Reports of Cases

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

10 November 2021 *

(Arbitration clause – International civilian staff of EU international missions – Recruitment on a contractual basis – Consecutive fixed-term contracts – Claim that all contractual relationships should be re-categorised as a 'contract of indefinite duration' – Action for contractual liability – Action for non-contractual liability)

In Case T-602/15 RENV,

Liam Jenkinson, residing in Killarney (Ireland), represented by N. de Montigny, lawyer,

applicant,

v

Council of the European Union, represented by A. Vitro and M. Bishop, acting as Agents,

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

European External Action Service (EEAS), represented by S. Marquardt, R. Spáč and E. Orgován, acting as Agents,

and

Eulex Kosovo, established in Pristina (Kosovo), represented by E. Raoult, lawyer,

defendants,

APPLICATION, principally, first, pursuant to Article 272 TFEU seeking, on the one hand, to have all of the applicant's employment contracts re-categorised as an employment contract of indefinite duration and, on the other hand, to obtain compensation for the contractual loss that the applicant claims to have suffered as a result and, second, under Articles 268 and 340 TFEU seeking to establish the non-contractual liability of the Council, the Commission, the EEAS and the Eulex Kosovo Mission,

THE GENERAL COURT (Second Chamber, Extended Composition),

composed of M. van der Woude, President, V. Tomljenović, F. Schalin, P. Škvařilová-Pelzl (Rapporteur) and I. Nõmm, Judges,

* Language of the case: French.

Registrar: L. Ramette, Administrator,

having regard to the written part of the procedure and further to the hearing on 8 July 2020,

gives the following

Judgment

I. Background to the dispute

1 The applicant, Mr Liam Jenkinson, an Irish national, was first employed from 20 August 1994 to 5 June 2002 under various consecutive fixed-term contracts ('FTCs') by the Monitor Mission to Yugoslavia, established by a Memorandum of Understanding signed at Belgrade on 13 July 1991, then known as the 'European Community Monitoring Mission (ECMM)', subsequently renamed the 'European Union Monitoring Mission (EUMM)' by Council Joint Action 2000/811/CFSP of 22 December 2000 on the European Union Monitoring Mission (OJ 2000 L 328, p. 53). The mandate of the ECMM, and thereafter of the EUMM, was extended on several occasions, most recently by Council Joint Action 2006/867/CFSP of 30 November 2006 extending and amending the mandate of the European Union Monitoring Mission (EUMM) (OJ 2006 L 335, p. 48) until 31 December 2007.

2 The applicant was then employed from 17 June 2002 to 31 December 2009 under consecutive FTCs by the European Union Police Mission in Bosnia and Herzegovina ('EUPM'), established by Council Joint Action 2002/210/CFSP of 11 March 2002 on the European Union Police Mission (OJ 2002 L 70, p. 1). The mandate of the EUPM was extended on several occasions, most recently by Council Decision 2011/781/CFSP of 1 December 2011 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH) (OJ 2011 L 319, p. 51) until 30 June 2012.

3 Lastly, the applicant was employed by the Eulex Kosovo Mission from 5 April 2010 to 14 November 2014 under 11 consecutive FTCs, the first 9 of which were concluded with the Head of the Eulex Kosovo Mission and the last 2 with the mission itself ('the 11 FTCs'). The Eulex Kosovo Mission was established by Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, Eulex Kosovo (OJ 2008 L 42, p. 92). It was extended on several occasions, in particular until 14 June 2016 by Council Decision 2014/349/CFSP of 12 June 2014 amending Joint Action 2008/124/CFSP (OJ 2014 L 174, p. 42).

4 During the tenth FTC, concluded with the Eulex Kosovo Mission, covering the period from 15 June to 14 October 2014, the applicant was informed by letter of 26 June 2014 from the Head of the Eulex Kosovo Mission ('the letter of 26 June 2014') that, following the decision to restructure the Eulex Kosovo Mission taken by the Member States on 24 June 2014, the post he had held since being hired by the mission would be abolished with effect from 14 November 2014 and that, consequently, his contract would not be renewed beyond that date. The eleventh and final FTC was thus concluded between the applicant and the Eulex Kosovo Mission for the period from 15 October to 14 November 2014 ('the final FTC').

5 With the exception of the final FTC, all the FTCs concluded by the applicant concerning his work in the Eulex Kosovo Mission contained an arbitration clause conferring jurisdiction on the Belgian courts. Article 21 of the final FTC contained an arbitration clause conferring jurisdiction on the EU Courts over any dispute relating to the contract, on the basis of Article 272 TFEU.

II. Proceedings before the General Court and the Court of Justice

6 By application lodged at the Registry of the General Court on 23 October 2015, the applicant brought the present action against the Council of the European Union, the European Commission, the European External Action Service ('EEAS') and the Eulex Kosovo Mission.

7 By order of 9 November 2016, *Jenkinson* v *Council and Others* (T-602/15, EU:T:2016:660; 'the initial order'), concerning the objections of inadmissibility raised by the defendants, the General Court declared that it manifestly lacked jurisdiction to rule on the first two heads of claim, put forward as principal claims, and dismissed the third head of claim, put forward in the alternative, as manifestly inadmissible. Consequently, it dismissed the action in its entirety.

8 As a result of an appeal brought by the applicant against the initial order, the Court of Justice set aside that order by judgment of 5 July 2018, *Jenkinson* v *Council and Others* (C-43/17 P, EU:C:2018:531; 'the judgment under appeal'), and referred the case back to the General Court.

9 Following the judgment under appeal, a time limit was set under Article 217(2) of the Rules of Procedure of the General Court for the defendants to lodge a defence.

10 By separate documents lodged on 31 October 2018 by the Commission and 19 November 2018 by the Council and the EEAS, those parties raised objections of inadmissibility.

11 On 19 November 2018 the Eulex Kosovo Mission lodged its defence.

12 On 28 January 2019 the applicant submitted observations on the objections of inadmissibility raised by the Council, the Commission and the EEAS.

13 On 5 February 2019 the applicant lodged his reply.

14 By letter lodged at the Registry on 12 February 2019, the applicant made an application, under Article 66 of the Rules of Procedure, for the omission of certain personal data vis-à-vis the public (other than his country of residence) contained in Annex 2 to the reply.

15 On 21 March 2019 the Eulex Kosovo Mission lodged its rejoinder.

16 By order of the First Chamber of 29 March 2019, the objections of inadmissibility were reserved for the final judgment. Subsequently, the Council, the Commission and the EEAS lodged defences.

17 On 18 June 2019 the applicant applied for leave to lodge a reply in order to respond to the defences of the Council, the Commission and the EEAS. That application also contained an application for a measure of organisation of procedure seeking to have the Commission produce a copy of the contract it had signed with the various heads of the Eulex Kosovo Mission (or, at the very least, the Head of Mission in post between October and November 2014).

18 On 21 June 2019 the First Chamber decided not to grant the applicant leave to lodge such a reply. Moreover, since the Commission produced, on 9 July 2019, a copy of the contracts it had signed with the Heads of Mission in post between 15 June 2014 and 14 June 2015, there was no need to adopt a position on the measure of organisation of procedure requested by the applicant. The applicant submitted observations on those contracts within the prescribed period.

19 On 6 September 2019, on a proposal from the Judge-Rapporteur, the General Court (First Chamber) adopted a measure of organisation of procedure ('the first measure of organisation of procedure') in order to gather the applicant's views on certain information and documents contained in the rejoinder and in the annex thereto and on Irish legislation, should it apply in the present dispute. The applicant replied to the questions put by way of the abovementioned measure of organisation of procedure in two stages, on 16 September 2019 and 27 September 2019.

20 By letter lodged at the Registry on 27 September 2019, the applicant made an application, under Article 66 of the Rules of Procedure, for the anonymisation of all personal, family, financial and tax data included in the various forms produced by the Eulex Kosovo Mission and in Annex 2 to the reply of 16 September 2019 to the first measure of organisation of procedure.

21 Owing to the partial renewal of the General Court, the present case was assigned to a new Judge-Rapporteur sitting in the Second Chamber.

22 On a proposal from the Second Chamber, the General Court decided, on 16 January 2020, pursuant to Article 28 of its Rules of Procedure, to refer the case to a chamber sitting in extended composition.

23 By decision of 21 January 2020, as a member of the chamber hearing the case was prevented from acting, the President of the General Court designated himself to complete the chamber under Article 17(2) of the Rules of Procedure.

24 On 13 March 2020, on a proposal from the Judge-Rapporteur, the General Court (Second Chamber, Extended Composition) adopted a measure of organisation of procedure ('the second measure of organisation of procedure') inviting the applicant and the defendants to reply to a number of questions, which they did by letter of 30 April 2020, in the case of the applicant ('the reply of 30 April 2020'), and by four separate letters, all dated 29 May 2020, in the case of the defendants.

25 In the reply of 30 April 2020 to the question asking the applicant to specify expressly and clearly the legal basis for the second principal head of claim, the applicant stated that that head of claim sought to establish the non-contractual liability of the institutions on the basis of Articles 268 and 340 TFEU. The defendants were invited to submit any observations they might have on that reply.

26 On 11 June 2020, the applicant submitted observations on the defendants' replies to the questions put to them in the context of the second measure of organisation of procedure ('the observations of 11 June 2020').

27 By four separate letters, all dated 12 June 2020, the defendants submitted their observations on the applicant's reply of 30 April 2020.

28 By letter of 25 June 2020, which it was decided to place on the case file, the Eulex Kosovo Mission submitted observations on the observations of 11 June 2020.

29 On 1 December 2020, on a proposal from the Judge-Rapporteur, the General Court (Second Chamber, Extended Composition) adopted a measure of organisation of procedure ('the third measure of organisation of procedure') inviting the applicant and the defendants to reply to a number of questions, which they did by letter of 23 December 2020, in the case of the Commission, by letter of 24 December 2020, in the case of the applicant, and by three separate letters all dated 5 January 2021, in the case of the Council, the EEAS and the Eulex Kosovo Mission.

30 By letter of 14 January 2021, the applicant submitted observations on the Eulex Kosovo Mission's reply to the first question put to it in the context of the third measure of organisation of procedure ('the observations of 14 January 2021').

III. Forms of order sought

31 The applicant claims that the Court should:

'Principally:

1. With regard to the rights derived from the private law contract:

   – recategorise his contractual relationship as an employment contract of an indeterminate duration;

   – declare that there has been a breach by the defendants of their contractual obligations and, in particular, of giving notice of termination of a contract of an indeterminate duration;

   in consequence, in compensation for the loss suffered by the abusive use of consecutive [FTCs] causing the applicant prolonged uncertainty and the breach of the obligation to give notice of termination of the contract:

   – order the defendants to pay the applicant compensation in lieu of notice of EUR 176 601.55 calculated on the basis of his seniority in post in missions created by the European Union …;

   – in the alternative, order the defendants to pay the applicant compensation in lieu of notice of EUR 45 985.15 calculated taking account of the length of his service for the [Eulex Kosovo Mission];

   – [declare] the dismissal of the applicant abusive and, in consequence, order the defendants to pay him compensation assessed *ex aequo et bono* at EUR 50 000;

   – [declare] that the defendants did not have the legal end of employment documents prepared and

– order them to pay the applicant the sum of EUR 100 per day of non-payment with effect from the bringing of the present action;

– order them to send the applicant the end of employment documents;

– order the defendants to pay interest on the abovementioned sums, calculated at the Belgian legal rate.

2. With regard to the abuse of power and actual discrimination:

– declare that the [Council, the Commission and the EEAS] treated the applicant in a discriminatory manner, without objective justification, during his employment on the missions which they instituted, as regards his remuneration, pension rights and related benefits and as regards a guarantee of future employment;

– hold that the applicant ought to have been recruited as a member of the temporary staff of [the Council, the Commission or the EEAS];

– order the [Council, the Commission and the EEAS] to compensate him for the loss of remuneration, pension, allowances and benefits caused by the abovementioned breaches of EU law;

order them to pay him interest on those sums, calculated at the Belgian legal rate;

– prescribe a period within which the parties are to determine that compensation, having regard to the grade and step in which the applicant ought to have been employed, the average progression of the remuneration, the progress of his career, the allowances which he thus ought to have received under that temporary contract, and compare the results obtained with the remuneration actually received by the applicant.

In the alternative:

– find that the defendants failed to fulfil their obligations;

– order them to compensate the applicant for the harm resulting from that failure, which is estimated *ex aequo et bono* at EUR 150 000.

In any event:

order the defendants to pay the costs.'

32 The Council contends that the Court should:

– principally, find the action inadmissible in so far as it is directed against the Council;

– in the alternative, find the action inadmissible in so far as it was brought out of time;

– in the further alternative, declare the action unfounded;

– order the applicant to pay the costs.

33 The Commission contends that the Court should:

– dismiss the action as inadmissible in respect of the Commission;

– in the alternative, dismiss the action as unfounded;

– order the applicant to pay the costs.

34 The EEAS contends that the Court should:

– dismiss the action as inadmissible in so far as it was brought out of time;

– in any event, dismiss the action as inadmissible in so far as it is directed against the EEAS;

– in the alternative, dismiss the action as unfounded;

– order the applicant to pay the costs.

