Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber)

13 December 2016*

(ECB — Staff of the ECB — Temporary agency staff — Limit on the maximum length of service of the same agency worker — Action for annulment — Challengeable act — Direct and individual effect — Interest in bringing proceedings — Period allowed for commencing proceedings — Admissibility — Failure to inform and consult the applicant trade union — Non-contractual liability)

In Case T-713/14,

International and European Public Services Organisation in the Federal Republic of Germany (IPSO), established in Frankfurt am Main (Germany), represented by L. Levi, lawyer,

applicant,

v

European Central Bank (ECB), represented initially by B. Ehlers, I. Köpfer and M. López Torres, and subsequently by Ehlers, P. Pfeifhofer and F. Malfrère, acting as Agents, assisted by B. Wägenbaur, lawyer,

defendant,

concerning, first, an application on the basis of Article 263 TFEU seeking the annulment of a decision of the ECB Executive Board of 20 May 2014 limiting to two years the maximum period during which the ECB may use the services of the same temporary agency worker for administrative and secretarial tasks, and, second, an application on the basis of Article 268 TFEU seeking compensation for the non-material harm suffered,

THE GENERAL COURT (First Chamber),

composed of H. Kanninen, President, I. Pelikánová and E. Buttigieg (Rapporteur), Judges,

Registrar: G. Predonzani, Administrator,

having regard to the written part of the procedure and further to the hearing on 2 June 2016,

gives the following

* Language of the case: French

Judgment

Background to the dispute

1 The applicant, the International and European Public Services Organisation in the Federal Republic of Germany (IPSO), is a professional trade union which, in accordance with its Statutes, represents the interests of persons employed in or working for international and European organisations established in Germany.

2 On 3 July 2008, the applicant and the European Central Bank (ECB) signed a framework agreement entitled 'Memorandum of Understanding between the [ECB] and [IPSO] on Recognition, Information-sharing and Consultation', supplemented by an addendum of 23 March 2011 ('the framework agreement').

3 Point 2 of the framework agreement lays down arrangements for the information, early involvement and consultation of IPSO about measures that may have an effect on the situation or interests of ECB staff.

4 On the applicant's initiative, the ECB entered into discussions with IPSO concerning the situation of agency workers at the ECB.

5 At a meeting on 29 January 2014, it was agreed between the parties, on the initiative of a member of the ECB Executive Board in charge of personnel matters, to set up a working group on issues concerning agency staff ('the working group'). The parties undertook to report their conclusions resulting from the discussions to that Executive Board member.

6 A number of other meetings on agency staff were held between the applicant and the ECB, represented by members of the Directorate General (DG) for Human Resources, Budget and Organisation, within the working group between 18 February 2014 and 5 December 2014, and continued beyond that date.

7 At its meeting on 20 May 2014, the Executive Board defined its position on certain issues concerning the use of agency staff at the ECB, and in particular on limiting to two years the maximum period of service for the ECB of the same agency worker performing administrative and secretarial tasks ('the contested act'). The contested act, which took the form of the summary proceedings of that meeting, provides as follows:

'Having taken note of the information provided in the documentation, and in particular that DG/H [Human Resources, Budget and Organisation] would continue discussions with the relevant business areas, with the aim of gradually diminishing the ECB's reliance on agency staff for recurrent tasks, the Executive Board: (a) decided that: (i) from now on, secretarial and administrative agency staff should only be used to cover for temporary business needs, and that the total duration of their successive contracts should not exceed 24 months …'

8 Certain transitional measures were laid down for the application of that decision. The Executive Board also noted the fact that the DG for Human Resources, Budget and Organisation was to prepare a separate note on the future of IT support agency staff.

9 At the meeting of the working group on 5 June 2014, the applicant was informed by the representatives of the DG for Human Resources, Budget and Organisation that the Executive Board had adopted the contested act.

10 On 16 July 2014, an information meeting was held for agency staff about the measures adopted in the contested act, and the following information on those measures was subsequently disseminated on the ECB intranet:

'The ECB Executive Board has decided to set a two year time limit on secretarial/administrative agency staff contracts … From now on, secretarial/administrative staff (employed to cover temporary needs, act as replacements or work on set projects) will only be able to be at the ECB for a total of two years on single, or consecutive, agency contracts. However, a transitory measure does apply … The Executive Board decision does not apply to DG-IS contractors or colleagues assigned to technical functions such as engineers or other technicians.'

Procedure and forms of order sought

11 By application lodged at the Registry of the General Court on 10 October 2014, the applicant brought the present action.

12 The applicant claims that the Court should:

— declare the action admissible and well founded;

— annul the contested act;

— order the ECB to pay compensation in respect of non-material damage, assessed *ex aequo et bono* at EUR 15 000;

— order the ECB to pay the costs.

13 The ECB contends that the Court should:

— dismiss the action as inadmissible or, in the alternative, as unfounded;

— order the applicant to pay the costs.

Law

1. *Admissibility*

14 Without formally raising a plea of inadmissibility under Article 114 of the Rules of Procedure of the General Court of 2 May 1991, the ECB disputes the admissibility of the action and, as it confirmed at the hearing, raises four objections of inadmissibility alleging, respectively: (i) the absence of a challengeable act; (ii) the applicant's lack of standing to bring proceedings; (iii) the applicant's lack of an interest in bringing proceedings, and (iv) failure to comply with the time limit for bringing proceedings.

The absence of a challengeable act

15 The ECB claims, principally, that the contested act is not a challengeable act for the purposes of the case-law, on the ground that it does not produce legal effects in respect of third parties. In that regard, it argues that the contested act is an internal instruction or guideline addressed only to ECB department heads, designed to harmonise the decisions they will be called upon to take, in the context of the 'decentralised management' of contract awards, concerning the selection of bids

submitted by temporary work agencies, the aim being to align internal selection criteria in anticipation of future amendments to the applicable German legislation, the Arbeitnehmerüberlassungsgesetz of 7 August 1972 (Law on the provision of temporary agency staff, BGBl I p. 1393, 'the AÜG'). According to the ECB, only the AÜG and not the contested act is relevant for establishing the legal framework applicable in the present case, since the ECB is required to comply with any amendments to that law.

16 The applicant maintains that the contested act is a challengeable act in as much as, first, it established a new, binding legal framework for the ECB's use of agency staff performing administrative and secretarial tasks, and, second, it produces effects beyond the internal organisation of the ECB's departments in that it significantly changes the legal position of temporary work agencies and that of agency workers, whose duration of employment in the ECB is limited.

17 According to settled case-law, only measures which produce binding legal effects and are capable of affecting the interests of third parties by bringing about a distinct change in their legal position constitute measures challengeable by an action for annulment (judgments of 31 March 1971, *Commission* v *Council*, 22/70, EU:C:1971:32, paragraph 42; of 6 April 2000, *Spain* v *Commission*, C-443/97, EU:C:2000:190, paragraph 27; and order of 12 February 2010, *Commission* v *CdT*, T-456/07, EU:T:2010:39, paragraph 52).

18 In order to determine whether an act the annulment of which is sought produces such effects, it is necessary to look to its substance (judgment of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 9), the context in which it was drafted (judgment of 17 February 2000, *Stork Amsterdam* v *Commission*, T-241/97, EU:T:2000:41, paragraph 62), and the intention of those who drafted it (see, to that effect, judgments of 17 July 2008, *Athinaïki Techniki* v *Commission*, C-521/06 P, EU:C:2008:422, paragraphs 42, 46 and 52, and of 26 January 2010, *Internationaler Hilfsfonds* v *Commission*, C-362/08 P, EU:C:2010:40, paragraph 52). By contrast, the form in which an act is adopted is in principle irrelevant for assessing the admissibility of an action for annulment (see, to that effect, judgments of 11 November 1981, *IBM* v *Commission*, EU:C:1981:264, paragraph 9, and of 7 July 2005, *Le Pen* v *Parliament*, C-208/03 P, EU:C:2005:429, paragraph 46). Nonetheless, the General Court may take into consideration the form in which acts the annulment of which is sought are adopted inasmuch as it may help to enable their nature to be identified (see, to that effect, judgment of 26 May 1982, *Germany and Bundesanstalt für Arbeit* v *Commission*, 44/81, EU:C:1982:197, paragraph 12, and order of 12 February 2010, *Commission* v *CdT*, T-456/07, EU:T:2010:39, paragraph 58).

