacale,

Cipur – Coordinamento Intersedi Professori Universitari di Ruolo,

THE COURT (Seventh Chamber),

composed of A. Kumin (Rapporteur), President of the Chamber, T. von Danwitz and P. G. Xuereb, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– EB, by F. Dinelli and G. Grüner, avvocati,

– the Università degli Studi 'Roma Tre', by L. Torchia, avvocata,

– the Confederazione Generale Italiana del Lavoro (CGIL) and the Federazione Lavoratori della Conoscenza – CGIL (FLC-CGIL), by F. Americo, I. Barsanti Mauceri and A. Andreoni, avvocati,

– the Anief – Associazione Professionale e Sindacale, by S. Galleano, V. De Michele and W. Miceli, avvocati,

– the Confederazione Generale Sindacale, by T. M. de Grandis and V. De Michele, avvocati,

– the Cipur – Coordinamento Intersedi Professori Universitari di Ruolo, by E. Albé, avvocata,

– the Italian Government, by G. Palmieri, acting as Agent, and by C. Colelli and L. Fiandaca, avvocati dello Stato,

– the European Commission, by G. Gattinara and M. van Beek, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Clause 5(1) of the framework agreement on fixed-term work, concluded on 18 March 1999 which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

2 The request has been made in proceedings between EB, an academic researcher, the Presidenza del Consiglio dei Ministri (President of the Council of Ministers, Italy), the Ministero dell'Istruzione dell'Università e della Ricerca (Ministry of Education, Higher Education and Research, Italy) and the Università degli Studi 'Roma Tre' ('the University') concerning the refusal to extend his fixed-term employment contract beyond the period provided for by law and, thereby, transform it into a contract of indefinite duration, or to allow him to undergo the appraisal for the purposes of appointment to the post of associate professor.

Legal context

European Union law

3 Recital 14 of Directive 1999/70 is worded as follows:

‘the signatory parties wished to conclude a framework agreement on fixed-term work setting out the general principles and minimum requirements for fixed-term employment contracts and employment relationships; they have demonstrated their desire to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination, and to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships[.]’

4 The second paragraph of the preamble to the framework agreement states that the parties to the agreement ‘recognise that contracts of an indefinite duration are, and will continue to be, the general form of employment relationship between employers and workers [and that] fixed-term employment contracts respond, in certain circumstances, to the needs of both employers and workers’.

5 Clause 1 of the framework agreement provides:

‘[That it]… is to:

(a) improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination;

(b) establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.’

6 Clause 3 of the framework agreement, headed ‘Definitions’, provides:

‘1. For the purpose of this agreement the term “fixed-term worker” means a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.

…’

7 Clause 4 of the framework agreement, entitled ‘Principle of non-discrimination’, provides, in subparagraph 1:

‘In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds.’

8 Clause 5 of the framework agreement, headed ‘Measures to prevent abuse’, provides:

‘1. To prevent abuse arising from the use of successive fixed-term employment contracts or relationships, Member States, after consultation with social partners in accordance with national law, collective agreements or practice, and/or the social partners, shall, where there are no

equivalent legal measures to prevent abuse, introduce in a manner which takes account of the needs of specific sectors and/or categories of workers, one or more of the following measures:

(a) objective reasons justifying the renewal of such contracts or relationships;

(b) the maximum total duration of successive fixed-term contracts or relationships;

(c) the number of renewals of such contracts or relationships.

2. Member States after consultation with the social partners and/or the social partners shall, where appropriate, determine under what conditions fixed-term employment contracts or relationships:

(a) shall be regarded as "successive"

(b) shall be deemed to be contracts or relationships of indefinite duration.'

9 Clause 8 of the framework agreement, headed 'Provisions on implementation', provides:

'1. Member States and/or the social partners can maintain or introduce more favourable provisions for workers than set out in this agreement.

…'

Italian law

10 Article 24 of Legge No 240 – Norme in materia di organizzazione delle università, di personale accademico e reclutamento, nonché delega al Governo per incentivare la qualità e l'efficienza del sistema universitario (Law No 240 – Provisions on the organisation of universities, academic staff and recruitment, as well as the power granted to the Government to encourage the quality and efficiency of the university system) of 30 December 2010 (Ordinary Supplement to GURI No 10 of 14 January 2011; 'Law No 240/2010'), entitled 'Fixed-term researchers', provides:

'1. Depending on the resources available for planning purposes, universities may, for their research, teaching, supplementary teaching and student services activities, conclude fixed-term employment contracts. The contract defines, on the basis of the university's regulations, the arrangements for carrying out teaching, non-curricular activities and student services activities and research.

