Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

22 February 2024*

(Reference for a preliminary ruling – Social policy – Directive 1999/70/EC – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Fixed-term employment contracts in the public sector – Staff having non-permanent contracts of indefinite duration – Clauses 2 and 3 – Scope – Concept of 'fixed-term worker' – Clause 5 – Measures to prevent and penalise the abuse of successive fixed-term employment contracts or relationships – Equivalent legal measures)

In Joined Cases C-59/22, C-110/22 and C-159/22,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Tribunal Superior de Justicia de Madrid (High Court of Justice, Madrid, Spain), made by decisions of 22 December 2021, 21 December 2021 and 3 February 2022, received at the Court on 27 January, 17 February and 3 March 2022, respectively, in the proceedings

MP

v

Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid (C-59/22),

and

IP

v

Universidad Nacional de Educación a Distancia (UNED) (C-110/22),

and

IK

v

Agencia Madrileña de Atención Social de la Comunidad de Madrid (C-159/22),

THE COURT (Sixth Chamber),

* Language of the case: Spanish.

composed of P.G. Xuereb, acting as President of the Chamber, A. Kumin (Rapporteur) and I. Ziemele, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid and the Agencia Madrileña de Atención Social de la Comunidad de Madrid, by A. Caro Sánchez, acting as Agent,

– the Spanish Government, by M.J. Ruiz Sánchez, acting as Agent,

– the European Commission, by I. Galindo Martín, D. Recchia and N. Ruiz García, 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 2, 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 The requests have been made in proceedings between, in Case C-59/22, MP and the Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid (Regional Department for the Presidency, Justice and Internal Affairs of the Autonomous Community of Madrid, Spain), in Case C-110/22, IP and the Universidad Nacional de Educación a Distancia (UNED) (National University of Distance Learning, Spain) and, in Case C-159/22, IK and the Agencia Madrileña de Atención Social de la Comunidad de Madrid (Madrid Social Assistance Agency of the Autonomous Community of Madrid, Spain), concerning the classification of the employment relationship between the persons concerned and the public administration concerned.

Legal context

European Union law

Directive 1999/70

3 Recital 17 of Directive 1999/70 states:

'As regards terms used in the framework agreement but not specifically defined therein, this Directive allows Member States to define such terms in conformity with national law or practice as is the case for other Directives on social matters using similar terms, provided that the definitions in question respect the content of the framework agreement'.

4 The first paragraph of Article 2 of that directive provides:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive [and are] required to take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this Directive. …'

The Framework Agreement

5 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.'

6 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.

…'

7 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.'

Spanish law

The Constitution

8 Article 23(2) of the Constitución española (Spanish Constitution) ('the Constitution') provides that citizens 'shall have the right to access on equal terms public office, in accordance with the requirements determined by law'.

9 Article 103(3) of the Constitution provides, in particular, that the status of civil servants, and entry into the civil service in accordance with the principles of merit and ability, are to be provided for in legislation.

The legislation on fixed-term contracts

– *The Workers' Statute*

10 Article 15(3) of Real Decreto Legislativo 2/2015, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores (Royal Legislative Decree 2/2015 approving the consolidated text of the Law on the Workers' Statute) of 23 October 2015 (BOE No 255 of 24 October 2015, p. 100224), in the version applicable to the facts of the main proceedings ('the Workers' Statute'), provides that 'temporary contracts concluded in breach of the law are deemed to be concluded for an indefinite period'.

11 Article 15(5) of the Workers' Statute provides:

'Without prejudice to the provisions of paragraphs 1(a), 2 and 3, workers who have been engaged, with or without interruption, for longer than 24 months over a period of 30 months in the same or a different work position with the same undertaking or group of undertakings on two or more temporary contracts, regardless of whether the workers have entered into the contracts directly or

have been supplied by temporary employment agencies or whether the same or different fixed-term conditions apply to the said contracts, shall acquire the status of permanent workers. …'

12 The 15th additional provision of the Workers' Statute, which relates to 'the application of time limits to contracts for a particular task or service and to successive contracts in public authorities', states that the breach of those limits in 'public authorities and […] public bodies which are linked to or dependent on them', cannot prevent 'the application of the constitutional principles of equality, merit and ability in access to public employment, [and] is not an obstacle to the obligation to fill the posts in question by means of normal procedures, in accordance with the provisions laid down in the applicable legislation', with the result that 'the worker shall retain the post which he or she occupied until that post is filled in accordance with the procedures referred to above, which shall mark the end of the employment relationship, unless that worker gains access to public employment by having successfully passed the corresponding selection procedure'.

– *The EBEP*

13 The Ley del Estatuto Básico del Empleado Público (consolidated text of the Law on the basic regulations relating to public servants), approved by Real Decreto Legislativo 5/2015 (Royal Legislative Decree No 5/2015) of 30 October 2015 (BOE No 261 of 31 October 2015, p. 103105), in the version applicable to the facts in the main proceedings ('the EBEP'), was amended, inter alia, by Real Decreto-ley 14/2021, de medidas urgentes para la reducción de la temporalidad en el empleo público (Royal Decree-Law 14/2021 on urgent measures to reduce temporary employment in the public sector) of 6 July 2021 (BOE No 161 of 7 July 2021, p. 80375), in the version applicable to the facts in the main proceedings ('Royal Decree-Law 14/2021').

14 Article 8 of the EBEP provides:

'1. Public servants are persons who carry out duties for remuneration in the public authorities in the service of the general interest.

2. Public servants shall be classified as

(a) civil servants;

(b) interim civil servants;

(c) contract staff, whether engaged under permanent, indefinite-duration or fixed-term employment contracts;

(d) temporary staff.'

15 According to Article 11(1) and (3) of the EBEP:

'1. A member of the contract staff means any person who, by virtue of a contract of employment concluded in writing, irrespective of the arrangements for recruitment laid down by employment law, performs services paid for by public authorities. Depending on its duration, the contract may be permanent, for an indefinite duration or fixed-term.

…

3. The selection procedures for the staff employed shall be public, governed in all cases by the principles of equality, merit and ability. In the case of temporary staff, they shall also be governed by the principle of speed, in order to meet expressly justified reasons of necessity and urgency.'

16 Article 55(1) of the EBEP states:

'All citizens shall be eligible for employment in the civil service, in accordance with the constitutional principles of equality, merit and ability, the provisions of these regulations and other rules in force in the legal order'.

17 Article 70 of the EBEP, entitled 'List of public sector vacancies', provides:

'1. Human resource needs which receive a budget allocation and are to be met by appointing new members of staff shall be included on a list of public sector vacancies or filled by means of another similar instrument for managing the fulfilment of staffing needs, which involves organising the relevant recruitment procedures for the posts to be filled (up to [10%] additional posts) and setting the maximum period for the publication of notices. In any event, the implementation of the list of public sector vacancies or similar instrument must take place within a non-renewable period of three years.

2. The list of public sector vacancies or similar instrument, approved annually by the governing bodies of the public administration, shall be published in the corresponding official gazette.

…'

18 Article 1(3) of Royal Decree-Law 14/2021 introduced the 17th additional provision of the EBEP. That 17th additional provision, first of all, lays down, inter alia, the obligation on the public administrations to ensure that there is no unlawfulness in fixed-term employment contracts and appointments of interim civil servants. Next, the 17th additional provision states, in particular, that 'unlawful actions' in that area 'shall give rise to appropriate liability in accordance with the regulations in force in each of the public administrations'. Lastly, the 17th additional provision also establishes the right of workers to receive, without prejudice to any compensation provided for under the employment law regulations, compensation for unlawful temporary employment, consisting in the payment of the difference between the maximum amount resulting from the application of the rule of 20 days' pay per year of service, up to a maximum of 12 months' pay, and the compensation that would have to be received for termination of the contract. That compensation becomes payable at the time of termination of the contract and is limited to the contract in respect of which the rules have been infringed.

– *Laws relating to the State Budget for 2017 and 2018*

19 The 43rd additional provision of Ley 6/2018 de Presupuestos Generales del Estado para el año 2018 (Law 6/2018 on the General State Budget for 2018) of 3 July 2018 (BOE No 161 of 4 July 2018, p. 66621), in the version applicable to the facts in the main proceedings ('the Law on the State Budget for 2018') – which replaced the 34th additional provision of Ley 3/2017 de Presupuestos Generales del Estado para el año 2017 (Law 3/2017 on the General State Budget for 2017) of 27 June 2017 (BOE No 153 of 28 June 2017, p. 53787) ('the Law on the State Budget for 2017') – provides, inter alia, that the status of staff having a non-permanent contract of indefinite duration may be granted only by virtue of a judicial decision. That 43rd additional provision states that 'unlawful actions' committed in connection with temporary recruitment by 'the bodies

responsible for personnel matters' 'in each public administration and in the bodies which make up their official public service' are to give rise to liability on the part of the 'bodies responsible for personnel matters, in accordance with the rules in force in each of the public administrations'.

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

Case C-59/22

20 MP has worked every summer since 22 October 1994 in the fire prevention service of the Comunidad de Madrid (Autonomous Community of Madrid, Spain). By judgment of 27 December 2007, the Tribunal Superior de Justicia de Madrid (High Court of Justice, Madrid, Spain), which is the referring court, had held that MP was employed, from the beginning of her employment relationship, as part of the 'seasonal part-time staff on contracts of indefinite duration'.

21 On 13 November 2020, MP submitted an application to the Department for the Presidency, Justice and Internal Affairs of the Autonomous Community of Madrid, seeking, first, reclassification of her contract of employment as a permanent contract of employment and, secondly, compensation equivalent to that provided for in Spanish law for unfair dismissal. The administration concerned did not grant her application.