19 Furthermore, it is evident from the case-law that a measure adopted by an institution which simply reflects the intention of that institution, or of one of its departments, to follow a particular line of conduct in a given field is not an act open to challenge for the purposes of Article 263 TFEU (see, to that effect, judgments of 27 September 1988, *United Kingdom* v *Commission*, 114/86, EU:C:1988:449, paragraph 13, and of 5 May 1998, *United Kingdom* v *Commission*, C-180/96, EU:C:1998:192, paragraph 28). Such internal guidelines, indicating the general lines along which, pursuant to the relevant provisions, the institution envisages subsequently adopting individual decisions whose legality may be challenged in accordance with the procedure laid down by Article 263 TFEU, have effects only within the administration itself and do not create any right or obligation in respect of third parties. Such acts therefore do not constitute acts adversely affecting any person, against which, as such, an action for annulment can be brought under Article 263 TFEU (see, to that effect, judgments of 6 April 2000, *Spain* v *Commission*, C-443/97, EU:C:2000:190, paragraph 28 and the case-law cited therein, and paragraphs 33 and 34, and of 20 November 2008, *Italy* v *Commission*, T-185/05, EU:T:2008:519, paragraph 41).

20 Only an act by which its author reaches an unequivocal and definitive position, in a form enabling its nature to be identified, constitutes a decision challengeable by an action for annulment (see, to that effect, judgment of 26 May 1982, *Germany and Bundesanstalt für Arbeit* v *Commission*, 44/81, EU:C:1982:197, paragraph 12, and order of 12 February 2010, *Commission* v *CdT*, T-456/07, EU:T:2010:39, paragraph 54).

21 In the present case, the contested act differs from a mere instruction or guideline for the ECB's departments both in its content and in the circumstances in which it was adopted, as well as in the way it was drafted and brought to the attention of those concerned.

22 With regard to its content, which was drafted in clear, unequivocal terms, the contested act constitutes a decision of the ECB Executive Board to limit to two years, subject to transitional measures, the period during which the ECB may use the services of the same agency worker for administrative and secretarial tasks in order to cover temporary needs. Contrary to the ECB's contention, in adopting that position, the Executive Board went beyond what would have been necessary for issuing internal guidelines to the ECB's departments regarding the drafting of tendering documentation relating to the selection of bids submitted by temporary work agencies. The Executive Board did not merely draw up non-binding instructions or lines of conduct, but adopted, outright, rules of general application, definitively establishing at least some of the criteria to be followed for the employment of agency workers within the institution, that is, the maximum duration of employment of the same agency worker performing administrative or secretarial tasks.

23 That decision has binding legal effects in as much as the ECB cannot, unless the rule is formally amended or repealed, depart from that rule when assessing bids submitted by temporary work agencies in the context of the contract award procedure relating to the institution's employment of agency workers.

24 That the contested act constitutes a decision is confirmed by the form in which it was adopted. First of all, it uses the expression 'the Executive Board has decided' (see paragraph 7 above), and second, the information communicated on the ECB's intranet refers to the contested act as follows: 'the Executive Board has decided to set' and 'Executive Board decision' (see paragraph 10 above). Likewise, in his letter of 30 September 2014 to the applicant, the President of the ECB refers to the contested act using the expression 'the Executive Board decided'.

25 As is evident from the settled case-law referred to in paragraph 18 above, even if, in order to determine whether a measure produces legal effects, it is necessary to look to its substance, the form which the measure takes constitutes one of a number of indications that may be taken into consideration by the Courts of the European Union to define the substance of the measure in question, even though the form alone does not enable the Courts to classify the measure as an act adversely affecting a person for the purposes of the fourth paragraph of Article 263 TFEU. Consequently, without regarding this finding as of decisive importance, it must be held that the ECB's use of the terms 'the Executive Board decided' and 'Executive Board decision' in connection with the contested act is such as to corroborate the interpretation of its contents as described in paragraph 22 above, supporting the conclusion that it constitutes a decision.

26 The circumstances surrounding the adoption of the contested act and the communication of its effect to ECB staff corroborate the finding that it constitutes a decision.

27 First of all, it should be noted that the position adopted by the ECB Executive Board in the contested act is in line with the institution's intention 'gradually to reduce the ECB's reliance on agency staff as regards recurrent tasks', as is apparent from the contested act and the document entitled 'Note on i) updated information on the use of agency staff in the ECB; ii) short- and medium-term option for reducing the ECB's reliance on agency staff', prepared for the Executive Board by the DG for Human Resources, Budget and Organisation, and taken into account by the Executive Board when adopting

the contested act ('the note by the DG for Human Resources, Budget and Organisation'). It follows that, in adopting the contested act, the Executive Board intended that it should form part of a general policy of reducing the ECB's use of agency workers.

28 The ECB maintains, however, that the purpose of the contested act was to anticipate, in accordance with the principle of sound administration, the amendment of the German legislation on temporary agency work (the AÜG), which is applicable to the contracts it concludes with temporary work agencies.

29 In that regard, it should be noted that the German Government's proposal to amend the AÜG in order to limit temporary agency contracts to 18 months was, admittedly, mentioned in the note by the DG for Human Resources, Budget and Organisation and in the information on the contested act that was disseminated on the ECB intranet on 16 July 2014. However, the mere fact that the proposal existed at the time when the contested act was adopted does not corroborate the ECB's argument that the act was adopted in anticipation of the amendment of the relevant German legislation.

30 First of all, it should be noted that the amendment of the German legislation to which the ECB refers had not yet been adopted when the contested act was adopted, and that its wording could not yet, at that point, be determined with any certainty. If the ECB's intention had indeed been to anticipate the adoption of the amendment of the AÜG, it would have brought the entry into force of the measures adopted by the contested act into line with the entry into force of the amendment. The measures provided for in the contested act applied from 16 July 2014, as is clear from the information disseminated on that date on the institution's intranet, whereas the amendment of the AÜG had not yet been adopted on that date and, moreover, had still not been adopted on the date of the hearing in the present case, as the ECB confirmed.

31 Secondly, it should be observed that the proposed amendment of the AÜG, as mentioned in the note by the DG for Human Resources, Budget and Organisation, provided for temporary agency contracts to be limited to 18 months, whereas the contested act set the maximum period for the use of the same agency worker in the ECB at 24 months. The contested act cannot, therefore, in any event, be regarded as having been adopted purely in anticipation of the measures planned at national level.

32 Thirdly, the measure adopted by the contested act applies only, as the applicant points out, to one category of agency workers in the ECB, namely those performing administrative and secretarial tasks, while the situation of agency workers performing other tasks, in particular IT support, was to be covered by a separate note by the DG for Human Resources, Budget and Organisation, as is apparent from point b)(i) of the contested act, and as is evidenced by the information disseminated on the ECB's intranet (see paragraph 10 above). Consequently, the contested act cannot be regarded as having been adopted in anticipation of the amendment of the AÜG, since it could not be assumed that the amendment would apply only to that category of agency workers rather than to all agency staff.

33 Consequently, the applicant is right to claim, in essence, that, in the absence of any amendments to that effect to the German legislation applicable, it was the contested act which established the legal framework by limiting to two years the period of service for the ECB of the same agency worker performing non-recurrent administrative and secretarial tasks.

34 Secondly, it is important to note that the measure adopted by the contested act was brought to the attention of ECB staff, and more especially its agency workers, not just by being disseminated on the institution's intranet, but also at an information meeting held specifically for that purpose for agency staff in the ECB. As the President of the ECB noted in his letter of 30 September 2014 to the applicant, the aim of that information meeting was to provide agency staff with 'clear information on their contractual situation'.

35 The ECB thus did not merely disseminate the information solely to ensure transparency, equal treatment or effective administration, as it claims, but also rightly considered it necessary to organise an information meeting about the effect of the contested act and its implications for the situation of agency staff in the ECB.

36 It follows from the foregoing that the ECB intended to confer binding legal effects on the contested act in limiting to two years the period of service for the ECB of agency staff performing non-recurrent administrative and secretarial tasks, which was likely to affect the interests of those staff by denying them the opportunity of being able to be employed in the ECB for a period exceeding that time limit.