2. The recipients shall be chosen by public selection procedures organised by the universities by means of a regulation within the meaning of Law No 168 of 9 May 1989 in compliance with the principles set out in the European Charter for Researchers annexed to the Commission Recommendation of 11 March 2005 (2005/251/EC) …

3. Those contracts shall have the following features:

(a) contracts for a period of three years, renewable once only for a period of two years, after a positive appraisal of the teaching and research activities carried out, on the basis of modalities, criteria and parameters defined by ministerial decree; those contracts may also be concluded with the same person in separate institutions;

(b) contracts for a period of three years, reserved for candidates who have been employed under the contracts referred to under (a), or who have obtained the national scientific qualifications entitling them to work as Category 1 and Category 2 teaching staff referred to in Article 16 of this Law, who hold a specialised medical diploma or who, for at least three years, consecutively or otherwise have received research grants within the meaning of Article 51(6) of Law No 449 of 27 December 1997, research grants as referred to in Article 22 of this Law, post-doctoral fellowships as referred to in Article 4 of Law No 398 of 30 November 1989, or similar contracts, grants or fellowships at foreign universities.

…

5. Depending on the resources available for planning purposes, in the third year of the contract referred to in paragraph 3(b), the University shall appraise the contract holder who has obtained the scientific qualifications referred to in Article 16 with a view to his or her appointment to the post of associate professor referred to in Article 18(1)(e). In the event of a positive appraisal, at the end of the contract, the contract holder shall be appointed to the post of associate professor. The appraisal shall be carried out in accordance with internationally recognised quality standards, defined by the University regulations within the framework of the criteria set by the Minister's decree. The programming referred to in Article 18(2) ensures that the necessary resources are available in the event of a positive appraisal. The procedure shall be published on the University's website.

…'

11 Article 20 of Legislative Decree No 75 – Modifiche e integrazioni al decreto legislativo 30 marzo 2001, n. 165, ai sensi degli articoli 16, commi 1, lettera a), e 2, lettere b), c), d) ed e) e 17, comma 1, lettere a), c), e), f), g), h), l) m), n), o), q), r), s) e z), della legge 7 agosto 2015, n. 124, in materia di riorganizzazione delle amministrazioni pubbliche (Legislative Decree No 75 – amending and supplementing Legislative Decree No 165 of 30 March 2001, pursuant to Article 16(1)(a) and (2)(b), (c), (d) and (e), and Article 17(1)(a), (c), (e), (f), (g), (h), (l), (m), (n), (o), (q), (r), (s) and (z) of Law No 124 of 7 August 2015, on the Reorganisation of Public Administrations) of 25 May 2017, (GURI No 130 of 7 June 2017), entitled 'Combatting job insecurity in public administrations' ('Legislative Decree No 75/2017'), provides:

'1. In order to combat job insecurity, reduce recourse to limited-term contracts and enhance the professional skills acquired by staff on fixed-term employment contracts, authorities may, during the years 2018 to 2020, in line with the three-year plan referred to in Article 6(2), and indicating the financial resources, recruit for an indefinite period of time non-managerial staff who meet the following requirements:

(a) be employed after the date of entry into force of Law No 124 of 2015 with fixed-term contracts with the recruiting authority or, in the case of local authorities that perform functions in an associated form, also with the authorities whose services are associated;

(b) have been recruited for a fixed period, for the same activities by way of competitive procedures, even by public authorities other than the recruiting authority;

(c) have completed, by 31 December 2017, a period of employment of at least three years, consecutive or otherwise, in the last eight years with the authority referred to in (a) above.

2. In the period 2018 to 2020, the authorities may, in accordance with the three-year plan referred to in Article 6(2), and without prejudice to the guarantee of adequate access from outside,

after indicating the financial resources, organise competition procedures reserved, up to a maximum of 50 per cent of the available posts, for non-managerial staff who meet the following requirements:

(a) hold, after the date of entry into force of Law No 124 of 2015, a flexible employment contract with the authority organising the competition;

(b) have completed, by 31 December 2017, at least three years of contract, consecutive or otherwise, during the last eight years with the authority organising the competition.

…

8. The authorities may extend the flexible working relationships with the persons participating in the procedures referred to in paragraphs 1 and 2 until their completion, within the limits of the resources available within the meaning of Article 9(28), of Decree-Law No 78 of 31 May 2010, converted with amendments by Law No 122, of 30 July 2010.

9. This Article does not apply to the recruitment of teaching, administrative, technical and auxiliary staff (ATA) in State schools and educational establishments. … Nor does this article apply to contracts for the supply of personnel to public authorities.'