35 The Eulex Kosovo Mission contends that the Court should:

– principally, dismiss the action as inadmissible in so far as it was brought out of time;

– in the alternative, dismiss the action as unfounded;

– order the applicant to pay the costs.

IV. Law

36 First of all, for the reasons given by the applicant, his applications under Article 66 of the Rules of Procedure for the omission and anonymisation of personal data, as referred to in paragraphs 14 and 20 above, must be granted.

A. Preliminary remarks

37 As a preliminary point, in the interests of the sound administration of justice, it is necessary, first of all, to determine precisely the legal basis and subject matter of the action and the applicant's first three heads of claim. As a second step, the Court will consider the scope of the judgment under appeal.

1. The legal basis and subject matter of the action and the applicant's first three heads of claim

38 By his first three heads of claim, as summarised by the Court of Justice in paragraph 3 of the judgment under appeal, in essence, the applicant formally requests that the General Court should:

– as a principal claim, re-categorise his contractual relationship as an employment contract of an indefinite duration ('CID'), find that the defendants had breached their contractual obligations, in particular, the obligation to give prior notice of termination of a CID, find that his dismissal

was unfair, and, in consequence, order those parties to pay compensation for the loss suffered as a result of the abusive use of consecutive FTCs, the breach of the obligation to give prior notice, and unfair dismissal ('the first head of claim');

– as a principal claim, declare that the Council, the Commission and the EEAS discriminated against him during his employment in the EU international missions referred to in paragraphs 1 to 3 above ('the missions'), in so far as concerns his remuneration, his pension rights and other benefits, declare that he should have been recruited as a member of the temporary staff of one of the institutions and, in consequence, order them to pay compensation for the loss sustained as a result ('the second head of claim'); and

– in the alternative, order the defendants, on the basis of non-contractual liability, to compensate the applicant for the harm resulting from their failure to comply with their obligations ('the third head of claim').

39 In the first place, it is necessary, at the outset, to rule on whether the action must be regarded as an action for annulment brought under Article 263 TFEU, as the Council, the EEAS and the Eulex Kosovo Mission implicitly contend in so far as they plead that the action is inadmissible on the ground that it is out of time.

40 In that regard, it is true that the application initiating proceedings contains various references which might suggest that the action is, at least in part, based on Article 263 TFEU. Thus, at the top of the first page of the application appears the heading 'Action for annulment and compensation' and, in paragraph 158 of the application, the applicant asserts that 'the decision not to renew [his contract] is unlawful and must be annulled'. Furthermore, the schedule of documents annexed to the application is headed 'Schedule of documents annexed to the action for annulment …' and the annexes to the application are identified as 'Annex … to the action for annulment'.

41 However, besides the fact that both in his observations on the objections of inadmissibility and in the reply, the applicant formally denies having brought an action for annulment, it is, in essence, clear from the application that notwithstanding the terminological inexactitudes in his pleadings, as noted in paragraph 40 above, the applicant did not intend to bring an action under Article 263 TFEU.

42 First, the applicant's first three heads of claim, which formally determine the subject matter of the dispute, do not contain any application for the annulment of any measure, in particular the letter of 26 June 2014 or a decision notified to the applicant by means of that letter. By contrast, as explained in detail in paragraphs 50 to 62 below, those heads of claim seek only the re-categorisation of consecutive FTCs as a CID and compensation for contractual and non-contractual loss.

43 Second, contrary to what the Council and the EEAS essentially maintain in their objections of inadmissibility and the Eulex Kosovo Mission in its defence, the applicant does not dispute the justification for the non-renewal of his contract. As the applicant expressly stated both in the observations on the objections of inadmissibility and in the reply, he does not challenge, in general terms, the Eulex Kosovo Mission's entitlement to terminate the employment relationship and he does not request reinstatement.

44 Third, nowhere in his pleadings does the applicant seek to demonstrate the unlawfulness of a measure so as to request its annulment. At most, in essence, as stated in his reply to a question put to him at the hearing and which was formally noted in the hearing minutes, he invokes the unlawfulness of Joint Action 2008/124 with a view to securing compensation for alleged non-contractual loss in the context of the second principal head of claim.

45 In the light of the foregoing considerations, it must be held that the present action was not brought under Article 263 TFEU. Consequently, the objection of inadmissibility raised by the Council, the EEAS and the Eulex Kosovo Mission claiming that the purported action for annulment against the letter of 26 June 2014 was brought out of time must be dismissed as having no basis in fact or in law.

46 In the second place, it is necessary to examine whether, as the applicant submitted during the written part of the procedure, the action includes an objection of illegality under Article 277 TFEU raised in respect of Joint Action 2008/124.

47 In the observations on the objections of inadmissibility and in the reply, the applicant states that although the pleas he puts forward in the present case allege infringement of the law applicable to contracts, he has not brought an action for annulment based on Article 263 TFEU, 'but an action for damages based primarily on Article 272 [TFEU] and, secondarily, on [Article 277] TFEU (objection of illegality) and [Article 268] TFEU (non-contractual liability of the European Union)'.

48 In that regard, as pointed out in paragraph 44 above, it is apparent from the applicant's pleadings that he invokes the unlawfulness of Joint Action 2008/124 only, at most, to demonstrate that his claim for compensation in respect of the non-contractual loss alleged in the second principal head of claim is well founded. Furthermore, even if the applicant raised an objection of illegality in respect of Joint Action 2008/124, on the basis of Article 277 TFEU, it would have to be held that that objection is not supported by any arguments in law or in fact developed in the application and that, therefore, since the applicant has not put forward any argument in support of such an objection, that objection does not satisfy the conditions laid down in Article 76(d) of the Rules of Procedure and must therefore be declared inadmissible (see, to that effect and by analogy, judgments of 14 July 2016, *Alesa* v *Commission*, T-99/14, not published, EU:T:2016:413, paragraphs 87 to 91, and of 3 March 2021, *Barata* v *Parliament*, T-723/18, under appeal, EU:T:2021:113, paragraphs 59 to 62).

49 In the third place, it is necessary to determine the legal basis and the subject matter of the applicant's first three heads of claim.

50 As regards the first principal head of claim, first, it is submitted to the EU Courts under Article 272 TFEU in the context of an arbitration clause that confers jurisdiction on those courts and is contained in the final FTC concluded between the applicant and the Eulex Kosovo Mission.

51 It follows from the grounds of the application, under the heading 'Jurisdiction', that the applicant, by reproducing it, relies on that arbitration clause, which confers jurisdiction on the Court of Justice of the European Union to settle disputes relating to that contract and refers expressly to Article 272 TFEU.

52 Second, as regards the subject matter of the demands made under the first head of claim, as is apparent from the Court of Justice's summary, set out in paragraph 38 above, the applicant asks the General Court to re-categorise the consecutive FTCs as a CID and to make a finding that the

circumstances in which the Eulex Kosovo Mission terminated that CID are contrary to the employment law applicable to that type of contract. On that basis, according to the exact wording of the first head of claim, as reproduced in paragraph 31 above, the applicant relies, in particular, on procedural and substantive rules applicable to the termination of a CID and invokes rules on compensation in lieu of notice.

53 Thus, the subject matter of the action as regards the first principal head of claim falls within the framework defined by the applicant's employment contract(s), as read and interpreted in the light of the applicable employment law.

54 In the light of the foregoing considerations, it must be held that the first head of claim, submitted as a principal claim, seeks, in the light of the law applicable to the contractual relationship at issue, the re-categorisation of the consecutive FTCs as a CID and, on account of that re-categorisation and the breach by the defendants of their contractual obligations, compensation for all the contractual loss allegedly sustained as a result of the misuse of consecutive FTCs and the infringement of the applicant's rights under a CID and of the conditions for terminating that type of contract.

55 Concerning the second head of claim, also submitted as a principal claim, first, in his reply of 30 April 2020, the applicant stated that that head of claim sought 'to establish the non-contractual liability of the institutions on the basis of Articles 268 and 340 [TFEU], in connection with the creation of a legal framework … relating to the employment of international contract staff by the missions which [was] unlawful for the reasons put forward in the action'.

56 Second, it must be stated that although no such legal basis expressly appeared in the application, it is clear from the grounds of the application that that head of claim seeks compensation for loss linked to the choices made by the institutions as regards the recruitment policy applying to international civilian staff in the EU international missions for which the applicant once worked.

57 First of all, as the Court of Justice summarised in paragraph 3 of the judgment under appeal, by his second head of claim, the applicant is asking the General Court to declare that the Council, the Commission and the EEAS treated him in a discriminatory manner during his employment in the three missions mentioned in paragraphs 1 to 3 above as regards his remuneration, pension rights and other benefits, to hold that the applicant ought to have been recruited as a member of the temporary staff of one of them and, as a consequence, to order them to pay him compensation for the loss sustained.

58 Next, the claim for compensation contained in the second head of claim is not directed against the Eulex Kosovo Mission, being the contracting party with which the applicant concluded the final FTC containing the arbitration clause conferring jurisdiction on the EU Courts.

59 Lastly, in his observations on the objections of inadmissibility, concerning the second head of claim, as stated in paragraph 55 above, the applicant not only expressly referred to Articles 268 and 340 TFEU, but also specified, and maintained, the grounds set out in the application intended to substantiate his claim for compensation based on the non-contractual liability of the defendants concerned.

60 In the light of the foregoing considerations, it must be held that the second head of claim, submitted as a principal claim, is based on Articles 268 and 340 TFEU and seeks compensation from the Council, the Commission and the EEAS for non-contractual loss which the applicant allegedly sustained as a result of their recruitment policy applying to international civilian staff in the missions for which the applicant once worked.

61 As regards the third head of claim, submitted as an alternative claim, the parties agree that it is based on Articles 268 and 340 TFEU. That head of claim seeks recognition of the non-contractual liability of the 'European institutions' on account of the loss which the applicant would sustain should the General Court dismiss his first two principal heads of claim.

62 To conclude, concerning the determination of the subject matter of the present action, it is apparent from the findings made in paragraphs 45, 48, 54, 60 and 61 above that, as regards the first head of claim, submitted as a principal claim, that action was brought under the arbitration clause conferring jurisdiction on the EU Courts contained in the final FTC and that, as regards the second head of claim, also submitted as a principal claim, and the third head of claim, submitted in the alternative, the present action is an action for non-contractual liability brought under Articles 268 and 340 TFEU.

2. The jurisdiction of the General Court following the judgment under appeal

63 By point 1 of the operative part of the judgment under appeal, the Court of Justice set aside the initial order in its entirety. Moreover, since it was not in a position to rule on the substance of the case, it decided, in point 2 of the operative part, to refer it back to the General Court. Therefore, it is for the General Court to rule on all the heads of claim in the application.

64 In that regard, in the first place, concerning the first head of claim, it must be recalled that in paragraphs 49 and 50 of the judgment under appeal, the Court of Justice held that the General Court had erred in law by stating that it manifestly lacked jurisdiction to rule on that head of claim in particular, whereas, in the light of paragraph 10 of the judgment of 1 July 1982, *Porta* v *Commission* (109/81, EU:C:1982:253), referred to in paragraph 44 of the judgment under appeal, it should have verified whether and, if so, to what extent it was entitled also to take account of the employment contracts preceding the final FTC.

65 It is apparent from paragraphs 45 to 47 of the judgment under appeal that, as the applicant's claims are linked to the existence of a single, continuous employment relationship based on a series of consecutive FTCs, they are directed at the re-categorisation of all the contracts and are based on all of those contracts, including the final FTC. The Court of Justice concluded, in paragraph 48 of that judgment, that the action contained claims that also arose under the final FTC.

66 Accordingly, the General Court must examine the claims set out in the first head of claim by also taking account of the employment contracts preceding the final FTC.

67 In the second place, given that the applicant's compensation claims in both the second and third heads of claim are made not under an arbitration clause, pursuant to Article 272 TFEU, but on the basis of Article 268 and the second paragraph of Article 340 TFEU, the General Court's jurisdiction to rule on them is not dependent on the arbitration clauses contained in the various FTCs concluded by the applicant.

68 Furthermore, it is apparent from the case-law of the Court of Justice that, as regards acts of staff management relating to 'field' operations, the General Court and, in the event of an appeal, the Court of Justice have jurisdiction to review such acts. According to the Court of Justice, that jurisdiction stems, as regards actions for non-contractual liability, from Article 268 TFEU, read together with the second paragraph of Article 340 TFEU, taking into account Article 19(1) TEU and Article 47 of the Charter of Fundamental Rights of the European Union (see, to that effect, judgment of 19 July 2016, *H* v *Council and Others*, C-455/14 P, EU:C:2016:569, paragraph 58). In that regard, the Court of Justice has held that decisions to redeploy members of a mission at theatre level, although adopted in the context of the common foreign and security policy (CFSP), do not constitute acts referred to in the second subparagraph of Article 24(1) TEU and the first paragraph of Article 275 TFEU and that, consequently, they fall within the jurisdiction of the EU Courts under the general provisions of the FEU Treaty referred to above as regards actions for non-contractual liability (see, to that effect, judgment of 19 July 2016, *H* v *Council and Others*, C-455/14 P, EU:C:2016:569, paragraph 59).