37 That conclusion is not called into question by the ECB's other arguments.

38 First, the ECB notes that the legal framework in the present dispute is constituted by two contractual relationships: between the ECB and the temporary work agencies, and between those agencies and the agency workers. As these two contractual relationships are separate, and as the agency workers and the ECB are not contractually linked, the contested act does not, in any event, have any legal effects on the situation of the agency workers, whose interests are represented by the applicant, but only on the contractual situation existing between the ECB and the temporary work agencies.

39 In that regard, it should be noted that the contested act does not just simply fall within the scope of the contractual relationship between the ECB and the temporary work agencies, but is a measure of general application which has legal effects beyond that relationship. As observed in paragraphs 22 and 36 above, it establishes a legal framework for the conditions governing the ECB's use of agency staff, the consequence of which is that the possibility is limited for the same agency worker to be employed in that institution for more than two years, thereby affecting his legal position.

40 Secondly, it is likewise necessary to reject the ECB's argument that limiting the duration of service of an agency worker in the ECB does not prevent him from being subsequently assigned to another post if that is provided for in his contract with the temporary work agency. That argument, albeit not without substance, is not the same as asking whether the contested act has legal effects in that it limits to two years the maximum period of service of an agency worker in the ECB, regardless of any other assignments he might be given by the temporary work agency.

41 Consequently, in the light of the case-law cited in paragraphs 17 to 20 above, the contested act is indeed an act having adverse effects and therefore an act open to challenge for the purposes of the fourth paragraph of Article 263 TFEU. Therefore, the ECB's first objection of inadmissibility must be dismissed.

The absence of a direct and individual effect on the applicant's interests

42 The ECB claims, in the alternative, that the contested act does not directly and individually affect the applicant's interests in so far as, first, it is not the addressee of the measure, and, second, it is not entitled to be consulted or informed in connection with the adoption of a decision, such as the contested act, concerning the situation of agency staff in the ECB.

43 The applicant claims that the contested act is of direct and individual concern to it, for the purposes of the case-law, in as much as its own interests as a social dialogue interlocutor, and its procedural rights resulting from the framework agreement and from its discussions with the ECB in the working group, which it calls an 'ad hoc agreement', were not respected when the contested act was adopted.

44 Under the fourth paragraph of Article 263 TFEU, any natural or legal person may, under the conditions laid down in the first and second paragraphs of that article, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

45 It is common ground that the applicant is not the addressee of the contested act. Furthermore, since the applicant does not claim that the contested act is a regulatory act which is of direct concern to it and does not entail implementing measures, but that the act is of direct and individual concern to it, it must first be examined whether those two conditions laid down by the fourth paragraph of Article 263 TFEU in order to institute an action for annulment are met in the present case.

46 First, as regards the requirement that the act must have a direct effect, it must be noted that, according to settled case-law, the condition that the act which is the subject of the dispute must be of direct concern to a natural or legal person requires that the act should directly affect the legal situation of the individual and leave no discretion to its addressees, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules without the application of other intermediate rules (see judgment of 13 March 2008, *Commission* v *Infront WM*, C-125/06 P, EU:C:2008:159, paragraph 47 and the case-law cited).

47 Second, regarding the requirement that the act must have an individual effect, according to settled case-law, a natural or legal person other than those to whom an act is addressed may claim to be individually concerned, for the purposes of the fourth paragraph of Article 263 TFEU, only if that act affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as in the case of the person addressed (judgment of 15 July 1963, *Plaumann* v *Commission*, 25/62, EU:C:1963:17, p. 107; see, also, judgment of 27 February 2014, *Stichting Woonlinie and Others* v *Commission*, C-133/12 P, EU:C:2014:105, paragraph 44 and the case-law cited).

48 An organisation such as the applicant, formed for the protection of the collective interests of a category of persons, cannot be considered as being directly and individually concerned by a measure affecting the general interests of that category (judgments of 14 December 1962, *Confédération nationale des producteurs de fruits et légumes and Others* v *Council*, 16/62 and 17/62, not published, EU:C:1962:47, p. 479, and of 18 March 1975, *Union syndicale-Service public européen and Others* v *Council*, 72/74, EU:C:1975:43, paragraph 17).

49 However, actions brought by associations such as the applicant, whose function it is to defend the collective interests of persons, are admissible in three situations, according to the case-law: where they represent the interests of persons who themselves have standing to bring proceedings; where they are distinguished individually because of the impact on their own interests as associations, in particular because their position as a negotiator has been affected by the measure sought to be annulled; and where a legal provision expressly confers on them a number of rights of a procedural nature (see judgment of 18 March 2010, *Forum 187* v *Commission*, T-189/08, EU:T:2010:99, paragraph 58 and the case-law cited).

50 In the present case, even though the applicant maintains that the change which the contested act makes to the situation of third parties, namely ECB staff and agency workers, is relevant for establishing that its legal position has been altered, in view of its role as a trade union the social purpose of which is to defend the collective interests of persons employed by or working for international and European organisations established in Germany, it does not claim that those persons themselves have standing to bring proceedings. It does, however, claim that it has standing to bring proceedings in so far as, first, its own interests as a social partner and negotiator in the discussions on the situation of agency staff in the ECB, and second, its procedural rights were infringed by the ECB.

51 As regards the question whether, in the present case, the applicant's position as a negotiator for the purposes of the case-law referred to in paragraph 49 above, resulting from its involvement in the discussions in the working group, was affected by the contested act, the ECB contends that that is not the case since, first, the contested act is an internal document addressed to the ECB's departments, and, second, in the absence of a duly signed document, the applicant cannot claim that the creation of the working group may be treated as an agreement from which it derives the rights it purports to have.

52 In that regard, it should be noted that the mere fact that a trade union representing staff took part in negotiations which led to the adoption of a measure is not sufficient to change the nature of the right of action which, in the context of Article 263 TFEU, it may possess in relation to that measure (see, to that effect, judgment of 18 March 1975, *Union syndicale-Service public européen and Others* v *Council*, 72/74, EU:C:1975:43, paragraph 19).

53 However, an association's action may be declared admissible where it is defending its own interests, as distinct from those of its members, particularly where its position as a negotiator was affected by the contested act (see, to that effect, judgments of 2 February 1988, *Kwekerij van der Kooy and Others* v *Commission*, 67/85, 68/85 and 70/85, EU:C:1988:38, paragraphs 21 to 24; of 24 March 1993, *CIRFS and Others* v *Commission*, C-313/90, EU:C:1993:111, paragraphs 29 and 30; and order of 23 November 1999, *Unión de Pequeños Agricultores* v *Council*, T-173/98, EU:T:1999:296, paragraph 54), in particular situations in which it occupied a clearly circumscribed position as negotiator which was intimately linked to the actual subject matter of the decision, thus placing it in a factual situation which distinguished it from all other persons (see, to that effect, judgment of 23 May 2000, *Comité d'entreprise de la Société française de production and Others* v *Commission*, C-106/98 P, EU:C:2000:277, paragraph 45, and order of 3 April 2014, *CFE-CGC France Télécom-Orange* v *Commission*, T-2/13, not published, EU:T:2014:226, paragraph 35).

54 In the present case, the applicant claims that its own interests as a social interlocutor with the ECB and a negotiator in discussions on the situation of agency workers within the institution were affected by the contested act, particularly given the fact that the contested act came under the terms of reference of the working group, whose report had not yet been adopted at the time of the adoption of the contested act, and that it was the only social partner taking part in the working group and signatory to the framework agreement.

55 The circumstances put forward by the applicant, as summarised in paragraph 54 above, are capable of distinguishing it, in the present case, for the purposes of the case-law cited in paragraph 53 above, from all other trade unions representing persons employed by or working for the ECB, in view of the role of social interlocutor which it played in the discussions with the ECB administration on the situation of agency workers in that institution, and which was circumscribed and linked to the actual subject matter of the contested act.

56 In that regard, it should be noted that it is common ground that the applicant is the only organisation representing persons employed by the ECB and working for it which entered into discussions with the ECB administration on the situation of agency workers in that institution, in particular by taking part in the working group created for that purpose. It actively pursued those discussions, keeping in close contact with the responsible departments, in particular by attending various meetings and exchanging correspondence with them, such as preparatory documents for and records of the meetings (see paragraphs 5, 6 and 9 above). As is evident from, among other things, the agendas for discussion in the working group and the summary record of the meeting which it held on 18 February 2014, the discussions focused in particular on the issue of the maximum period of service of agency workers in the ECB, which is linked precisely to the actual subject matter of the contested act.