12 Article 5(4a) of decreto legislativo n. 368 – Attuazione della direttiva 1999/70/CE relativa all'accordo quadro sul lavoro a tempo determinato concluso dall'UNICE, dal CEEP e dal CES (Legislative Decree No 368 transposing Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP) of 6 September 2001 (GURI No 235 of 9 October 2001) ('Legislative Decree No 368/2001'), which transposes Directive 1999/70 into Italian law, provides:

'Without prejudice to the rules on successive contracts set out in the preceding paragraphs, where, as a result of a succession of fixed-term contracts for the performance of equivalent tasks, an employment relationship between the same employer and the same worker continues for an overall period of more than 36 months, including any extensions and renewals, disregarding any breaks between one contract and another, the employment relationship shall be regarded as being a relationship of indefinite duration within the meaning of paragraph 2 …'

13 That provision was reproduced, in substance, and maintained in force by Article 19 of decreto legislativo n. 81 – Disciplina organica dei contratti di lavoro e revisione della normativa in tema di mansioni, a norma dell'articolo 1, comma 7, della legge 10 dicembre 2014, n. 183 (Legislative Decree No 81 – Systematic regulation of employment contracts and revision of the legislation on employment obligations, pursuant to Article 1, paragraph 7, of Law No 183, of 10 December 2014) of 15 June 2015 (Ordinary Supplement to GURI No 144 of 24 June 2015; 'Legislative Decree No 81/2015'), entitled 'Setting the time limit and maximum duration', in force since 25 June 2015. According to that provision, once the 36-month limit is exceeded, whether it is a single contract or successive contracts concluded for the performance of functions of the same level and legal status, 'the contract is to be converted into a permanent contract as from the date on which that time limit is exceeded'.

14 However, in accordance with Article 10(4a) of Legislative Decree No 368/2001, Article 5(4a) of that legislative decree does not apply in certain cases. The contract at issue in the main proceedings is one of those cases, by virtue of Article 29(2)(d) of Legislative Decree No 81/2015, since that provision expressly provides, among the exclusions from the scope of Article 5(4a) of Legislative Decree No 368/2001, for fixed-term contracts concluded pursuant to Law No 240/2010.

15 Article 29(4) of Legislative Decree No 81/2015 states that the provisions of Article 36 of decreto legislativo n. 165 – Norme generali sull'ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche (Legislative Decree No 165 laying down general rules concerning the organisation of employment in public authorities) of 30 March 2001 (Ordinary Supplement to GURI No 106 of 9 May 2001; 'Legislative Decree No 165/2001') are to remain unchanged.

16 Article 36 of Legislative Decree No 165/2001, as amended by Legislative Decree No 75/2017, entitled 'Personnel on fixed-term contracts or hired under flexible employment relationships', provides:

'1. For requirements connected with their everyday needs, public authorities shall recruit exclusively by means of employment contracts of indefinite duration …

…

5. In any event, infringement of mandatory provisions on the recruitment or employment of workers by public authorities cannot lead to the creation of employment relationships of indefinite duration with those public authorities, without prejudice to any liability or sanction which those authorities may incur. The worker concerned shall be entitled to compensation for damage suffered as a result of working in breach of mandatory provisions …

…

5c. Fixed-term employment contracts established in breach of this Article shall be deemed null and void and shall render the authority liable. Managers who act in breach of the provisions of this Article shall also be liable within the meaning of Article 21. No performance bonus may be awarded to managers who have made unlawful use of flexitime.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

17 On 1 December 2012, EB was employed by the University as a researcher for a period of three years on the basis of a contract concluded under Article 24(3)(a) of Law No 240/2010 (the 'Type A contract'). Such a contract may only be extended once for a maximum of two years.

18 In October 2014, EB obtained the national scientific qualification for the post of Category 2 university professor, within the meaning of Article 16 of that law, which attests that the holder has the scientific qualifications necessary to take part in certain university competitions.

19 It is common ground that, when EB was still employed, the University, in accordance with Article 24(6) of Law No 240/2010, which allows, for a period of eight years from the entry into force of that law, for researchers employed on the basis of a permanent contract, working at the University and having obtained national scientific qualifications to undergo the appraisal procedure for appointment to the post of Category 2 professor, launched such a procedure, passed by two researchers in the same field as EB who were employed on the basis of such a contract. However, EB was not entitled to undergo that appraisal on the grounds that he was employed on a fixed-term contract, even though he had the scientific qualifications.

