Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber, Extended Composition)

24 March 2021 *

[Text rectified by order of 14 April 2021]

(Civil service – Members of the contract staff – Reform of the Staff Regulations in 2014 – Transitional measures relating to certain methods for calculating pension rights – Change in the rules following the signature of a new contract as a member of the contract staff – Definition of 'being in service')

In Case T-769/16,

Maxime Picard, residing in Hettange-Grande (France), represented by M.-A. Lucas and M. Bertha, lawyers,

applicant,

v

European Commission, represented by B. Mongin and G. Gattinara, acting as Agents,

defendant,

[As rectified by order of 14 April 2021] APPLICATION under Article 270 TFEU seeking annulment, first, of the reply of the manager of the Pensions Sector of the Commission's Office for Administration and Payment of Individual Entitlements (PMO) of 4 January 2016 and, second, in so far as necessary, the decision of 25 July 2016 of the Director of Directorate E of the Commission's Directorate-General Human Resources dismissing the applicant's complaint of 1 April 2016 against the decision or lack of decision resulting from the reply of 4 January 2016,

THE GENERAL COURT (First Chamber, Extended Composition),

composed of H. Kanninen, President, M. Jaeger, N. Półtorak, O. Porchia (Rapporteur) and M. Stancu, Judges,

Registrar: M. Marescaux, Administrator,

having regard to the written part of the procedure and further to the hearing on 14 September 2020,

gives the following

* Language of the case: French.

Judgment

Background to the dispute

1 The applicant, Maxime Picard, is a contract staff member at the European Commission.

2 Between April 2004 and June 2008, the applicant was employed successively by two companies as a security agent, first with the company Brinks until 31 March 2006 and then with Group 4 Securicor ('G 4S') from 1 April 2006. During that period, he was made available both to the Translation Centre for the Bodies of the European Union (CdT), to carry out administrative tasks related to security, and to the Commission, as a trainer.

3 After having been a successful candidate in 2005 in selection procedure EPSO/CAST/25/05, launched by the European Personnel Selection Office (EPSO) with a view to constituting a reserve list for the recruitment of contract staff for the first function group ('FG I'), in 2007, the applicant participated in selection procedure EPSO/CAST/27/07 giving access to the second function group ('FG II').

4 On 14 April 2008, the applicant was invited to an oral selection test for a position as a contract staff member in FG II in Unit 5 of the Commission's Office for Administration and Payment of Individual Entitlements (PMO). He passed that test.

5 On 10 June 2008, the applicant was recruited by the Commission, with effect from 1 July 2008, as a contract staff member in Unit 5 of the PMO ('the 2008 contract'). By that recruitment, carried out under selection procedure EPSO/CAST/25/05, the applicant was classified in FG I, Grade 1, Step 1, pursuant to Article 80 of the Conditions of Employment of Other Servants ('the CEOS').

6 In the course of selection procedure EPSO/CAST/27/07, the Commission's Directorate-General (DG) Human Resources took the view that, at the closing date for the submission of applications provided for in the call for expression of interest, it had not been established that the applicant satisfied the condition of three years of appropriate professional experience, on the ground that his duties as an employee of Brinks and G 4S at the CdT had apparently been those of a security agent in FG I.

7 The 2008 contract was renewed three times for a fixed term and, by decision of 3 May 2011, for an indefinite period.

8 On 15 June 2011, the applicant's case was examined by a reclassification committee initiated by Unit 5 of the PMO with a view to offering him reclassification to FG II. He was considered eligible subject to confirmation by the Commission's DG Human Resources. Unit 7 of the PMO responsible for Human Resources therefore submitted a request for reclassification to that Directorate-General.

9 By email of 9 December 2011 from DG Human Resources, the applicant was informed that the request for reclassification had been refused on the ground that he did not meet the conditions of eligibility on the closing date for registration on 27 April 2007 for procedure EPSO/CAST/27/07, that is, at least three years of appropriate professional experience.

10 The following year, in June 2012, the applicant sent a certificate of professional experience, dated 1 June 2012, drawn up by the CdT, to Unit 7 of the PMO. That certificate covered the period from April 2004 to July 2007 during which time the applicant had been employed by Brinks and G 4S (see paragraph 2 above). The purpose of the certificate was to confirm that the applicant had in fact performed tasks falling within the scope of FG II and not FG I.

11 On the basis of that certificate, at the end of June 2012, Unit 7 of the PMO informally requested DG Human Resources to reconsider the reclassification request rejected in 2011 (see paragraphs 8 and 9 above).

12 However, DG Human Resources expressed doubts as to the possibility of changing its position, since the CdT's certificate had been produced five years after the facts, and did not come from the applicant's employers (Brinks and G 4S), but from their client, the CdT, and appeared to contradict an earlier certificate issued by G 4S in 2008. Following the expression of that informal position, Unit 7 of the PMO refrained from submitting a formal request for reclassification regarding the applicant.