69 In the present case, it is apparent from the subject matter of the compensation claims made by the applicant in the second and third heads of claim, as determined in paragraphs 55 to 61 above, that those claims, in so far as they concern the legal framework for the recruitment, on a contractual basis, of international civilian staff to missions in general and the specific conditions of the applicant's recruitment, relate to acts of staff management. Therefore, in the light of the case-law cited in paragraph 68 above, the General Court has jurisdiction to examine those claims on the basis of Article 268 TFEU and the second paragraph of Article 340 TFEU.

70 To conclude, the General Court has jurisdiction to examine the demands made in the first head of claim under the arbitration clause conferring jurisdiction on the EU Courts, contained in the final FTC, and to examine the demands set out in the second and third heads of claim, submitted, respectively, as a principal claim and, in the alternative, on the basis of Article 268 TFEU and the second paragraph of Article 340 TFEU.

B. Admissibility

71 The defendants raise several objections of inadmissibility. They contend, separately or jointly, that the alternative claim for compensation is insufficiently clear and that the facts, decisions and possible irregularities relied on by the applicant are not attributable to them.

72 The applicant challenges the substance of those objections of inadmissibility.

73 At the outset, concerning the first objection of inadmissibility alleging that the alternative claim for compensation lacks clarity, an objection relating exclusively to the third head of claim since that head of claim is specifically submitted in the alternative to the first two heads of claim, the examination of that objection should be reserved for the eventuality that the first two heads of claim are dismissed.

74 Concerning the second objection of inadmissibility alleging that the facts, decisions and possible irregularities relied on by the applicant are not attributable to the defendants, in essence, the defendants submit that they had no contractual relationship with the applicant (in the case of the Council, the EEAS and the Commission) or that they had no such relationship prior to 5 April 2010 (in the case of the Eulex Kosovo Mission). The conduct complained of is therefore not attributable to them, in whole or in part.

75 First, it must be observed that the arguments put forward in support of the present objection of inadmissibility all relate, at least in essence, to the claim that the consecutive FTCs should be re-categorised as a CID and to the claim for compensation in respect of the contractual loss which the applicant allegedly sustained. In the light of the finding made in paragraph 54 above, the applicant puts forward those claims in the context of the first principal head of claim. Accordingly, the view must be taken that, in essence, that objection of inadmissibility is directed not against the action as a whole, but only against the first head of claim.

76 Second, it must be observed that where the Court is seised, pursuant to an arbitration clause under Article 272 TFEU, of an action relating to employment law dealing, in particular, with whether a contractual relationship should be re-categorised as a CID, the examination of the possible involvement of the defendants put in issue in that relationship and, as the case may be, of the period concerned is closely linked to the examination of the merits of the action.

77 Third, the same is true of the examination of whether and to what extent each of the defendants is liable for the contractual loss which the applicant invokes in the first head of claim, particularly since the claim for re-categorisation as a CID and the ensuing claim for compensation concern not only the employment relationship entered into by the applicant in the context of his work in the Eulex Kosovo Mission, but also the employment relationships entered into in the context of the first two missions referred to in paragraphs 1 and 2 above. The Eulex Kosovo Mission did not acquire legal personality until 2014, following the insertion, by Decision 2014/349, of Article 15a in Joint Action 2008/124. As is apparent from paragraphs 1 and 2, the first two missions are no longer operational. Consequently, if the claim for the re-categorisation as a single CID of all the applicant's employment relationships in the three missions between 20 August 1994 and 14 November 2014 and the claim for compensation in respect of alleged contractual loss are upheld, it will be necessary, in any event until the Eulex Kosovo Mission acquired legal personality on 12 June 2014, to identify which EU institutions were responsible for the activities concerned.

78 Therefore, it is after the examination of the merits of the first head of claim that it might be necessary, in the light of the applicable law, to determine to what extent the demands made by the applicant under that head of claim are well founded vis-à-vis each of the defendants.

79 In the light of the foregoing considerations and the circumstances of the present case, the Court considers it appropriate, in the interests of the sound administration of justice, to examine the claims made under the first head of claim before potentially examining those objections of inadmissibility (see, to that effect and by analogy, judgment of 26 February 2002, *Council* v *Boehringer*, C-23/00 P, EU:C:2002:118, paragraph 52).

C. Substance

1. The principal claim for re-categorisation of the contractual relationship as a CID and for compensation in respect of contractual loss (first head of claim)

(a) The claim for re-categorisation of the consecutive FTCs as a single CID

80 As regards the examination of the merits of the claim set out in the first head of claim in so far as it seeks the re-categorisation of the applicant's consecutive FTCs as a CID, it must be observed that, in the section relating to the subject matter of the action and in the form of order sought in the

application, the applicant seeks, by the first head of claim, in general terms, 'to re-categorise his contractual relationship as a [CID]'. In addition, it is apparent from the grounds of the application supporting that claim for re-categorisation that the applicant takes 'contractual relationship' to mean all the consecutive FTCs which he concluded in the context of his work in the missions referred to in paragraphs 1 to 3 above. Consequently, the claim for re-categorisation of the contractual relationship as a CID and the claim for compensation in respect of alleged contractual loss primarily relate to all the contracts concluded in the context of his work in the missions and, in the alternative, to the 11 FTCs relating to his work in the Eulex Kosovo Mission.

81 However, it is apparent from the judgment under appeal that the General Court's jurisdiction stems from the arbitration clause conferring jurisdiction on the EU Courts contained in the final FTC and that, as stated in paragraphs 64 to 66 above, that jurisdiction covers all claims arising from the final FTC or which are directly connected with the obligations flowing from that contract.

82 Therefore, since the final FTC is one of the 11 FTCs, which relate to the applicant's work in the Eulex Kosovo Mission, it is appropriate, first of all, to examine the applicant's claim that the 11 FTCs should be re-categorised as a single CID. If that claim is dismissed, the Court will not have jurisdiction to examine the claim for re-categorisation as a CID of the first two series of FTCs concluded by the applicant in the context of his work in the first two missions, referred to in paragraphs 1 and 2 above, since those FTCs did not contain an arbitration clause conferring jurisdiction on the EU Courts.

83 For the purposes of examining the claim for re-categorisation of the 11 FTCs as a single CID, it is necessary to determine the law applicable to the contractual relationship between the applicant and the Eulex Kosovo Mission or the Heads of Mission in respect of the first nine FTCs and thereafter apply that law.

(1) Determination of the law applicable to the 11 FTCs

84 As regards the law applicable to his contractual relationship in the Eulex Kosovo Mission, the applicant alleges infringement of, first, various provisions of Belgian law or, in the alternative, of Irish law and, second, several rules and general principles of EU law, in particular the principles and rules laid down or identified in 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). He submits that, in accordance with the provisions of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6), particularly Article 8(4) thereof, Belgian law should be applied to this dispute. Concerning the alleged breach of general principles of EU law, the applicant relies on the case-law of the EU Courts, from which it follows that the principles deriving from Directive 1999/70 may be relied on against the EU institutions where they are the specific expression of fundamental rules of the EU Treaty and of general principles that are directly binding on those institutions. The applicant also claims a breach of the European Code of Good Administrative Behaviour of the European Ombudsman ('the Code of Good Behaviour'), which, in his view, essentially reproduces the full range of workers' rights as protected by EU instruments and national legislation.

85 The applicant submits first of all that his employment on the basis of consecutive FTCs was abusive and that the formalities which had to be met under Belgian law before those FTCs could be concluded were not complied with. Consequently, he claims that his contractual relationship

should be re-categorised as a CID. Furthermore, as a result of that re-categorisation, all the social rights he enjoyed as a worker employed under the rules on CIDs, not only in the field of social security and pensions, but also in relation to information, consultation, notification and contract termination, were infringed. However, he states that he does not challenge the lawfulness of the decision not to renew his contract and does not seek reinstatement.

86 Next, he challenges the argument that the law applicable to his contractual relationship is the autonomous law of the Eulex Kosovo Mission, especially since the legal instruments which that mission invokes cannot be relied on against him.

87 Finally, in reply to a question put to him under the first measure of organisation of procedure, asking him to submit any observations he might have on the Irish legislation which, according to the Eulex Kosovo Mission, applies to this dispute, the applicant asserted that, in the circumstances of the present case, there were no objective grounds justifying the use of FTCs beyond the four-year limit provided for in section 9 of the Protection of Employees (Fixed-Term Work) Act 2003 ('the 2003 Act'), with the result that, in accordance with that section, the contractual relationship should be re-categorised as a CID. He also stated that the breach of section8 of the 2003 Act, concerning the employer's prior information obligations towards the employee when renewing an FTC, '*ipso facto* entails the recategorisation the FTCs as a CID'.

88 The Eulex Kosovo Mission, largely supported by the Council, the Commission and the EEAS, disputes the applicant's arguments.

89 In particular, the Eulex Kosovo Mission and the EEAS submit that the law applicable to the contractual relationship entered into under the 11 FTCs is the autonomous law of the Eulex Kosovo Mission, as developed since the mission's establishment in 2008. They contend that the purpose of that autonomous law is to regulate the employment contracts which the mission concludes with members of the contract staff, taking account of the mission's specific features, including its temporary nature. If the Court decides not to apply that autonomous law, the mission maintains, in accordance with the Rome I Regulation and the provisions of the 11 FTCs, that in view of the applicant's permanent tax residence in Ireland, Irish employment law will apply to the contractual relationship at issue. The Council expressly endorses the Eulex Kosovo Mission's arguments in that respect.

(i) Preliminary remarks

90 It is apparent from the parties' arguments that they rely on different legislative sources which, in their view, apply in the present case.

91 In that regard, first, it is necessary to examine the argument put forward by the EEAS and the Eulex Kosovo Mission to the effect that in the present case the Court should apply an autonomous law, developed since the mission's establishment in 2008, the purpose of which is to regulate the employment contracts concluded with members of the contract staff, taking account of the mission's specific features.

92 In that connection, suffice it to note that the EU legislature has not adopted, under provisions of primary law and in particular Article 336 TFEU, rules designed to regulate, for example in the Conditions of Employment of Other Servants of the European Union ('the CEOS') or any other act, the conditions of employment of contract staff in a CFSP mission like the Eulex Kosovo Mission.

93 Furthermore, it is not apparent from the wording of the acts adopted following the establishment of that mission that those acts contain provisions capable of resolving the dispute underlying the first head of claim, namely the claim for re-categorisation of the 11 FTCs as a single CID, on the one hand, and the claim for compensation in respect of the contractual loss allegedly sustained in the context of the employment relationship at issue, on the other.

94 Accordingly, the EEAS and the Eulex Kosovo Mission are wrong to invoke the application of an autonomous law here.

95 Second, concerning the breach of the Code of Good Behaviour claimed by the applicant, it follows from the actual wording of that code, particularly Articles 1 to 3 thereof, that it is a guide of good administrative practice to which the institutions, bodies, offices or agencies of the European Union, their authorities and their staff must adhere in their dealings with the public. Under Article 3(2) thereof, the principles set out in the code do not apply to the relations between those entities and their officials or other servants of the European Union. Breach of the provisions of that code cannot therefore be successfully relied on by the applicant in his relations with any of the defendants, as his employer (see, to that effect and by analogy, judgment of 7 July 2010, *Tomas* v *Parliament*, F-116/07, F-13/08 and F-31/08, EU:F:2010:77, paragraphs 85 and 86). Accordingly, the complaint alleging breach of that code must be dismissed as unfounded.

96 Third, concerning the application of the general principles of EU law on which the applicant relies, it is true that the principle prohibiting abuse of rights, under which no one may seek to misuse rules of law, is one of the general principles of law compliance with which is ensured by the EU Courts (see judgment of 21 September 2011, *Adjemian and Others* v *Commission*, T-325/09 P, EU:T:2011:506, paragraph 59 and the case-law cited; also see, to that effect, judgment of 6 February 2018, *Altun and Others*, C-359/16, EU:C:2018:63, paragraph 49).

97 Furthermore, by means of Directive 1999/70 and, more specifically, the implementation of the framework agreement on fixed-term work concluded on 18 March 1999 ('the FTW Framework Agreement'), which constitutes the annex to that directive, the EU legislature established a legal framework the objective of which is to prevent abuse of rights arising from the use of consecutive fixed-term employment contracts or relationships.

98 Taking action against abuse of rights arising from the use of consecutive fixed-term employment contracts or relationships serves to achieve the objectives which the European Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, adopted in Article 151 TFEU, which include improved living and working conditions and proper social protection for workers (judgment of 21 September 2011, *Adjemian and Others* v *Commission*, T-325/09 P, EU:T:2011:506, paragraph 60).

99 However, it is also apparent from settled case-law that where proceedings have been brought before the General Court pursuant to an arbitration clause under Article 272 TFEU, it must resolve the dispute on the basis of the substantive rules of the national law applicable to the contract (see judgment of 4 May 2017, *Meta Group* v *Commission*, T-744/14, not published, EU:T:2017:304, paragraph 64; also see, to that effect, judgment of 18 December 1986, *Commission* v *Zoubek*, 426/85, EU:C:1986:501, paragraph 4).

