Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

3 July 2014*

(Reference for a preliminary ruling — Social policy — Directive 1999/70/EC — Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Maritime sector — Ferries making crossings between two ports situated in the same Member State — Successive fixed-term employment contracts — Clause 3(1) — Concept of 'fixed-term employment contract' — Clause 5(1) — Measures to prevent abuse arising from the use of fixed-term contracts — Penalties — Conversion of the employment contract into one of indefinite duration — Conditions)

In Joined Cases C-362/13, C-363/13 and C-407/13,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Italy), made by decisions of 3 April 2013, received at the Court on 28 June and 17 July 2013, in the proceedings

**Maurizio Fiamingo** (C-362/13),

**Leonardo Zappalà** (C-363/13),

**Francesco Rotondo and Others** (C-407/13)

v

**Rete Ferroviaria Italiana SpA,**

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, C.G. Fernlund, A. Ó Caoimh (Rapporteur), C. Toader and E. Jarašiūnas, Judges,

Advocate General: J. Kokott,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 7 May 2014,

after considering the observations submitted on behalf of:

— M. Fiamingo and L. Zappalà, by A. Notarianni, avvocatessa,

— F. Rotondo and Others, by V. De Michele and R. Garofalo, avvocati,

— Rete Ferroviaria Italiana SpA, by F. Sciaudone, avvocato,

* Language of the case: Italian.

— the Italian Government, by G. Palmieri, acting as Agent, assisted by G. Albenzio, avvocatto dello Stato,

— the Polish Government, by B. Majczyna, acting as Agent,

— the Norwegian Government, by I.S. Jansen and K.B. Moen, acting as Agents,

— the European Commission, by C. Cattabriga and J. Enegren, acting as Agents,

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

gives the following

## Judgment

1 These requests for a preliminary ruling concern the interpretation of Clauses 3 and 5 of the Framework Agreement on fixed-term work concluded on 18 March 1999 ('the Framework Agreement'), 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 These requests have been made in proceedings between workers employed as seafarers and their employer, Rete Ferroviaria Italiana SpA ('RFI'), concerning the classification of contracts of employment between them.

### Legal context

*EU law*

Directive 1999/70/EC

3 Article 1 of Directive 1999/70 states that the purpose of that directive is 'to put into effect the framework agreement … concluded … between the general cross-industry organisations (ETUC, UNICE and CEEP) annexed hereto'.

4 The second to fourth paragraphs in the preamble to the Framework Agreement are worded as follows:

'The parties to this agreement recognise that contracts of an indefinite duration are, and will continue to be, the general form of employment relationship between employers and workers. They also recognise that fixed-term employment contracts respond, in certain circumstances, to the needs of both employers and workers.

This agreement sets out the general principles and minimum requirements relating to fixed-term work, recognising that their detailed application needs to take account of the realities of specific national, sectoral and seasonal situations. It illustrates the willingness of the Social Partners to establish a general framework for ensuring equal treatment for fixed-term workers by protecting them against discrimination and for using fixed-term employment contracts on a basis acceptable to employers and workers.

This agreement applies to fixed-term workers with the exception of those placed by a temporary work agency at the disposition of a user enterprise. It is the intention of the parties to consider the need for a similar agreement relating to temporary agency work.'

5 Paragraphs 6 to 8 and 10 of the general considerations to the Framework Agreement state:

'6. Whereas employment contracts of an indefinite duration are the general form of employment relationships and contribute to the quality of life of the workers concerned and improve performance;

7. Whereas the use of fixed-term employment contracts based on objective reasons is a way to prevent abuse;

8. Whereas fixed-term employment contracts are a feature of employment in certain sectors, occupations and activities which can suit both employers and workers;

...

10. Whereas this agreement refers back to Member States and social partners for the arrangements for the application of its general principles, minimum requirements and provisions, in order to take account of the situation in each Member State and the circumstances of particular sectors and occupations, including the activities of a seasonal nature.'

6 Under Clause 1 of the Framework Agreement, entitled 'Purpose':

'The purpose of this framework agreement 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.'

7 Clause 2 of the Framework Agreement, entitled 'Scope', provides:

'1. This agreement applies to fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State.

2. Member States after consultation with the social partners and/or the social partners may provide that this agreement does not apply to:

(a) initial vocational training relationships and apprenticeship schemes;

(b) employment contracts and relationships which have been concluded within the framework of a specific public or publicly-supported training, integration and vocational retraining programme.'