13 In 2014, Unit 7 of the PMO sent a request to DG Human Resources for recruitment to an FG II post supported by a new certificate drawn up by Brinks, dated 31 March 2014, confirming the information provided in 2012 by the CdT, but which failed to specify the nature of the duties performed by the applicant when employed as a security agent.

14 In view of that new information and as the certificate was not very detailed, DG Human Resources contacted Brinks in order to validate its content. Finally, on 25 April 2014, that led to the confirmation of the certificates of 31 March 2014 from Brinks and 1 June 2012 from the CdT by Brinks' Head of Human Resources, who provided evidence that the applicant had in fact performed 'appropriate' tasks with regard to FG II throughout the duration of his contract with that company, that is, from 1 April 2004 to 31 March 2006.

15 In the light of that certificate, and as a result of a fresh application that the applicant was able to submit in so far as it appeared in the database set up at the end of procedure EPSO/CAST/27/07, the validity of which was extended until the end of December 2016, on 16 May 2014, DG Human Resources offered the applicant a new contract as a contract staff member that he signed on the same day, pursuant to Article 3a of the CEOS ('the contract of 16 May 2014'). That contract, of indefinite duration, took effect on 1 June 2014, with classification of the applicant in FG II, at Grade 5, Step 1.

16 On 20 August 2014, the applicant lodged a complaint, under Article 90(2) of the Staff Regulations of Officials of the European Union ('the Staff Regulations') against the decision of 16 May 2014. He argued, in substance, that the contract of 16 May 2014, placing him in FG II, should have taken effect as from 1 July 2008, the date on which he had initially been recruited as a contract staff member in FG I.

17 By decision of 10 December 2014, communicated to the applicant on 11 December 2014, the Director of Directorate B of DG Human Resources, in his capacity as the authority authorised to conclude contracts of employment, rejected that complaint, principally, as inadmissible for being out of time and, in the alternative, as unfounded.

18 The applicant did not bring an action before the Court of Justice of the European Union against that decision of 10 December 2014, which has therefore become final.

19 In the meantime, the Staff Regulations and the CEOS were amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (OJ 2013 L 287, p. 15), which entered into force on 1 November 2013 and is applicable, as regards the relevant provisions in the present case, from 1 January 2014 ('the 2014 reform').

20 Following the 2014 reform, the second paragraph of Article 77 of the Staff Regulations, also applicable to contract staff by reference to Article 109(1) of the CEOS, defines a new annual rate of acquisition of pension rights of 1.8%, less favourable than the previous rate of 1.9%. In addition, the fifth paragraph of Article 77 of the Staff Regulations sets the retirement age at 66 years, compared with 63 years previously.

21 A transitional regime has, however, been provided for. Thus, the second paragraph of Article 21 of Annex XIII to the Staff Regulations on 'transitional measures applicable to officials of the Union' provides, first of all, that officials who 'entered the service in the period from 1 May 2004 to 31 December 2013' continue to acquire pension rights at an annual rate of 1.9%, notwithstanding the entry into force of the new Article 77. Furthermore, according to the table in the second subparagraph of Article 22(1) of Annex XIII to the Staff Regulations, 'officials aged 35 years … on 1 May 2014 and who entered the service before 1 January 2014 shall become entitled to a retirement pension at the age … [of] 64 years [and] 8 months' ('Articles 21 and 22 of Annex XIII to the Staff Regulations' and the 'transitional provisions concerning the annual rate of acquisition of pension rights and the retirement age'). Finally, Article 1(1) of the annex to the CEOS provides that, with the exception of Article 22(4) of Annex XIII to the Staff Regulations, those transitional provisions concerning the annual rate of acquisition of pension rights and the retirement age 'shall apply by analogy to other servants employed on 31 December 2013'.

22 By email of 4 January 2016, the applicant, having doubts as to the implications that the 2014 reform might have regarding his position after signing the contract of 16 May 2014, asked the manager of the Pensions sector of Unit 4 of the PMO ('the manager of the Pensions sector') for clarifications ('the email of 4 January 2016').

23 By email of the same day, the manager of the Pensions sector informed the applicant that his pension rights had been modified as a result of the change of contract and that, therefore, as far as the applicant was concerned, the normal retirement age and the annual rate of acquisition of pension rights had changed to 66 years and 1.8% respectively as from 1 June 2014 ('the reply of 4 January 2016').

24 On 4 April 2016, the applicant made a formal complaint under Article 90(2) of the Staff Regulations against the reply of 4 January 2016.

25 By decision of 25 July 2016, communicated to the appellant on 26 July 2016, the Director of Directorate E of DG Human Resources, in his capacity as the authority authorised to conclude contracts of employment, dismissed the complaint, principally, as inadmissible in the absence of an act adversely affecting the applicant and, in the alternative, as unfounded ('the rejection decision of 25 July 2016').