100 According to the case-law of the Court of Justice, EU law requires that, when transposing directives, the Member States take care to rely on an interpretation of them which allows a fair balance to be struck between the various fundamental rights protected by the EU legal order. Subsequently, when implementing the measures transposing those directives, the authorities and courts of the Member States must not only interpret their national law in a manner consistent with those directives but also make sure that they do not rely on an interpretation of them which would be in conflict with those fundamental rights or with the other general principles of EU law (see judgment of 18 October 2018, *Bastei Lübbe*, C-149/17, EU:C:2018:841, paragraph 45 and the case-law cited).

101 Therefore, in the light of the arbitration clause contained in the final FTC conferring jurisdiction on the EU Courts, the General Court must ensure compliance with the general principle prohibiting abuse of rights arising from the use of consecutive fixed-term employment contracts or relationships when implementing the national law applicable to the present dispute.

(ii) Rules for determining the national law applicable to the contractual relationship at issue

102 As regards the examination of the merits of the first head of claim, which seeks to have the consecutive FTCs re-categorised as a single CID and also seeks, as a result of that re-categorisation, compensation in respect of the contractual loss allegedly sustained, it is necessary in the light of the case-law referred to in paragraph 99 above to determine the law applicable to the contractual relationship at issue. In that connection, it is apparent from the subject matter of the dispute underlying that head of claim that the applicable national law falls within the scope of employment law.

103 In order to determine the substantive rules of national law applicable to an employment law dispute such as that at issue in the present case, the EU Courts are to use the rules of private international law and, in particular, under Article 28 of the Rome I Regulation, in respect of contracts concluded after 17 December 2009, like the 11 FTCs, the rules set out in Article 8 of that regulation relating to individual employment contracts.

104 Article 8(1) of the Rome I Regulation provides that 'an individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3' thereof, and that that choice 'may not, however, have the result of depriving the employee of the protection afforded to him [or her] by provisions that cannot be derogated from by agreement under the law [of the country where the employee, in performance of the contract, habitually carries out his or her work or the country where the place of business through which the employee was engaged is situated]'. Article 3(1) of the Rome I Regulation states that 'a contract shall be governed by the law chosen by the parties', a choice that 'shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case' and that, 'by their choice the parties can select the law applicable to the whole or to part only of the contract'.

105 The law applicable to the contract is thus, in principle, that expressly provided for in the contract and the contractual provisions expressing the common intention of the parties must take precedence over any other criterion which might be used only where the contract is silent on a particular point (see judgment of 18 February 2016, *Calberson GE* v *Commission*, T-164/14, EU:T:2016:85, paragraph 23 and the case-law cited).

106 Where the parties have not made a choice, the EU Courts must determine the law applicable to the individual employment contract using the objective criteria laid down in Article 8(2) to (4) of the Rome I Regulation. Under Article 8(2), to the extent that the law applicable to the individual employment contract has not been chosen, the contract is to be governed by the law of the country in which or, failing that, from which the employee habitually carries out his or her work. Article 8(3) provides that where the law applicable cannot be determined pursuant to Article 8(2), the contract is to be governed by the law of the country where the place of business through which the employee was engaged is situated. Lastly, in accordance with Article 8(4), where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in Article 8(2) or (3), the law of that other country is to apply.

107 In the present case, if it is found that the 11 FTCs do not contain provisions capable of directly resolving the dispute underlying the first head of claim, the rules of private international law will be applied in order to determine the substantive rules of national law applicable here.

(iii) Lack of provisions in the 11 FTCs capable of directly resolving the dispute underlying the first head of claim

108 Besides the fact that, as noted in paragraph 92 above, the acts adopted following the establishment of the Eulex Kosovo Mission do not contain any provision capable of resolving the dispute underlying the first head of claim, it must be held that the same is true of the 11 FTCs.

109 Thus, the preamble to the first nine FTCs stated that Commission Communication C(2009) 9502 of 30 November 2009, entitled 'Specific Rules for Special Advisers of the Commission entrusted with the implementation of operational CFSP actions and contracted international staff' ('Communication C(2009) 9502'), laid down the conditions of employment of international staff. Article 23 of the first nine FTCs referred to that communication either in an annex (the first five FTCs) or by means of a hyperlink in that article (the sixth to ninth FTCs). It was also stated that the communication formed an integral part of those contracts. It is common ground that, in accordance with the first point of the third subparagraph of paragraph 2 and paragraph 4a of Communication C(2009) 9502, the employment contract was subject to the employment law of the staff member's country of origin or country of permanent (tax) residence before taking up duties in the mission. By contrast, that communication contained no provisions capable of resolving the dispute underlying the first head of claim.

110 In the tenth and eleventh FTCs, the preamble stated that in accordance with Article 10(3) of Joint Action 2008/124, 'the conditions of employment and the rights and obligations of international and local staff shall be laid down in the contracts to be concluded between [the Eulex Kosovo Mission] and the staff member concerned'. Unlike the first nine FTCs, the tenth and eleventh FTCs do not contain any provision referring to the application of the substantive rules of national employment law. The only references to the application of national law contained in the tenth and eleventh FTCs, in Articles 12 and 13 thereof, concerned the social security and pension scheme and the tax arrangements to which the applicant would be subject, which are not relevant to a dispute the subject matter of which is limited, as here, to the field of employment law. Accordingly, none of the provisions of the tenth and eleventh FTCs makes it possible to determine the law applicable to the dispute underlying the first head of claim.

111 It follows from the foregoing considerations that, in the absence of any provision in the 11 FTCs enabling the dispute underlying the first head of claim to be resolved or designating the law applicable to those contracts, it is necessary, in order to resolve that dispute, to determine the

substantive rules of national law applicable to those FTCs. In that regard, the first nine FTCs concluded with the Head of the Eulex Kosovo Mission should be examined separately, followed by the last two FTCs concluded with the Eulex Kosovo Mission.

(iv) Substantive rules of national law applicable to the first nine FTCs concluded between the applicant and the Head of the Eulex Kosovo Mission

112 First, as stated in paragraph 109 above, the preamble to the first nine FTCs stated that Communication C(2009) 9502 laid down the conditions of employment of international staff.

113 As for whether Communication C(2009) 9502 can be relied on against the applicant, something which he denies, it must be observed that after initially claiming that he had no knowledge of that communication prior to the start of the first FTC, the applicant conceded in his reply to the first measure of organisation of procedure that the communication in question had been forwarded to him before the signature of that FTC, as an annex to an email of 9 February 2010 sent to him by the Human Resources Department of the Eulex Kosovo Mission.

114 Furthermore, concerning the applicant's argument that paragraph 5 of Communication C(2009) 9502, entitled 'Final provisions', stated in point (b) that the communication would no longer apply after 1 January 2011, the effective date of establishment of the EEAS, it is true that, contrary to the Eulex Kosovo Mission's claims, the application of that communication after that date could not be based on the political agreement concluded in 2013 in the Committee of Permanent Representatives (Coreper), pursuant to which the communication would continue to apply until a political agreement had been reached to replace it. Such reasoning would entail the retroactive incorporation of Communication C(2009) 9502, after its expiry, into the FTCs concluded before that agreement came into being. The Eulex Kosovo Mission does not put forward any justification that could serve as a legal basis for such retroactive application.

115 However, like the Eulex Kosovo Mission, the Court considers that it was the joint intention of the contracting parties to incorporate Communication C(2009) 9502 into the third to ninth FTCs, concluded after the communication's expiry, pursuant to Article 23.1 of those contracts. Accordingly, contrary to what the applicant claims, since Communication C(2009) 9502 formed an integral part of the first nine FTCs concluded between the applicant and the Head of the Eulex Kosovo Mission, it may be relied on against them.

116 Second, Article 1.1 of the first nine FTCs stipulated that, by signing the employment contract, the employee acknowledged and accepted the terms and principles set out in those contracts, the annexes thereto, the standard operating procedures and the code of conduct of the Eulex Kosovo Mission. Article 23 of the first nine FTCs referred to Communication C(2009) 9502 and stated that it formed an integral part of those contracts.

117 As is expressly clear from the first nine FTCs concluded between the applicant and the Head of the Eulex Kosovo Mission taken as a whole, all of which contain, at the beginning of the first page, the words 'Contract of employment for international staff', the applicant was hired as 'international staff' within the meaning of paragraph 4a of Communication C(2009) 9502.

118 Furthermore, it is readily apparent from the third subparagraph of paragraph 4a of Communication C(2009) 9502 that 'concerning relevant … labour laws for international staff, the national regulations of their country of origin/permanent (fiscal) residency shall remain applicable'. The tenth subparagraph thereof states that 'the employment contract shall be subject

to the labour and social law of the country of citizenship/permanent (fiscal) residency before taking up the duties of the employee'. In addition, the eleventh subparagraph of that paragraph provides that 'termination of the contract … as well as liability aspects shall be subject to the applicable national social and labour legislation of the country' identified in accordance with the criteria set out in the tenth subparagraph. Finally, under the sixth subparagraph of paragraph 4a of Communication C(2009) 9502, if the country of origin and the 'permanent (fiscal) residency' before taking up duties differ, the latter is to prevail.

119 In the light of the foregoing considerations, so far as concerns the first nine FTCs, the Court finds that the contracting parties chose, for the purpose of Article 8(1) of the Rome I Regulation, Irish law as the applicable national employment law by designating, by means of a reference to Communication C(2009) 9502, first, the law of the applicant's country of nationality (in accordance with the tenth subparagraph of paragraph 4a of Communication C(2009) 9502) and, second, the law of his country of origin and permanent (tax) residence before taking up duties in the Eulex Kosovo Mission (in accordance with the third and tenth subparagraphs of paragraph 4a of Communication C(2009) 9502).

120 First, it is common ground that the applicant is an Irish national. The tenth subparagraph of paragraph 4a of Communication C(2009) 9502 expressly designates the law of the State of which the staff member is a national as the law applicable to the employment relationship.

121 Second, as regards the applicant's country of origin and residence before taking up duties in the Eulex Kosovo Mission, it is necessary to determine where he was located between 31 December 2009, when his employment in the EUPM in Bosnia and Herzegovina ended (see paragraph 2 above), and 5 April 2010, when he took up duties in the Eulex Kosovo Mission (see paragraph 3 above).

122 In his reply of 16 September 2019 to the first measure of organisation of procedure, the applicant acknowledged that his country of origin as designated and asserted in the context of his contractual relationship with the Eulex Kosovo Mission was Ireland. Thus, he accepted that it follows from the various documents produced by the Eulex Kosovo Mission in the rejoinder that he had consistently stated, not only upon the conclusion of his first FTC with that mission but also throughout his employment relationship with it, in particular in his statements of home travel expenses, that his country of origin was Ireland. He added that Ireland had continued to be his country of origin throughout his periods of employment in the missions referred to in paragraphs 1 to 3 above.

123 It is apparent from the documents before the Court that, when the applicant took up duties in the Eulex Kosovo Mission, his country of origin and residence was Ireland. Moreover, it must be pointed out that, again in his reply of 16 September 2019 to the first measure of organisation of procedure, the applicant also stated that Ireland was his country of origin prior the conclusion, in 1994, of the first FTC with the first mission for which he had worked. Therefore, the connecting factor relating to the country of origin points to Irish law as the employment law applicable in the present case, so far as concerns the first nine FTCs concluded between the applicant and the Head of Mission.

124 That finding cannot be altered in the light of the criterion laid down in the sixth subparagraph of paragraph 4a of Communication C(2009) 9502, referred to in paragraph 118 above. The applicant's pleadings do not show that he claimed to have tax residence in a country other than his country of origin.

(v) Substantive rules of national law applicable to the tenth and eleventh FTCs signed by the applicant and the Head of the Eulex Kosovo Mission

125 As is apparent from paragraph 110 above, the Court finds that, unlike the first nine FTCs, the tenth and eleventh FTCs do not contain any provision concerning the contracting parties' choice of the law governing the employment relationship established by each of those last two contracts.

126 The preamble to the tenth and eleventh FTCs, concluded between the applicant and the Eulex Kosovo Mission, represented by the Head of Mission, stated that in accordance with Article 10(3) of Joint Action 2008/124, the conditions of employment and the rights and obligations of international and local staff were to be laid down in the contracts concluded between the Eulex Kosovo Mission and the staff member concerned.

127 Nevertheless, although Article 1 of the tenth and eleventh FTCs was essentially the same as Article 1.1 of the first nine FTCs, referred to in paragraph 116 above, it must be observed, first, that the actual provisions of those two FTCs do not make it possible to determine the rules applicable to the conditions of employment under those FTCs, in particular in relation to the employment law dispute underlying the first head of claim. Second, Article 23 of the tenth and eleventh FTCs no longer contained any reference to Communication C(2009) 9502 and also did not refer to annexed documents containing guidance aimed at establishing the employment law applicable to them. It must therefore be held that the parties did not designate the employment law applicable to the tenth and eleventh FTCs.