22 MP then brought an action before the Juzgado de lo Social nº 18 de Madrid (Social Court No 18, Madrid, Spain). In support of that action, she advanced the same claims as those put forward in support of the application referred to in the preceding paragraph. By judgment of 10 June 2021, that court dismissed that action. MP brought an appeal against that judgment before the referring court. In support of her appeal, she submits that the dismissal of her action resulted from an infringement, first, of Spanish law and, secondly, of the Framework Agreement, as interpreted in the case-law of the Court of Justice. According to MP, the appropriate penalty for abuse by the administration of contracts contrary to the rules is recognition of the permanent nature of her employment relationship and payment of compensation.

23 Since it was uncertain (i) as to whether the Framework Agreement, and in particular Clause 5 thereof, was applicable to a worker such as MP, who since the beginning of her employment relationship has been linked to the public administration by a non-permanent contract of indefinite duration, (ii) as to whether the Spanish law relating to that type of contract is consistent with that Clause 5 and (iii) as to the inferences to be drawn were Spanish law not to be consistent with that clause, the Tribunal Superior de Justicia de Madrid (High Court of Justice, Madrid) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) For the purposes of Clause 2 of the agreement annexed to [Directive 1999/70], must a worker with a "non-permanent contract of indefinite duration" [known as "indefinido no fijo"], as described in this order, be regarded as a "worker with a fixed-term contract" and is such a worker included in the scope of the [Framework Agreement] and, in particular, Clause 5 thereof?

(2) If the first question is answered in the affirmative, for the purposes of the application of Clause 5 of the [Framework Agreement], must it be considered that there has been "successive use" of temporary contracts or successive renewals in the case of a worker having a non-permanent contract of indefinite duration [known as "indefinido no fijo"] with an administrative authority, where that contract does not set a term and the duration of the contract is instead subject to the publication of a vacancy notice and the filling of the post, which would lead to termination of the contract, where that vacancy notice was not published between the start date of the employment relationship and the first half of 2021?

(3) Is Clause 5 of [the Framework Agreement] to be interpreted as precluding an interpretation of Article 15(5) of the [Workers' Statute] (the aim of which is to comply with the directive and which therefore provides for a maximum duration of 24 months for all of a worker's successive temporary contracts combined during a reference period of 30 months) in accordance with which periods worked as a non-permanent worker with a contract of indefinite duration [known as "indefinido no fijo"] are not counted, in view of the fact that, in that case, for the purposes of such a contract, there is no limitation applicable to its duration, number, reasons for renewal or the use of further, successive contracts?

(4) Does Clause 5 of the [Framework Agreement] preclude national legislation which does not establish any limitation (in terms of either number, duration or reasons) on express or tacit renewals of a particular temporary contract, like the non-permanent contract of indefinite duration [known as "indefinido no fijo"] in the public sector, and merely sets a limit for successive terms of that contract through the use of further temporary contracts?

(5) Since no provision limiting express or tacit renewals of the contracts of non-permanent workers engaged on an indefinite basis [known as "trabajadores indefinidos no fijos") has been enacted by the Spanish legislature, is the situation of a public sector worker, like the worker in these proceedings, who has a non-permanent contract of indefinite duration[,] the envisaged duration of which has never been expressed or specified[,] and which has been extended until 2021 without any selection process having been launched to fill her post and bring the situation of temporary employment to an end, to be regarded as an infringement of Clause 5 of the [Framework Agreement]?

(6) Can the national legislation be considered to include measures that are a sufficient deterrent in respect of the use of successive contracts or renewals of temporary contracts contrary to Clause 5 of the Framework Agreement, which fulfil the conditions established by the case-law of the [Court of Justice] in its judgments of 7 March 2018, [*Santoro*, C-494/16, EU:C:2018:166,] and of 8 May 2019, [*Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387,] in relation to compensation for the harm suffered by a worker by means of *restitutio in integrum*, when it provides solely for limited and objective compensation (20 days' salary for each year worked, up to a limit of one year's pay) but no provision exists for additional compensation to compensate in full for the harm caused if it exceeds that amount?

(7) Can the national legislation be considered to include measures that are a sufficient deterrent in respect of the use of successive contracts or renewals of temporary contracts contrary to Clause 5 of the Framework Agreement, which fulfil the conditions established by the case-law of the [Court of Justice] in its judgments of 7 March 2018, [*Santoro*, C-494/16, EU:C:2018:166,] and of 8 May 2019, [*Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387,] in relation to compensation for the harm suffered by a worker,

when it provides only for compensation that becomes due at the time when the contract is terminated because the post has been filled but which does not provide for any compensation while the contract is in force as an alternative to a declaration that the contract is of indefinite duration? In a dispute in which the only issue is whether the worker has permanent status, but the contract has not been terminated, is it necessary to award compensation for harm suffered as a result of the temporary nature of the contract as an alternative to a declaration of permanent status?

(8) Can the national legislation be considered to include measures that are a sufficient deterrent against public administrative authorities and public sector bodies in respect of the use of successive contracts or renewals of temporary contracts contrary to Clause 5 of the Framework Agreement, which are aimed at "preventing and penalising the misuse of fixed-term contracts" by an employer in relation to other and future workers, which fulfil the conditions established by the case-law of the [Court of Justice] in its judgments of 7 March 2018, [*Santoro*, C-494/16, EU:C:2018:166,] and of 8 May 2019, [*Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387,] where those measures consist of legal provisions introduced with effect from 2017 [34th additional provision of the Law on the State Budget for 2017 and 43rd additional provision of the Law on the State Budget for 2018 and Royal Decree-Law 14/2021] which state that liability will be established for "unlawful actions" without specifying that liability other than by a general reference to legislation which does not specify [it] and without any specific instance of the establishment of liability existing in the context of thousands of judgments which have ruled that workers have non-permanent contracts of indefinite duration [known as "trabajadores indefinidos no fijos"] on the ground of non-compliance with the provisions on temporary contracts?

(9) If those measures are considered to be a sufficient deterrent, given that they were introduced for the first time in 2017, can those measures be applied to prevent the conversion of contracts into contracts of indefinite duration where the conditions for such a conversion on the grounds of infringement of Clause 5 of the Framework Agreement occurred at an earlier point in time or, on the other hand, would that constitute a retroactive and expropriatory application of those measures?

(10) If the view is taken that no measures exist that are a sufficient deterrent in Spanish law, must the consequence of the infringement of Clause 5 of the [Framework Agreement] by a public employer be that the contract is treated as a non-permanent contract of indefinite duration [known as "indefinido no fijo"] or must the worker be recognised as having fully permanent status?

(11) Is the conversion of the contract into a permanent contract under the [Framework Agreement] and the case-law of the [Court of Justice] interpreting [it] required even if it is considered to be contrary to Articles 23(2) and 103(3) of the [Constitution], where those constitutional provisions are interpreted as meaning that access to all public sector employment, including where engagement is under an employment contract, may occur only after a candidate has passed a competitive selection procedure in which the principles of equality, merit, ability and publicity are applied?

(12) Must the conversion of the specific worker's contract into a permanent contract be set aside where, by means of a Law, notice is published of a procedure for the consolidation of temporary employment, with the publication of a vacancy notice for the post occupied by the worker, bearing in mind that that procedure must guarantee "compliance with the principles

of free competition, equality, merit, ability and publicity" and that therefore the worker in respect of whom successive contracts or temporary renewals have been used may not consolidate his or her post because it is awarded to another person, in which case that worker's contract will be terminated with compensation calculated at the rate of 20 days' salary for each year worked, up to a limit of one year's pay?

(13) Even if he or she is not dismissed, is the worker entitled to compensation equal to or greater than that amount, to be determined by the courts if it is not quantified in law, for the use of successive contracts or the renewal of his or her contract contrary to Clause 5 [of the Framework Agreement]?

(14) Is all of the foregoing affected in any way, and if so how, by the fact that the employment relationship at issue is a seasonal relationship of indefinite duration [known as "laboral indefinida discontinua"], where that relationship has been reflected in cascading temporary contracts, season after season, as stated in the worker's appeal?'

Case C-110/22

24 IP has been working for the UNED as a 'video producer' since 11 February 1994 under successive temporary contracts.

25 By judgment of 29 September 2001, the Juzgado de lo Social nº 15 de Madrid (Social Court No 15, Madrid, Spain), it was ruled that IP had the status of a worker having a non-permanent contract of indefinite duration. Although the post occupied by IP under that status was regarded by the UNED as a vacant post, no vacancy notice had yet been published as at the date on which IP brought the matter before the Juzgado de lo Social nº 42 de Madrid (Social Court No 42, Madrid, Spain). Before that court, IP sought a declaration recognising his right to his post as a permanent worker or, in the alternative, that he be awarded the post in a competition based on qualifications. Following the dismissal of those claims by judgment of 1 June 2021, IP brought an appeal against that judgment before the Tribunal Superior de Justicia de Madrid (High Court of Justice, Madrid), which is the referring court.

26 In support of his appeal, IP alleges infringement of the provisions, first, of Spanish law and, secondly, of the Framework Agreement as interpreted by the Court of Justice. In his view, the only possible consequence of such an infringement is the recognition of the status of permanent worker, in accordance with the case-law of the Court.

27 The referring court states that, inasmuch as Directive 1999/70 was not yet applicable *ratione temporis* to the temporary contracts concluded before 2001, the subject matter of the dispute in the main proceedings relates only to circumstances subsequent to the judgment of 29 September 2001.

28 Furthermore, according to that court, contrary to what the UNED maintains in the main proceedings, the '*acte clair* doctrine' cannot be applied. Thus, since the Court has not received sufficient explanations as to the concept of a 'worker having a non-permanent contract of indefinite duration', it cannot be considered that, in the judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario* (C-726/19, EU:C:2021:439), the Court held that the recognition of the status of a worker having a non-permanent contract of indefinite duration was sufficient to compensate for the loss suffered by the worker concerned.