20 Six months before the end of his contract on 1 December 2015, EB requested the extension of that contract, which was extended on 24 November 2015, with effect from 1 December 2015, for a period of two years.

21 On 8 November 2017, before the expiry of his extended contract, EB applied for the extension of his contract under Article 20(8) of Legislative Decree No 75/2017 so that his fixed-term employment relationship would be converted into an employment contract of indefinite duration. In that connection, he argued that that provision also applies to university teaching staff. In addition, EB sought the implementation, as from 2018, of the employment stabilisation procedure provided for in Article 20(1) thereof.

22 By a note dated 21 November 2017, the University rejected EB's claims, arguing, first, that Article 20(8) of Legislative Decree No 75/2017 did not apply to university researchers hired under a fixed-term contract, and, second, that Article 29 of Legislative Decree No 81/2015 did not allow recourse to a procedure provided for the recruitment of researchers under a contract of indefinite duration.

23 EB brought an action before the referring court not only against that decision, but also sought the annulment of Circular No 3/2017 adopted by the Ministro per la semplificazione e la pubblica amministrazione (Minister for Simplification and Public Administration), according to which Legislative Decree No 75/2017 did not apply to researchers recruited under a fixed-term employment contract. In addition, he asked the University to grant him the right to be hired on a permanent basis or to be allowed to undergo the appraisal procedure in order to be appointed to the post of associate professor pursuant to Article 24(5) of Law No 240/2010.

24 In support of his action, EB submits, inter alia, that Article 20 of Legislative Decree No 75/2017 must be interpreted as also applying to employment relationships covered by public law and, therefore, to the employment relationship of Type A researchers, since the framework agreement precludes a different interpretation, such as that applied by Circular No 3/2017.

25 EB also submits that the exclusion of his contract from the rule providing for the automatic conversion of a fixed-term contract extended for more than 36 months into a contract of indefinite duration – an exclusion contained in Article 29(2)(d) of Legislative Decree No 81/2015 – is incompatible with the framework agreement, in so far as there are no objective reasons for a researcher to be employed on a fixed-term contract, in particular where that employment extends for a period of more than three years, which was exactly the situation of the applicant in the main proceedings.

26 EB also argues that, by not allowing researchers recruited on fixed-term contracts, who, like himself, have obtained the academic qualifications required for appointment to the post of 'associate professor', to undergo the assessment with a view to appointment to an associate professorship, Article 24(3) of Law No 240/2010 is contrary to the principle of non-discrimination set out in Clause 4 of the framework agreement.

27 Finally, EB relies on the principle of equivalence, according to which, in the absence of a national rule that is more favourable to the category of researchers to which he belongs, the provisions relating to the private sector – such as those that provide for the automatic conversion of a fixed-term employment contract extended beyond 36 months into a permanent contract – should be applied, as well as the provisions applicable to categories of fixed-term workers in the public sector who, like school teachers, may benefit from some form of stabilisation of their employment relationship through appropriate procedures, in accordance with Article 20 of Legislative Decree No 75/2017.

28 The University, in turn, observes that Article 20 of Legislative Decree No 75/2017 does not apply to university researchers, by virtue of the provisions set out in Article 3(2) of Legislative

Decree No 165/2001. In that connection, it argues that that provision does not give rise to discrimination in relation to other researchers who do not fall within the category of staff employed by the public sector.

29 The University also notes that the difference in treatment between the categories referred to in Article 24(3)(a) and (b) of Law No 240/2010 is justified, given that the researchers concerned by that provision under (b) have more experience.

30 The referring court considers that, as regards researchers recruited under a Type A contract referred to in Article 24(1) and (3)(a) of Law No 240/2010, the use of such fixed-term contracts may be abusive, and it questions whether the exclusion, deriving from Article 29(2)(d) of Legislative Decree No 81/2015, of the possibility of converting a contract, such as the one concluded between EB and the University, into a contract of indefinite duration is compatible with Clause 5 of the framework agreement. It refers, in that regard, in particular to the judgment of 14 September 2016 in *Martínez Andrés and Castrejana López* (C-184/15 and C-197/15, EU:C:2016:680), in which the Court established that the prohibition on converting a fixed-term employment contract into a contract of permanent duration is compatible with the framework agreement only if it is possible to have recourse to some other effective measure in order properly to penalise the abuse of successive fixed-term contracts.

31 According to the national court, there is no such alternative measure, since the compensation for damage which the applicant in the main proceedings could obtain is limited to the payment of a lump sum which is not proportionate to the actual extent of the damage suffered. In those circumstances, EB is in a situation in which the domestic legal order does not provide for any form of sanction for the abuse of fixed-term contracts, as was the case in the judgment of 25 October 2018, *Sciotto* (C-331/17, EU:C:2018:859).