57 While there is no need to rule, at this stage, on whether the discussions and contacts in the working group, relied on in paragraph 56 above, must be classified as an 'ad hoc agreement', as the applicant claims, it must be concluded that the ECB recognised the applicant as an interlocutor when questions

concerning agency staff were examined, particularly the maximum duration of their employment in the ECB (see, to that effect and by analogy, judgment of 24 March 1993, *CIRFS and Others* v *Commission*, C-313/90, EU:C:1993:111, paragraph 29).

58 Thus, its position as a social interlocutor with the ECB in discussions on agency staff, relating in particular to the question of the duration of their employment in the ECB, is sufficient in the present case to show that the applicant is individually concerned by the contested act for the purposes of the sixth paragraph of Article 263 TFEU. That status is in fact peculiar to it, within the meaning of the case-law, inasmuch as, of the various trade unions that may be active in defence of the interests of persons employed by or working for the ECB, it was the one which entered into discussions with the ECB precisely on the issues covered by the contested act, which distinguishes it from all other trade unions (see, to that effect, judgment of 9 July 2009, *3F* v *Commission*, C-319/07 P, EU:C:2009:435, paragraphs 92 and 93, and order of 18 April 2002, *IPSO and USE* v *ECB*, T-238/00, EU:T:2002:102, paragraph 55).

59 Similarly, the applicant is directly concerned by the contested act, within the meaning of the case-law, inasmuch as the act had the immediate effect of affecting its position as social interlocutor in the discussions on agency staff issues, since it denied it the opportunity to take part in and influence the decision-making.

60 Consequently, the objection of inadmissibility based on the applicant's lack of standing to bring proceedings must be rejected without any need to rule, at this stage, on the existence of any procedural guarantees which the applicant might claim to have in connection with the adoption of the contested act.

The lack of a legal interest in bringing proceedings

61 The ECB claims, in the alternative, that the applicant's interest in having the contested act annulled 'is more political than legal'. The applicant therefore does not have an interest in bringing proceedings within the meaning of the case-law, on the ground that, for the reasons set out in relation to the dispute as to whether the contested act is open to challenge (see paragraph 15 above), the ECB was not required to consult the applicant before the act was adopted by the Executive Board.

62 The applicant contends that it does have an interest in bringing proceedings inasmuch as the present action seeks to protect its rights to be informed and consulted.

63 In accordance with settled case-law, an action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in the annulment of the contested act. Such an interest requires that the annulment of that act must be capable, in itself, of having legal consequences and that the action may therefore, through its outcome, procure an advantage to the party which brought it (see judgment of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 55 and the case-law cited, and order of 4 December 2014, *Talanton* v *Commission*, T-165/13, not published, EU:T:2014:1027, paragraphs 34 and 35 and the case-law cited).

64 An applicant's interest in bringing proceedings must be vested and current (see judgment of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 56 and the case-law cited).

65 As the applicant points out, in the present action it is seeking precisely to safeguard its procedural rights to be consulted and informed. It follows that the annulment of the contested act is capable of having the consequence that the ECB will be required to ensure observance of those rights before

adopting an act such as the contested act. However, the existence of such an interest in bringing proceedings presupposes that the applicant is able to claim to possess those rights here, which must be assessed in conjunction with the pleas in law of the action.

The failure to comply with the time limit for bringing an action

66 The ECB claims, in the further alternative, that the action is inadmissible for failure to comply with the time limit for bringing an action. Since the contested act is an internal instruction addressed to the institution's departments, it did not need to be published, according to the ECB, and, in any event, dissemination on the institution's intranet was not equivalent to publication. Consequently, the additional period of fourteen days for calculating the time limit for bringing an action, laid down in Article 102(1) of the Rules of Procedure of 2 May 1991, was not applicable in the present case. The time limit was therefore to be calculated from the date on which the applicant became aware of the contested act, that is, from 16 July 2014, the date on which the contested act was disseminated on the ECB's intranet and an information meeting was held which the applicant attended. Consequently, the action, which was brought on 10 October 2014, was out of time.

67 The applicant maintains that the action was brought within the requisite time limit.

68 In that regard, it should be noted that, according to settled case-law, the time limit prescribed for bringing actions under Article 263 TFEU is a matter of public policy since it was established in order to ensure that legal positions are clear and certain and to avoid any discrimination or arbitrary treatment in the administration of justice, and the EU Court must ascertain, even of its own motion, whether that time limit has been observed (judgments of 23 January 1997, *Coen*, C-246/95, EU:C:1997:33, paragraph 21, and of 18 September 1997, *Mutual Aid Administration Services* v *Commission*, T-121/96 and T-151/96, EU:T:1997:132, paragraphs 38 and 39).

69 The sixth paragraph of Article 263 TFEU provides that annulment proceedings must be instituted within two months. Time begins to run from the publication of the measure, its notification to the plaintiff, or, in the absence thereof, the date on which it came to the knowledge of the latter, as the case may be.

70 It is clear simply from the wording of that provision that the criterion of the date on which a measure came to the knowledge of the plaintiff, as the starting point of the period prescribed for instituting proceedings, is subsidiary to the criteria of publication or notification of the measure (judgment of 10 March 1998, *Germany* v *Council*, C-122/95, EU:C:1998:94, paragraph 35; see also judgment of 27 November 2003, *Regione Siciliana* v *Commission*, T-190/00, EU:T:2003:316, paragraph 30 and the case-law cited).

71 In the present case, it is common ground that the contested act was not notified to the applicant. It was also not published, since it was only information about the contested act that was disseminated on the ECB's intranet. That being so, it is the date on which the contested act came to the knowledge of the applicant which must be regarded as the point from which the time limit for instituting proceedings started to run.

72 In that regard, it should be noted that, according to the case-law, in the absence of publication or notification, it is for a party which has knowledge of a decision concerning it to request the whole text thereof within a reasonable period but, subject thereto, the period for bringing an action can begin to run only from the moment at which the third party concerned acquires precise knowledge of the content of the decision in question and of the reasons on which it is based in such a way as to enable it to exercise its right of action (judgments of 6 July 1988, *Dillinger Hüttenwerke* v *Commission*, 236/86, EU:C:1988:367, paragraph 14, and of 19 February 1998, *Commission* v *Council*, C-309/95, EU:C:1998:66, paragraph 18).

73 The ECB claims that it is 16 July 2014, the date on which information concerning the contested act was disseminated on the ECB's intranet and on which an information meeting was held which the applicant attended, that must be regarded as the point from which the time limit for instituting proceedings started to run.

74 Clearly, however, on that date, the applicant did not have precise knowledge of the content of the contested act and of the reasons on which it was based. It is evident from the file, nor is it disputed by the ECB, that the exact content of the contested act was not communicated to the applicant until 24 October 2014, after proceedings were instituted, and that it obtained a copy of the contested act only with the defence. The fact, alleged by the ECB, that the information disseminated on the institution's intranet 'essentially' reflected the information which the applicant received from the ECB administration on 24 October 2014 is not sufficient for a finding that on 16 July 2014 the applicant had precise knowledge of the content of the contested act and of the reasons on which it was based, within the meaning of the case-law cited in paragraph 72 above.

75 Consequently, the applicant was constrained to bring the present action without being able to be sure of knowing all the relevant details of the contested act (see, to that effect and by analogy, judgment of 6 July 1988, *Dillinger Hüttenwerke* v *Commission*, 236/86, EU:C:1988:367, paragraph 15).

76 Furthermore, it must be pointed out that the applicant fulfilled its obligation, required by the case-law (see paragraph 72 above), to request the whole text of the contested act within a reasonable period. It is clear from the documents before the Court that the applicant sent a number of requests to the ECB administration for a copy of the contested act, the last one prior to the initiation of proceedings dating from 8 October 2014.

77 That being so, the action cannot be considered out of time.

78 Consequently, the fourth objection of inadmissibility raised by the ECB must be dismissed without any need to rule on the parties' arguments concerning the calculation of the time limit for bringing proceedings in relation to the date on which information on the contested act was disseminated on the ECB intranet.