29 In those circumstances the Tribunal Superior de Justicia de Madrid (High Court of Justice, Madrid) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) For the purposes of Clause 2 of the [Framework Agreement], must a worker with a "non-permanent contract of indefinite duration" [known as "indefinido no fijo"], as described in this order, be regarded as a "worker with a fixed-term contract" and is such a worker included in the scope of the Framework Agreement and, in particular, Clause 5 thereof?

(2) If the first question is answered in the affirmative, for the purposes of the application of Clause 5 of the [Framework Agreement], must it be considered that there has been "successive use" of temporary contracts or successive renewals in the case of a worker having a non-permanent contract of indefinite duration [known as "indefinido no fijo"] with an administrative authority, where that contract does not provide for a specific term and the duration of the contract is instead subject to the future publication of a vacancy notice and the filling of the post, where that vacancy notice was not published between 2002 and the first half of 2021?

(3) Is Clause 5 of [the Framework Agreement] to be interpreted as precluding an interpretation of Article 15(5) of the [Workers' Statute] (the aim of which is to comply with [Directive 1999/70] and which therefore provides for a maximum duration of 24 months for all of a worker's successive temporary contracts combined during a reference period of 30 months) in accordance with which periods worked as a non-permanent worker with a contract of indefinite duration [known as "indefinidos no fijos"] are not counted, in view of the fact that, in that case, for the purposes of such a contract, there is no limitation applicable to its duration, number, reasons for renewal or the use of further, successive contracts?

(4) Does Clause 5 of the [Framework Agreement] preclude national legislation which does not establish any limitation (in terms of either number, duration or reasons) on express or tacit renewals of a particular temporary contract, like the non-permanent contract of indefinite duration [known as "indefinido no fijo"] in the public sector, and merely sets a limit for successive terms of that contract through the use of further temporary contracts?

(5) Since no provision limiting express or tacit renewals of the contracts of non-permanent workers engaged on an indefinite basis [known as "trabajadores indefinidos no fijos") has been enacted by the Spanish legislature, is the situation of a public sector worker, like the worker in these proceedings, who has a non-permanent contract of indefinite duration[,] the envisaged duration of which has never been expressed or specified[,] and which has lasted from at least 2002 (reinstatement following dismissal) until 2021 without any selection process having been launched to fill his post and bring the situation of temporary employment to an end, to be regarded as an infringement of Clause 5 of the [Framework Agreement]?

(6) Can the national legislation be considered to include measures that are a sufficient deterrent in respect of the use of successive contracts or renewals of temporary contracts contrary to Clause 5 of the Framework Agreement, which fulfil the conditions established by the case-law of the [Court of Justice] in its judgments of 7 March 2018, [*Santoro*, C-494/16, EU:C:2018:166,] and of 8 May 2019, [*Rossato and Conservatorio di Musica F.A. Bonporti*,

C-494/17, EU:C:2019:387,] in relation to compensation for the harm suffered by a worker by means of *restitutio in integrum*, when it provides solely for limited and objective compensation (20 days' salary for each year worked, up to a limit of one year's pay) but no provision exists for additional compensation to compensate in full for the harm caused if it exceeds that amount?

(7) Can the national legislation be considered to include measures that are a sufficient deterrent in respect of the use of successive contracts or renewals of temporary contracts contrary to Clause 5 of the Framework Agreement, which fulfil the conditions established by the case-law of the [Court of Justice] in its judgments of 7 March 2018, [*Santoro*, C-494/16, EU:C:2018:166,] and of 8 May 2019, [*Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387,] in relation to compensation for the harm suffered by a worker, when it provides only for compensation that becomes due at the time when the contract is terminated because the post has been filled but which does not provide for any compensation while the contract is in force as an alternative to a declaration that the contract is of indefinite duration? In a dispute in which the only issue is whether the worker has permanent status, but the contract has not been terminated, is it necessary to award compensation for harm suffered as a result of the temporary nature of the contract as an alternative to a declaration of permanent status?

(8) Can the national legislation be considered to include measures that are a sufficient deterrent against public administrative authorities and public sector bodies in respect of the use of successive contracts or renewals of temporary contracts contrary to Clause 5 of the Framework Agreement, which are aimed at "preventing and penalising the misuse of fixed-term contracts" by an employer in relation to other and future workers, which fulfil the conditions established by the case-law of the [Court of Justice] in its judgments of 7 March 2018, [*Santoro*, C-494/16, EU:C:2018:166,] and of 8 May 2019, [*Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387,] where those measures consist of legal provisions introduced with effect from 2017 [34th additional provision of the Law on the State Budget for 2017 and 43rd additional provision of the Law on the State Budget for 2018 and Royal Decree-Law 14/2021] which state that liability will be established for "unlawful actions" without specifying that liability other than by a general reference to legislation which does not specify [it] and without any specific instance of the establishment of liability existing in the context of thousands of judgments which have ruled that workers have non-permanent contracts of indefinite duration [known as "trabajadores indefinidos no fijos"] on the ground of non-compliance with the provisions on temporary contracts?

(9) If those measures are considered to be a sufficient deterrent, given that they were introduced for the first time in 2017, can those measures be applied to prevent the conversion of contracts into contracts of indefinite duration where the conditions for such a conversion on the grounds of infringement of Clause 5 of the Framework Agreement occurred at an earlier point in time or, on the other hand, would that constitute a retroactive and expropriatory application of those measures?

(10) If the view is taken that no measures exist that are a sufficient deterrent in Spanish law, must the consequence of the infringement of Clause 5 of the [Framework Agreement] by a public employer be that the contract is treated as a non-permanent contract of indefinite duration [known as "indefinido no fijo"] or must the worker be recognised as having fully permanent status, without making any distinction?

(11) Is the conversion of the contract into a permanent contract under the [Framework Agreement] and the case-law of the [Court of Justice] interpreting [it] required, in accordance with the principle of the primacy of EU law, even if it is considered to be contrary to Articles 23(2) and 103(3) of the [Constitution], where those constitutional provisions are interpreted as meaning that access to all public sector employment, including where engagement is under an employment contract, may occur only after a candidate has passed a competitive selection procedure in which the principles of equality, merit, ability and publicity are applied? Given that another interpretation – that used by the Tribunal Constitucional (Constitutional Court, Spain) – is possible, is it necessary to apply the principle that national law must be interpreted in conformity with EU law to the constitutional provisions of the Member State, so that it is obligatory to choose the interpretation which renders those provisions compatible with EU law, in this case by construing Articles 23(2) and 103(3) of the Constitution as not requiring the application of the principles of equality, merit and ability to procedures for the recruitment of contractual staff?

(12) Is it possible that conversion of the contract into a permanent contract under the [Framework Agreement] and the case-law of the [Court of Justice] interpreting [it] may not apply if, before that conversion is ordered by a court, provision is made for a statutory procedure for the consolidation of temporary employment, which is required to be conducted in the near future and which involves the publication of vacancy notices to fill the post occupied by the worker, bearing in mind that that procedure must guarantee "compliance with the principles of free competition, equality, merit, ability and publicity" and that therefore the worker in respect of whom a succession of temporary contracts or renewals has been used may be able to consolidate his or her post, but may also not be able to do so because that post is awarded to another person, in which case that worker's contract will be terminated with compensation calculated at the rate of 20 days' salary for each year worked, up to a limit of one year's pay?'

Case C-159/22

30 IK has been working for the Madrid Social Services Agency, Autonomous Community of Madrid, since 21 December 1998 on the basis of successive temporary contracts, with contracts being interrupted between the years 1999 and 2010.

31 On 14 October 2020, IK brought an action before the Juzgado de lo Social nº 21 de Madrid (Social Court No 21, Madrid, Spain), seeking a declaration that her contract of employment concluded with her employer was a contract of indefinite duration or, in the alternative, a non-permanent contract of indefinite duration. By judgment of 19 April 2021, that court dismissed that action.

32 IK brought an appeal against that judgment before the Tribunal Superior de Justicia de Madrid (High Court of Justice, Madrid), which is the referring court. In support of her appeal, she alleges infringement of both Spanish law and Clause 5 of the Framework Agreement as interpreted by the Court of Justice. Furthermore, IK submits that the only solution which would comply with the requirements laid down by the Courts of the European Union would be to declare that her employment relationship is of indefinite duration and, in the alternative, that that employment relationship is a non-permanent relationship of indefinite duration.

33 The referring court states that the subject matter of the dispute in the main proceedings concerns exclusively the most recent employment contract, namely the temporary replacement contract to cover a vacant post, concluded on 1 August 2016 by the parties to the main proceedings and which extended at least until the date of the judgment being appealed, namely 19 April 2021. The referring court states that, in accordance with Spanish law – in particular the judgment of the Tribunal Supremo (Supreme Court, Spain) of 28 June 2021, delivered in order to implement Clause 5 of the Framework Agreement, as interpreted in the judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario* (C-726/19, EU:C:2021:439) – it must be concluded, in the present case, that the administration concerned abused successive fixed-term contracts, contrary to Clause 5 of the Framework Agreement. That administration failed to publish a vacancy notice for the vacant post and thus tacitly renewed, year after year, the contract at issue in the main proceedings. However, according to the referring court, it remains to be determined whether such an infringement should result in the worker in the main proceedings being granted the status of a worker employed for an indefinite duration.

34 Furthermore, according to the referring court, for the same reason as that referred to in paragraph 28 above, the 'a*cte clair* doctrine' is not applicable to the present case.

35 In those circumstances the Tribunal Superior de Justicia de Madrid (High Court of Justice, Madrid) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Can the national legislation be considered to include measures that are a sufficient deterrent in respect of the use of successive contracts or renewals of temporary contracts contrary to Clause 5 of the Framework Agreement, which fulfil the conditions established by the case-law of the [Court of Justice] in its judgments of 7 March 2018, [*Santoro*, C-494/16, EU:C:2018:166,] and of 8 May 2019, [*Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387,] in relation to compensation for the harm suffered by a worker by means of *restitutio in integrum*, when it provides solely for limited and objective compensation (20 days' salary for each year worked, up to a limit of one year's pay) but no provision exists for additional compensation to compensate in full for the harm caused if it exceeds that amount?