Procedure and forms of order sought

26 By application lodged at the Registry of the General Court on 7 November 2016, the applicant brought the present action.

27 By separate document lodged at the Court Registry on 6 February 2017, the Commission raised an objection of inadmissibility under Article 130(1) of the Rules of Procedure of the General Court. The Commission contends that the Court should:

– dismiss the action as manifestly inadmissible;

– order the applicant to pay the costs.

28 On 24 April 2017, the applicant submitted his observations on the objection of inadmissibility, in which he claims that the Court should:

– reject the objection of inadmissibility or at least reserve its decision until the final judgment;

– grant the forms of order sought in his application.

29 By decision of 12 October 2017, the President of the Third Chamber of the General Court, after hearing the parties, decided to stay the proceedings on the basis of Article 69(d) of the Rules of Procedure until the decision closing the proceedings in Case T-128/17, *Torné* v *Commission*, had acquired the force of *res judicata*.

30 Following the judgment of 14 December 2018, *Torné* v *Commission* (T-128/17, EU:T:2018:969), and in the absence of an appeal against it, the parties submitted their observations on the consequences of that judgment for the present case within the period prescribed.

31 By order of 13 May 2019, in accordance with Article 130(7) of the Rules of Procedure, the General Court (Third Chamber) decided to reserve judgment on the objection of inadmissibility raised by the Commission until final judgment and reserved the costs.

32 By letter of 16 May 2019, the Judge-Rapporteur invited the parties to examine the possibilities of an amicable settlement of the dispute. No agreement between the parties was reached which would allow an examination of those possibilities.

33 On 27 June 2019, the Commission lodged its defence. The reply and the rejoinder were lodged on 15 October and 26 November 2019, respectively.

34 Following a change in the composition of the Chambers of the Court, pursuant to Article 27(5) of the Rules of Procedure, the President of the General Court reallocated the case to a different Judge-Rapporteur, who was assigned to the First Chamber in its new formation, to which the present case was therefore allocated.

35 By document lodged at the Court Registry on 18 December 2019, the applicant requested a hearing.

36 On 28 April 2020, the General Court (First Chamber), by way of measures of organisation of procedure, provided for in Article 89(3) of its Rules of Procedure, put written questions to the parties. Those questions were answered within the period prescribed.

37 On the same day, the Court, by way of a measure of organisation of procedure pursuant to Article 89(3) of the Rules of Procedure, questioned the parties on whether they wished to have an oral hearing despite the Covid-19 health crisis.

38 The Commission and the applicant replied on 30 April and 29 July 2020, respectively, that they wanted a hearing.

39 On a proposal from the First Chamber, on 3 June 2020, the General Court decided, pursuant to Article 28 of the Rules of Procedure, to refer the case to a chamber sitting in extended composition.

40 The parties presented oral argument and replied to the Court's oral questions at the hearing on 14 September 2020.

41 The applicant claims that the Court should:

– annul the decision fixing, in advance, certain elements of the applicant's pension rights, or the failure to adopt such a decision required by the Staff Regulations, contained in the message sent to the applicant on 4 January 2016 by the manager of the Pensions sector, informing him, in response to his query of the same date, that his pension rights had changed following his re-employment in FG II on 1 June 2014, that his pensionable age was 66 years old and that the accrual rate of his pension rights would be 1.8% from 1 June 2014;

– annul if necessary the decision of 25 July 2016 of the Director of Directorate E of DG Human Resources of the Commission, in so far as it rejects the applicant's complaint of 1 April 2016 against the decision or lack of decision resulting from the reply of 4 January 2016 as inadmissible in the absence of a measure adversely affecting him and, in the alternative, as unfounded;

– order the Commission to pay the costs.

42 The Commission contends that the Court should:

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

– order the applicant to pay the costs.

Law

Admissibility

43 In its objection of inadmissibility, the Commission raises a plea of inadmissibility based on the absence of an act adversely affecting the applicant within the meaning of Article 91 of the Staff Regulations. The Commission repeats and expands on its arguments concerning the admissibility of the action in the defence.

44 The applicant, first, challenges the objection of inadmissibility raised by the Commission and, secondly, argues that the Commission's arguments in the defence on the admissibility of the appeal should not be taken into consideration.

45 In that connection, it should be observed that the EU Courts are entitled to assess whether, according to the circumstances of each case, the proper administration of justice justifies the dismissal of the action on the merits without first ruling on the grounds of inadmissibility raised by the defendant (judgments of 26 February 2002, *Council* v *Boehringer*, C-23/00 P, EU:C:2002:118, paragraph 50 and 52, and of 13 January 2017, *Deza* v *ECHA*, T-189/14, EU:T:2017:4, paragraph 26).