2. *Substance*

The claim for annulment

79 In support of its application for annulment, the applicant raises two pleas in law alleging, first, a breach of the right to information and consultation as guaranteed by Article 27 of the Charter of Fundamental Rights of the European Union and by Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community — Joint declaration of the European Parliament, the Council and the Commission on employee representation (OJ 2002 L 80, p. 29), and defined and implemented by the framework agreement and by discussions in the working group, which the applicant describes as an 'ad hoc agreement', as well as a breach of that alleged 'ad hoc agreement' and of the framework agreement, and, second, infringement of Article 41 of the Charter of Fundamental Rights.

The first plea, alleging a breach of the right to information and consultation as guaranteed by Article 27 of the Charter of Fundamental Rights and by Directive 2002/14, and defined and implemented by the framework agreement and by the alleged 'ad hoc agreement', as well as a breach of that 'ad hoc agreement' and of the framework agreement

80 The applicant maintains that, by adopting the contested act without entering into social dialogue with the applicant, the ECB infringed the right of workers to information and consultation referred to in Article 27 of the Charter of Fundamental Rights and Article 4 of Directive 2002/14, as implemented by negotiated agreements within the meaning of Article 5 of that directive, that is, by the framework agreement and the alleged 'ad hoc agreement'.

81 The ECB denies that it breached the applicant's rights to be consulted and informed, in so far as the provisions relied on do not confer such rights on the applicant here.

82 It is necessary to examine, first of all, whether, in the present case, the applicant is entitled, under the provisions it relies on, to claim procedural guarantees that should have enabled it to be informed, consulted and involved prior to the adoption of the contested act, and then, if appropriate, whether those procedural rights were infringed contrary to those guarantees.

– Article 27 of the Charter of Fundamental Rights

83 The applicant refers first of all to the right of workers to information and consultation, provided for in Article 27 of the Charter of Fundamental Rights.

84 In that regard, it should be noted that Article 27 of the Charter of Fundamental Rights lays down the right of workers to information and consultation within the undertaking. According to the case-law, those provisions may apply in relations between the EU institutions and their staff, as is apparent from the judgment of 19 September 2013, Review of *Commission* v *Strack* (C-579/12 RX-II, EU:C:2013:570).

85 However, according to the actual wording of Article 27 of the Charter of Fundamental Rights, the exercise of the rights laid down in that article is confined to the cases and conditions provided for by European Union law and national laws and practices (judgment of 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraph 45, and order of 11 November 2014, *Bergallou* v *Parliament and Council*, T-22/14, not published, EU:T:2014:954, paragraph 33).

86 It follows that Article 27 of the Charter of Fundamental Rights, which does not lay down any directly applicable rule of law, is not in itself sufficient to confer on individuals an individual right to consultation and information which they may invoke as such (see, to that effect, judgment of 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraph 47).

87 Consequently, the applicant cannot rely, in this instance, on rights to consultation and information based solely on Article 27 of the Charter of Fundamental Rights.

88 According to the explanations relating to Article 27 of the Charter of Fundamental Rights, which, under the third paragraph of Article 6(1) TEU and Article 52(7) of the Charter of Fundamental Rights, must be given due regard for the interpretation of the Charter, the Union acquis in the field covered by Article 27 of the Charter of Fundamental Rights, laying down the conditions in which that article applies, is constituted, inter alia, by Directive 2002/14, relied on by the applicant in the present case.

89 It is therefore necessary to determine whether the applicant might, in this instance, derive the rights it relies on from Article 27 of the Charter of Fundamental Rights, as defined by the provisions of Directive 2002/14.

– Directive 2002/14

90 The applicant refers to the fields of information and consultation defined by Article 4 of Directive 2002/14 and claims that that article does not confine consultation rights solely to workers with an employment contract linking them directly to the undertaking. Agency workers therefore also have the right, according to the applicant, to benefit from collective rights and representation in the ECB.

91 According to the ECB, Article 27 of the Charter of Fundamental Rights, as defined by the provisions of Directive 2002/14, cannot form the basis of an obligation for the ECB to inform or consult the representatives of agency workers prior to the adoption of the contested act in so far as, first, it is evident from the case-law that Directive 2002/14 does not impose obligations, as such, on the institutions in their relations with their staff, and, second, the directive places those obligations on an 'employer', yet the ECB is not the employer of the agency workers. Lastly, even if those provisions were applicable to it, the ECB considers that the contested act does not fall within the scope of Article 4(2) of Directive 2002/14.

92 As a preliminary point, it is necessary to consider whether Directive 2002/14 lays down rights to consultation and information for agency staff and their representatives, as the applicant claims.

93 According to recital 18 and Article 1(1) of Directive 2002/14, the purpose of the directive is 'to establish a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings or establishments within the [Union]'. It is also apparent from the provisions of the directive that the information and consultation of workers are to be organised through the representatives provided for by national laws and practices.

94 According to Article 2(f) and (g) of Directive 2002/14, 'information' means 'transmission by the employer to the workers' representatives of data in order to enable them to acquaint themselves with the subject matter and to examine it', and 'consultation' means 'the exchange of views and establishment of dialogue between the employees' representatives and the employer'. According to Article 2(c) and (d) of the same directive, 'employer' means a 'natural or legal person party to employment contracts or employment relationships with employees, in accordance with national law and practice' and 'employee' means 'any person who, in the Member State concerned, is protected as an employee under national employment law and in accordance with national practice'.

95 In that regard, first of all, it should be observed that the system put in place by Directive 2002/14 is intended to apply to all employees referred to in Article 2(d) of that directive, apart from certain exceptions laid down in Article 3(2) and (3) thereof (judgment of 18 January 2007, *Confédération générale du travail and Others*, C-385/05, EU:C:2007:37, paragraph 37). Furthermore, the ECB does not dispute that agency workers are protected as employees in Germany for the purposes of Article 2(d) of Directive 2002/14 and as is evident, in particular, from recitals 1 and 23 and Article 2 of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ 2008 L 327, p. 9), as transposed into German law by the AÜG.

96 Secondly, it is common ground that the ECB and the agency staff supplied to it are not linked by a contractual relationship. However, as the applicant claims, in essence, the ECB and the agency workers are linked by an 'employment relationship' within the meaning of Article 2(c) of Directive 2002/14, so that the ECB must be regarded as their employer for the purposes of that provision.

97 Firstly, it is evident from settled case-law that the essential feature of an 'employment relationship' is that for a certain period of time one person performs services for and under the direction of another person as regards, in particular, his freedom to choose the time, place and content of his work, in return for which he receives remuneration. That characterisation is generally acquired in EU law if the abovementioned conditions are met, irrespective of whether or not an employment contract has been concluded by the person concerned (see judgments of 13 February 2014, *Commission* v *Italy*, C-596/12, not published, EU:C:2014:77, paragraph 17 and the case-law cited, and of 4 December 2014, *FNV Kunsten Informatie en Media*, C-413/13, EU:C:2014:2411, paragraphs 34 and 36 and the case-law cited).

98 In the present case, the relationship between the ECB and the agency staff meets all of those conditions, since the agency workers carry out their professional activities for and under the direction of the ECB, to which they are periodically supplied by a temporary work agency, which pays them remuneration in return.

99 That finding is confirmed by the case-law, according to which the supply of temporary workers is a complex situation which is specific to labour law, involving a two-fold employment relationship between, on the one hand, the temporary employment business and the temporary worker and, on the other, the temporary worker and the user undertaking, as well as a relationship of supply between the temporary employment business and the user undertaking (judgment of 11 April 2013, *Della Rocca*, C-290/12, EU:C:2013:235, paragraph 40).

100 A distinction must thus be made between an employment relationship resulting from a contract concluded directly between an employee and an employer and an employment relationship such as that between a user undertaking, in this case the ECB, and the temporary workers supplied to it by a temporary work agency.

101 Secondly, the term employer, as used in Article 2(c) of Directive 2002/14, does not mean, as the applicant claims, that only employment relationships governed by an employment contract concluded directly between the employer and the employee come within its scope, contrary to the provisions of, in particular, 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), which would then not apply to fixed-term workers supplied to a user undertaking (see, to that effect, judgment of 11 April 2013, *Della Rocca*, C-290/12, EU:C:2013:235, paragraphs 36 and 39).

102 Thirdly, it should be observed that Article 8 of Directive 2008/104, which is the legislation specifically on temporary agency work, imposes on the user undertaking a duty to inform workers' representatives on the use of temporary agency workers when providing information on the employment situation in that undertaking to bodies representing workers. That provision, which clearly places the user undertaking, in this case the ECB, under an obligation to provide information on its use of temporary agency workers, also specifies that Directive 2008/104 applies 'without prejudice to national and [EU] provisions on information and consultation which are more stringent and/or specific and, in particular, Directive 2002/14'.