(2) Can the national legislation be considered to include measures that are a sufficient deterrent in respect of the use of successive contracts or renewals of temporary contracts contrary to Clause 5 of the Framework Agreement, which fulfil the conditions established by the case-law of the [Court of Justice] in its judgments of 7 March 2018, [*Santoro*, C-494/16, EU:C:2018:166,] and of 8 May 2019, [*Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387,] in relation to compensation for the harm suffered by a worker, when it provides only for compensation that becomes due at the time when the contract is terminated because the post has been filled but which does not provide for any compensation while the contract is in force as an alternative to a declaration that the contract is of indefinite duration? In a dispute in which the only issue is whether the worker has permanent status, but the contract has not been terminated, is it necessary to award compensation for harm suffered as a result of the temporary nature of the contract as an alternative to a declaration of permanent status?

(3) Can the national legislation be considered to include measures that are a sufficient deterrent against public administrative authorities and public sector bodies in respect of the use of successive contracts or renewals of temporary contracts contrary to Clause 5 of the Framework Agreement, which are aimed at "preventing and penalising the misuse of fixed-term contracts" by an employer in relation to other and future workers, which fulfil the conditions established by the case-law of the [Court of Justice] in its judgments of 7 March 2018, [*Santoro*, C-494/16, EU:C:2018:166,] and of 8 May 2019, [*Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387,] where those measures consist of legal provisions introduced with effect from 2017 [34th additional provision of the Law on the State Budget for 2017 and 43rd additional provision of the Law on the State Budget for 2018 and Royal Decree-Law 14/2021] which state that liability will be established for "unlawful actions" without specifying that liability other than by a general reference to legislation which does not specify [it] and without any specific instance of the establishment of liability existing in the context of thousands of judgments which have ruled that workers have non-permanent contracts of indefinite duration [known as "trabajadores indefinidos no fijos"] on the ground of non-compliance with the provisions on temporary contracts?

(4) If the view is taken that no measures exist that are a sufficient deterrent in Spanish law, must the consequence of the infringement of Clause 5 of the [Framework Agreement] by a public employer be that the contract is treated as a non-permanent contract of indefinite duration [known as "indefinido no fijo"] or must the worker be recognised as having fully permanent status, without making any distinction?

(5) Is the conversion of the contract into a permanent contract under the [Framework Agreement] and the case-law of the [Court of Justice] interpreting [it] required, in accordance with the principle of the primacy of EU law, even if it is considered to be contrary to Articles 23(2) and 103(3) of the [Constitution], where those constitutional provisions are interpreted as meaning that access to all public sector employment, including where engagement is under an employment contract, may occur only after a candidate has passed a competitive selection procedure in which the principles of equality, merit, ability and publicity are applied? Given that another interpretation – that used by the Tribunal Constitucional (Constitutional Court, Spain) – is possible, is it necessary to apply the principle that national law must be interpreted in conformity with EU law to the constitutional provisions of the Member State, so that it is obligatory to choose the interpretation which renders those provisions compatible with EU law, in this case by construing Articles 23(2) and 103(3) of the Constitution as not requiring the application of the principles of equality, merit and ability to procedures for the recruitment of contractual staff?

(6) Is it possible that conversion of the contract into a permanent contract under the [Framework Agreement] and the case-law of the [Court of Justice] interpreting [it] may not apply if, before that conversion is ordered by a court, provision is made for a statutory procedure for the consolidation of temporary employment, which is required to be conducted in the near future and which involves the publication of vacancy notices to fill the post occupied by the worker, bearing in mind that that procedure must guarantee "compliance with the principles of free competition, equality, merit, ability and publicity" and that therefore the worker in respect of whom a succession of temporary contracts or renewals has been used may be able to consolidate his or her post, but may also not be able to do so because that post is awarded to another person, in which case that worker's contract will be terminated with compensation calculated at the rate of 20 days' salary for each year worked, up to a limit of one year's pay?'

Procedure before the Court

36 By decision of 27 April 2022, Cases C-59/22, C-110/22 and C-159/22 were joined for the purposes of the written and oral parts of the procedure and of the judgment.

Jurisdiction of the Court and the admissibility of the requests for a preliminary ruling

37 The defendants in the main proceedings in Cases C-59/22 and C-159/22 as well as the Spanish Government submit that the Court lacks jurisdiction to answer the requests for a preliminary ruling and that, in any event, those requests must be declared inadmissible.

38 In the first place, according to those defendants and the Spanish Government, the Court lacks jurisdiction to rule on the requests for a preliminary ruling inasmuch as they involve an interpretation of national law.

39 In addition, according to those defendants and the Spanish Government, those requests amount to requiring the Court to give an advisory opinion of general application on the concept, specific to Spanish law, of a 'worker having a non-permanent contract of indefinite duration', and to do so on the basis of aspects on which it has already ruled on various occasions.

40 More specifically, the requests seek to call into question two lines of well-established case-law of the Court, namely, first, the case-law according to which the conversion of an employment contract into a 'non-permanent employment contract of indefinite duration' constitutes an appropriate penalty for the abuse of successive fixed-term contracts and, secondly, the case-law according to which the Member States are not obliged, under the Framework Agreement, to convert a fixed-term employment relationship into an employment relationship of indefinite duration where there are domestic rules which make it possible to penalise and deter the abuse of successive fixed-term contracts.

41 In the second place, the defendants in Cases C-59/22 and C-159/22 submit that, by including in the requests for a preliminary ruling questions relating to the award of compensation to the worker concerned, the referring court broadens the subject matter of the disputes in the main proceedings. In the context of those disputes, the applicants in the main proceedings only sought to have recognised the indefinite duration of their employment relationship. Those requests for a preliminary ruling should, therefore, be declared inadmissible in so far as they concern the questions relating to the award of such compensation, since those questions raise a hypothetical problem.

42 In that connection, it must be recalled that the system of cooperation established by Article 267 TFEU is based on a clear division of responsibilities between the national courts and the Court of Justice. In proceedings brought on the basis of that article, the interpretation of provisions of national law is a matter for the courts of the Member States, not for the Court of Justice, and the Court has no jurisdiction to rule on the compatibility of rules of national law with EU law. On the other hand, the Court does have jurisdiction to provide the national court with all the guidance as to the interpretation of EU law necessary to enable that court to rule on the compatibility of national rules with EU law (judgment of 25 October 2018, *Sciotto*, C-331/17, EU:C:2018:859, paragraph 27 and the case-law cited).

43 It must be recalled further 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 3 June 2021, *Ministero dell'Istruzione, dell'Università e della Ricerca – MIUR and Others (University researchers)*, C-326/19, EU:C:2021:438, paragraph 35 and the case-law cited).

44 It follows that questions relating to EU law 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 a rule of EU law 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 (judgment of 3 June 2021, *Ministero dell'Istruzione, dell'Università e della Ricerca – MIUR and Others (University researchers)*, C-326/19, EU:C:2021:438, paragraph 36 and the case-law cited).

45 In the present case, it is clear from the information provided by the referring court that, in Joined Cases C-59/22, C-110/22 and C-159/22, the applicants in the main proceedings concluded several successive temporary employment contracts and that, in the context of Cases C-59/22 and C-110/22, the employment relationship has already been reclassified, by a judgment of 27 December 2007 and by a judgment of 29 September 2001 respectively, as a 'non-permanent employment relationship of indefinite duration'. That said, according to the referring court, the doubt persists, in particular, as to whether, in accordance with Clauses 2 and 3 of the Framework Agreement, such a relationship falls within the scope of that framework agreement.

46 Furthermore, it is clearly apparent from the requests for a preliminary ruling that the referring court considers that the reclassification of a wrongful employment relationship as a 'non-permanent employment relationship of indefinite duration' does not constitute a measure duly penalising that wrongful employment relationship, with the result that, in the disputes in the main proceedings, it will be required to determine the national measures enabling, in accordance with the requirements resulting from Directive 1999/70, the abuse of successive fixed-term employment relationships to be penalised.

47 In those circumstances, it is not obvious that the interpretation of EU law sought by the referring court, namely that of Clauses 2, 3 and 5 of the Framework Agreement, bears no relation to the actual facts of the disputes in the main proceedings or the purpose of those proceedings or that the questions concerning the award of compensation, provided for in Spanish law, as a measure penalising abuse of the temporary employment relationships concerned, in accordance with the requirements of Directive 1999/70, raise a hypothetical problem.

48 Moreover, the circumstance that the requests for a preliminary ruling allegedly call into question the two lines of well-established case-law of the Court goes to the analysis of the substance of those requests and, accordingly, does not affect either the Court's jurisdiction to answer those requests or their admissibility.

49 That said, by the 13th question referred in Case C-59/22, the referring court asks, in essence, whether the award of compensation additional to that referred to in the 6th and 7th questions referred in Cases C-59/22 and C-110/22 and in the 1st and 2nd questions referred in Case

C-159/22, which would be fixed by the national courts, could constitute an appropriate measure, for the purposes of Clause 5 of the Framework Agreement, in order to penalise abuse arising from the use of non-permanent contracts of indefinite duration successively extended.

50 In that regard, it must be borne in mind that, since, in the context of the procedure laid down in Article 267 TFEU, the request for a preliminary ruling serves as the basis for the procedure followed before the Court, it is essential that the national court should, in that decision, set out the factual and legislative context of the dispute in the main proceedings and give at the very least some explanation of the reasons for the choice of the EU law provisions which it seeks to have interpreted and of the link it establishes between those provisions and the national legislation applicable to the proceedings pending before it (judgment of 5 May 2022, *Universiteit Antwerpen and Others*, C-265/20, EU:C:2022:361, paragraph 24 and the case-law cited).