32 Furthermore, the referring court questions the compatibility of Article 24(1) and (3)(a) of Law No 240/2010 with the framework agreement, in so far as that provision limits the duration of researchers' contracts to three years, with a possible extension of two years, thus allowing indiscriminate recourse to fixed-term contracts, whereas the renewal of such a contract should be justified by objective reasons.

33 It is under those circumstances that the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy) stayed the proceedings and referred the following questions for a preliminary ruling:

'(1) Although there is no general obligation on Member States to provide for the conversion of fixed-term employment contracts into contracts of indefinite duration, does Clause 5 of the framework agreement … headed 'Measures to prevent abuse', preclude, also in the light of the principle of equivalence, national legislation, such as that laid down in Article 29(2)(d) and [Article 29(4)] of Legislative Decree No 81 of 15 June 2015 and Article 36(2) and (5) Legislative Decree No 165 of 30 March 2001, which does not allow in respect of university researchers employed on a three-year fixed-term contract, which may be extended for two years pursuant to Article 24(3)(a) of Law [No 240/2010], the subsequent establishment of a relationship of indefinite duration?

(2) Although there is no general obligation on Member States to provide for the conversion of fixed-term employment contracts into contracts of unlimited duration, does Clause 5 of the framework agreement … headed 'Measures to prevent abuse', preclude, also in the light of the principle of equivalence, national legislation, such as that laid down in Article 29(2)(d) and

[Article 29(4)] of Legislative Decree No 81 of 15 June 2015 and Article 36(2) and (5) Legislative Decree No 165 of 30 March 2001, from being applied by the national courts of the Member [State] concerned in such a way that a right to maintain the employment relationship is granted to persons employed by public authorities under a flexible employment contract governed by the rules of employment law, but that right is not conferred, in general, on staff employed on fixed-term contracts by those authorities under administrative law, and (as a result of the above provisions of national law) no other effective measure is available under the national legal system to penalise such abuse with regard to workers?

(3) Although there is no general obligation on Member States to provide for the conversion of fixed-term employment contracts into contracts of unlimited duration, does Clause 5 of the framework agreement …, headed 'Measures to prevent abuse', preclude …, also in the light of the principle of equivalence, national legislation such as that laid down in Article 24(1) and (3) of Law [No 240/2010] which provides for the conclusion and extension for a total period of five years (three years and a possible extension of two years) of fixed-term contracts between researchers and universities, making the conclusion of the contract subject to the availability of "the resources for planning for the purposes of carrying out research, teaching, non-curricular activities and student service activities" and also making extension of the contract subject to a "positive appraisal of the teaching and research activities carried out", without laying down objective and transparent criteria for determining whether the conclusion and renewal of those contracts actually meet a genuine need and whether they are capable of achieving the objective pursued and are necessary for that purpose, and therefore entails a specific risk of abusive use of such contracts, thus rendering them incompatible with the purpose and practical effect of the framework agreement?'

Consideration of the questions referred

Admissibility

34 The University submits that the questions referred for a preliminary ruling are manifestly inadmissible. First, they are purely hypothetical and clearly irrelevant to the resolution of the dispute in the main proceedings, since it is clear from the order for reference that the national court has no doubts as to the interpretation to be given to the national legislation at issue in the main proceedings. Second, that court did not set out the reasons which led it to question the interpretation of EU law, which would not only contravene Article 94 of the Court's Rules of Procedure, so that those questions should also be considered inadmissible on that basis, but would also violate the University's rights of defence.

35 In that regard, it must be recalled that, in the context of the cooperation between the Court of Justice and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court of Justice. Consequently, where the questions referred concern the interpretation of EU law, the Court is in principle required to give a ruling (judgment of 25 November 2020, *Sociálna poisťovňa*, C-799/19, EU:C:2020:960, paragraph 43 and the case-law cited).

36 Those questions referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law or the assessment of

its validity that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it and to understand the reasons for the referring court's view that it needs answers to those questions in order to rule in the dispute before it (judgment of 2 February 2021, *Consob*, C-481/19, EU:C:2021:84, paragraph 29 and the case-law cited).