128 Consequently, since the contracting parties did not make a choice in that regard in respect of those last two FTCs, it is necessary to determine the applicable employment law on the basis of the connecting factors laid down in private international law, namely, in the present case, as recalled in paragraph 106 above, in accordance with the objective criteria set out in Article 8(2) to (4) of the Rome I Regulation.

129 On that basis, under the successive criteria set out in Article 8(2) and (3) of the Rome I Regulation, the applicable law would, in principle, be Kosovan law. However, as both the applicant and the Eulex Kosovo Mission point out, under Article 2(4) of Law No 03/L-212 on Labour of Kosovo, annexed to the Eulex Kosovo Mission's defence, the provisions of that law did not apply to employment relationships in international missions like the Eulex Kosovo Mission. Thus, Kosovan employment law itself excludes its application to employment relationships such as those at issue here.

130 In any event, it must be observed that the tenth and eleventh FTCs are more closely connected, within the meaning of Article 8(4) of the Rome I Regulation, with Irish law, which must therefore be applied to those contracts.

131 First, notwithstanding the consecutive conclusion of the tenth and eleventh FTCs, there was, in fact, a continuous employment relationship between the parties beginning with the first of the 11 FTCs.

132 That continuity is demonstrated in particular, first of all, by the title of the post held by the applicant in the mission under the tenth and eleventh FTCs, namely that of 'IT Officer (Regional Infrastructure Support) (EK 10453)', which he had held since the conclusion of the sixth FTC. As the applicant himself described in his observations of 11 June 2020 and as is also apparent from the first annex attached to those observations, in the post he had held since 15 June 2012,

identified under the reference EK 10453, he was responsible within the Eulex Kosovo Mission for managing and supervising all members of staff working in the IT help desk/support office. That observation is not contradicted by the fact that the tasks entrusted to him under the sixth to eleventh FTCs may have changed over the period in question, namely between 15 June 2012 and 14 November 2014.

133 As is clear from the description provided by the applicant himself in part III of the performance evaluation report ('PER') covering the period from 16 April to 14 November 2014, his tasks subsequently changed as a result of the restructuring of the Eulex Kosovo Mission, particularly as a result of the closure of the regional IT support unit. Such changes in the tasks performed by the applicant are part and parcel of the duties of manager and supervisor in charge of a unit, which was the post he used to hold. They cannot therefore have altered the continuity of the employment relationship between the applicant and the mission over the course of the 11 FTCs.

134 Next, it is apparent from all six PERs drawn up during the employment relationship between the Eulex Kosovo Mission or the Head of Mission and the applicant that the applicant was offered a new FTC. Those PERs were produced by the Eulex Kosovo Mission in response to a request to that effect made in the third measure of organisation of procedure.

135 Lastly, it is common ground that the applicant advanced to a higher professional step in line with his accumulated seniority in the course of his 11 consecutive FTCs in the Eulex Kosovo Mission.

136 In the light of that continuity and the links between the 11 FTCs, and having regard to the fact that the tenth and eleventh FTCs were silent as to the contracting parties' choice of the law applicable to the employment law dispute underlying the first head of claim, account must be taken of the criteria for determining the applicable law as set out in the first nine FTCs.

137 As stated in paragraph 123 above, in the first nine FTCs, the contracting parties chose to make their contractual relationship subject to Irish law. Thus, notwithstanding the fact that the tenth and eleventh FTCs were silent on the issue of the applicable law, in accordance with the case-law referred to in paragraph 105 above, pursuant to Article 8(4) of the Rome I Regulation, it must be concluded that in the light of all the circumstances characterising the applicant's employment relationship in the context of his work in the Eulex Kosovo Mission under the 11 FTCs, the last two FTCs remain subject to Irish law, as the law of the applicant's country of nationality and origin when he took up duties in the Eulex Kosovo Mission.

138 Second, concerning the social security and pension schemes and the tax arrangements applying to the applicant, the last two FTCs provided, in Articles 12.1 and 13.1, that the employee would be subject to the national law in force in his country of permanent (tax) residence before taking up duties in the Eulex Kosovo Mission. Although the applicable connecting factor in respect of those schemes and arrangements does not relate directly to the subject matter of an employment law dispute, such as that underlying the first head of claim, it must be observed that, in the light of the findings set out in paragraphs 121 to 124 above, they point once again to Irish law as the applicable national law.

139 To conclude, Irish law must be applied to the whole of the contractual relationship entered into under the 11 FTCs concluded by the applicant with the Head of the Eulex Kosovo Mission and subsequently with that mission itself. It is therefore in the light of Irish law and not Belgian law on which the applicant initially relied that a ruling must be given on the subject matter of the dispute underlying the first head of claim.

(2) Substantive rules of Irish employment law applicable in this case transposing Clause 5 of the FTW Framework Agreement

140 As is apparent from paragraphs 96 to 98 above, by implementing the FTW Framework Agreement annexed to Directive 1999/70, the EU legislature, having regard to the general legal principle prohibiting abuse of rights, established a legal framework the objective of which is to prevent abuse of rights arising from the use of consecutive fixed-term employment contracts or relationships.

141 Clause 5 of the FTW Framework Agreement, headed 'Measures to prevent abuse', states:

'1. To prevent abuse arising from the use of successive fixed-term employment contracts or relationships, Member States, after consultation with social partners in accordance with national law, collective agreements or practice, and/or the social partners, shall, where there are no equivalent legal measures to prevent abuse, introduce in a manner which takes account of the needs of specific sectors and/or categories of workers, one or more of the following measures:

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

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

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

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

(a) shall be regarded as successive;

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

142 The purpose of Clause 5(1) of the FTW Framework Agreement is to implement one of the objectives of that agreement, namely to place limits on successive recourse to fixed-term employment contracts or relationships, regarded as a potential source of abuse to the detriment of workers, by laying down as a minimum a number of protective provisions designed to prevent the status of employees from being insecure (see judgment of 26 January 2012, *Kücük*, C-586/10, EU:C:2012:39, paragraph 25 and the case-law cited).

143 Thus, Clause 5(1) of the FTW Framework Agreement requires Member States, in order to prevent abuse arising from the use of consecutive fixed-term employment contracts or relationships, actually to adopt in a binding manner one or more of the measures listed where domestic law does not include equivalent legal measures. The measures listed in Clause 5(1)(a) to (c), of which there are three, relate, respectively, to objective reasons justifying the renewal of such employment contracts or relationships, the maximum total duration of those consecutive fixed-term employment contracts or relationships, and the number of renewals of such contracts or relationships (see judgment of 26 January 2012, *Kücük*, C-586/10, EU:C:2012:39, paragraph 26 and the case-law cited).

144 Directive 1999/70 was transposed into Irish law by the 2003 Act. The 2003 Act came into force on 14 July 2003.

145 Section 9 of the 2003 Act transposes Clause 5 of the FTW Framework Agreement. Section 9(1) provides that the FTC of an employee who, on or after the passing of the 2003 Act, has completed his or her third year of continuous employment with his or her employer or associated employer, may be renewed by that employer on only one occasion for a fixed term of no longer than one year. Under section 9(3) of the 2003 Act, any term of an FTC which purports to contravene section 9(1) is to have no effect and the contract in question is to be deemed to be a contract of indefinite duration.

146 Under section 9(4) of the 2003 Act, an employer may nevertheless derogate from the requirements of section 9(1) to (3) if there are objective grounds for doing so. The meaning of 'objective grounds' is amplified in section 7 of the 2003 Act. Under section 7, 'a ground shall not be regarded as an objective ground for the purposes of any provision of this Part unless it is based on considerations other than the status of the employee concerned as a fixed-term employee and the less favourable treatment which it involves for that employee (which treatment may include the renewal of a fixed-term employee's contract for a further fixed term) is for the purpose of achieving a legitimate objective of the employer and such treatment is appropriate and necessary for that purpose'. In other words and in essence, in order to be objective, the ground relied on must be based on considerations unrelated to the employee, and the less favourable treatment which the FTC involves for that employee must be intended to achieve a legitimate objective of the employer, in an appropriate and necessary manner.

(3) The application of Irish employment law to the claim for re-categorisation of the 11 FTCs as a CID

147 In the applicant's reply to the first measure of organisation of procedure, inasmuch as he was asked in particular to submit his observations on the possible application of Irish law, in essence, the applicant maintained his claim for re-categorisation of the 11 FTCs as a CID. In that regard, he submitted that there were no objective grounds, of a general or budgetary nature, capable of justifying the conclusion of the 11 FTCs and that, in accordance with the case-law, his recruitment by the Eulex Kosovo Mission to cover fixed and lasting needs was abusive, with the result that those FTCs should be re-categorised as a single CID.

148 Specifically, concerning the objective grounds relied on by the Eulex Kosovo Mission to justify concluding the 11 FTCs, the applicant denies that the mission was automatically limited to the duration of its mandate, particularly since the duration of the FTCs at issue was not aligned with the duration of that mandate. He adds that it would have been possible to make his contractual relationship one of indefinite duration, since the decision-making procedure for the renewal of missions was organised in such a way that notice could easily be given within the period applicable to a CID.

149 The Eulex Kosovo Mission, supported by the other defendants, essentially argues that there were objective grounds justifying the conclusion of the 11 FTCs.

150 In the present case, it is for the Court, under the arbitration clause contained in the final FTC, to assess, in the light of section 9 of the 2003 Act, which transposes Clause 5 of the FTW Framework Agreement, the merits of the applicant's claim for the re-categorisation of the 11 FTCs as a single CID. It is not apparent from either the case file or the parties' arguments that the 2003 Act is incompatible with Directive 1999/70 or indeed with the general legal principle prohibiting abuse of rights.

151 In the first place, it is common ground that the applicant was recruited to the Eulex Kosovo Mission on the basis of the first sentence of Article 9(3) of Joint Action 2008/124. In accordance with that article, the Eulex Kosovo Mission could, as required, recruit international and local civilian staff on a contractual basis. By contrast, given the joint action's silence on that point, it was for the Head of Mission and subsequently for the mission itself, upon acquiring legal personality in 2014, to decide on the type of contract to be offered to the applicant. Thus, throughout the entire contractual relationship with the applicant, it was decided to offer him consecutive FTCs.

152 In the second place, according to the case-law of the EU Courts, it is for the authorities concerned to consider in each case all the circumstances at issue, taking account, in particular, of the number of consecutive contracts concluded with the same person or for the purposes of performing the same work, in order to ensure that fixed-term employment contracts or relationships, even those ostensibly concluded to meet a need for replacement staff, are not abused by employers. Although the assessment of the objective reason put forward must refer to the renewal of the most recent employment contract concluded, the existence, number and duration of consecutive contracts of that type concluded in the past with the same employer may be relevant in the context of that overall assessment (see judgment of 26 January 2012, *Kücük*, C-586/10, EU:C:2012:39, paragraph 40 and the case-law cited).

153 It is not in dispute that the applicant was employed in the Eulex Kosovo Mission under the 11 FTCs, concluded in succession between 5 April 2010 and 14 November 2014, as an IT officer. It is apparent from the documents before the Court that the third anniversary of the start of the employment relationship fell during the performance of the eighth FTC, which ended on 14 June 2013. In accordance with section 9(1) of the 2003 Act, the duration of the ninth FTC, which ran from 15 June 2013 to 14 June 2014, did not exceed one year. It is therefore from the last of those dates that the prohibition on concluding new FTCs applied. Accordingly, the tenth FTC should, in principle, be re-categorised as a CID unless, in accordance with section 9(4) of the 2003 Act, there were objective grounds justifying its conclusion.

154 The Court has consistently held that the concept of 'objective reasons' within the meaning of Clause 5(1)(a) of the FTW Framework Agreement must be understood as referring to precise and concrete circumstances characterising a given activity, which are therefore capable, in that particular context, of justifying the use of consecutive FTCs. Those circumstances may result, in particular, from the specific nature of the tasks for the performance of which such contracts have been concluded and from the inherent characteristics of those tasks or, as the case may be, from pursuit of a legitimate social-policy objective of a Member State (see judgment of 26 January 2012, *Kücük*, C-586/10, EU:C:2012:39, paragraph 27 and the case-law cited).

155 It is in the light of that case-law that it is necessary to apply section 7 of the 2003 Act and to examine whether, in accordance with section 9 thereof, there were, in the present case, such objective reasons or grounds for concluding the 11 consecutive FTCs after 14 June 2014, that is to say, after the ninth FTC.

156 In that regard, it must be observed that the legal framework and overall labour context in which the applicant performed the tasks entrusted to him in the Eulex Kosovo Mission were characterised by their temporary nature. That temporary nature is apparent, in particular, not only from the duration of the mission's mandates and the periods covered by the financial reference amounts intended to cover its expenditure, but also from the periodic (re)definition of

its competences and scope of action and from the duration of the Head of Mission's mandates. It is also illustrated by the conditions and arrangements for recruiting staff to the Eulex Kosovo Mission.