51 Those cumulative requirements concerning the content of a request for a preliminary ruling are expressly set out in Article 94 of the Rules of Procedure of the Court of Justice, which the referring court is presumed – in view of the cooperation established by Article 267 TFEU – to be familiar with and which it is required to follow to the letter. Those requirements are recalled, inter alia, in the recommendations of the Court of Justice of the European Union to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2019 C 380, p. 1) (judgment of 5 May 2022, *Universiteit Antwerpen and Others*, C-265/20, EU:C:2022:361, paragraph 25 and the case-law cited).

52 It must be also be borne in mind in that regard that the information provided in requests for a preliminary ruling serves not only to enable the Court to give useful answers but also to ensure that governments of the Member States and other interested parties have the opportunity to submit observations in accordance with Article 23 of the Statute of the Court of Justice of the European Union. It is for the Court to ensure that that opportunity is safeguarded, given that, under that provision, only the orders for reference are notified to the interested parties, accompanied by a translation in the official language of each Member State, but excluding any case-file that may be sent to the Court by the national court (judgment of 5 May 2022, *Universiteit Antwerpen and Others*, C-265/20, EU:C:2022:361, paragraph 26 and the case-law cited).

53 However, it must be found that the request for a preliminary ruling submitted in Case C-59/22 does not contain any explanation concerning the compensation referred to in the 13th question and does not indicate, in particular, the content of the relevant provisions or case-law relating to that compensation in Spanish law.

54 Accordingly, the 13th question referred in Case C-59/22 must be declared inadmissible.

55 As regards the 14th question referred in Case C-59/22, by which the referring court asks, in essence, whether the fact that the applicant in the main proceedings in that case was employed as a part-time 'seasonal' worker on a contract of indefinite duration has any bearing on the answer to be given to the questions referred, while it is apparent from the documents before the Court that, under Spanish law, contracts relating to the status of 'seasonal part-time staff on contracts of indefinite duration' fall within the category of non-permanent contracts of indefinite duration, the referring court fails to indicate the content of the relevant provisions or case-law relating to that status under Spanish law. Furthermore, that court does not explain the reasons for which it considers that that status could affect the interpretation of Clauses 2, 3 and 5 of the Framework Agreement.

56 Consequently, having regard to the case-law referred to in paragraphs 50 to 52 above, the 14th question in Case C-59/22 must be declared inadmissible.

57 It follows from the foregoing considerations, first, that the Court has jurisdiction to rule on the requests for a preliminary ruling and, secondly, that the requests for a preliminary ruling are admissible, with the exception of the 13th and 14th questions referred in Case C-59/22.

Consideration of the questions referred

The first questions referred in Cases C-59/22 and C-110/22

58 By the first questions referred in Cases C-59/22 and C-110/22, the referring court asks, in essence, whether Clauses 2 and 3 of the Framework Agreement must be interpreted as meaning that a worker having a non-permanent contract of indefinite duration is to be regarded as a fixed-term worker within the meaning of that framework agreement and, therefore, as falling within its scope.

59 In that regard, in the first place, according to settled case-law, it is apparent from the wording of Clause 2(1) of the Framework Agreement that the scope of that agreement is broad, 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'. In addition, the definition of 'fixed-term workers' within the meaning of Clause 3(1) of the Framework Agreement, encompasses all workers without drawing a distinction according to whether their employer is in the public, or private, sector and regardless of the classification of their contract under domestic law (judgment of 3 June 2021, *Servicio Aragonés de Salud*, C-942/19, EU:C:2021:440, paragraph 31 and the case-law cited).

60 In the second place, it should be borne in mind that, as is clear from the title and wording of Clause 3(1) of the Framework Agreement, that provision 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' (see judgment of 3 July 2014, *Fiamingo and Others*, C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 46).

61 The Framework Agreement therefore applies to all workers providing remunerated services in the context of a fixed-term employment relationship linking them with their employer, provided that they are linked by an employment contract or relationship within the meaning of national law, subject to the sole provisos of the discretion conferred on Member States by Clause 2(2) of the Framework Agreement as to the application of that agreement to certain categories of employment contracts or relationships and of the exclusion, in accordance with the fourth paragraph of the preamble to the Framework Agreement, of temporary agency workers (judgment of 3 June 2021, *Servicio Aragonés de Salud*, C-942/19, EU:C:2021:440, paragraph 32 and the case-law cited).

62 In the present case, it is apparent from the requests for a preliminary ruling that, in the context of the public sector, the concept of a 'worker having a non-permanent contract of indefinite duration' (known as a 'trabajador indefinido no fijo') constitutes a judicial creation and that it must be distinguished from the concept of 'permanent worker' (known as a 'trabajador fijo').

63 In that regard, the referring court notes that while the termination of a permanent worker's contract is subject to the grounds for termination and the general conditions laid down by the Workers' Statute, the termination of the non-permanent contract of indefinite duration is subject, in accordance with the case-law of the Tribunal Supremo (Supreme Court), to a specific ground of termination. Thus, where the employment relationship concerned is reclassified as a non-permanent contract of indefinite duration, the administration concerned would be required to follow the procedure for filling the post held by the worker employed on a non-permanent contract of indefinite duration, by applying the constitutional principles of publicity, equality, merit and ability. Once that post has been filled, the worker's non-permanent contract of indefinite duration would be terminated, unless that worker had himself or herself participated in that procedure and had been awarded that post.

64 The referring court states that, according to the Tribunal Supremo (Supreme Court), a non-permanent contract of indefinite duration, the duration of which is limited by the occurrence of a specific event, namely the definitive award of the post occupied by the worker concerned to the person who has been successful in the competition to be organised by the administration in order to fill that post, must be regarded as a fixed-term contract for the purposes of applying Directive 1999/70.

65 Consequently, having regard to the nature of the non-permanent contract of indefinite duration as defined, according to the referring court, in Spanish law, workers, such as the applicants in the main proceedings in Cases C-59/22 and C-110/22, must be regarded as having the status of a 'fixed-term worker' within the meaning of Clause 3(1) of the Framework Agreement and, therefore, fall within the scope of that agreement.

66 In the light of the foregoing considerations, the answer to the first questions referred in Cases C-59/22 and C-110/22 is that Clauses 2 and 3 of the Framework Agreement must be interpreted as meaning that a worker having a non-permanent contract of indefinite duration must be regarded as a fixed-term worker, within the meaning of that framework agreement, and, therefore, as falling within the scope of that agreement.

The second questions referred in Cases C-59/22 and C-110/22

67 By the second questions referred in Cases C-59/22 and C-110/22, the referring court asks, in essence, whether the expression 'use of successive fixed-term employment contracts or relationships' in Clause 5 of the Framework Agreement must be interpreted as encompassing the case of a worker having a single, non-permanent contract of indefinite duration with the administration concerned, where that contract does not set a term, but is terminated if the post concerned is awarded following the publication of a vacancy notice and that vacancy notice has not been published within the period prescribed by that administration.

68 In that regard, it should be borne in mind that the purpose of Clause 5 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 ensure that the status of employees is not made insecure (judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 26 and the case-law cited).

69 Accordingly, Clause 5(1) of the Framework Agreement requires, with a view to preventing abuse 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 (judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 27 and the case-law cited).

70 Therefore, it is clear from the wording of that provision of the Framework Agreement and from settled case-law that that provision is applicable solely when there are successive fixed-term employment contracts or relationships, so that a contract which is the very first and only fixed-term employment contract does not fall within its scope (judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 28 and the case-law cited).

71 Moreover, it should be pointed out that, in accordance with settled case-law, Clause 5(2)(a) of the Framework Agreement provides that it is, as a general rule, the task of the Member States and/or the social partners to determine under what conditions fixed-term employment contracts or relationships are to be regarded as 'successive', within the meaning of the Framework Agreement (judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 29 and the case-law cited).

72 While the reason for such a reference back to the Member States and/or the social partners for the purpose of establishing the specific rules for application of the term 'successive' within the meaning of the Framework Agreement is the concern to preserve the diversity of the relevant national rules, it is, however, to be remembered that the margin of appreciation thereby left to the national authorities is not unlimited, because it cannot in any event go so far as to compromise the objective or the practical effect of the Framework Agreement. In particular, that discretion must not be exercised by those authorities in such a way as to lead to a situation liable to give rise to abuse and thus to thwart that objective (judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 30 and the case-law cited).

73 Member States are required to guarantee the result imposed by EU law, as imposed not only by the third paragraph of Article 288 TFEU, but also by the first paragraph of Article 2 of Directive 1999/70, read in the light of recital 17 of that directive (judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 31 and the case-law cited).

74 The limits on the discretion left to the Member States, referred to in paragraph 72 above, are most particularly necessary in respect of a key concept, such as whether employment relationships are successive, which is determinative of the definition of the very scope of the provisions of national law designed to implement the Framework Agreement (judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 32 and the case-law cited).

75 In the present case, it is apparent from the requests for a preliminary ruling in Cases C-59/22 and C-110/22 that, in the first place, where a worker is declared to have the status of a 'worker having a non-permanent contract of indefinite duration', although that declaration may be regarded as constituting a penalty against the employer concerned for the abuse of successive fixed-term employment contracts, it has the effect of substituting such a status for the fixed-term

contracts which that worker was able to conclude previously, with the result that, by that declaration, the employment relationship concerned would, from the outset, become a non-permanent employment relationship of indefinite duration. Thus, the fixed-term contracts concluded previously would cease to be in force and the worker would from the outset have a single, non-permanent contract of indefinite duration.

76 In the second place, in the context of Cases C-59/22 and C-110/22, the referring court sets out that the non-permanent contract of indefinite duration does not have a set term, but that the end of that contract is subject to the post at issue being filled, and that the administration concerned is obliged to open the public procedure to fill that post.