103 It follows from the foregoing that, contrary to the ECB's claims, Directive 2002/14 must be regarded as applicable concerning a user undertaking's obligations to inform and consult temporary agency workers' representatives.

104 Next, it should be observed that, as the ECB claims, according to settled case-law, since directives are addressed to the Member States and not to the EU's institutions or bodies, the provisions of Directive 2002/14 cannot be treated, as such, as imposing any obligations on the institutions in their relations with their staff (see, to that effect and by analogy, judgments of 9 September 2003, *Rinke*, C-25/02, EU:C:2003:435, paragraph 24, and of 21 May 2008, *Belfass* v *Council*, T-495/04, EU:T:2008:160, paragraph 43).

105 However, as has already been held, the fact that a directive is not, as such, binding on the institutions does not mean that rules or principles laid down in that directive may not be relied on against the institutions, where those rules or principles themselves appear to be merely the specific expression of fundamental treaty rules and general principles directly applicable to the institutions. In a community based on the rule of law, the uniform application of the law is a fundamental requirement and any person subject to the law is subject to the principle of due process of law. Thus, the institutions are required to respect the rules of the FEU Treaty and the general principles of law which apply to them, just as any other person subject to the law (see, to that effect, judgments of 9 September 2003, *Rinke*, C-25/02, EU:C:2003:435, paragraphs 25 to 28, and of 21 September 2011, *Adjemian and Others* v *Commission*, T-325/09 P, EU:T:2011:506, paragraph 56 and the case-law cited).

106 Likewise, a directive may be binding on an institution where the latter, within the scope of its organisational autonomy in particular, has sought to carry out a specific obligation laid down by a directive or in the specific instance where an internal measure of general application itself expressly refers to measures laid down by the Union legislature pursuant to the Treaties. Lastly, the institutions must, in accordance with their duty to act in good faith, take account, in their actions as employer, of the legislation adopted at Union level (judgment of 8 November 2012, *Commission* v *Strack*, T-268/11 P, EU:T:2012:588, paragraphs 43 and 44).

107 It is therefore necessary to determine whether and under what conditions Directive 2002/14 may be relied on for the purpose of identifying whether and to what extent the ECB was under any obligation to consult and inform the applicant trade union prior to adopting the contested act.

108 First of all, it should be noted that the general framework for the information and consultation of workers established by Directive 2002/14 is, it is true, an expression of the fundamental rights laid down in Article 27 of the Charter of Fundamental Rights. However, as was stated in paragraph 86 above, those fundamental rules resulting from Article 27 of the Charter of Fundamental Rights to not apply directly to the ECB for the purposes of the case-law cited in paragraph 105 above, since, as is evident from that provision, they need to be defined further by Union law and national law.

109 Secondly, the applicant claims that the ECB is bound by the regulations and directives concerning EU social policy, pursuant to Article 9(c) of the Conditions of Employment for Staff of the European Central Bank ('the Conditions of Employment').

110 Article 9(c) of the Conditions of Employment provides as follows:

'No specific national law governs these Conditions of Employment. The ECB shall apply (i) the general principles of law common to the Member States, (ii) the general principles of European [Union (EU)] law, and (iii) the rules contained in the [EU] regulations and directives concerning social policy which are addressed to Member States. Whenever necessary, these legal instruments will be implemented by the ECB. [EU] recommendations in the area of social policy will be given due consideration. In interpreting the rights and obligations under the present Conditions of Employment, due regard shall be shown for the authoritative principles of the regulations, rules and case-law which apply to the staff of the [European Union] institutions.'

111 In so far as the applicant's argument refers to a situation in which an internal measure of general application itself expressly refers to measures laid down by the Union legislature pursuant to the Treaties, for the purposes of the case-law cited in paragraph 106 above, it should be pointed out that, even though that provision of the Conditions of Employment reflects the general principle that the uniform application of the law requires the EU institutions to respect the rules of EU law, including directives (see paragraph 105 above), and even though a European Union measure must be interpreted, as far as possible, in conformity with primary law as a whole (see judgment of 19 September 2013, Review of *Commission* v *Strack*, C-579/12 RX-II, EU:C:2013:570, paragraph 40

and the case-law cited), it does not indicate an undertaking by the ECB to 'carry out a specific obligation', in particular an obligation to inform or consult workers' representatives, as provided for in Directive 2002/14.

112 Thirdly, the applicant claims that the provisions of Article 27 of the Charter of Fundamental Rights and Article 4(2) of Directive 2002/14 were implemented by the framework agreement and by the discussions in the working group, which it describes as an 'ad hoc agreement'. The applicant thus appears to be referring to a situation in which the ECB, within the scope of its organisational autonomy in particular, has sought to carry out a specific obligation laid down by that directive, within the meaning of the case-law cited in paragraph 106 above.

113 It is therefore necessary to consider whether the framework agreement and the creation of the working group in January 2014 with the applicant's involvement might be regarded as giving concrete expression to the rights laid down in Directive 2002/14 in favour of the applicant in the context of the adoption of the contested act.

– The framework agreement:

114 According to the applicant, point 2 of the framework agreement is comparable to the fields of information and consultation defined by Article 4 of Directive 2002/14. Under point 2 of the framework agreement, applicable to issues relating to agency staff under the alleged 'ad hoc agreement', it has the right to be informed, consulted and made part of the early involvement procedure for the adoption of measures, such as the contested act, which lead to material changes in work organisation and changes in contractual relations or employment-related policies having an effect on the situation of ECB staff.

115 The ECB maintains that the framework agreement is not applicable in this instance as regards the applicant's rights to be consulted and informed, in so far as the framework agreement does not relate to agency staff because they are not regarded as members of staff of the ECB within the meaning of point 1(a), first indent, of the agreement, and point 2(a) of the agreement cannot have the effect of widening the scope of that provision.

116 It should be noted that the subject matter of the framework agreement between the ECB and the applicant is, as is stated in its title, 'recognition, information-sharing and consultation'. Recital 3 states that 'the development of a mature social dialogue between the ECB and the trade unions, enabling a more effective involvement of ECB staff members in matters which are of direct concern to them, requires the sharing of information and consultation'.

117 According to point 1(a) of the framework agreement, 'information' is to be understood as 'transmission by the ECB [to IPSO] of data in order to enable it to acquaint itself with the subject matter and to examine it, as well as the transmission of date from [IPSO] to the ECB for the same purpose', and consultation must be understood as an 'exchange of views between the ECB and [IPSO]'.

118 Point 2 of the framework agreement confers on the applicant procedural guarantees of information, early involvement and consultation in the areas defined in point 2(a) according to the arrangements provided for in point 2(d)-(f). The purpose of those guarantees, according to point 2(b) of the framework agreement, is to 'permit and promote a two-way flow of ideas and information between the ECB and [IPSO] so as to ensure that both parties have a better understanding of each other's perspective on issues that fall within the scope of this [agreement]'. In addition, according to that provision, 'although early involvement and consultation shall not aim to reach mutual agreement, they shall provide an opportunity for the trade union to influence the decision-making process'.

119 Point 2(a) of the framework agreement provides as follows:

‘[IPSO] shall be informed on the recent and intended development of the ECB, its activities as well as economic and financial situation, in so far as they may have an effect on the situation or interests of staff.

[IPSO] shall be part of the early involvement procedure and consulted on proposed structural developments within the ECB as well as on proposed measures leading to material changes in work organisation and measures leading to changes in contractual relations or employment-related policies.’

120 The applicant claims that the fields of information and consultation defined in point 2(a) of the framework agreement are comparable to the fields defined in Article 4 of Directive 2002/14.

121 Under Article 4(2) of Directive 2002/14, information and consultation cover:

‘a) information on the recent and probable development of the undertaking’s or the establishment’s activities and economic situation;

b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;

c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the Community provisions referred to in Article 9(1).’