46 In the circumstances of the present case, the Court considers that it is appropriate, in the interests of procedural economy, to examine from the outset the pleas in law relied on by the applicant, without first ruling on the objection of inadmissibility raised by the Commission and, consequently, on the applicant's plea of inadmissibility relating thereto, since the action is, in any event and for the reasons set out below, unfounded.

Substance

47 By his action, the applicant seeks annulment of the reply of 4 January 2016 and, in so far as necessary, of the rejection decision of 25 July 2016.

48 In support of the action, the applicant relies on a single plea in law, alleging an error of law and infringement of the second and fifth paragraphs of Article 77 of the Staff Regulations, applicable to contract staff by virtue of Article 109 of the CEOS, and Articles 21 and 22 of Annex XIII to the Staff Regulations, in that it is apparent from the reply of 4 January 2016 that the date of entry into service taken into account for the application of those provisions of the Staff Regulations was 1 June 2014, the starting date of the contract of 16 May 2014, whereas 1 July 2008, the date on which he initially entered the service of the Commission as a contract staff member in FG I, should have been taken into account.

49 That plea is divided into two parts, both based on an error of law, the first on the ground that the date of entry into service referred to in Articles 21 and 22 of Annex XIII to the Staff Regulations must be that of the first recruitment, and the second on the ground that the contract of 16 May 2014, the object and effect of which was to reclassify the applicant without any substantial change in his duties, was not a break in continuity in his career.

50 More specifically, in support of the first part of the plea, the applicant observes, as a preliminary point, that the reply of 4 January 2016 excluded him from the scope of Articles 21 and 22 of Annex XIII to the Staff Regulations solely because he had transferred to FG II on 1 June 2014 as the result of a new contract which, as set out in the rejection decision of 25 July 2016, terminated the previous contract and constituted a new recruitment.

51 In that regard, the applicant submits that, even if the contract of 16 May 2014 constituted a new recruitment on 1 June 2014, it is clear that the date of entry into service referred to in Articles 21 and 22 of Annex XIII to the Staff Regulations is the date of initial recruitment of officials and, by analogy, other servants, including contract staff, and not the date on which an official is eligible, after passing an open competition, for appointment to a post in a grade or function group higher

than the post for which he or she was originally engaged, or, by analogy, the date on which a contract staff member, after passing a general selection procedure, transfers to a post in a higher function group, in accordance with Article 87(4) of the CEOS.

52 Therefore, according to the applicant, by considering as a matter of principle that, for contract staff, any change in the status or type of contract within the CEOS must be regarded as an interruption in the continuity of service giving rise to the application of the statutory rules applicable on the date of commencement of the new contract, the PMO and DG Human Resources erred in law and misinterpreted the concept of entry into service set out in Articles 21 and 22 of Annex XIII to the Staff Regulations. Furthermore, in support of that argument, the applicant refers to the judgment of 14 December 2011, *De Luca* v *Commission* (T-563/10 P, EU:T:2011:746, paragraphs 46 and 48 to 52), and to the judgments of 16 September 2015, *EMA* v *Drakeford* (T-231/14 P, EU:T:2015:639, paragraph 40), and of 5 February 2014, *Drakeford* v *EMA* (F-29/13, EU:F:2014:10, paragraphs 46 to 48).

53 In the reply, the applicant states that Articles 21 and 22 of Annex XIII to the Staff Regulations were applicable to him by virtue of Article 1(1) of the annex to the CEOS, so that the specific condition of applicability of those provisions was not lacking.

54 In that regard, first, the applicant claims that the Commission's argument that, in order for Articles 21 and 22 of Annex XIII to the Staff Regulations to apply to the applicant, he not only had to be in service on 31 December 2013, but also had to remain in service in the same capacity after that date, is unfounded both in fact, because he was still a contract staff member in FG I on 1 January 2014, and in law, on the ground that, in substance, the Commission adds to the text of Article 1(1) of the annex to the CEOS the condition of being in office in the same capacity after that date. The same would apply to the Commission's argument based on the expression 'employed before the entry into force [of the amendments made to the Staff Regulations by Regulation No 1023/2013]' in recital 29 of Regulation No 1023/2013.

55 Secondly, the applicant submits that the Commission misinterprets his email of 4 January 2016 as being based solely on the contract of 16 May 2014 and disregards his argument that it was as a result of his contract of 10 June 2008, and not that of 16 May 2014, that he was in office on 31 December 2013, within the meaning of Article 1(1) of the CEOS. He also submits that the contract of 16 May 2014 did not constitute a new entry into service or a discontinuity in his employment with the result that Articles 21 and 22 of Annex XIII to the Staff Regulations would cease to apply to him. To argue, as the Commission does, that the initial applicability of Articles 21 and 22 of Annex XIII to the Staff Regulations requires not only that the person concerned is in service or in office on the day prior to the entry into force of the new rules, but also that he or she is in service after that date, or that the application of those articles is to be assessed on the basis of the administrative position or contract of the person concerned when his or her situation changes, constitutes an error of law. It is also legally incorrect to consider that any change of status or contract puts an end to being in service or in office, or leads to a break in the continuity of service or duties.