77 In the third place, the referring court notes, in the context of Case C-59/22, that no selection procedure has been held since the beginning of the non-permanent employment relationship of indefinite duration at issue in the main proceedings, that is to say, for 27 years. Similarly, it is apparent from the request for a preliminary ruling submitted in Case C-110/22 that the vacancy notice was postponed and had still not been published as at the date on which the main action in that case was brought, with the result that the applicant in those proceedings has had a non-permanent contract of indefinite duration with the administration concerned for 20 years.

78 Finding an absence of successive fixed-term employment relationships, within the meaning of Clause 5 of the Framework Agreement, on the sole ground that a worker has a single, non-permanent contract of indefinite duration with the administration concerned, whereas, as is apparent from the requests for a preliminary ruling, first, that latter contract, also temporary in nature, replaces by way of penalty successive fixed-term contracts and, secondly, the continuation of that worker having a non-permanent contract of indefinite duration in the post concerned is the consequence of the failure of the employer concerned to comply with its legal obligation to organise, within the relevant deadline, a selection procedure seeking definitively to fill that vacant post – with the result that his or her employment relationship was consequently implicitly extended for several years – risks compromising the object, the aim and the practical effect of the Framework Agreement (see, to that effect, judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 35 and the case-law cited).

79 Such a restrictive interpretation of the concept of 'successive fixed-term employment relationships' would allow insecure employment of workers over a period of years (judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 36 and the case-law cited).

80 Further, that restrictive interpretation would be liable to have the effect not only that, in reality, a large number of fixed-term employment relationships would not qualify for the protection of workers sought by Directive 1999/70 and the Framework Agreement, because the objective pursued by that directive and that agreement would lose a large part of its substance, but also that the abuse of such relationships by employers in order to meet permanent and long-term staffing needs would be permitted (judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 37 and the case-law cited).

81 In the present case, since, because the administration concerned failed to organise within the relevant deadline a selection procedure seeking definitively to fill the post occupied by a worker having a non-permanent contract of indefinite duration, the automatic extensions of that

temporary contract may be treated like renewals and, consequently, like the conclusion of separate fixed-term contracts. It follows that the situations at issue in the main proceedings in Cases C-59/22 and C-110/22 are not characterised by the conclusion of a single contract, but by the conclusion of contracts which may indeed be classified as 'successive' within the meaning of Clause 5 of the Framework Agreement, which it is for the referring court to verify.

82 In the light of the foregoing considerations, the answer to the second questions referred in Cases C-59/22 and C-110/22 is that Clause 5 of the Framework Agreement must be interpreted as meaning that the expression 'use of successive fixed-term employment contracts or relationships' in that provision encompasses a situation in which, since the administration concerned failed to organise within the relevant deadline a selection procedure seeking definitively to fill the post occupied by a worker having a non-permanent contract of indefinite duration, that worker's temporary contract with that administration was automatically extended.

The third to fifth questions referred in Cases C-59/22 and C-110/22

83 As regards the third to fifth questions referred in Cases C-59/22 and C-110/22, the referring court states that since the concept of a 'non-permanent contract of indefinite duration' is a judicial creation, there is no Spanish legislation for that type of contract. Accordingly, none of the measures provided for in Clause 5(1)(a) to (c) of the Framework Agreement was adopted by the Spanish legislature in order to prevent abuse that may arise from the use of non-permanent contracts of indefinite duration successively extended.

84 That said, the referring court considers that it cannot be excluded that, in accordance with the principle that national law must be interpreted in conformity with EU law, Article 15(5) of the Workers' Statute, which sets a limit for successive temporary contracts, also applies to non-permanent contracts of indefinite duration.

85 However, the referring court notes that even if that were the case, it would still be uncertain whether the Spanish legislation complies with Clause 5 of the Framework Agreement, given that Article 15(5) of the Workers' Statute does not lay down any limitation for the duration or renewal, express or tacit, of non-permanent contracts of indefinite duration, but merely establishes a temporal limit on the combination of a single non-permanent contract of indefinite duration with other temporary contracts.

86 It is in that context that by the third to fifth questions referred in Cases C-59/22 and C-110/22 the referring court asks, in essence, whether Clause 5 of the Framework Agreement must be interpreted as precluding national legislation which does not provide for any of the measures referred to in paragraph 1(a) to (c) of that clause, or an 'equivalent legal measure', within the meaning of that clause, in order to prevent the abuse of non-permanent contracts of indefinite duration.

87 In that regard, it must be borne in mind that, as has been pointed out in paragraphs 68 and 69 above, Clause 5 of the Framework Agreement, the purpose of which is to implement one of the objectives of that agreement, namely to place limits on the use of successive fixed-term employment contracts or relationships, requires, in paragraph 1 thereof, Member States 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 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 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 43 and the case-law cited).

88 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 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 44 and the case-law cited).

89 In that way, Clause 5(1) of the Framework Agreement assigns to the Member States a 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 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 45 and the case-law cited).

90 In addition, it should be noted that it is not for the Court to rule on the interpretation of provisions of national law, that being exclusively for the national courts having jurisdiction, which must determine whether the requirements set out in Clause 5 of the Framework Agreement are met by the provisions of the applicable national law (see judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 50 and the case-law cited).

91 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 the misuse of successive fixed-term employment contracts or relationships (judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 51 and the case-law cited).

92 However, the Court, when giving a preliminary ruling, may, where appropriate, provide clarification designed to give the national courts guidance in their assessment (judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 52 and the case-law cited).

93 It is apparent from the documents before the Court that both the defendant in the main proceedings in Case C-59/22 and the Spanish Government submit that, as the Tribunal Supremo (Supreme Court) held, the concept of a 'worker having a non-permanent contract of indefinite duration' is consistent with the characteristics of the three measures set out in Clause 5 of the Framework Agreement. Thus, first, the application of the corresponding type of contract meets an objective reason, namely to ensure access to employment in the public sector under conditions of equality, merit, ability and publicity, while remedying the use of unlawful contracts in that sector until the post to be filled is indeed filled, secondly, that type of contract has a maximum duration which depends on the publication of the vacancy notice intended to fill the post, as that process may be instigated by the worker himself or herself and must take place within a maximum period in accordance with Spanish law and, thirdly, any successive nature is precluded since there is no renewal of that type of contract.

94 In that context, since, according to the referring court, as stated in paragraphs 83 to 85 above, Spanish law does not lay down, for the category of non-permanent contracts of indefinite duration, any measure intended to prevent the abuse of those contracts, within the meaning of

Clause 5(1)(a) to (c) of the Framework Agreement, and Article 15(5) of the Workers' Statute, even if interpreted in accordance with the requirements of that clause, would not constitute such a measure either, it is appropriate, in order to provide a useful answer to that court, to provide clarification with regard to the arguments put forward by the defendant in the main proceedings in Case C-59/22 and by the Spanish Government, as referred to in paragraph 93 above.

95 As regards, first, the objective reasons set out by the defendants in Case C-59/22 and the Spanish Government, namely to ensure access to employment in the public sector under conditions of equality, merit, ability and publicity, while remedying the use of unlawful contracts in that sector until the post to be filled is indeed filled, it must be found, as is apparent from the very wording of clause 5(1)(a) of the Framework Agreement, that that provision concerns the objective reasons justifying the 'renewal' of fixed-term contracts, not the objective reasons justifying the application, as such, of a type of contract, such as a non-permanent contract of indefinite duration.

96 As regards, secondly, the organisation within the relevant deadlines of selection procedures seeking to definitively fill posts occupied temporarily by fixed-term workers, it should be noted that such a measure is capable of preventing the precarious situation of those workers from becoming entrenched, by ensuring that the posts they occupy are rapidly filled definitively (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 94).

97 Therefore, the organisation within the relevant deadlines of such procedures is, in principle, capable, in the circumstances at issue in the main proceedings, of preventing abuses resulting from the use of successive fixed-term employment relationships until those posts are definitively filled (see, to that effect, judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 95).

98 That being said, it is apparent from the requests for a preliminary ruling that, in the present case, notwithstanding the fact that the legislation at issue in the main proceedings provides for precise deadlines for the organisation of such procedures by the administration concerned, in actual fact, those deadlines are not respected and those procedures are uncommon.

99 In those circumstances, national legislation which provides for the organisation of selection procedures seeking to definitively fill posts occupied temporarily by fixed-term workers as well as precise deadlines for that purpose, but which does not allow it to be ensured that such procedures are actually organised, does not appear capable of preventing the abusive use, by the employer concerned, of successive fixed-term employment relationships (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 97).

100 Consequently, subject to verification by the referring court, such legislation does not seem to constitute a sufficiently effective and deterrent measure to ensure that the measures taken pursuant to the Framework Agreement are fully effective and cannot, therefore, be classified as an 'equivalent legal measure', within the meaning of Clause 5 of the Framework Agreement.

101 In the light of the foregoing considerations, the answer to the third to fifth questions referred in Cases C-59/22 and C-110/22 is that Clause 5(1)(a) to (c) of the Framework Agreement must be interpreted as precluding national legislation which does not provide for any of the measures referred to in that provision or an 'equivalent legal measure', within the meaning of that provision, in order to prevent the abuse of non-permanent contracts of indefinite duration.

The sixth and seventh questions referred in Cases C-59/22 and C-110/22 and the first and second questions referred in Case C-159/22

102 By the sixth and seventh questions referred in Cases C-59/22 and C-110/22 and by the first and second questions referred in Case C-159/22, the referring court asks, in essence, whether Clause 5 of the Framework Agreement must be interpreted as precluding national legislation which provides for the payment of limited compensation, equal to 20 days' salary for each year worked, up to a limit of one year's pay, to any worker whose employer has abused non-permanent contracts of indefinite duration successively extended.