122 A comparison of the content and scope of the rights of workers’ representatives to ‘information’ and ‘consultation’ under Directive 2002/14 (see paragraph 94 above) with those laid down in favour of the applicant by the framework agreement (see paragraph 117 above), and a comparison of the fields of consultation and information laid down by those two measures (see paragraphs 119 and 121 above), lead to the conclusion that the framework agreement constitutes an implementation of Directive 2002/14 as regards the applicant’s rights to consultation and information in its relations with the ECB. It follows that, in concluding the framework agreement with the applicant, the ECB, within the scope of its organisational autonomy, sought to carry out a specific obligation within the meaning of the case-law cited in paragraph 106 above, in this instance to inform and consult a workers’ representative as provided for in Directive 2002/14. It follows that the ECB is, in principle, bound by the rules and principles laid down in that directive in its relations with the applicant.

123 However, it is important to note, as the ECB maintains, that, in accordance with point 1(a) of the framework agreement, agency staff issues are expressly excluded from its scope.

124 Consequently, the applicant in the present case may not rely on Directive 2002/14 through the framework agreement, in view of the fact that the contested act specifically concerns the situation of agency workers.

125 The applicant, however, claims that it is able, in the present case, to claim the procedural rights guaranteed by Directive 2002/14, as implemented by the framework agreement, in so far as the adoption of the contested act affects the situation and interests of ECB staff other than agency workers. According to the applicant, the decision taken by the Executive Board, which involves a change to the management and employment of agency staff, has a major impact on work organisation, with, among other things, an increase in their workload, repeated and frequent training for agency staff, who can only serve the ECB for a limited period, and a redefinition of priorities in the content of the tasks performed by staff, constituting a ‘change in … employment-related policies’ within the meaning of point 2(d) of the framework agreement.

126 The ECB maintains that the provisions of point 2(a) of the framework agreement cover only ECB activities and plans having an effect on the situation or interests of its staff, or measures concerning them 'directly and specifically'. In its view, the impact on the situation of staff described by the applicant is merely indirect and hypothetical. The contested act thus does not involve or entail material changes within the meaning of the second paragraph of point 2(a) of the framework agreement.

127 In that regard, it should be observed that, in the note taken into consideration by the Executive Board when adopting the contested act, the DG for Human Resources, Budget and Organisation did, admittedly, anticipate 'an additional cost [resulting from the adoption of the contested measure] for the ECB as an organisation, given that the transfer of knowledge and the efforts made to train agency staff will increase because of the greater rotation of agency staff', and it therefore predicted that there might be certain effects on the situation of ECB staff. However, those consequences cannot be regarded as constituting a change in the employment policy relating to them, a change in their contractual relations with the ECB or material changes in their work organisation, within the meaning of point 2(a) of the framework agreement.

128 It follows that the applicant cannot claim the procedural guarantees provided for by directive 2002/14, implemented, in respect of the applicant, by the framework agreement, by relying on the fact that the adoption of the contested act has the effect of changing the situation or interests of ECB staff.

129 It follows from the foregoing that the applicant cannot rely, in the context of the adoption of the contested act, on the provisions of Directive 2002/14 as implemented by the framework agreement, unless it can be established, as it claims, that its involvement in discussions with the ECB administration on subjects concerning agency staff is to be regarded as intended to define the scope of the framework agreement and widen its application to agency staff, which will be examined in paragraphs 130 to 142 below.

– The status of the working group

130 The applicant maintains that it can claim the procedural rights referred to in point 2 of the framework agreement because they are applicable to issues concerning agency workers in accordance with its discussions with the ECB in the working group, which it classifies as an 'ad hoc agreement'. It also claims that this alleged 'ad hoc agreement' implements the provisions of Directive 2002/14.

131 The ECB maintains that there is no 'ad hoc agreement' concluded with the applicant on issues concerning agency workers in so far as, in accordance with the principle of legal certainty, it only concludes written agreements bearing the signatures of the parties. In the absence of a proper agreement, the applicant cannot claim that such an 'ad hoc agreement' exists. Moreover, the ECB notes that exchanges of views with the applicant do not mean that it engaged in a voluntary consultation procedure.

132 In that regard, it should be noted that it is common ground that, at the meeting of 29 January 2014, it was agreed between the applicant and the ECB, on the initiative of a member of the ECB Executive Board in charge of personnel matters, to set up a working group on issues concerning agency staff (see paragraph 5 above). Each party drew up a list of subjects to be discussed, including the question of the maximum period of service of agency workers in the ECB (see also paragraph 56 above). The parties undertook to submit to the Executive Board member in charge of personnel matters a report on their conclusions following those discussions.

133 Such exchanges with the applicant constitute an undertaking from the ECB to the applicant to involve it in discussions on the institution's agency staff policy and in establishing principles relating to those staff, to be set out in a joint report containing the conclusions reached by the parties.

134 The ECB cannot reasonably rely on formal inadequacies, namely the lack of written form and signatures, to evade the undertakings thus given in respect of the applicant. As the applicant essentially maintains, even though no document was signed establishing the working group and no specific terms of reference were formally drawn up, the purpose and remit of the working group were put down in writing, so that the parties' intention was clearly to discuss issues relating to the situation of agency staff in the ECB, and particularly the duration of their employment by the ECB, as is evident from the documents they exchanged, such as the lists of subjects for discussion or the records of the meetings (see also paragraph 56 above). It is clear, in particular, from the record of the meeting held by the working group on 18 February 2014 that the applicant and the ECB administration agreed to work together to establish joint principles of agency staff governance at the ECB ('situation de lege ferenda').

135 Furthermore, the fact that the working group was set up on the initiative of a member of the Executive Board in charge of personnel matters, and that he wished to receive a report on the conclusions reached by those taking part, confers a special authority on the working group and confirms that the ECB was fully committed, in respect of the applicant, to completing the working group's discussions, without the institution overlooking the existence of those discussions and deciding to adopt a measure relating to one of the very subjects covered by the group.

136 Moreover, it should be noted that the various documents exchanged between the parties do not, it is true, suggest that their intention, in setting up the working group in January 2014, was to widen the scope of the framework agreement to cover agency staff, at the very least on an ad hoc basis.

137 However, as the applicant rightly points out, the addendum to the framework agreement of 23 March 2011 provides, in point 2(e), for the ECB and the applicant to be able to set up, on an ad hoc basis, committees and task forces on specific issues. That provision of the framework agreement therefore establishes a contractual legal basis for the creation of working groups such as, in the present case, the working group set up in January 2014 on agency staff issues.

138 Furthermore, it is important to note that the applicant was recognised by the ECB as a social partner, as the framework agreement demonstrates. The ECB could therefore not be unaware that, in the working group, the applicant was acting in its capacity as a trade union whose social purpose was, precisely, to defend the collective interests of persons employed, in particular, by the ECB or working for it. Since the ECB had recognised the applicant's rights to information and consultation in the framework agreement, the ECB could not deny it those rights when it came to issues discussed in the working group without rendering the applicant's participation in that group meaningless.

139 It must be concluded that, in opening social dialogue about the issues covered by the contested act, it was the parties' implied intention to extend the applicant's rights to be informed and consulted under the framework agreement to cover issues relating to agency staff, at the very least until the working group set up in January 2014 had completed its work. Since the contested act forms part of the ECB's general policy of reducing its use of agency staff, as shown in paragraph 27 above, it must be regarded as coming under point 2(a) of the framework agreement in so far as it contains measures leading to changes in the working relations between the ECB and agency staff and in the institution's employment policy relating to them, for the purposes of that provision.

140 That being so, there is no need to consider whether the setting up of the working group might be regarded as directly implementing, in the present case, the provisions of Directive 2002/14 in respect of the applicant as the agency workers' representative.

141 Consequently, as is clear from paragraph 65 above, the applicant has an interest in bringing proceedings for the annulment of the contested act in order to safeguard its procedural rights. The objection of inadmissibility alleging the applicant's lack of an interest in bringing proceedings must therefore be dismissed.

142 It is therefore necessary to consider whether the recognised rights of the applicant were infringed by the ECB in the present case, as the applicant claims.

– The breach of the applicant's rights to be informed and consulted

143 According to the applicant, the ECB infringed its rights resulting from the framework agreement and its discussions with the ECB in the working group, on the grounds, first, that the applicant did not receive information which it should have been sent in connection with the proposed decision as resulting from the contested act, second, that it was not invited to take part in an early involvement procedure, and, third, that the contested act, which fell within the working group's remit, was adopted without the ECB having awaited the group's final report. The ECB thus undermined the social dialogue and compromised the good faith which it owes the applicant as a social partner.