37 In the present case, it should be observed, in the first place, that the reference for a preliminary ruling meets the criteria laid down in Article 94 of the Rules of Procedure. That request provides the necessary clarifications as regards the relevant facts and the subject matter of the main proceedings. It also refers to the tenor of the provisions of national law, which, according to the referring court, may be applicable to the case in the main proceedings. The referring court also mentions, on the one hand, the reasons for its uncertainty regarding the interpretation of Directive 2008/94 and, on the other, the relationship between certain provisions of EU law and the national legislation which it considers to be applicable to the dispute in the main proceedings. That information is also required to permit the Italian Government and other interested parties to submit observations pursuant to Article 23 of the Statute of the Court, as evidenced, in particular, by the observations lodged by the University.

38 In the second place, it is clear from that information that the referring court has shown the relationship between the requested interpretation of the framework agreement and the actual facts and purpose of the dispute in the main proceedings. Furthermore, in the light of that information, it must be held that the questions put to the Court of Justice are not hypothetical and that the Court has all the factual or legal material necessary to give a useful answer to those questions.

39 In those circumstances, the questions referred are admissible.

Substance

40 As a preliminary point, it must be observed that, by its first two questions, the national court asks whether the absence of measures to penalise the abuse of fixed-term contracts, such as those at issue in the main proceedings, is compatible with Clause 5 of the framework agreement. The third question asks whether that provision precludes the use of such fixed-term contracts on the grounds that that is abusive.

41 Since the examination of the need for measures to sanction abuse of fixed-term contracts presupposes the existence of such abuse, the third question for a preliminary ruling must be examined first.

The third question

42 By its third question, the national court is asking, in essence, whether Clause 5 of the framework agreement must be interpreted as precluding national legislation under which, as regards the recruitment of university researchers, provides for the conclusion of fixed-term contracts for a period of three years, with the only possibility of extension, for a maximum period of two years, making the conclusion of such contracts subject to the condition that resources are available 'for planning for the purposes of carrying out research, teaching, non-curricular activities and student service activities', and making the extension of those contracts conditional on the 'positive appraisal of the teaching and research activities carried out' without, however, defining objective and transparent criteria in order to ascertain whether the conclusion and renewal of such contracts

actually meet a genuine need, that they are likely to achieve the objective pursued and are necessary to that end.

43 The third question therefore covers two issues: the conclusion of the contract at issue in the main proceedings, and the extension of that contract.

44 In that regard, it must be recalled that Article 24(3) of Law No 240/2010 provides for two types of contract for university researchers, thereby replacing the previous rules which had granted such persons a permanent post after the successful completion of an initial trial period of three years, namely, Type A contracts on the one hand and, on the other, the contracts referred to in Article 24(3)(b) of Law No 240/2010 ('Type B contract'). The latter are also concluded for a period of three years.

45 While it is true that the selection procedure leads, for both categories of university researchers, to the conclusion of a fixed-term contract, namely for a period of three years, it is apparent from the reference for a preliminary ruling that there are, however, differences between those types of contract.

46 The conclusion of a Type A contract depends on the existence of resources available to carry out research, teaching, further education and student services activities. Such a contract may be extended once for a period of two years, after a positive appraisal of the scientific activity performed by the person concerned. On the other hand, a Type B contract cannot be extended, but the researcher concerned has the opportunity, at the end of that period and depending on the outcome of an appropriate appraisal, of being appointed to a post as an associate professor, such a post being of indefinite duration.

47 The conditions of access to the university researcher contract are also different. For Type A contracts, it is sufficient to hold doctorate, an equivalent university degree or specialist medical diploma. For Type B contracts, it is necessary to have worked as a researcher in accordance with Article 24(3)(a) of Law No 240/2010, to have obtained accreditation as a Category 1 or Category 2 professor, to have completed a period of medical training or to have spent at least three years at different universities with research grants or scholarships.

48 Therefore, the fact of having concluded a Type A contract allows access to a Type B contract. A university researcher can thus continue his or her academic career by moving from a Type A contract to a Type B contract, which will then give him or her the opportunity to be appointed to the post of associate professor. Such an appointment depends, however, on the outcome of an appropriate appraisal and, therefore, is not automatic.

49 It follows that the fundamental difference between the two categories of university researchers now provided for lies in the fact that the researchers referred to in Article 24(3)(a) of Law No 240/2010 do not have direct access, as part of their career, to the post of associate professor, whereas those referred to in Article 24(3)(b) do have direct access.

50 In the present case, EB was hired after successfully completing a selection procedure organised under Article 24 of Law No 240/2010 and, therefore, as a result of a positive appraisal taking into account the 'resources for planning for the purposes of carrying out research, teaching, non-curricular activities and student service activities', as required by subparagraph 3(a) thereof.