56 Thirdly, according to the applicant, it follows from paragraphs 90 to 93 of the judgment of 14 December 2018, *Torné* v *Commission* (T-128/17, EU:T:2018:969), that the need to reconcile the objectives of preserving acquired rights and controlling budgetary costs makes it necessary to consider that the criterion for assessing the notion of 'staff employed before the entry into force of the reform' is membership of and contribution to the Union pension scheme before that date, that the expressions 'employed before the entry into force of the reform' and 'entered the service

between 1 May 2004 and 31 December 2013' are equivalent, and that, while entitlement to the transitional provisions requires that the person concerned is still in service after 31 December 2013, a new contract with a new employer after that date does not prevent that, provided that it does not result in a break in continuity in membership and contribution to the scheme. Since the applicant's membership of and contribution to the Union pension scheme were not interrupted when his contract of 16 May 2014 succeeded that of 1 July 2008, he was, therefore, still in service on 1 June 2014 within the meaning of Article 1(1) of the annex to the CEOS and in service within the meaning of Articles 21 and 22 of Annex XIII to the Staff Regulations.

57 Fourthly, the applicant submits that the conclusion of a new type of contract does not put an end to the application of Articles 21 and 22 of Annex XIII to the Staff Regulations, but allows a career development for staff members which could not otherwise be achieved without prejudice to their pension rights.

58 In support of the second part of the plea, the applicant submits, in the first place, that although, as a result of the contract of 16 May 2014, he did in fact transfer to a function group higher than that to which he had initially been recruited, after having passed a general selection procedure, that new contract did not fall within the scope of the employment regime provided for by the CEOS other than that of contract staff, and did not entail a break in his career, evidenced by a substantial change in his duties.

59 In that regard, the applicant maintains, first of all, that neither the nature nor the level of his duties changed as a result of that contract. Next, although the position of contract staff member in FG I had a different title from that of contract staff member in FG II which was applicable under the new contract, the general purpose of the two positions and the specific duties he had to perform were defined in strictly identical terms in the two job descriptions. Moreover, as is clear from the letter of 16 May 2014, the contract of 16 May 2014 classifies the applicant's post in Grade 5, Step 1, which means, first, that part of the experience he had acquired at the Commission in FG I was taken into account and, secondly, that that experience was the same as the experience required for FG II.

60 In the second place, the applicant submits, in substance, that the contract of 16 May 2014 has affected neither his affiliation nor his contribution to the Union pension scheme.

61 The Commission challenges the arguments put forward by the applicant in support of the first and second parts of the plea.

62 Since the two parts of the single plea are closely connected, they must be examined together.

63 Essentially, the present case raises the question whether the signing of a new contract following the entry into force of the 2014 reform, by a contract staff member such as the applicant, represents a change in the employment relationship with the Union administration which would prevent that staff member benefitting from the transitional provisions concerning the annual rate of acquisition of pension rights and the retirement age.

64 As a preliminary point, Article 1(1) of the annex to the CEOS must be interpreted and, in so doing to clarify which conditions, under that article, determine the application to contract staff of Articles 21 and 22 of Annex XIII to the Staff Regulations.

Article 1(1) of the annex to the CEOS and the conditions of application of Articles 21 and 22 of Annex XIII to the Staff Regulations to other servants covered by the CEOS

65 First of all, as set out in paragraph 21 above, under Article 1(1) of the annex to the CEOS, as amended by Regulation No 1023/2013, 'Article 21, Article 22, with the exception of paragraph 4, … of … Annex [XIII to the Staff Regulations] shall apply by analogy to other servants employed on 31 December 2013'.

66 Secondly, it must be observed that Articles 21 and 22 of Annex XIII to the Staff Regulations provide, respectively, that officials who entered the service between 1 May 2004 and 31 December 2013 are entitled to an annual rate of acquisition of pension rights of 1.9%, and that if they were 35 years old on 1 May 2014 and entered the service before 1 January 2014, they are entitled to a retirement pension at the age of 64 years and 8 months.

67 As stated in recital 29 of Regulation No 1023/2013, the Union legislature has provided, in particular in Articles 21 and 22 of Annex XIII to the Staff Regulations, and in Article 1(1) of the annex to the CEOS, for 'transitional measures … to enable the new rules and measures to be applied gradually, whilst respecting the acquired rights and legitimate expectations of the staff employed before the entry into force of [the] amendments to the Staff Regulations'.