144 The ECB does not dispute that the contested act was adopted without the Executive Board having awaited the working group's report. It also does not dispute that the purpose of the working group was, in particular, to deal with the question of the duration of employment of agency staff in the ECB, which was, precisely, the subject matter of the contested act, as it confirmed at the hearing in response to a question from the General Court.

145 In order to ensure the effectiveness of the right to information and consultation resulting from Article 27 of the Charter of Fundamental Rights, defined by Directive 2002/14 and implemented by the framework agreement as extended to cover agency staff issues by the creation of the working group, the ECB should have given the applicant access to all relevant information concerning the contested act prior to its adoption in order to enable it to prepare an appropriate response to the changes to the institution's agency staff policy contained in the act, and to organise consultation on the subject, if appropriate, or, at the very least, it should have given the applicant the opportunity to formulate its opinion in the working group and thus be involved in taking any decisions having a possible impact on persons whose interests it defends.

146 In that regard, it should also be noted, as the applicant points out and as is evident from the purpose of the framework agreement defined in point 2(b) (see paragraph 118 above), that the aim of the right to consultation and information of the applicant trade union is not for the social partners to agree on a subject covered by those procedural guarantees, but only to provide an opportunity for the trade union to influence decision-making. As is clear from the case-law, it is one of the most modest forms of participation in a decision-making process, since in no circumstances does it involve any obligation for the administration to act upon the observations made, but it must afford those concerned, through a representative of their interests, an opportunity to be heard prior to the adoption or amendment of acts of general application which concern them (see, to that effect and by analogy, judgment of 20 November 2003, *Cerafogli and Poloni* v *ECB*, T-63/02, EU:T:2003:308, paragraph 23 and the case-law cited, and paragraph 24), in particular by having access to all relevant information throughout the process of adopting such acts, the objective being to enable a trade union such as the applicant to participate in the consultation process as fully and effectively as possible (see, to that effect and by analogy, judgment of 4 May 2016, *Andres and Others* v *ECB*, T-129/14 P, EU:T:2016:267, paragraph 57).

147 Consequently, unless it is to undermine the effectiveness of the obligation to consult, the administration must comply with that obligation whenever consultation of workers' representatives is such as to have an influence on the substance of the measure to be adopted (see, to that effect and by analogy, judgment of 20 November 2003, *Cerafogli and Poloni* v *ECB*, T-63/02, EU:T:2003:308, paragraph 23).

148 It follows that, in adopting the contested act without first having involved the applicant, even though the subject matter of the act came under the discussions in the working group, and without awaiting the working group's report, the ECB did not respect the applicant's rights to be informed and consulted, which form part of its rights and powers as the trade union representing the persons concerned, in breach of Article 27 of the Charter of Fundamental Rights, defined by Directive 2002/14 and implemented by the framework agreement as extended to cover agency staff by the creation of the working group.

149 That finding is not invalidated by the ECB's argument that the contested act was adopted, for the purpose of sound administration, in anticipation of a future amendment of the AÜG, with which the ECB would, in any event, be required to comply.

150 As noted in paragraphs 29 to 32 above, it cannot be considered that the contested act was adopted simply in anticipation of a future amendment of the AÜG.

151 The first plea in law must therefore be upheld, without there being any need to consider the applicant's complaints alleging a breach of Directive 2008/104 or to rule on the admissibility of those complaints, which is challenged by the ECB. Consequently, the contested act must be annulled without any need to consider the second plea in law.

The claim for damages

152 The applicant claims that it suffered non-material harm that can be separated from the illegality on which the annulment of the contested act is based and cannot be compensated for in full by that annulment, and it seeks payment of EUR 15 000 by way of compensation. It argues that it was denied its position as a social partner because the contested act was adopted in disregard of the social dialogue. It points out that it made requests for the contested act to be withdrawn or suspended until the working group had completed its work.

153 The ECB claims that, since the action is inadmissible and unfounded, the claim for damages has no legal basis.

154 First of all, it should be noted that, pursuant to the second paragraph of Article 340 TFEU, the European Union must, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties. However, pursuant to the third paragraph of Article 340 TFEU, in derogation from the second paragraph, the ECB is, in accordance with the general principles common to the laws of the Member States, to make good any damage caused by it or its servants in the performance of their duties.

155 According to settled case-law, applicable *mutatis mutandis* to the non-contractual liability of the ECB provided for in the third paragraph of Article 340 TFEU, the European Union's non-contractual liability under the second paragraph of Article 340 TFEU for the unlawful conduct of its bodies depends on fulfilment of a set of conditions, namely: the unlawfulness of the conduct alleged against the institutions, the fact of damage and the existence of a causal link between that conduct and the damage complained of (see judgments of 27 November 2007, *Pitsiorlas* v *Council and ECB*, T-3/00 and T-337/04, EU:T:2007:357, paragraph 290 and the case-law cited; of 23 May 2014, *European Dynamics Luxembourg* v *ECB*, T-553/11, not published, EU:T:2014:275, paragraph 342 and the case-law cited; and of 7 October 2015, *Accorinti and Others* v *ECB*, T-79/13, EU:T:2015:756, paragraph 65 and the case-law cited).

156 In the present case, it is evident from paragraph 148 above that the contested act is unlawful in that it was adopted in breach of the applicant's rights to be informed and consulted, thus infringing Article 27 of the Charter of Fundamental Rights, defined by Directive 2002/14 and implemented by the framework agreement as extended to cover agency staff by the creation of the working group.

157 Without there being any need to rule on whether that unlawful conduct by the ECB constitutes a sufficiently serious breach for the purposes of the case-law (judgment of 4 July 2000, *Bergaderm and Goupil* v *Commission*, C-352/98 P, EU:C:2000:361, paragraph 42), or whether the other conditions for the ECB to incur non-contractual liability, set out in paragraph 155 above, are met in the present instance, it should be noted that, even if that were the case, the annulment of the contested act constitutes, contrary to the applicant's claims, adequate and sufficient compensation for the non-material harm which allegedly resulted from the disregarding of the social dialogue and of its position as a social partner.

158 In so far as the non-material harm alleged by the applicant results from the illegality of the contested act, it is settled case-law that such harm is, in principle, sufficiently compensated for by the court's finding of illegality, unless the applicant can show that it suffered non-material harm that can be separated from the illegality on which the annulment is based and cannot be compensated for in full by that annulment (see, to that effect, judgments of 28 May 2013, *Abdulrahim* v *Council and Commission*, C-239/12 P, EU:C:2013:331, paragraph 72 and the case-law cited, and of 6 June 2006, *Girardot* v *Commission*, T-10/02, EU:T:2006:148, paragraph 131 and the case-law cited).

159 The applicant does not provide any evidence in support of its allegation that the non-material harm it suffered can be separated, in the present case, from the illegality of the contested act.

160 By contrast, the annulment of the contested act has the effect of requiring the ECB, pursuant to Article 266 TFEU, to take the necessary measures to comply with the present judgment and to initiate or continue social dialogue with the applicant on the issue that was the subject matter of the contested act, which will have the effect of compensating in full for the non-material harm alleged by the applicant and resulting from the disregarding of the social dialogue and of its position as a social partner.

161 Consequently, the claim for damages must be dismissed.

Costs

162 Pursuant to Article 134(3) of the Rules of Procedure, the General Court may order that the costs be shared or that each party bear its own costs where each party succeeds on some and fails on other heads. However, if it appears justified in the circumstances of the case, the General Court may order that one party, in addition to bearing his own costs, pay a proportion of the costs of the other party.

163 In the present case, the ECB has failed on the application for annulment of the contested act, while the applicant has failed on the claim for damages. In the circumstances of the case, the ECB must be ordered to pay, in addition to its own costs, three quarters of the applicant's costs, while the applicant must be ordered to bear one quarter of its own costs.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby:

1. **Annuls the decision of the Executive Board of the European Central Bank (ECB) of 20 May 2014 limiting to two years the maximum period during which the ECB may use the services of the same agency worker for administrative and secretarial tasks;**

2. **Dismisses the action as to the remainder;**

3. **Orders the ECB to bear its own costs and to pay three quarters of the costs incurred by the International and European Public Services Organisation in the Federal Republic of Germany (IPSO). IPSO is ordered to bear one quarter of its own costs.**

Kanninen Pelikánová Buttigieg

Delivered in open court in Luxembourg on 13 December 2016.

[Signatures]

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