8 Clause 3 of the Framework Agreement, entitled '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.

…’

9 Clause 5 of the Framework Agreement, entitled ‘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 employment 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.’

10 Under the heading ‘Provisions on implementation’, Clause 8(2) of the Framework Agreement states:

‘This Agreement shall be without prejudice to any more specific [European law] provisions, and in particular [European law] provisions concerning equal treatment or opportunities for men and women.’

Directive 2009/13/EC

11 Article 1 of Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners’ Associations (ECSA) and the European Transport Workers’ Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC (OJ 2009 L 124, p. 30), is worded as follows:

‘This Directive implements the Agreement on [the] Maritime Labour Convention, 2006 [the “MLC 2006”], concluded on 19 May 2008 between the organisations representing management and labour in the maritime transport sector (European Community Shipowners’ Associations, ECSA and European Transport Workers’ Federation, ETF) as set out in the Annex [“the agreement on the MLC 2006”].’

12 The part of that agreement entitled ‘Definitions and Scope of Application’ provides:

‘1. For the purpose of this Agreement and unless provided otherwise in particular provisions, the term:

…

(c) “seafarer” means any person who is employed or engaged or works in any capacity on board a “ship” to which this Agreement applies;

…

(e) “ship” means a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;

…

2. Except as expressly provided otherwise, this Agreement applies to all seafarers.

…’

13 Within the part of the agreement entitled ‘The Regulations and the Standards’, Title 2, which is headed ‘Conditions of Employment’, contains, in particular, Regulation 2.1 concerning ‘Seafarers’ employment agreements’. Standard A2.1, paragraph 4, of Regulation 2.1 is worded as follows:

‘Each Member State shall adopt laws and regulations specifying the matters that are to be included in all seafarers’ employment agreements governed by its national law. Seafarers’ employment agreements shall in all cases contain the following particulars:

…

(c) the place where and date when the seafarers’ employment agreement is entered into;

…

(g) the termination of the agreement and the conditions thereof, including:

(i) if the agreement has been made for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period, which shall not be less for the shipowner than for the seafarer;

(ii) if the agreement has been made for a definite period, the date fixed for its expiry; and

(iii) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged;

…’

14 Within the final part of the Agreement, entitled ‘Final Provisions’, the fourth paragraph provides:

‘This Agreement shall be without prejudice to any more stringent and/or specific existing [European Union] legislation.’

*Italian law*

15 In Italy, employment contracts for seafarers are governed by the rules of the Navigation Code, approved by Royal Decree No 327 of 30 March 1942 (‘the Navigation Code’), which, pursuant to Article 1 thereof, takes precedence over the general rules of civil law applicable to employment contracts. Such contracts are therefore not subject to Legislative Decree No 368 of 6 September 2001 implementing Directive 1999/70/EC concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP (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) (*GURI* No 235 of 9 October 2001, p. 4).

16 Article 325 of the Navigation Code provides:

‘The employment contract may be concluded:

(a) for one or several given voyages;

(b) for a fixed term;

(c) for an indefinite duration.

…

For the purposes of the employment contract, the term “voyage” means all the crossings made between the port of loading and the port of final destination, in addition to a possible crossing in ballast to return to the port of loading.

…’

17 According to Article 326 of the Navigation Code:

‘A fixed-term contract and a contract for several voyages may not be concluded for a period longer than one year; if they are concluded for a longer period they shall be considered to be contracts of indefinite duration.

If, under a number of contracts for several voyages or a number of fixed-term contracts, or under a number of contracts of both types, the engaged seafarer is employed by the same shipowner continuously for a period longer than one year, the employment contract shall be governed by the rules concerning contracts of indefinite duration.

For the purposes of the previous paragraph, the employment shall be considered to be continuous when the period between the ending of one contract and the conclusion of the subsequent contract is no more than [60] days.’

18 Article 332 of the Navigation Code states:

‘The employment contract must indicate:

…

(4) where the engagement is for voyages, the voyage or voyages to be made and the date on which the seafarer must begin work; where the engagement is for a fixed term, the starting point and duration of the contract …

…’

19 Article 374 of the Navigation Code provides:

‘The provisions of [Article] 326 … may be derogated from by the *norme corporative* [special body of rules relating to a trade or profession]; they may not be derogated from in individual contracts, unless that derogation is to the advantage of the person employed. However, even under the *norme corporative* the period provided for in the first and second paragraphs of Article 326 may not be increased, nor may the period provided for in Article 326(3) be reduced.’