157 First, as regards the duration of the mission's mandates, it must be recalled that it was on the basis of the EU Treaty in the version in force at that time, particularly Article 14 thereof, that the Council adopted Joint Action 2006/304/CFSP of 10 April 2006 on the establishment of an EU Planning Team (EUPT Kosovo) regarding a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo (OJ 2006 L 112, p. 19). On 11 December 2006, on the basis of the same provisions of the EU Treaty, the Council adopted Joint Action 2006/918/CFSP amending and extending Joint Action 2006/304 (OJ 2006 L 349, p. 57), in which it approved the concept of EU crisis management in Kosovo. Furthermore, it was in the light of those joint actions that Joint Action 2008/124 established the Eulex Kosovo Mission, again on the basis, in particular, of Article 14 of the EU Treaty. Recital 10 of Joint Action 2008/124 recalls that Article 14(1) of the EU Treaty calls for the indication of financing for the whole period of implementation of that joint action.

158 Under Article 14(1) of the EU Treaty, in the version in force when the Eulex Kosovo Mission was established, joint actions were to be adopted by the Council and were concerned with certain situations where operational action by the European Union was deemed necessary. Those joint actions had to lay down their objectives, scope, the means to be made available to the European Union, the conditions for their implementation and, if necessary, their duration.

159 Thus, under the first sentence of the second paragraph of Article 20 of Joint Action 2008/124 as originally worded, the joint action was to expire 28 months after the adoption of the operation plan (OPLAN) for the European Union Rule of Law Mission in Kosovo, Eulex Kosovo. Having regard to the date of adoption of that plan, the initial mandate of that joint action expired on 14 June 2010. It was subsequently extended on several occasions by the Council for consecutive periods of two years.

160 Thus, its mandate was extended, inter alia, initially until 14 June 2012 (Article 1(10) of Council Decision 2010/322/CFSP of 8 June 2010 amending and extending Joint Action 2008/124 (OJ 2010 L 145, p. 13)), then until 14 June 2014 (Article 1(7) of Council Decision 2012/291/CFSP of 5 June 2012 amending and extending Joint Action 2008/124 (OJ 2012 L 146, p. 46)), and again until 14 June 2016 (Article 1(9) of Decision 2014/349)).

161 Second, as regards the periods covered by the financial reference amounts, which appear in the successive versions of Article 16 of Joint Action 2008/124, entitled 'Financial arrangements', it was for the Council, in accordance with the last subparagraph of paragraph 1 of that article in its various versions since that resulting from Decision 2010/322, to decide those amounts intended to cover the expenditure of the Eulex Kosovo Mission. Those periods covered by the financial reference amounts illustrate the temporary budgetary context of the European Union's involvement in Kosovo through the Eulex Kosovo Mission.

162 Thus, between the mission's establishment and the first half of 2015, the financial reference amounts intended to cover mission-related expenditure, initially set under Joint Action 2008/124 until 14 June 2009 (Articles 16 and 20 of Joint Action 2008/124), and then under Council Joint Action 2009/445/CFSP of 9 June 2009, amending Joint Action 2008/124 (OJ 2009 L 148, p. 33) until 14 June 2010 (Article 1(1) of Joint Action 2009/445), were subsequently determined by decisions of the Council: until 14 October 2010 (Article 1(6) of Decision 2010/322); until

14 October 2011 (Article 1 of Council Decision 2010/619/CFSP of 15 October 2010 amending Joint Action 2008/124 (OJ 2010 L 272, p. 19)); until 14 December 2011 (Article 1 of Council Decision 2011/687/CFSP of 14 October 2011 amending Joint Action 2008/124 (OJ 2011 L 270, p. 31)); until 14 June 2012 (Article 1 of Council Decision 2011/752/CFSP of 24 November 2011 amending Joint Action 2008/124 (OJ 2011 L 310, p. 10)); until 14 June 2013 (Article 1(5) of Decision 2012/291); until 14 June 2014 (Council Decision 2013/241/CFSP of 27 May 2013 amending Joint Action 2008/124 (OJ 2013 L 141, p. 47)); until 14 October 2014 (Article 1(6) of Decision 2014/349); and, lastly, until 14 June 2015 (Article 1(3) of Council Decision 2014/685/CFSP of 29 September 2014 amending Joint Action 2008/124 (OJ 2014 L 284, p. 51)).

163 Third, concerning the definition of the competences and scope of action of the Eulex Kosovo Mission, those were adjusted in step with developments in the field and in the relations between the European Union and the Kosovan authorities.

164 First of all, that geopolitical and diplomatic uncertainty is reflected by the second subparagraph of Article 28(1) TEU, under which, if there is a change in circumstances having a substantial effect on a question subject to a decision adopted by the Council establishing an operational action of the European Union, the Council is to review the principles and objectives of that decision and adopt the necessary decisions. The same was true of Article 14(2) of the EU Treaty, in the version in force when the Eulex Kosovo Mission was established in 2008, which was replaced by the second subparagraph of Article 28(1) TEU. Furthermore, that uncertainty is also captured by the repeated references, in the recitals of the various Council decisions amending and extending Joint Action 2008/124, to the fact that the Eulex Kosovo Mission was to be conducted in the context of a situation which could deteriorate and harm the objectives, initially, of the CFSP, and then of external action as set out in Article 21 TEU.

165 Next, in accordance with Article 19 of Joint Action 2008/124 in the version resulting from Decision 2010/322, the Council was required to evaluate, no later than six months before the expiry of that action, whether the mission was to be extended. Thus, it is plain from the recitals of each of the decisions extending that joint action that the Council relied on the recommendations made in that regard by the Political and Security Committee (PSC) (recital 3 of Decision 2010/322) and subsequently on the strategic review (recital 3 of Decision 2012/291 and recital 4 of Decision 2014/349).

166 The strategic review of the Eulex Kosovo Mission (CMDP, EEAS 00115/14) drawn up in January 2014 ('the strategic review') was produced by the Eulex Kosovo Mission in a partially declassified form as Annex A5 to its reply to the second measure of organisation of procedure. It was on the basis of the strategic review that the Council decided, by Decision 2014/349, to amend and extend Joint Action 2008/124 until 14 June 2016. In that regard, it must be observed that as the Eulex Kosovo Mission in particular maintains, it is apparent from that review that, in 2013, the Kosovan authorities expressed the wish that in view of the end of the joint action's mandate, then set for 14 June 2014, the process for ending Kosovo's supervised independence should be initiated. Thus, in a letter from the cabinet of the Prime Minister of Kosovo written in July 2013, which forms Annex I to the strategic review, those authorities proposed a transition strategy designed to help the mission transfer its executive powers to the relevant Kosovan institutions in a coordinated manner so as to terminate its mandate in June 2014. In that letter, the Kosovan authorities listed a number of fields of activity of the Eulex Kosovo Mission which, based on their own assessment, could be transferred to the Kosovan institutions.

167 Furthermore, it was in the light of those wishes expressed by the Kosovan authorities, among other things, that the strategic review recommended that the scope of the Eulex Kosovo Mission's activities be redefined. In that regard, in paragraph 45 of that review, it was proposed in particular that a residual presence at local judicial level be maintained. Similarly, in paragraph 75 of the strategic review, given the extension of the mission's mandate from June 2014 to June 2016, it was expressly stated that, having regard to the new activities entrusted to the mission, the mission would be much smaller and, in that connection, a transitional period of three to four months was proposed, to end in September or October 2014.

168 Lastly, it is apparent from the revised version of the OPLAN adopted on 20 June 2014 (9633/6/14 REV 6) that the Eulex Kosovo Mission stated, in a partially declassified version attached as Annex A7 to its reply to the second measure of organisation of procedure, that the amendments to Joint Action 2008/124 were the result of weighing the Kosovan authorities' aspirations against the finding, set out in the strategic review, that, notwithstanding the progress made, the objectives pursued would not be achieved in full in June 2014. Accordingly, in section 1.2 ('Situation Update'), it was expressly stated that, in the context of the extension of its mandate until June 2016, a partnership approach would have to be put in place to satisfy both the wishes of the Kosovan authorities to take ownership of the challenges and the willingness to transition in the fields of activity where agreed standards had been met. That section made clear that 'local ownership and accountability must be a defining characteristic of the coming mandate'. As regards the implementation of the restructuring of the Eulex Kosovo Mission, which was to come into force on 15 October 2014, it is apparent from section 4.2.1 ('Transition Phase') that, during the transition phase beginning on 15 June 2014 and ending on 14 October 2014, the mission was to be reorganised in accordance with the organisation chart attached as Annex 1 to that version of the OPLAN. It follows from that annex that, in respect of technical services, the number of information technology officers in the Information Technology and Software Development Unit, to which the applicant belonged, was to decrease from six to four.

169 Concerning the principles applicable to that transition phase, in terms of the consequences of the decisions to restructure the Eulex Kosovo Mission for the employment conditions of its staff, it was envisaged that where a post was to be abolished, the contracts of the contract staff members holding such positions would not in any event be renewed upon their expiry.

170 Fourth, the duration of the mandates of each Head of Mission again illustrates the consequences of the temporary decision-making framework governing the European Union's involvement in Kosovo through the Eulex Kosovo Mission.

171 Thus, under the second paragraph of Article 2 of PSC Decision EULEX/1/2008 of 7 February 2008 concerning the appointment of the Head of Mission of the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (2008/125/CFSP) (OJ 2008 L 42, p. 99), the mandate of the first Head of Mission ran until the expiry of Joint Action 2008/124. That mandate ended on 14 October 2010, following the repeal of Decision EULEX/1/2008 by Article 2 of PSC Decision EULEX/1/2010 of 27 July 2010 concerning the appointment of the Head of Mission of the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (2010/431/CFSP) (OJ 2010 L 202, p. 10).

172 The mandate of the second Head of Mission first of all ran from 15 October 2010 to 14 October 2011 under Decision EULEX/1/2010, and was subsequently extended on three occasions: until 14 June 2012 (PSC Decision EULEX KOSOVO/1/2011 of 27 July 2010 extending the mandate of the Head of Mission of the European Union Rule of Law Mission in Kosovo,

EULEX KOSOVO (2011/688/CFSP) (OJ 2011 L 270, p. 32)); until 14 October 2012 (PSC Decision EULEX KOSOVO/1/2012 of 12 June 2012 extending the mandate of the Head of Mission of the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (2012/310/CFSP) (OJ 2012 L 154, p. 24)); and, lastly, until 31 January 2013 (PSC Decision EULEX KOSOVO/2/2012 of 12 October 2012 extending the mandate of the Head of Mission of the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (2012/631/CFSP) (OJ 2012 L 282, p. 45)).

173 The mandate of the third Head of Mission first of all ran from 1 February 2013 to 14 June 2014 (PSC Decision EULEX KOSOVO/3/2012 of 4 December 2012 on the appointment of the Head of Mission of the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (2012/751/CFSP) (OJ 2012 L 334, p. 46)), and was subsequently extended until 14 October 2014 (PSC Decision EULEX KOSOVO/1/2014 of 17 June 2014 extending the mandate of the Head of Mission of the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (2014/371/CFSP) (OJ 2014 L 180, p. 17)).

174 In the light of the conclusion of the final FTC for the period from 15 October to 14 November 2014, it should be added that a fourth Head of Mission was appointed for the period from 15 October 2014 to 14 June 2015 (PSC Decision EULEX KOSOVO/2/2014 of 9 October 2014 on the appointment of the Head of Mission of the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (2014/707/CFSP) (OJ 2014 L 295, p. 59)).

175 It is apparent from the foregoing observations that the duration of the mandates of the Heads of the Eulex Kosovo Mission was not only limited, but was also fixed for variable and intermittent periods. Besides the fact that the first nine FTCs were concluded between the applicant and the Head of Mission then in post, it must be observed that, in accordance with the seventh and eighth subparagraphs of paragraph 4 of Communication C(2009) 9502, which initially formed an integral part of the provisions governing the contractual relationship between the applicant and the Head of Mission, the duration of the employment contracts of international staff had to be consistent with the terms of the employment contract of the CFSP Special Adviser with whom the applicant had concluded the contract. In that regard, it is common ground that each Head of Mission with whom the applicant signed the first nine FTCs was, in his capacity as Head of Mission then in post, the CFSP Special Adviser. The fact that the Eulex Kosovo Mission lacked legal personality provided a valid reason for the employment contracts of international contract staff to be concluded by the Heads of Mission. As the Eulex Kosovo Mission points out, the duration of the mandates of the Heads of Mission was limited under paragraph 4 of Communication C(2009) 9502. In those circumstances, in principle, the Heads of Mission could not conclude employment contracts of a longer duration than their own contracts.

176 Thus, it follows from the observations made in paragraphs 157 to 175 above that, during the period between the date on which the Eulex Kosovo Mission was established and the second half of 2014, the duration of the mission's mandate as a civilian crisis management mission, initially set at 28 months, was subsequently extended on three occasions for two years. Furthermore, both the periods covered by the financial reference amounts intended to cover the mission's expenditure and the mandates of the various Heads of Mission were set for successive, intermittent and varying periods. Moreover, the definition of the competences and scope of action of the mission was adjusted in step with developments in the implementation of the mandate entrusted to the mission, in the field situation and in the relations between the European Union and the Kosovan authorities.