68 As transitional provisions, they are, according to settled case-law, subject to a strict interpretation because of their derogatory nature (see judgments of 2 September 2010, *Kirin Amgen*, C-66/09, EU:C:2010:484, paragraph 33, and of 17 January 2013, *Commission* v *Spain*, C-360/11, EU:C:2013:17, paragraph 18 and the case-law cited) and their budgetary implications (see, to that effect, judgment of 30 June 2005, *Olesen* v *Commission*, T-190/03, EU:T:2005:264, paragraph 48 and the case-law cited), cannot run counter to the objectives pursued by the EU legislature or to the system established by the Staff Regulations and the CEOS (see judgment of 14 December 2018, *Torné* v *Commission*, T-128/17, EU:T:2018:969, paragraph 80 and the case-law cited).

69 Thirdly, it follows from the wording of Article 1(1) of the annex to the CEOS that the Union legislature provided for Annex XIII to the Staff Regulations to apply by analogy to staff covered by the CEOS, so that Articles 21 and 22 of that annex apply to such staff in so far as an analogy can be drawn between them and officials, taking into account the specific characteristics of each category of staff.

70 To that end, it must be recalled, as a preliminary point, how the category of contract staff differs from that of officials.

71 On that subject, first, it must be observed that the definition of each of the various categories of persons employed by the Union, either as officials properly so called or under the various categories of staff covered by the CEOS, corresponds to the legitimate needs of the Union administration and to the nature of the tasks, whether permanent or temporary, which it is required to perform (see judgment of 19 October 2006, *De Smedt* v *Commission*, F-59/05, EU:F:2006:105, paragraph 76 and the case-law cited).

72 In particular, for the purposes of Article 3a of the CEOS, contract staff, within the meaning of the CEOS, means staff not assigned to a post included in the list of posts appended to the section of the budget relating to the institution concerned and engaged for the performance of full-time or part-time duties.

73 Furthermore, it follows from recital 36 of Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities (OJ 2004 L 124, p. 1), which introduced the category of contract staff, that the latter are generally assigned to tasks carried out under the supervision of officials or temporary agents. Furthermore, it is important to note that, according to that recital of the regulation, the rights and obligations of contract staff were defined by analogy with those of temporary agents, in particular as regards social security, allowances and working conditions.

74 On the other hand, officials who, according to Article 1a of the Staff Regulations '[are] any person[s] who ha[ve] been appointed, as provided for in these Staff Regulations, to an established post on the staff of one of the institutions of the Union by an instrument issued by the Appointing Authority of that institution', are the only persons who may permanently perform public-service duties.

75 Secondly, it must be observed, as set out in the case-law, that the difference between officials and contract staff not only resides in the nature of the duties they have to perform, but also, in particular, the fact that whereas the legal link between an official and the administration is based upon the Staff Regulations and not on a contract so that those rights and obligations may be altered at any time by the legislature (see, to that effect, judgment of 8 September 2020, *Commission and Council* v *Carreras Sequeros and Others*, C-119/19 P and C-126/19 P, EU:C:2020:676, paragraph 143 and the case-law cited), the situation of staff governed by the CEOS is generally characterised by the contractual nature of the employment relationship (see, to that effect, judgment of 19 October 2006, *De Smedt* v *Commission*, F-59/05, EU:F:2006:105, paragraph 76 and the case-law cited).

76 It follows, as the Commission rightly observed at the hearing, that whereas an official enters and remains in the service of the administration of the Union by virtue of an act of appointment which remains unchanged for his or her entire career, a member of the contract staff enters and remains in service by virtue of a contract under Article 3a of the CEOS for as long as that contract has effect. Therefore, it is by virtue of a contract in force that he or she is linked to the administration of the Union and that he or she can perform his or her duties.

77 In the light of the foregoing considerations, Article 1(1) of the annex to the CEOS must be interpreted as meaning that, in order to be covered by the transitional rules laid down for officials in Articles 21 and 22 of Annex XIII to the Staff Regulations, other servants must be 'employed on 31 December 2013', that is, they must be engaged under a contract within the meaning of Article 3a of the CEOS on that date.

78 In the present case, the parties disagree, in particular, on what is meant by to be 'employed on 31 December 2013' within the meaning of Article 1(1) of the annex to the CEOS.

79 In that regard, the Commission submits that, in order for Articles 21 and 22 of Annex XIII to the Staff Regulations to be applicable to other servants, not only must the staff member be in service on a given date, namely 31 December 2013, but he or she must be 'still in service', that is to say, he or she must still be in service both on and after 31 December 2013. Therefore, in the Commission's view, any change of contract entails a termination of the employment relationship with the Union administration, so that the staff member cannot benefit from the application of Articles 21 and 22 of Annex XIII to the Staff Regulations.