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

20 The appellants in the main proceedings are seamen enrolled in the register of seafarers. They were engaged by RFI under successive fixed-term contracts, concluded after 2001, to work on one or several voyages and for a maximum of 78 days, on board ferries making the crossing between Messina-Villa San Giovanni and Messina-Reggio Calabria (Italy). It is apparent from the orders for reference that under those contracts the appellants had worked for their employer for a period of less than one year and that a period of less than 60 days had elapsed between the end of one contract of employment and the conclusion of the subsequent contract.

21 Considering that their employment relationship had been unlawfully terminated following their disembarkation, the appellants in the main proceedings brought an action before the Tribunale di Messina (Court of Messina), seeking a declaration that their fixed-term employment contracts were void, the conversion of those contracts into employment contracts of indefinite duration, immediate re-engagement or reinstatement and compensation for loss suffered.

22 At first instance, the Tribunale di Messina upheld the claims of the appellants in the main proceedings in Case C-407/13 and dismissed the claims of the appellants in the main proceedings in Cases C-362/13 and C-363/13. On appeal, however, the Corte d'appello di Messina (Court of Appeal, Messina) dismissed the appellants' claims in their entirety.

23 The appellants in the main proceedings then brought an appeal before the Corte suprema di cassazione (Supreme Court of Cassation). They submitted that the Corte d'appello di Messina had wrongly held that the Framework Agreement was not applicable to seafarers and had wrongly considered that their fixed-term employment contracts were lawful even though those contracts did not indicate the termination date of the contracts but only their duration by the phrase 'a maximum of 78 days' and also failed to set out the objective reasons justifying the use of such contracts. According to the appellants, the use of fixed-term employment contracts was abusive because their use was explained not by the particular character of maritime work or the existence of objective reasons, but in order to remedy structural staff shortages.

24 As a result, the Corte suprema di cassazione considers that it is necessary to ask whether the Framework Agreement applies to employment relationships in the maritime sector. If it does, the arrangements for employment for a fixed term provided for by the Navigation Code might prove to be contrary to the Framework Agreement. Given that by Legislative Decree No 368 of 6 September 2001, implementing Directive 1999/70/EC concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP, the Italian legislature fulfilled the obligation laid down in Clause 5 of that agreement to provide for measures designed to prevent abuse arising from the use of successive fixed-term employment contracts, it is possible that the provisions of that decree must equally be applied to employment relationships in the maritime sector.

25 In those circumstances, the Corte suprema di cassazione decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Are the clauses of the Framework Agreement … applicable to maritime labour? In particular, does Clause 2(1) [of the Framework Agreement] also cover workers engaged for a fixed-term on ferries making daily sea crossings?

(2) Does the Framework Agreement …, in particular Clause 3(1), preclude national legislation (Article 332 of the Navigation Code) that provides that the "duration" of the contract, rather than its "term", is to be indicated, and is it compatible with that directive to provide for the duration of the contract by indicating a terminating point that is definite as to its existence ("a maximum of 78 days") but indefinite as to when it occurs?

(3) Does the Framework Agreement …, in particular Clause 3(1), preclude national legislation (Articles 325, 326 and 332 of the Navigation Code) in which the objective reasons for a fixed-term contract are expressed simply in terms of the voyage or voyages to be made, in essence equating the purpose of the contract (the services provided) with its cause (the reasons for concluding a fixed-term contract)?

(4) Does the Framework Agreement ... preclude national legislation (in the present case, the Navigation Code) which, in the event of the use of successive contracts (in a way that would amount to abuse for the purposes of Clause 5), excludes the conversion of those contracts into contracts of indefinite duration (the measure provided for in Article 326 of the Navigation Code only applies in situations in which the seafarer works continuously for more than one year and in situations in which the period between the ending of one contract and the conclusion of the subsequent contract is no more than 60 days)?'

26 By order of the President of the Court of 28 August 2013, Cases C-362/13, C-363/13 and C-407/13 were joined for the purposes of the written and oral procedure and of the judgment.

## Consideration of the questions referred

### *The first question*

27 By its first question, the referring court asks, essentially, whether the Framework Agreement must be interpreted as meaning that it applies to workers, such as the appellants in the main proceedings, who are employed as seafarers under fixed-term employment contracts on ferries making sea crossings between two ports situated in the same Member State.