51 It must be recalled that, according to Clause 1 of the framework agreement, the purpose of that agreement is, first, to improve the quality of fixed-term work by ensuring the application of the

principle of non-discrimination and, second, to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.

52 However, it is clear from the wording of Clause 5 of the framework agreement and from settled case-law that that clause is applicable solely when there are successive fixed-term employment contracts or relationships (judgments of 22 January 2020, *Baldonedo Martín*, C-177/18, EU:C:2020:26, paragraph 70, and of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 56 and the case-law cited), so that a contract which is the very first or only fixed-term employment contract does not fall within the scope of Clause 5(1) of the framework agreement (see, to that effect, judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 38 and the case-law cited). In that context, the Court also pointed out that the framework agreement does not require Member States to adopt a measure requiring every first or single fixed-term employment contract to be justified by an objective reason (judgment of 3 July 2014, *Fiamingo and Others*, C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 57).

53 Therefore, the conclusion of a fixed-term contract, such as the Type A contract, is not, as such, covered by Clause 5(1) of the framework agreement and thus does not fall within the scope of that provision.

54 However, that provision is applicable where a Type A contract is extended for a maximum period of two years, as provided for in Article 24(3)(a) of Law No 240/2010, since in that case there are two successive fixed-term contracts.

55 In that regard, it must be observed that the purpose of Clause 1 of the framework agreement is to implement one of the objectives of that agreement, namely to place limits on successive recourse to fixed-term employment contracts or relationships, regarded as a potential source of abuse to the detriment of workers, by laying down as a minimum a number of protective provisions designed to prevent the status of employees from being insecure (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 36 and the case-law cited).

56 Therefore, Clause 5(1) of the framework agreement requires, with a view to preventing misuse of successive fixed-term employment contracts or relationships, the effective and binding adoption by Member States of at least one of the measures listed in that provision, where their domestic law does not already include equivalent legal measures. The measures listed in Clause 5(1)(a) to (c), of which there are three, relate, respectively, to objective reasons justifying the renewal of such employment contracts or relationships, the maximum total duration of successive fixed-term employment contracts or relationships, and the number of renewals of such contracts or relationships (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 54 and the case-law cited).

57 The Member States enjoy a certain discretion in that regard since they have the choice of relying on one or more of the measures listed in Clause 5(1)(a) to (c) of the framework agreement, or on existing equivalent legal measures, while taking account of the needs of specific sectors and/or categories of workers (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 55 and the case-law cited).

58 In that way, Clause 5(1) of the Framework Directive assigns to the Member States the general objective of preventing such abuse, while leaving to them the choice as to how to achieve it, provided that they do not compromise the objective or the practical effect of the framework agreement (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector),* C-760/18, EU:C:2021:113, paragraph 56 and the case-law cited).

59 In the present case, it should be noted that Article 24(3)(a) of Law No 240/2010 establishes not only a limit on the maximum duration of the fixed-term contract of university researchers belonging to the category to which EB belongs, but also on the possible number of renewals of that contract. More specifically, as regards the Type A contract, that law sets the maximum duration of the contract at three years and allows only one extension, which is limited to a period of two years.

60 Article 24(3) of Law No 240/2010 therefore contains two of the measures indicated in Clause 5(1) of the framework agreement, namely limits on the maximum total duration of fixed-term contracts and the number of possible renewals. The referring court has not pointed to any evidence which might suggest that these measures would be insufficient to prevent abuse of fixed-term contracts with regard to Type A contracts.

61 Admittedly, the referring court observes, relying on the judgments of 14 September 2016, *Martínez Andrés and Castrejana López* (C-184/15 and C-197/15, EU:C:2016:680), and of 25 October 2018, *Sciotto* (C-331/17, EU:C:2018:859), that the national legislation at issue in the main proceedings does not contain objective and transparent criteria which make it possible to determine, first, whether the conclusion and extension of Type A contracts are justified by genuine needs of a temporary nature and, second, whether they are such as to satisfy those needs, and whether they are implemented in a proportionate manner.

62 However, in that connection, it must be observed, first, that, unlike the circumstances in the cases giving rise to the judgments of 14 September 2016, *Martínez Andrés and Castrejana López* (C-184/15 and C-197/15, EU:C:2016:680), as well as of 25 October 2018, *Sciotto* (C-331/17, EU:C:2018:859), the national legislation applicable to the dispute in the main proceedings contains measures which correspond to those provided for in Clause 5(1)(b) and (c) of the framework agreement.