177 It should also be added that, as regards the conditions and arrangements for recruiting staff to the Eulex Kosovo Mission, the first sentence of Article 9(2) of Joint Action 2008/124 provides that 'E[ulex] K[osovo] shall consist primarily of staff seconded by Member States or EU institutions'. In accordance with the second sentence of Article 9(2) of that joint action, each Member State or EU institution was to bear the costs related to any of the staff seconded by it, including travel expenses to and from the place of deployment, salaries, medical coverage and allowances. Under the first sentence of Article 9(3) thereof, international civilian staff in particular could also be recruited by the mission, as required, on a contractual basis, if the functions required were not provided by staff seconded by Member States.

178 Accordingly, staff were to be recruited to the Eulex Kosovo Mission primarily by means of the secondment of staff by Member States or the EU institutions. It was only as a fall back, where the staff thus seconded were not in a position to perform certain functions required for the mission, that the mission could then recruit international and local civilian staff.

179 Those conditions of employment of staff in the Eulex Kosovo Mission were justified by the temporary nature of the mission's mandate, in so far as that mandate, as is apparent in particular from paragraphs 163, 166 and 177 above, was always liable to be adjusted or even opposed by the Kosovan authorities irrespective of its duration and purpose. Those circumstances specific to an international crisis management mission established within the framework of the CFSP, like the Eulex Kosovo Mission, justified its workforce being recruited, primarily, by means of the secondment of staff by Member States or the EU institutions. If that mission's mandate had not been renewed or had been suspended during its implementation, it would have been possible to terminate the secondment of staff to it by Member States or the EU institutions immediately, without the risk of exposing the mission to administrative and budgetary consequences incompatible with its temporary nature.

180 Therefore, since the applicant was not a staff member seconded by a Member State or an EU institution, the tasks that could be entrusted to him, whatever their specific purpose, were necessarily and directly exposed not only to the vagaries of international relations, which determined the Eulex Kosovo Mission's continuance in the field, its competences, its scope of action and its funding, but also to the ever-changing nature of Member States' capacity to second national staff capable of meeting the needs of the mission. Those conditions and arrangements for employing mission staff, which are closely and directly linked to the mission's temporary nature, also constitute objective grounds justifying the decision to offer FTCs to international civilian staff.

181 Consequently, in view of the temporary nature of all those parameters, the applicant is wrong to claim that, in order to perform his work in the Eulex Kosovo Mission, he could have been offered a CID containing a termination clause to be triggered if the mission's mandate came to an end and that the post he once held was intended to meet fixed and lasting needs. The employment prospects of the mission's staff as a whole, including international civilian staff, were all dependent on a decision to continue the mission, in the light of geopolitical factors, and, in that event, on the definition of the mission's competences and scope of action under its mandate. It is therefore the very nature of the entity concerned – inasmuch as its ultimate fate is to cease to exist and it is, in that particular context, exclusively dependent on the funds allocated to it by the budgetary authority based on its competences and scope of action as defined by the political authority – which necessarily determines the temporary nature of the conditions of employment of its staff and, in principle, until the ninth FTC, the duration of the mandate of the Head of Mission, with whom the contracts were initially concluded.

182 Thus, the duration of the contracts concluded by or on behalf of the Eulex Kosovo Mission with international civilian staff could not, in any case, go beyond the end of each of the mission's mandates or, above all and in principle, the end of the periods covered by the financial reference amounts.

183 In the present case, the end date of each of the first nine FTCs concluded between the applicant and the Head of Mission and that of the tenth FTC concluded between the applicant and the mission itself always coincided with the end of one of the mission's mandates, the end of the periods covered by the financial reference amounts or the end of the Head of Mission's mandate, with the result that recourse to those FTCs was necessary and appropriate, as is apparent from the following observations:

– the end of the first FTC, scheduled for 14 June 2010, coincided with the end of the mission's mandate provided for in Joint Actions 2008/124 and 2009/445 and the end of the period covered by the financial reference amount set by Joint Action 2009/445;

– the end of the second FTC, scheduled for 14 October 2010, coincided with the end of the period covered by the financial reference amount set by Decision 2010/322;

– the end of the third FTC, scheduled for 14 October 2011, coincided with the end of the period covered by the financial reference amount set by Decision 2010/619 and the end of the Head of Mission's mandate set by Decision 2010/431;

– the end of the fourth FTC, scheduled for 14 December 2011, coincided with the end of the period covered by the financial reference amount set by Decision 2011/687;

– the end of the fifth FTC, scheduled for 14 June 2012, coincided with the end of the mission's mandate provided for in Decision 2010/322, the end of the period covered by the financial reference amount set by Decision 2011/752 and the end of the Head of Mission's mandate set by Decision 2011/688;

– the end of the sixth FTC, scheduled for 14 October 2012, coincided with the end of the Head of Mission's mandate set by Decision 2012/310;

– the end of the seventh FTC, scheduled for 31 January 2013, coincided with the end of the Head of Mission's mandate set by Decision 2012/631;

– the end of the eighth FTC, scheduled for 14 June 2013, coincided with the end of the period covered by the financial reference amount set by Decision 2012/291;

– the end of the ninth FTC, scheduled for 14 June 2014, coincided with the end of the mission's mandate provided for in Decision 2012/291, the end of the period covered by the financial reference amount set by Decision 2013/241 and the end of the Head of Mission's mandate set by Decision 2011/751;

– and the end of the tenth FTC, scheduled for 14 October 2014, coincided with the end of the period covered by the financial reference amount set by Decision 2014/349.

184 To conclude, in light of the fact that the contractual relationship between the applicant and the Eulex Kosovo Mission took place in a context that was temporary in nature and which was closely linked to the precise and specific circumstances of the determination and implementation of the Eulex Kosovo Mission's mandate, it must be held that, in the circumstances of the present case, there were objective grounds justifying the use, beyond 14 June 2014, namely after the ninth FTC, of consecutive FTCs in connection with the applicant's employment as an international civilian staff member in that mission. Therefore, contrary to the applicant's arguments, no abuse was committed when he was offered the first 10 FTCs.

185 Concerning the objective grounds justifying, in accordance with section 9 of the 2003 Act, the conclusion of the eleventh FTC between the applicant and the Eulex Kosovo Mission, the applicant was expressly informed by letter of 26 June 2014 that, following the decision to restructure the Eulex Kosovo Mission taken by the Member States on 24 June 2014, the post of IT officer which he had held since being hired by the Eulex Kosovo Mission would be abolished with effect from 14 November 2014, with the result that his contract would not be renewed beyond that date. That information was therefore formally communicated to the applicant just under five months before his employment prospects in that mission were due to end, namely on 14 November 2014, and just under four months before the end of the tenth FTC, scheduled for 14 October 2014. Moreover, that letter clearly set out the reasons why, after 14 November 2014, it would not be possible to offer the applicant a new contract of employment in the mission for the duties he had, until then, been responsible for in the course of his employment relationships with the mission.

186 It was in that specific context, which was directly and closely linked to the restructuring of the Eulex Kosovo Mission decided in June 2014, that, at the end of the tenth FTC, on 14 October 2014, in accordance with the letter of 26 June 2014, the Eulex Kosovo Mission offered the applicant a final FTC for the period from 15 October to 14 November 2014. The applicant was therefore well aware of the reasons why and the circumstances in which he was being offered a final FTC and of the fact that, in the light of the mission's restructuring and the ensuing abolition of the post he had hitherto held, there was no feasible prospect of his contract being renewed for the duties for which he had previously been responsible. That particular circumstance is a perfect illustration of the highly temporary and uncertain facet marking the very nature of a CFSP mission such as the Eulex Kosovo Mission and, in consequence, its very existence. Moreover, except for the inclusion in Article 21 of the arbitration clause conferring jurisdiction on the EU Courts, the provisions of that contract were no different from those of the tenth FTC.

187 It is apparent from the findings in paragraphs 185 and 186 above that, in addition to the objective grounds linked to the temporary and ever-changing nature of the Eulex Kosovo Mission's mandate, in terms of its duration, content and funding, which justified the conclusion of the first 10 FTCs, there were other objective grounds, based on the particular context, providing an even more specific and detailed justification for the mission's decision to offer the applicant the final FTC for a period of only one month. Such an offer was a necessary and appropriate means of meeting the needs for which the contractual relationship had been established, in the light of those objective grounds. Indeed, the date on which that FTC ended coincided with the date on which the post hitherto held by the applicant had to be abolished as part of the mission's restructuring decided on by the Council and its implementation by the mission, namely 15 November 2014.

188 Consequently, first of all, there were objective grounds, in accordance with section 9 of the 2003 Act, justifying the conclusion of the 11 FTCs. Accordingly, there was no abuse when the applicant was offered the final FTC. Next and as a result, having regard to the considerations set out in paragraphs 184 and 187 above, the claim for re-categorisation of the 11 FTCs as a single CID must be dismissed as unfounded. Lastly, in accordance with the considerations set out in paragraph 82 above, the claim for re-categorisation of the FTCs concluded between the applicant and the first two missions, referred to in paragraphs 1 and 2 above, must therefore also be dismissed.

189 That conclusion cannot be called into question by the applicant's additional arguments. That is the case, first, as regards the argument that the re-categorisation of the contractual relationship as a CID is automatic because the 11 FTCs were consistently signed after the date on which the applicant took up his duties.

190 Although it is common ground that all 11 FTCs were signed after they took effect, it is sufficient to note that the rule on which the applicant relies derives from Article 9 of the Belgian Law of 3 July 1978 on employment contracts (*Moniteur belge* of 22 August 1978, p. 9277). As stated in paragraph 139 above, the national law applicable to the present dispute is Irish law, which does not contain an even remotely comparable contractual formality. Therefore, that argument is unfounded.

191 Second, the Court must dismiss the argument that since all the documents forming an integral part of the contracts, particularly Communication C(2009) 9502, were not forwarded to the applicant, he was not informed of his tax and social rights prior to the signature of the first FTC. He maintains in that regard that, in the absence of informed consent and information concerning the legal framework applicable to the 11 FTCs, those FTCs are invalid, with the result that, for that same reason, the contractual relationship should be re-categorised as a single CID.

192 The Eulex Kosovo Mission denies that the applicant's consent was vitiated.

193 As for the alleged failure to inform the applicant of his tax and social rights prior to the signature of the first FTC, as stated in paragraph 113 above, Communication C(2009) 9502 was in fact sent to him before that contract was signed.

194 It is not disputed that that communication, which formed an integral part of the first nine FTCs concluded between the applicant and the Head of the Eulex Kosovo Mission, expressly referred, in addition to the rules applicable to the employment relationship, to all the applicant's social and tax rights. Furthermore, it must be observed, first of all, that in the email of 9 February 2010 forwarding Communication C(2009) 9502 (see paragraph 113 above) to the applicant, the Human Resources Department of the mission explained the applicable procedure and detailed rules, inter alia, for determining the applicant's grade and salary with a view to drawing up his offer of employment. Next, for those purposes, the applicant returned the declaration of residence form to the mission, duly completed and dated 22 February 2010. Lastly, by a subsequent email of 18 March 2010, the mission informed the applicant, in particular, based on the documents he had provided following the email of 9 February 2010, of the category under which his post fell, his grade and step, his salary and other emoluments, the hours and working times in the mission, his leave entitlement and his inclusion in the high-risk insurance policy. The mission also asked the applicant to confirm his acceptance of the offer of employment attached to the email of 18 March 2010 and the exact date of his arrival, making clear that he could request any

information he might consider useful beforehand. The applicant returned that offer of employment, which specified his post, grade, remuneration and the date of termination of his initial FTC, signed and dated 25 March 2010.

195 It follows from all of the foregoing considerations that the applicant concluded the first FTC with the Eulex Kosovo Mission in full knowledge of his conditions of employment and of his social and tax rights. Moreover, in his written pleadings, the applicant has not claimed that the documents annexed to the other 10 consecutive FTCs subsequently concluded with the mission were not made available to him. Concerning the final FTC, as noted in paragraph 138 above, the information relating to the applicant's social and tax rights was contained in the actual provisions of the contract. The only information annexed to the final FTC was the job description, the salary scale and the beneficiary designation form.

196 Third, the applicant's argument alleging infringement of section 8(2) of the 2003 Act is also unfounded.

197 In that regard, as pointed out in paragraph 87 above, the applicant submits that the infringement of section 8 of the 2003 Act *ipso facto* entails the re-categorisation of the FTCs as a CID. Similarly, in response to a further question raised in the context of the third measure of organisation of procedure, the applicant expressly stated that his claim for compensation in respect of contractual loss, relating to the unlawful termination of his employment relationship, hinges on the re-categorisation, on the basis of 'the application of section 9 of the [2003 Act]', of his contractual relationship in the missions.

198 Under section 8(2) of the 2003 Act, where an employer proposes to renew an FTC, the employee must be informed in writing by the employer of the objective grounds justifying the FTC and the failure to offer a CID, at the latest by the date of the renewal. Under section 8(4) of that act, where the employer has omitted to provide that information in writing or where that information is evasive or equivocal, just and equitable inferences may be drawn from the circumstances of the case.