28 In this respect it should be recalled that, as the Court has already ruled on several occasions, it is apparent from the very wording of Clause 2(1) of the Framework Agreement that the scope of that agreement is conceived in broad terms, as it covers generally 'fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State' (see, in particular, *Adeneler and Others*, C-212/04, EU:C:2006:443, paragraph 56; *Della Rocca*, C-290/12, EU:C:2013:235, paragraph 34; and *Márquez Samohano*, C-190/13, EU:C:2014:146, paragraph 38).

29 In addition, the definition of 'fixed-term workers' for the purposes of the Framework Agreement, set out in Clause 3(1), encompasses all workers without drawing a distinction according to whether their employer is in the public, or private, sector (see *Adeneler and Others*, EU:C:2006:443, paragraph 56; *Della Rocca*, EU:C:2013:235, paragraph 34; and *Márquez Samohano* EU:C:2014:146, paragraph 38) and regardless of the classification of their contract under domestic law (see *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 166).

30 The Framework Agreement thus applies to all workers providing remunerated services in the context of a fixed-term employment relationship linking them with their employer (see *Del Cerro Alonso*, C-307/05, EU:C:2007:509, paragraph 28; *Gavieiro Gavieiro and Iglesias Torres*, C-444/09 and C-456/09, EU:C:2010:819, paragraph 42; and the order in *Montoya Medina*, C-273/10, EU:C:2011:167, paragraph 26).

31 The scope of the Framework Agreement is not unlimited, however. Thus, it is apparent from the wording of Clause 2(1) of the Framework Agreement that the definition of the contracts and employment relationships to which it applies are not determined by that agreement or by EU law, but

by national law and/or practice, so long as those concepts are not defined in a manner that results in the arbitrary exclusion of a category of persons from the benefit of the protection provided by the Framework Agreement (see *Sibilio*, C-157/11, EU:C:2012:148, paragraphs 42 and 51).

32 Moreover, Clause 2(2) of the Framework Agreement confers a margin of discretion on Member States as to the application of the Framework Agreement to certain categories of contracts or employment relationships. That provision gives the Member States and/or the social partners the option of making the Framework Agreement inapplicable to 'initial vocational training relationships and apprentice schemes' and 'employment contracts and relationships which have been concluded within the framework of a specific public or publicly-supported training, integration and vocational retraining programme' (see *Adeneler and Others*, EU:C:2006:443, paragraph 57; *Sibilio*, EU:C:2012:148, paragraphs 52 and 53; and *Della Rocca*, EU:C:2013:235, paragraph 35).

33 Additionally, the Court has held that it is explicitly stated in the fourth paragraph of the preamble to the Framework Agreement that the agreement does not apply to temporary workers (see *Della Rocca*, EU:C:2013:235, paragraphs 36 and 45).

34 In the present case, it is apparent from the information submitted to the Court, which is not contested, that the appellants in the main proceedings were linked with their employer by a contract of employment within the meaning of the national law. It is also common ground that those contracts of employment are not amongst the employment relationships that may be excluded from the scope of the Framework Agreement by application of Clause 2(2) thereof.

35 RFI and the Italian and Norwegian Governments emphasise, however, that EU law, like international law and national law, contains provisions intended specifically to regulate the maritime sector, notably, the agreement on the MLC 2006, which is annexed to Directive 2009/13 and which sets out a series of regulations and standards in respect of maritime employment contracts, in particular paragraph (4)(g) of Standard A2.1, which defines the termination of the contract and the conditions thereof. They argue that Clause 8(2) of the Framework Agreement provides that that agreement applies without prejudice to more specific provisions of EU law.

36 However, it neither appears, nor has it been suggested, that the agreement on the MLC 2006, any more than other acts adopted by the EU legislature regarding the maritime sector, includes rules designed, in common with the Framework Agreement, to guarantee the application of the principle of non-discrimination as regards workers employed on fixed-term contracts or to prevent abuse arising from the successive use of fixed-term employment relationships or contracts. The agreement on the MLC 2006, as is apparent, in particular, from the third paragraph of its final provisions, applies without prejudice to any other provision in force in the European Union that is more specific or that offers a higher degree of protection to seafarers.

37 It must also be noted that, by virtue of paragraph 1(c) and (e) and paragraph 2 of the agreement on the MLC 2006, that agreement does not apply to seafarers employed on board ships navigating exclusively in inland waters, such as those at issue in the main proceedings.