103 In that regard, it must be borne in mind that Clause 5 of the Framework Agreement does not lay down any specific penalties where instances of abuse have been established. In that case, it is incumbent on the national authorities to adopt measures that are not only proportionate, but also are sufficiently effective and act as sufficient deterrent to ensure that the measures taken pursuant to the Framework Agreement are fully effective (judgment of 13 January 2022, *MIUR and Ufficio Scolastico Regionale per la Campania*, C-282/19, EU:C:2022:3, paragraph 81 and the case-law cited).

104 Furthermore, the Court has held that where the improper use of successive fixed-term employment contracts or relationships has taken place, a measure offering effective and equivalent safeguards for the protection of workers must be capable of being applied in order duly to penalise that abuse and to nullify the consequences of the breach of EU law. According to the very wording of the first paragraph of Article 2 of Directive 1999/70, Member States must 'take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by [that d]irective' (judgment of 13 January 2022, *MIUR and Ufficio Scolastico Regionale per la Campania*, C-282/19, EU:C:2022:3, paragraph 84 and the case-law cited).

105 In the present case, it is apparent from the requests for a preliminary ruling that, in accordance with Spanish law, the limited compensation is payable to non-permanent workers having a contract of indefinite duration when their contracts are terminated because their post is filled, which presupposes either that they participated in the selection procedure and were unsuccessful, or that they did not participate in it.

106 However, the Court has held that the payment of an end-of-contract compensation did not allow the purpose of Clause 5 of the Framework Agreement, consisting in preventing abuse arising from the use of successive fixed-term contracts, to be achieved. Such a payment seems to be independent of any consideration relating to the lawful or abusive nature of the use of fixed-term contracts (judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 74 and the case-law cited).

107 Such a measure therefore does not appear to be capable of duly penalising the improper use of successive fixed-term employment contracts or relationships and of removing the consequences of the infringement of EU law and, consequently, does not seem in itself to constitute a sufficiently effective and deterrent measure to ensure that the measures taken pursuant to the Framework Agreement are fully effective, within the meaning of the case-law referred to in paragraph 103 above (judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 75 and the case-law cited).

108 In the light of the foregoing considerations, the answer to the sixth and seventh questions referred in Cases C-59/22 and C-110/22 and the first and second questions referred in Case C-159/22 is that Clause 5 of the Framework Agreement must be interpreted as precluding national legislation which provides for the payment of limited compensation, equal to 20 days' salary for each year worked, up to a limit of one year's pay, to any worker whose employer has abused non-permanent contracts of indefinite duration successively extended, where the payment of that end-of-contract compensation is independent of any consideration relating to the lawful or abusive nature of the use of those contracts.

The eighth and ninth questions referred in Cases C-59/22 and C-110/22 and the third question referred in Case C-159/22

109 By the eighth questions referred in Cases C-59/22 and C-110/22 and by the third question referred in Case C-159/22, the referring court asks, in essence, whether Clause 5 of the Framework Agreement must be interpreted as precluding national provisions under which 'unlawful actions' give rise to liability on the part of the public administrations, 'in accordance with the rules in force in each of [those] public administrations'.

110 If those questions are answered in the negative, the referring court, by the ninth questions referred in Cases C-59/22 and C-110/22, asks, in essence, whether those national provisions, adopted as from 2017, should apply to abuses committed before the respective dates on which the provisions entered into force.

111 In that regard, it should be borne in mind that, in accordance with the requirements arising from the case-law cited in paragraph 103 above, it will be for the referring court to determine whether the national provisions are effective and act as a deterrent to ensure that the measures taken pursuant to the Framework Agreement are fully effective. It will be for that court, in particular, to ascertain whether those national provisions constitute effective measures not only to prevent the abuse of successive fixed-term contracts, but also duly to penalise that abuse and to nullify the consequences of the breach of EU law.

112 It is apparent from the requests for a preliminary ruling that the referring court itself appears to harbour doubts as to whether the national provisions concerned, namely the 43rd additional provision of the Law on the State Budget for 2018 and the 17th additional provision of the EBEP introduced by Royal Decree-Law 14/2021, are compliant with Clause 5 of the Framework Agreement. Thus, first, in its view, the expression 'unlawful actions' is undefined and, therefore, remains too vague to enable the imposition of penalties or the attribution of liability in accordance with the principles of legality and certainty. Secondly, those national provisions do not specify the liability which may be incurred and merely refer to 'the rules in force in each of the public administrations', such rules not being identifiable. Thirdly, the referring court was not aware of any public administration which had been held to be liable for having either encouraged or concluded successive fixed-term contracts.

113 In those circumstances, it must be stated that, in the light of the national legal framework referred to in the requests for a preliminary ruling, the wording of the 43rd additional provision of the Law on the State Budget for 2018 and that of the 17th additional provision of the EBEP appear to contain such a level of ambiguity and of abstraction that it does not make them comparable to the Italian mechanism for the liability of administrative authorities, to which the Court refers in the judgment of 7 March 2018, *Santoro* (C-494/16, EU:C:2018:166); that mechanism, in

conjunction with other effective and dissuasive measures, had been held, subject to verification by the referring court in the case which had given rise to that judgment, to be such as to establish that the Italian legislation was compliant with Clause 5 of the Framework Agreement.

114 In the light of the foregoing considerations, the answer to the eighth questions referred in Cases C-59/22 and C-110/22 and the third question referred in Case C-159/22 is that Clause 5 of the Framework Agreement must be interpreted as precluding national provisions under which 'unlawful actions' give rise to liability on the part of the public administrations, 'in accordance with the rules in force in each of [those] public administrations', where those national provisions are not effective and a deterrent in order to ensure that the measures taken pursuant to that clause are fully effective.

115 In view of the answer provided to the eighth questions referred in Cases C-59/22 and C-110/22, there is no need to rule on the ninth questions referred in Cases 59/22 and C-110/22.

The 12th questions referred in Cases C-59/22 and C-110/22 and the 6th question referred in Case C-159/22

116 By the 12th questions referred in Cases C-59/22 and C-110/22 and by the 6th question referred in Case C-159/22, the referring court asks, in essence, whether Clause 5 of the Framework Agreement must be interpreted as precluding national legislation which provides for the organisation of procedures for the consolidation of temporary employment, by means of the publication of vacancy notices to fill the posts occupied by temporary workers, including workers having non-permanent contracts of indefinite duration.

117 In that regard, the Court has made clear that although the organisation of selection procedures provides the opportunity to workers who have been abusively employed in the context of successive fixed-term employment relationships of attempting to gain access to stable employment, since those workers could, in principle, participate in those procedures, such a circumstance cannot relieve the Member States of their need to comply with the obligation to provide adequate measures to duly punish the abusive use of successive fixed-term employment contracts and relationships. Indeed, such procedures, the outcome of which is moreover uncertain, are in general also accessible to candidates who have not been victims of such abuse (see, to that effect, judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 100).

118 Accordingly, since such procedures are organised irrespective of any consideration as to the abusive use of fixed-term contracts, it does not appear to be an appropriate means of duly penalising the improper use of such relationships and of nullifying the consequences of the breach of EU law. It therefore does not appear to allow the purpose of Clause 5 of the Framework Agreement to be fulfilled (see, to that effect, judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 101).

119 In the present case, it is apparent from the requests for a preliminary ruling that, first, by means of the consolidation procedures, the Spanish legislature attempts to reduce the use of successive temporary contracts in national administrations without, however, foregoing, in the context of those procedures, compliance with the principles of equality, free competition, publicity, merit and ability. Secondly, workers having non-permanent contracts of indefinite duration are likely to lose their employment if they do not pass the tests concerned. Thirdly, in the event of

termination of the non-permanent contract of indefinite duration, those workers will be entitled to a limited compensation equal to 20 days' salary for each year worked, up to a limit of one year's pay.

120 However, in accordance with the considerations arising from the case-law cited in paragraphs 117 and 118 above, which, in the light of the material in the file before the Court, are applicable in the present case, the organisation of the consolidation procedures provided for in Spanish law, subject to verification by the referring court, does not appear capable of duly penalising the abuse of successive non-permanent employment relationships of indefinite duration and, therefore, of nullifying the consequences of the breach of EU law.

121 In the light of the foregoing considerations, the answer to the twelfth questions referred in Cases C-59/22 and C-110/22 and the sixth question referred in Case C-159/22 is that Clause 5 of the Framework Agreement must be interpreted as precluding national legislation which provides for the organisation of procedures for the consolidation of temporary employment, by means of the publication of vacancy notices to fill the posts occupied by temporary workers, including non-permanent workers having contracts of indefinite duration, where that organisation is independent of any consideration relating to the abusive nature of the use of those temporary contracts.

The 10th and 11th questions referred in Cases C-59/22 and C-110/22 and the 4th and 5th questions referred in Case C-159/22

122 It is apparent from the requests for a preliminary ruling that, although the Tribunal Constitucional (Constitutional Court) considers that the constitutional principles referred to in Article 23(2) and Article 103(3) of the Constitution – according to which access to employment in the civil service must respect the principles of equality, merit and ability – do not apply to contractual employment relationships, the Social Division of the Tribunal Supremo (Supreme Court), for its part, applies those principles to such relationships; accordingly, in that court's view, it is thereby made impossible to classify workers not recruited on the basis of a selection procedure complying with the aforementioned principles as 'permanent workers' and it was, therefore, made necessary to introduce the concept of a 'worker having a non-permanent contract of indefinite duration'. According to the referring court, it follows that the conversion of successive temporary contracts, and in particular of non-permanent contracts of indefinite duration which are extended successively, into permanent contracts may be regarded as contrary to the abovementioned provisions of the Constitution, as interpreted by the Tribunal Supremo (Supreme Court).