80 However, the applicant submits, in substance, that, for Articles 21 and 22 of Annex XIII to the Staff Regulations to be applicable to a member of staff covered by the CEOS, it is sufficient that he or she was recruited under a contract on 31 December 2013, irrespective of any subsequent change of contract. He therefore criticises the Commission for adding to the condition of being 'employed on 31 December 2013', provided for in Article 1(1) of the annex to the CEOS, an additional condition, that of remaining in office without interruption after that date.

81 In that regard, contrary to the applicant's submissions, the Commission does not add a condition, but merely interprets the expression 'by analogy' in Article 1(1) of the annex to the CEOS, which assumes that the contract staff are in a position similar to that of officials. That position can only be established if the contract staff member has not signed a new contract which involves the beginning of a new employment relationship with the Union administration. In that regard, it must be recalled that, according to case-law, the contract is the legal instrument by which an employment relationship between a contract staff member, on the one hand, and the administration of the Union, on the other hand, takes concrete form. More specifically, the Court has ruled that that employment relationship may remain unchanged, even following the signing of a new contract formally distinct from the initial contract, provided that the latter contract does not make any substantial change to the duties of the member of staff, in particular to the function group, such as to call into question the functional continuity of his or her employment relationship with the administration of the Union (see, to that effect, judgment of 16 September 2015, *EMA* v *Drakeford*, T-231/14 P, EU:T:2015:639, paragraph 40).

82 Therefore, it follows from all the foregoing considerations that Articles 21 and 22 of Annex XIII to the Staff Regulations are transitional provisions which apply, in accordance with Article 1(1) of the annex to the CEOS, by analogy to other servants in service on 31 December 2013 and who remain in service after that date under a contract, as defined in paragraph 81 above, until their position is examined for the purposes of calculating pension rights.

83 That interpretation makes it possible to recognise, while following a functional approach, the legal value of signing a new contract under the CEOS and to preserve the acquired rights and legitimate expectations of staff, in accordance with recital 29 of Regulation No 1023/2013.

84 It is in the light of the foregoing observations that it must be examined whether the signing of a new contract after the entry into force of the 2014 reform excludes the application of Articles 21 and 22 of Annex XIII to the Staff Regulations to the applicant's situation.

The applicant's situation

85 In the present case, it must be recalled, in the first place, that the applicant was recruited as a member of the contract staff for the first time in 2008 under a fixed-term contract which was renewed three times and then, for an indefinite period, from 3 May 2011. That contract was in force until the effective date of the contract of 16 May 2014, that is, 1 June 2014. Thus, on 31 December 2013, the applicant was in service under the contract signed in 2008, the initial contract of employment. On that date, he was performing the duties in FG I of a member of staff responsible for manual or administrative support tasks carried out under the supervision of officials or temporary agents, as provided for in the table in Article 80(2) of the CEOS.

86 In the second place, it should be noted that, on 16 May 2014, the applicant signed what he himself admitted was 'undoubtedly a new contract'. In particular, and as the applicant confirms, it was a contract of employment as a member of the contract staff for an indefinite period with

classification in FG II, Grade 5, Step 1, under Article 87(4) of the CEOS. In particular, it is apparent from Article 2 of the new contract that the applicant was engaged by the latter to perform the duties of a contract staff member entrusted with clerical, secretarial or equivalent tasks, as set out in the table in Article 80(2) of the CEOS. He also completed a six-month probationary period which was sanctioned by a probationary report. Therefore, as stated in paragraph 81 above, the change of function group has called into question the functional continuity of the applicant's working relationship with the Union administration.

87 Furthermore, none of the arguments put forward by the applicant in the second part of the plea is capable of proving the existence, in the present case, of any substantial continuity of the duties he performed.

88 First, as recalled in paragraph 86 above, it is common ground that, as a result of the contract of 16 May 2014, the applicant transferred to a position in a function group higher than the one to which he was initially recruited. Secondly, as the applicant acknowledges, the title of a contract staff member's post in FG I was different from that of a contract staff member's post in FG II, the former being 'administrative assistant – expert fees' while the latter is 'administrative manager – expert fees'. In addition, as the Commission points out, by the contract of 16 May 2014, the applicant was transferred to another post identified by another number. Thirdly, the fact that the description of the duties and responsibilities in the profiles of the two posts was worded identically does not prove that the applicant performed substantially the same duties as a contract staff member working first in FG I and then in FG II.

89 Finally, the applicant claims that his classification in Grade 5, Step 1, of FG II, provided for in the contract of 16 May 2014, required taking account of some of the experience acquired in FG I, which is evidence that that experience fell within the scope of FG II. However, it must be observed that, even if the classification provided for in the contract of 16 May 2014 required part of the applicant's experience in FG I to be taken into account, that does not amount to recognition, with *ex tunc* effect, that the duties performed by the applicant as a member of the contract staff in FG I, under a different contract, were in fact duties falling within FG II. Thus, when a new contract is proposed, professional experience is taken into account by the institution solely for the purposes of classification, with *ex nunc* effects. Furthermore, it must be observed that the fact that part of the experience acquired by the applicant in the course of his employment in FG I may have been taken into account as actually falling within FG II does not prove that, from 1 July 2008 until the signing of the contract of 16 May 2014, and therefore without any break, he only performed functions falling within FG II. The applicant does not provide any evidence in support that claim of continuity.