38 It follows that workers in the circumstances of the appellants in the main proceedings, who are seafarers employed under fixed-term employment contracts on ferries making crossings between two ports within the same Member State, fall within the scope of the Framework Agreement, which does not exclude any particular sector from its scope.

39 This conclusion is borne out by the contents of Clause 5(1) of the Framework Agreement, which, in conformity with the third paragraph of the preamble to the Framework Agreement as well as paragraphs 8 and 10 of its general considerations, makes it possible for Member States, when

implementing the agreement, to take account of the needs of specific sectors and/or categories of workers involved, provided that that is justified on objective grounds (see, to this effect, *Marrosu and Sardino*, C-53/04, EU:C:2006:517, paragraph 45, and *Kücük*, C-586/10, EU:C:2012:39, paragraph 49).

40 In the light of the foregoing, the answer to the first question is that the Framework Agreement must be interpreted as meaning that it applies to workers, such as the appellants in the main proceedings, who are employed as seafarers under fixed-term employment contracts on board ferries making sea crossings between two ports situated in the same Member State.

*The second question*

41 By its second question, the referring court asks whether the provisions of the Framework Agreement, in particular Clause 3(1) thereof, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides that fixed-term employment contracts have to indicate their duration, but not their termination date.

42 RFI submits that this question is inadmissible for two reasons. On the one hand, it concerns the interpretation of national legislation. On the other hand, Clause 3(1) of the Framework Agreement is concerned only with the definition of certain terms and is therefore not a basis upon which the legality of the national legislation at issue may be tested.

43 It must, however, be observed that the present question clearly does concern the interpretation of EU law and that it is therefore admissible.

44 Turning to the substance, it should be recalled that the Framework Agreement is not intended to harmonise all national rules relating to fixed-term employment contracts but simply aims, by determining general principles and minimum requirements, to establish a general framework for ensuring equal treatment for fixed-term workers by protecting them against discrimination and to prevent abuse arising from the use of successive fixed-term work agreements or contracts (see, in this regard, *Del Cerro Alonso*, EU:C:2007:509, paragraphs 26 and 36; *Impact*, C-268/06, EU:C:2008:223, paragraph 111; *Huet*, C-251/11, EU:C:2012:133, paragraph 41; and the order in *Vino*, C-20/10, EU:C:2010:677, paragraph 54).

45 The Framework Agreement does not contain any provision that lays down the formal particulars that must be included in fixed-term employment contracts.

46 In that regard, Clause 3(1) of the Framework Agreement, as both its heading and its wording clearly demonstrate, defines the concept of 'fixed-term worker' and, in that context, sets out the central characteristic of a fixed-term contract, namely the fact that the end of such a contract is determined 'by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event'. However, that clause does not impose any obligation on Member States in respect of the rules of national law applicable to the conclusion of fixed-term employment contracts (see, to this effect, the order in *Vino*, EU:C:2010:677, paragraphs 60 to 62 and the case-law cited).

47 In any event, inasmuch as the present question must be understood as seeking to determine whether the Framework Agreement is applicable to workers whose employment contracts, such as those at issue in the main proceedings, indicate only their duration (by referring to a 'maximum of 78 days'), it suffices to state that such workers must be regarded as 'fixed-term workers' within the meaning of Clause 3(1) of the Framework Agreement, given that such a reference permits the end of those contracts to be determined objectively and that the Framework Agreement therefore applies to them.

48 In view of the foregoing, the answer to the second question is that the provisions of the Framework Agreement must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which provides that fixed-term employment contracts have to indicate their duration, but not their termination date.

*The third and fourth questions*

49 By its third and fourth questions, the referring court asks, in substance, whether Clauses 3(1) and 5 of the Framework Agreement must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, on the one hand, considers that the mere indication of one or several voyages to be made constitutes objective justification for the fixed-term employment contract and, on the other hand, provides that fixed-term contracts are converted into employment contracts of indefinite duration only where the worker concerned has been employed continuously under such contracts by the same employer for a period longer than one year, the employment relationship being considered to be continuous when the time that elapses between the fixed-term employment contracts is less than or equal to 60 days.

50 RFI submits that the part of this query corresponding to the third question is inadmissible on the ground that it is unrelated to the subject-matter of the main proceedings in that it seeks to verify the compatibility with the Framework Agreement of the national legislation regarding employment contracts for one or several given voyages, while in the main proceedings the employment contracts have been classified as fixed-term employment contracts.