123 It is in that context that, by the 10th and 11th questions referred in Cases C-59/22 and C-110/22 and by the 4th and 5th questions referred in Case C-159/22, the referring court asks, in essence, whether Clause 5 of the Framework Agreement must be interpreted as meaning that, in the absence of adequate measures in national law to prevent and, where necessary, penalise, pursuant to Clause 5, abuse arising from the use of successive temporary contracts, including non-permanent contracts of indefinite duration which are successively extended, such temporary contracts should be converted into permanent contracts, even if such conversion is contrary to Article 23(2) and Article 103(3) of the Constitution, as interpreted by the Tribunal Supremo (Supreme Court).

124 In that regard, it follows from settled case-law that Clause 5 of 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, nor, as referred to in paragraph 103 above, does it lay down any specific penalties where instances of abuse have been established (judgment of 7 April 2022, *Ministero della Giustizia and Others (Status of Italian magistrates)*, C-236/20, EU:C:2022:263 paragraph 60 and the case-law cited).

125 It should also be noted that it is clear from Clause 5(2) of the Framework Agreement that Member States have the power, in the form of measures to prevent misuse of successive fixed-term employment contracts, to convert fixed-term employment relationships into relationships of indefinite duration, the stability of employment conferred by the latter being the most important aspect of the protection of workers (judgment of 8 May 2019, *Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387, paragraph 39).

126 It is, therefore, for the national authorities to adopt proportionate, effective and dissuasive measures to ensure that the rules adopted pursuant to the Framework Agreement on fixed-term work, which can provide, for that purpose, for the conversion of fixed-term contracts into contracts of indefinite duration, are fully effective. However, where the improper use of successive fixed-term employment relationships has taken place, a measure must be capable of being applied in order to penalise duly that abuse and to nullify the consequences of the breach (judgment of 7 April 2022, *Ministero della Giustizia and Others (Status of Italian magistrates)*, C-236/20, EU:C:2022:263, paragraph 61 and the case-law cited).

127 In order for national legislation, such as the Spanish legislation at issue in the main proceedings, interpreted by the Tribunal Supremo (Supreme Court) – which, in the public sector, prohibits a succession of temporary contracts, such as the non-permanent contracts of indefinite duration at issue in the main proceedings, from being converted into a permanent employment contract – to be regarded as compatible with the Framework Agreement on fixed-term work, the domestic law of the Member State concerned must include, in that sector, another effective measure to prevent and, where relevant, punish the abuse of successive fixed-term contracts (see, to that effect, judgment of 7 April 2022, *Ministero della Giustizia and Others (Status of Italian magistrates)*, C-236/20, EU:C:2022:263, paragraph 62 and the case-law cited).

128 It follows from the foregoing that legislation which lays down a mandatory rule that, where there is misuse of temporary employment contracts, such as the non-permanent contracts of indefinite duration at issue in the disputes in the main proceedings, such contracts are to be converted into a permanent employment relationship, is likely to comprise a measure that actually punishes such misuse and, therefore, be considered to comply with Clause 5 of the Framework Agreement (judgment of 8 May 2019, *Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387, paragraph 40 and the case-law cited).

129 That said, as regards the non-compliance of such a conversion with the constitutional principles of equality, merit and ability, as interpreted by the Tribunal Supremo (Supreme Court), referred to by the referring court, it must be borne in mind that the Court has held that Clause 5(1) of the Framework Agreement does not appear, so far as its subject matter is concerned, to be unconditional and sufficiently precise for individuals to be able to rely upon it before a national court. Under Clause 5(1), it is left to the discretion of the Member States to have recourse, for the purposes of preventing the abuse of fixed-term employment contracts, to one or more of the measures listed in that clause, or even to existing equivalent legal measures, while taking account of the needs of specific sectors and/or categories of workers. In addition, it is not possible to make

an adequate determination of the minimum protection which should, in any event, be implemented pursuant to Clause 5(1) of the Framework Agreement (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 64 and the case-law cited).

130 However, it follows from settled case-law that when national courts apply domestic law, they are bound to interpret it, to the fullest extent possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by that directive and consequently comply with the third paragraph of Article 288 TFEU. That obligation to interpret national law in conformity with EU law concerns all provisions of national law, whether adopted before or after that directive (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 65 and the case-law cited).

131 The requirement for national law to be interpreted in conformity with EU law is inherent in the system of the FEU Treaty, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of EU law when they determine the disputes before them (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 66 and the case-law cited).

132 It is true that the obligation on a national court to refer to the content of a directive when interpreting and applying the relevant rules of domestic law is limited by general principles of law, particularly those of legal certainty and non-retroactivity, and that obligation cannot serve as the basis for an interpretation of national law that is *contra legem* (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 67 and the case-law cited).

133 Nevertheless, the principle that national law must be interpreted in conformity with EU law requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that the directive concerned is fully effective and achieving an outcome consistent with the objective pursued by that directive (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 68 and the case-law cited).

134 In the present case, it is therefore for the referring court, to the fullest extent possible, where abuse of successive fixed-term employment contracts has occurred, to interpret and apply the relevant provisions of national law in such a way that it is possible duly to penalise the abuse and to nullify the consequences of the breach of EU law. In that context, it will be for the referring court to assess whether the relevant provisions of the Constitution may, where appropriate, be interpreted in a manner consistent with Clause 5 of the Framework Agreement in order to ensure that Directive 1999/70 is fully effective and to achieve an outcome consistent with the objective pursued by that directive (see, by analogy, judgment of 11 February 2021, *M.V. and Others (Successive fixed-term contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 69 and the case-law cited).

135 In addition, the Court has held that the obligation to interpret national law in conformity with EU law requires national courts to change established case-law, where necessary, if it is based on an interpretation of domestic law that is incompatible with the objectives of a directive. Consequently, a national court cannot, in particular, validly claim that it is impossible for it to interpret a provision of national law in a manner that is consistent with EU law merely because

that provision has consistently been interpreted in a manner that is incompatible with EU law (judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 86 and the case-law cited).

136 It follows from all of the foregoing, first, that, if the referring court were to consider that the domestic legal order concerned does not include, in the public sector, an effective measure to prevent and, where necessary, penalise the abuse of successive temporary contracts, including non-permanent contracts of indefinite duration which have been successively extended, the conversion of those contracts into a permanent employment relationship is capable of constituting such a measure.

137 Secondly, if, in such a situation, the referring court were also to consider that the settled case-law of the Tribunal Supremo (Supreme Court), unlike that of the Tribunal Constitucional (Constitutional Court), precludes such a conversion, the referring court would then have to amend that case-law of the Tribunal Supremo (Supreme Court) if it is based on an interpretation of the provisions of the Constitution that is incompatible with the objectives of Directive 1999/70 and, in particular, Clause 5 of the Framework Agreement.

138 In the light of the foregoing considerations, the answer to the 10th and 11th questions referred in Cases C-59/22 and C-110/22 and the 4th and 5th questions referred in Case C-159/22 is that Clause 5 of the Framework Agreement must be interpreted as meaning that, in the absence of adequate measures in national law to prevent and, where necessary, penalise, pursuant to Clause 5, abuse arising from the use of successive fixed-term contracts, including non-permanent contracts of indefinite duration which have been extended successively, the conversion of those temporary contracts into permanent contracts is capable of constituting such a measure. It is, as the case may be, for the national court to amend the established national case-law if it is based on an interpretation of the provisions of national law, including constitutional provisions, which is incompatible with the objectives of Directive 1999/70 and, in particular, of Clause 5 of the Framework Agreement.

Costs

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

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

1. **Clauses 2 and 3 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 meaning that a worker having a non-permanent contract of indefinite duration must be regarded as a fixed-term worker, within the meaning of that framework agreement, and, therefore, as falling within the scope of that agreement.

2. **Clause 5 of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Directive 1999/70,**

must be interpreted as meaning that the expression 'use of successive fixed-term employment contracts or relationships' in that provision encompasses a situation in which, since the administration concerned failed to organise within the relevant deadline a selection procedure seeking definitively to fill the post occupied by a worker having a non-permanent contract of indefinite duration, that worker's temporary contract with that administration was automatically extended.

3. **Clause 5(1)(a) to (c) of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Directive 1999/70,**

must be interpreted as precluding national legislation which does not provide for any of the measures referred to in that provision or an 'equivalent legal measure', within the meaning of that provision, in order to prevent the abuse of non-permanent contracts of indefinite duration.

4. **Clause 5 of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Directive 1999/70,**

must be interpreted as precluding national legislation which provides for the payment of limited compensation, equal to 20 days' salary for each year worked, up to a limit of one year's pay, to any worker whose employer has abused non-permanent contracts of indefinite duration successively extended, where the payment of that end-of-contract compensation is independent of any consideration relating to the lawful or abusive nature of the use of those contracts.

5. **Clause 5 of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Directive 1999/70,**

must be interpreted as precluding national provisions under which 'unlawful actions' give rise to liability on the part of the public administrations, 'in accordance with the rules in force in each of [those] public administrations', where those national provisions are not effective and a deterrent in order to ensure that the measures taken pursuant to that clause are fully effective.

6. **Clause 5 of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Directive 1999/70,**

must be interpreted as precluding national legislation which provides for the organisation of procedures for the consolidation of temporary employment, by means of the publication of vacancy notices to fill the posts occupied by temporary workers, including non-permanent workers having contracts of indefinite duration, where that organisation is independent of any consideration relating to the abusive nature of the use of those temporary contracts.

7. **Clause 5 of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Directive 1999/70,**

must be interpreted as meaning that in the absence of adequate measures in national law to prevent and, where necessary, penalise, pursuant to Clause 5, abuse arising from the use of successive fixed-term contracts, including non-permanent contracts of indefinite

duration which have been extended successively, the conversion of those temporary contacts into permanent contracts is capable of constituting such a measure. It is, as the case may be, for the national court to amend the established national case-law if it is based on an interpretation of the provisions of national law, including constitutional provisions, which is incompatible with the objectives of Directive 1999/70 and, in particular, of Clause 5 of the Framework Agreement.

[Signatures]