90 Thus, as stated in paragraph 81 above, the new contract, by which the applicant was transferred to a new function group, entailed the termination of all the effects of the 2008 contract, pursuant to which he was 'employed on 31 December 2013' in accordance with Article 1(1) of the annex to the CEOS, and, consequently, a termination of the employment relationship with the Union administration.

91 In the third place, it must be stated that taking up employment under the new contract does not affect the rights acquired by the applicant under the 2008 contract up to the date of entry into force of the contract of 16 May 2014 as regards the annual rate of acquisition of pension rights. Articles 2 and 3 of Annex VIII to the Staff Regulations, applicable to servants under Article 109

of the CEOS, provide that the pension of a contract staff member, such as the applicant, depends on the sum of the various annual rates of acquisition which have been acquired by the latter during each year of service.

92 In the present case, since the contract signed on 16 May 2014 took effect on 1 June 2014, the applicant was eligible, until that date, to the pension scheme in force before the reform, whereas between 1 January 2014 and 1 June 2014, he was covered by the pension scheme under the transitional provisions. Consequently, when calculating his pension rights, the applicant is entitled to the 1.9% acquisition rate for the years of service completed under the 2008 contract, as that rate is an acquired right for the applicant, but the 1.8% acquisition rate will be applicable to him from the date on which the contract of 16 May 2014 took effect.

93 It follows from all of the foregoing that the PMO and DG Human Resources did not commit any error of law by considering that the contract of 16 May 2014, by which the applicant was promoted to a higher function group, gave rise to a new entry into service for the purposes of the application of Article 1(1) of the annex to the CEOS, depriving the applicant of the application of the transitional provisions with regard to the annual rate of acquisition of pension rights and the retirement age.

94 That conclusion cannot be called into question by the other arguments raised by the applicant.

95 First, as regards the argument based on a supposed analogy with the judgment of 14 December 2011, *De Luca* v *Commission* (T-563/10 P, EU:T:2011:746), it must be observed, as the Commission submits, that that judgment concerns the application of a recruitment provision, such as Article 12(3) of Annex XIII to the Staff Regulations regarding the classification in step of officials entered on a list of suitable candidates before 1 May 2006 and recruited between 1 May 2004 and 30 April 2006, to an official in active employment appointed to another post as a successful candidate in an open competition and for which the Staff Regulations do not lay down specific provisions. It must be observed that the case which gave rise to that judgment does not present any analogy with the present case with regard to the application of the transitional provisions on pension rights to a contract staff member.

96 Secondly, as regards the argument based on the supposed analogy with the judgments of 16 September 2015, *EMA* v *Drakeford* (T-231/14 P, EU:T:2015:639), and of 5 February 2014, *Drakeford* v *EMA* (F-29/13, EU:F:2014:10), it must be observed, as is clear from paragraph 81 above, that that argument is irrelevant in the present case, inasmuch as the contract of 16 May 2014 is a new contract giving the applicant access to new duties and, therefore, involving the termination of his employment relationship with the Union administration.

97 Thirdly, as regards the applicant's argument that a new contract does not preclude the application of Articles 21 and 22 of Annex XIII to the Staff Regulations, as long as that does not lead to discontinuity in membership of and contributions to the Union pension scheme, it must be observed that the application of Articles 21 and 22 of Annex XIII to the Staff Regulations to staff members does not depend on the allegedly uninterrupted membership of the Union pension scheme, but on the functional continuity of the employment relationship (see paragraph 81 above).

98 Fourthly and lastly, as regards the applicant's argument, in substance, that the conclusion of a new type of contract does not put an end to the application of Articles 21 and 22 of Annex XIII to the Staff Regulations, but allows for career development for staff members which would not otherwise

take place without prejudice to their pension rights, it must be recalled that the conclusion of a new contract does not entail a loss of pension rights already acquired. Furthermore, in that regard, it must be observed that the conditions for affiliation to the pension scheme are, by their nature and subject to respect for acquired rights, conditions which may change in the future at the will of the Union legislature.

99 In the light of all the foregoing, the applicant's single plea in law must be dismissed as unfounded and, therefore, the action must be dismissed in its entirety.

Costs

100 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicant has been unsuccessful, he must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (First Chamber, Extended Composition)

hereby:

1. Dismisses the action;

2. Orders Mr Maxime Picard to pay the costs.

Kanninen Jaeger Półtorak

Porchia Stancu

Delivered in open court in Luxembourg on 24 March 2021.

[Signatures]

Table of contents