51 It should be borne in mind that, according to settled case-law, questions on the interpretation of EU law 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 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 (see, inter alia, *Della Rocca*, EU:C:2013:235, paragraph 29, and *Márquez Samohano*, EU:C:2014:146, paragraph 35).

52 In the present case, it should be observed, however, that the referring court seeks guidance on the interpretation of the Framework Directive in the context of real litigation arising out of the termination of the successive fixed-term employment contracts concluded by the appellants in the main proceedings for one or several given voyages. By its third question, that court raises the question whether the national legislation at issue in the main proceedings, according to which the indication of the voyage or voyages to be made constitutes an objective reason for the conclusion of such contracts, complies with the requirements imposed by the Framework Agreement. In those circumstances, that question cannot be regarded as hypothetical and, hence, must be considered admissible.

53 As to the substance, in so far as the present questions concern the interpretation of Clause 3(1) of the Framework Agreement, it should be recalled that, as has already been stated at paragraph 46 of this judgment, that provision is irrelevant because it does not impose any obligation on Member States in respect of the rules of national law that apply to the conclusion of fixed-term employment contracts.

54 As regards Clause 5 of the Framework Agreement, it should be borne in mind that the purpose of paragraph 1 of that clause 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 (see, in

particular, *Adeneler and Others*, EU:C:2006:443, paragraph 63; *Angelidaki and Others*, EU:C:2009:250, paragraph 73; *Deutsche Lufthansa*, C-109/09, EU:C:2011:129, paragraph 31; *Kücük*, EU:C:2012:39, paragraph 25; and *Márquez Samohano*, EU:C:2014:146, paragraph 41).

55 As is apparent from the second paragraph of the preamble to the Framework Agreement and from paragraphs 6 and 8 of the general considerations thereto, the benefit of stable employment is viewed as a major element in the protection of workers, whereas it is only in certain circumstances that fixed-term employment contracts are liable to respond to the needs of both employers and workers (see *Adeneler and Others*, EU:C:2006:443, paragraph 62, and *Huet*, EU:C:2012:133, paragraph 35).

56 Thus, Clause 5(1) of the Framework Agreement requires Member States, in order to prevent abuse arising from the use of successive fixed-term employment contracts or relationships, to adopt one or more of the measures listed in a manner that is effective and binding, where domestic law does not 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 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 (see *Angelidaki and Others*, EU:C:2009:250, paragraphs 74 and 151; *Kücük*, EU:C:2012:39, paragraph 26; *Márquez Samohano*, EU:C:2014:146, paragraph 42; and the order in *Papalia*, C-50/13, EU:C:2013:873, paragraphs 18 and 19).

57 It must be pointed out, however, that the Framework Agreement does not require the Member States to adopt a measure requiring every first or single use of a fixed-term employment contract to be justified by an objective reason. As the Court has already held, such fixed-term employment contracts are not within the scope of Clause 5(1) of the Framework Agreement, which relates solely to prevention of the misuse of successive fixed-term employment contracts or relationships; the objective reasons referred to in Clause 5(1)(a) thus relate only to the 'renewal of such contracts or relationships' (see *Angelidaki and Others*, EU:C:2009:250, paragraph 90, and the order in *Vino*, EU:C:2010:677, paragraphs 58 and 59).

58 As regards successive fixed-term employment contracts or relationships, it is clear from paragraph 56 of this judgment that the signatory parties to the Framework Agreement considered, as paragraph 7 of the general considerations thereto indicates, that the use of fixed-term employment contracts founded on objective reasons is a way to prevent abuse (see *Adeneler and Others*, EU:C:2006:443, paragraph 67; *Angelidaki and Others*, EU:C:2009:250, paragraphs 91 and 92; and the order in *Vassilakis and Others*, C-364/07, EU:C:2008:346, paragraph 86).

59 Nonetheless, the Member States enjoy a certain discretion in the implementation of Clause 5(1) of the Framework Agreement since they have the choice of relying on one or more of the measures listed in that clause, or even on existing equivalent legal measures, while taking account of the needs of specific sectors and/or categories of workers (see *Impact*, EU:C:2008:223, paragraph 71; *Angelidaki and Others*, EU:C:2009:250, paragraphs 81 and 93; and *Deutsche Lufthansa*, EU:C:2011:129, paragraph 35).