63 In those judgments, the problem of establishing whether the renewal of the fixed-term contracts at issue in those cases was justified by objective reasons, within the meaning of Clause 5(1)(a) of the framework agreement including the need to cover genuine and temporary needs, arose solely because of the absence of measures falling within the two categories of measures referred to in paragraph 59 of the present judgment, which are, however, provided for in Article 24(3)(a) of Law No 240/2010. Therefore, the fact that the national legislation at issue in the main proceedings does not contain any details as to the genuine and temporary nature of the needs to be met by recourse to fixed-term contracts, which was relied on by the national court, is irrelevant.

64 Second, it must be recalled that, in those judgments, the workers concerned had no indication as to the duration of their employment relationship. By contrast, in the present case, persons entering into a Type A contract, such as that between EB and the University, are informed, even before signing the contract, that the employment relationship may not last more than five years.

65 As regards the benefit of stability of employment for a worker, that is, of course, as is clear from the second paragraph of the preamble to the framework agreement, conceived as a major element of protection for workers, whereas only in certain circumstances are fixed-term

employment contracts likely to meet the needs of both employers and workers (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 48 and the case-law cited).

66 However, the termination of the effects of a fixed-term researcher's contract, such as that of EB, engaged under a Type A employment contract, does not necessarily lead to job instability, as it allows the worker concerned to acquire the necessary qualifications to obtain a Type B contract, which may, in turn, lead to an employment relationship of indefinite duration as an associate professor.

67 Third, it should be noted that the fact that universities have a constant need to employ university researchers, as appears from the national rules in question, does not mean that that need could not be met by having recourse to fixed-term employment contracts.

68 The post of researcher appears to be intended as the first step in a scientist's career, the researcher being destined, in any case, to move on to another position, namely a teaching position, first as an associate professor and then as a full professor.

69 Furthermore, with regard to the fact that the two-year extension of Type A contracts is conditional on the positive evaluation of the teaching and research activities carried out, the 'particular needs' of the sector concerned may reasonably consist, in the field of scientific research, in the need to ensure the career development of individual researchers on the basis of their respective merits, which must therefore be evaluated. Therefore, a provision which would oblige a university to conclude a contract of indefinite duration with a researcher, irrespective of the evaluation of the results of his or her scientific activities, would not meet the above requirements.

70 Finally, the principle of equivalence, which was invoked on several occasions by the referring court in its decision and by EB himself, refers to the need to ensure judicial protection of rights conferred by the EU legal order which is not less favourable than that provided for comparable rights which have their origin in national law alone. Therefore, that principle is not applicable in the present case, since that need only concerns provisions which have as their object rights conferred by the legal order of the European Union (see, to that effect, judgment of 7 March 2018, *Santoro*, C-494/16, EU:C:2018:166, paragraphs 39 and 40).

71 In the light of all the foregoing considerations, the answer to the third question is that Clause 5 of the framework agreement must be interpreted as not precluding national legislation under which provision is made, in respect of the recruitment of university researchers, for the conclusion of a fixed-term contract for a period of three years, with a single possibility of extension, for a maximum period of two years, by making the conclusion of such contracts subject, first, to the condition that resources are available 'for planning for the purposes of carrying out research, teaching, non-curricular activities and student service activities', and, second, that such contracts are extended on condition that there is a 'positive appraisal of the teaching and research activities carried out', without it being necessary for those rules to define objective and transparent criteria making it possible to verify that the conclusion and renewal of such contracts do indeed meet a genuine need, and that they are likely to achieve the objective pursued and are necessary for that purpose.

The first and second questions

72 As mentioned in paragraph 40 of the present judgment, the first and second questions refer to measures intended to penalise the abuse of fixed-term contracts.

73 As is apparent from the answer to the third question, since Clause 5 of the framework agreement does not preclude the national legislation at issue in the main proceedings and the latter does not therefore give rise to a risk of abuse of fixed-term contracts, it is not necessary to answer the first and second questions.

Costs

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

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

Clause 5 of the framework agreement on fixed-term work, concluded on 18 March 1999 which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding national legislation under which provision is made, in respect of the recruitment of university researchers, for the conclusion of a fixed-term contract for a period of three years, with a single possibility of extension, for a maximum period of two years, making the conclusion of such contracts subject, first, to the condition that resources are available 'for planning for the purposes of carrying out research, teaching, non-curricular activities and student service activities', and, second, that such contracts are extended on condition that there is a 'positive appraisal of the teaching and research activities carried out', without it being necessary for those rules to define objective and transparent criteria making it possible to verify that the conclusion and renewal of such contracts do indeed meet a genuine need, and that they are likely to achieve the objective pursued and are necessary for that purpose.

[Signatures]

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1 Language of the case: Italian.