60 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 (see *Huet*, EU:C:2012:133, paragraphs 42 and 43 and the case-law cited).

61 It follows that, for the purposes of that implementation, a Member State can legitimately choose not to adopt the measure referred to in Clause 5(1)(a), which requires the renewal of such successive fixed-term employment contracts or relationships to be justified by objective reasons. It may, on the contrary, prefer to adopt one or both of the measures referred to in Clause 5(1)(b) and (c) which deal, respectively, with the maximum total duration of those successive fixed-term employment contracts or relationships and the number of renewals of such contracts or relationships, or it may even choose to maintain an existing equivalent legal measure, and it may do so provided that, whatever the measure

thus chosen, the effective prevention of the misuse of fixed-term employment contracts or relationships is assured (see *Angelidaki and Others*, EU:C:2009:250, paragraph 94, and *Deutsche Lufthansa*, EU:C:2011:129, paragraph 44).

62 Furthermore, where, as in the present case, EU law does not lay down any specific penalties in the event that instances of abuse are nevertheless established, it is incumbent on the national authorities to adopt measures that are not only proportionate, but also sufficiently effective and a sufficient deterrent to ensure that the measures taken pursuant to the Framework Agreement are fully effective (see, in particular, *Angelidaki and Others*, EU:C:2009:250, paragraph 158, and the orders in *Affatato*, C-3/10, EU:C:2010:574, paragraph 45, and *Papalia*, EU:C:2013:873, paragraph 20).

63 While, in the absence of relevant EU rules, the detailed rules for implementing such measures are a matter for the domestic legal order of the Member States, under the principle of their procedural autonomy, they must not, however, be less favourable than those governing similar domestic situations (principle of equivalence) or render impossible in practice or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (see, in particular, *Angelidaki and Others*, EU:C:2009:250, paragraph 159, and the orders in *Affatato*, EU:C:2010:574, paragraph 46, and *Papalia*, EU:C:2013:873, paragraph 21).

64 Therefore, where abuse of successive fixed-term contracts or relationships has taken place, a measure offering effective and equivalent guarantees for the protection of workers must be capable of being applied in order duly to punish that abuse and nullify the consequences of the breach of EU law (see *Angelidaki and Others*, EU:C:2009:250, paragraph 160; see also the orders in *Affatato*, EU:C:2010:574, paragraph 47, and *Papalia*, EU:C:2013:873, paragraph 22).

65 In this respect, it should be recalled that, as the Court has observed on a number of occasions, the Framework Agreement does not lay down a general obligation on the Member States to provide for the conversion of fixed-term employment contracts into contracts of indefinite duration. Indeed, Clause 5(2) of the Framework Agreement in principle leaves it to the Member States to determine the conditions under which fixed-term employment contracts or relationships are to be regarded as contracts or relationships of indefinite duration. It follows that the Framework Agreement does not specify the conditions under which contracts of indefinite duration may be used (see, in particular, *Huet*, EU:C:2012:133, paragraphs 38 to 40 and the case-law cited).

66 In the present case, as regards the national law at issue in the main proceedings, it must be recalled that it is not for the Court to rule on the interpretation of provisions of national law, that being exclusively for the referring court or, as the case may be, the national courts having jurisdiction, which must determine whether the requirements set out in paragraphs 56 to 65 of this judgment are met by the provisions of the applicable national law (see, in particular, *Vassallo*, C-180/04, EU:C:2006:518, paragraph 39; *Angelidaki and Others*, EU:C:2009:250, paragraph 163; and the order in *Papalia*, EU:C:2013:873, paragraph 30).

67 It is therefore for the referring court to determine to what extent the conditions for application and the actual implementation of the relevant provisions of national law render the latter an appropriate measure for preventing and, where necessary, punishing the misuse of successive fixed-term employment contracts or relationships (see, to this effect, *Vassallo*, EU:C:2006:518, paragraph 41, and *Angelidaki and Others*, EU:C:2009:250, paragraph 164).

68 However, the Court, when giving a preliminary ruling, may, where appropriate, provide clarification designed to give the national court guidance in its assessment (see, in particular, *Vassallo*, EU:C:2006:518, paragraph 39, and the order in *Papalia*, EU:C:2013:873, paragraph 31).

69 In this regard, without it being necessary to assess whether national legislation, such as the provision made in Article 326 of the Navigation Code, which was adopted before the entry into force of Directive 1999/70 and the Framework Agreement, includes an 'objective reason' within the meaning of Clause 5(1)(a) of the Framework Agreement, it should be stated that such legislation, which lays down a mandatory rule that, when a worker has been employed continuously by the same employer under several fixed-term employment contracts for a period longer than one year, those contracts are converted into an employment contract of indefinite duration, is likely to satisfy the requirements recalled at paragraphs 56 to 65 of this judgment.

70 Such legislation is likely to comprise both an existing legal measure equivalent to the measure preventing the misuse of successive fixed-term employment contracts set out in Clause 5(1)(b) of the Framework Agreement, which relates to the maximum total duration of such contracts, and a measure that punishes that misuse (see, by way of analogy, *Angelidaki and Others*, EU:C:2009:250, paragraph 170, and the order in *Koukou*, C-519/08, EU:C:2009:269, EU:C:2009:269, paragraph 79).

71 This conclusion does not appear to be thrown into doubt by the provision of that legislation whereby only those fixed-term employment contracts separated by a time lapse of less than or equal to 60 days are considered to be 'continuous' and, hence, 'successive'. Such a lapse of time may generally be considered to be sufficient to interrupt any existing employment relationship and to have the effect that any contract signed after that time is not considered to be successive, especially where, as in the cases in the main proceedings, the duration of those fixed-term employment contracts cannot exceed 78 days. It would seem difficult for an employer, who has permanent and lasting requirements, to circumvent the protection against abuse afforded by the Framework Agreement by allowing a period of about two months to elapse following the end of every fixed-term employment contract (see, by analogy, the order in *Vassilakis and Others*, EU:C:2008:346, paragraph 115).

72 That said, it is for the national authorities and courts responsible for implementing the measures transposing Directive 1999/70 and the Framework Agreement, and which are called upon to rule on the classification of successive fixed-term employment contracts, to consider in each case all the circumstances at issue, taking account, in particular, of the number of successive contracts concluded with the same person or for the purposes of performing the same work, in order to ensure that fixed-term relationships are not abused by employers (see the order in *Vassilakis and Others*, EU:C:2008:346, paragraphs 116).

73 In particular, in cases such as those in the main proceedings, the referring court must satisfy itself that the maximum duration of one year, provided for by the national legislation at issue in the main proceedings, is calculated in a manner that does not substantially reduce the effectiveness of the prevention and punishment of the misuse of successive fixed-term employment contracts. That might arise, as the European Commission observed in its written observations, if, rather than being calculated on the basis of the number of calendar days covered by those employment contracts, the maximum duration was calculated on the basis on the number of days' service actually completed by the worker concerned, where, for example, as a result of the low volume of crossings, the latter number is considerably lower than the former.

74 It follows from the foregoing that the answer to the third and fourth questions is that Clause 5 of the Framework Agreement must be interpreted as meaning that it does not preclude, in principle, national legislation, such as that at issue in the main proceedings, which provides for the conversion of fixed-term employment contracts into employment contracts of indefinite duration only in circumstances where the worker concerned has been employed continuously under such contracts by the same employer for a period longer than one year, the employment relationship being considered to be continuous where the fixed-term employment contracts are separated by time lapses of less than or equal to 60 days. It is, however, for the referring court to satisfy itself that the conditions of application and the effective implementation of that legislation result in a measure that is adequate to prevent and punish the misuse of successive fixed-term employment contracts or relationships.

## Costs

75 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 (Third Chamber) hereby rules:

1. **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 meaning that it applies to workers, such as the appellants in the main proceedings, who are employed as seafarers under fixed-term employment contracts on board ferries making sea crossings between two ports situated in the same Member State.**

2. **The provisions of the Framework Agreement on fixed-term work must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which provides that fixed-term employment contracts have to indicate their duration, but not their termination date.**

3. **Clause 5 of the Framework Agreement on fixed-term work must be interpreted as meaning that it does not preclude, in principle, national legislation, such as that at issue in the main proceedings, which provides for the conversion of fixed-term employment contracts into employment contracts of indefinite duration only in circumstances where the worker concerned has been employed continuously under such contracts by the same employer for a period longer than one year, the employment relationship being considered to be continuous where the fixed-term employment contracts are separated by time lapses of less than or equal to 60 days. It is, however, for the referring court to satisfy itself that the conditions of application and the effective implementation of that legislation result in a measure that is adequate to prevent and punish the misuse of successive fixed-term employment contracts or relationships.**

[Signatures]