199 First of all, it must be observed at the outset that, first, although section 8(4) of the 2003 Act provides that, in the event of a breach of the obligation to provide prior written information laid down in paragraph 2 of that section, just and equitable inferences may be drawn from the circumstances of the case, the Irish legislature did not however stipulate that such inferences could consist in the re-categorisation of the FTCs at issue as a CID. Section 8(4) of the 2003 Act differs in that regard from section 9(3) thereof, from which it is clear that the Irish legislature provided, this time expressly, that, in the event of infringement of section 9(1) and (2), the FTC concerned should be re-categorised as a CID.

200 Second, it is apparent from the case-law of the Irish courts, particularly the judgment of the Labour Court (Ireland) of 24 February 2009 in *National University of Ireland Maynooth* v. *Dr Ann Buckley (FTD092)*, on which the parties were invited to submit observations in the context of the third measure of organisation of procedure, that where section 8(4) of the 2003 Act is applied, the just and equitable inferences drawn by those courts take the form – if section 8(2) of the 2003 Act is infringed and there are objective grounds justifying the conclusion of an FTC – of financial compensation.

201 Next, as regards the alleged infringement of section 8(2) of the 2003 Act in the present case, it is indeed reasonable to consider that the requirements relating to the provision of prior written information that is not evasive or equivocal were met when the eleventh FTC was concluded, the performance of which began on 15 October 2014. In its letter of 26 June 2014, the Eulex Kosovo Mission clearly and unambiguously stated that, on account of the abolition of the applicant's post with effect from 15 November 2014, it could offer him only one final FTC at the end of the tenth FTC. As is apparent from paragraphs 185 to 187 above, the reason given constituted an objective ground within the meaning of section 7 of the 2003 Act, since it was directly linked to timescale factors characteristic of the very nature of the mission.

202 However, contrary to the Eulex Kosovo Mission's claims and as the applicant submits in his reply to the third measure of organisation of procedure, it does not follow from either the provisions of the second to tenth FTCs, including the documents annexed thereto, or the six PERs that the mission formally and specifically informed the applicant, in accordance with section 8(2) of the 2003 Act, in writing and prior to the renewed FTCs taking effect, of the objective grounds for offering him those FTCs and for being unable to offer him a CID. The Eulex Kosovo Mission relies in that regard on information which, in its view, was included in those PERs and in the documents annexed to the FTCs, relating to the timescale factors characteristic of the Eulex Kosovo Mission, namely, among others, the limited duration of the mandates of the mission and of its successive heads and the limited duration of its budget, allocated periodically.

203 It must be held, first, that it is common ground that the second to tenth FTCs were not signed before their respective dates of entry into effect. Therefore, contrary to section 8(2) of the 2003 Act, the written information they contained could not be formally and specifically brought to the attention of the applicant prior to those dates.

204 Second, it must also be stated that some of the six PERs related to periods of work covered by more than one FTC, with the result that the information obligation laid down in section 8(2) of the 2003 Act was clearly not complied with via that channel when each of the second to ninth FTCs was renewed. That is the case, for example, of the fourth PER, which concerned the period from 15 June 2012 to 14 June 2013, a period which was covered by the sixth, seventh and eighth FTCs. The applicant was therefore evidently not informed in writing of the objective grounds justifying the offer of the seventh and eighth FTCs.

205 Still with regard to the six PERs, it is true that the second PER, which concerned the period from 15 October 2010 to 20 July 2011, contained the words 'current end of mission date: 14th OCT 2011'. However, that information proved to be incorrect. On the date of signature of the second PER, namely 8 August 2011, as is apparent from paragraph 160 above, the mission's mandate had been extended to 14 June 2012 after the adoption of Decision 2010/322. As is apparent from paragraphs 162 and 172 above, 14 October 2011 marked the date of both the end of a period covered by the financial reference amounts intended to finance the mission and the end of the mandate of the Head of Mission in post at that time.

206 It follows from the foregoing considerations that, in addition to the lack of comprehensive information relating to the renewal of the second to tenth FTCs, the information relied on by the Eulex Kosovo Mission concerning them was, in some respects, ambiguous, if not incorrect, with the result that it did not meet the requirements for specific, prior information laid down in section 8(2) of the 2003 Act.

207 Consequently, the applicant is fully entitled to claim infringement of section 8(2) of the 2003 Act.

208 By contrast, as regards the just and equitable inferences to be drawn from that infringement under section 8(4) of the 2003 Act, it must be recalled that it follows from the rules governing the procedure before the EU Courts, in particular Article 21 of the Statute of the Court of Justice of the European Union and Article 76 and Article 84(1) of the Rules of Procedure of the General Court, that the dispute is in principle determined and circumscribed by the parties and that the EU Courts may not rule *ultra petita* (see judgment of 17 September 2020, *Alfamicro* v *Commission*, C-623/19 P, not published, EU:C:2020:734, paragraph 40 and the case-law cited). Specifically, where an action is brought before the General Court as the court having jurisdiction over the contract on the basis of Article 272 TFEU, it must rule within the legal and factual context as determined by the parties to the dispute (see judgment of 17 September 2020, *Alfamicro* v *Commission*, C-623/19 P, not published, EU:C:2020:734, paragraph 41 and the case-law cited).

209 In the present case, as noted in paragraph 197 above, in so far as the applicant alleges infringement of section 8 of the 2003 Act, he expressly stated that he sought the re-categorisation of the FTCs as a CID which that infringement *ipso facto* entails. Furthermore, he clearly stated that his claim for compensation relating to the unlawful termination of his employment relationship is based on the re-categorisation, pursuant to section 9 of the 2003 Act, of his contractual relationship with the missions in which he worked on a consecutive basis. However, it is apparent from the considerations set out in paragraphs 199 and 200 above that such a claim for re-categorisation cannot be upheld solely on the basis of an infringement of section 8 of the 2003 Act. That is particularly so because, as stated in paragraph 188 above, there were objective grounds in the present case, in accordance with section 9 of the 2003 Act, for concluding the consecutive FTCs.

210 In the light of all the foregoing considerations, the claim that the consecutive FTCs should be re-categorised as a single CID must be dismissed.

(b) The claim for compensation in respect of all contractual loss

211 The applicant's claim for compensation in respect of contractual loss contained in the first head of claim hinges on the re-categorisation of the FTCs as a single CID, on account of the defendants' alleged misuse of consecutive FTCs and infringement of the contractual formalities under Belgian or Irish law. In that connection, the applicant pleads infringement of the social rights he ought to have enjoyed as a worker employed under the rules on CIDs, not only in the field of social security and pensions, but also in relation to information, consultation, notification and contract termination. The applicant therefore claims that all the rights he ought to have enjoyed pursuant to the conclusion of a CID should be restored to him retroactively.

212 The defendants dispute the applicant's arguments.

213 In that regard, it must first be observed, in line with the conclusion drawn in paragraphs 82 and 188 above, that the complaint alleging that the Eulex Kosovo Mission misused FTCs must be dismissed as must, in consequence, the claim for re-categorisation as a CID of the contractual relationship entered into by the applicant with the Eulex Kosovo Mission and, consecutively, with the first two missions, referred to in paragraphs 1 and 2 above.

214 Second, as is apparent from paragraphs 189 to 195 above, the applicant wrongly alleges that the Eulex Kosovo Mission infringed the procedural rules for the conclusion of the 11 FTCs and the rules on the provision of information to the worker, thereby arguing that those contracts are invalid because his consent was defective.

215 Accordingly, the applicant's claim for compensation in respect of contractual loss made in the first head of claim must be dismissed as unfounded.

216 In view of the conclusions drawn in paragraphs 188 and 215 above, the Court must dismiss the claims set out in the first head of claim as unfounded, without it therefore being necessary to rule on the objection of inadmissibility, referred to in paragraph 74 above, which the defendants direct at those claims (see, to that effect and by analogy, judgments of 26 February 2002, *Council* v *Boehringer*, C-23/00 P, EU:C:2002:118, paragraph 52, and of 1 December 1999, *Boehringer* v *Council and Commission*, T-125/96 and T-152/96, EU:T:1999:302, paragraphs 143 and 146).

2. The principal claim for compensation in respect of non-contractual loss (second head of claim)

217 Concerning the second head of claim, also put forward as a principal claim, the applicant asks the Court, in essence, to declare that by deciding, during his employment in the EU international missions, to recruit him as an international civilian staff member on a contractual basis, rather than as a member of the temporary staff on the basis of the CEOS, the Council, the Commission and the EEAS infringed various rules of law, in particular certain provisions of the 'Treaty', and treated him in a discriminatory manner. Furthermore, in the light of the different forms of financial loss and loss under the Staff Regulations caused to him by that unlawful conduct, the applicant requests that those three defendants be ordered to compensate him in an amount to be determined by the parties within a period set by the Court.

218 The Council, the Commission, the EEAS and the Eulex Kosovo Mission dispute the applicant's arguments. In addition, in their observations on the applicant's reply to the second measure of organisation of procedure, in which the applicant stated that his claim for compensation under the second head of claim was based on Article 268 and the second paragraph of Article 340 TFEU, the Commission and the EEAS contend that that claim for compensation is inadmissible.

219 As a preliminary point, it must be recalled that, as stated in paragraph 60 above, the second principal head of claim is based on Articles 268 and 340 TFEU and seeks compensation from the Council, the Commission and the EEAS for non-contractual loss which the applicant allegedly sustained as a result of the recruitment policy they adopted for international civilian staff in the missions.

220 Notwithstanding the Commission and the EEAS's contention that the second head of claim is inadmissible, the Court considers it appropriate, in the interests of procedural economy and the sound administration of justice, in order to provide the parties to the main proceedings with a complete and useful response to that head of claim, to begin by examining the substantive claim it contains, in accordance with the case-law referred to in paragraph 79 above.

221 In that regard, it must be noted that under the second paragraph of Article 340 TFEU, 'in the case of non-contractual liability, the Union shall, 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'. In accordance with settled case-law, in order for the European Union to incur non-contractual liability under the second paragraph of Article 340 TFEU for unlawful conduct of its institutions, a number of conditions must be satisfied: the institution's conduct must be unlawful, actual damage must have been suffered and there must be a causal link between the conduct complained of and the damage pleaded (see judgments of

9 September 2008, *FIAMM and Others* v *Council and Commission*, C-120/06 P and C-121/06 P, EU:C:2008:476, paragraph 106 and the case-law cited, and of 25 November 2014, *Safa Nicu Sepahan* v *Council*, T-384/11, EU:T:2014:986, paragraph 47).

222 Those conditions are cumulative. It follows that, if any one of those conditions is not satisfied, the action must be dismissed in its entirety, without it being necessary to examine the other conditions (see, to that effect, judgment of 7 December 2010, *Fahas* v *Council*, T-49/07, EU:T:2010:499, paragraph 93, and order of 17 February 2012, *Dagher* v *Council*, T-218/11, not published, EU:T:2012:82, paragraph 34).

223 Furthermore, the condition relating to the existence of unlawful conduct on the part of the EU institutions requires a sufficiently serious breach of a rule of law intended to confer rights on individuals (see, to that effect, judgment of 30 May 2017, *Safa Nicu Sepahan* v *Council*, C-45/15 P, EU:C:2017:402, paragraph 29 and the case-law cited).

224 In the present case, concerning in the first place the alleged infringement of rules of law, particularly primary law, it should be pointed out first that, without identifying those rules, the applicant reproduces in footnote 63 of the application an extract from a book on the general substantive law of the European Union, which refers to Articles 39 and 42 EC. It should be borne in mind that those articles appeared in Chapter I, entitled 'Workers', of Title III, entitled 'Free movement of persons, services and capital', of Part Three of the EC Treaty, entitled 'Community policies', and that free movement of workers is ensured within the European Union (Article 75 TFEU (formerly Article 39 EC)). Under Article 48 TFEU (formerly Article 42 EC), the legislature is to adopt such measures in the field of social security as are necessary to provide freedom of movement for workers. Since the employment relationship at issue in the present case was exclusively concluded and performed outside the territory of the European Union, these proceedings do not in any way concern the applicant's exercise of his right to move freely as a worker, so that the claim that the discrimination allegedly committed by the first three defendants 'is contrary to the Treaty' is manifestly unfounded.

225 Second, as for the complaint that the Council, the Commission and the EEAS committed an abuse of power, the applicant essentially maintains that they established and used a system for the employment of mission staff in breach of primary law. He also states that the institutions themselves were aware of the legal, financial and reputational risks arising from contracts concluded between the various CFSP missions and international civilian staff. In that regard, the applicant refers to the 2012 annual activity report, drawn up by the Commission's Service for Foreign Policy Instruments, and to documents he claims were drawn up by the Working Party of Foreign Relations Counsellors (RELEX) for the attention of the Council.

226 It must be observed that Article 28 TEU, which replaced, by amendment, Article 14 of the EU Treaty in the version in force when the Eulex Kosovo Mission was established (see paragraph 158 above), provides in the first subparagraph of paragraph 1 that, where the international situation requires operational action by the European Union, the Council is to adopt the necessary decisions and that those decisions must lay down their objectives, scope, the means to be made available to the European Union, if necessary their duration, and the conditions for their implementation. Thus, in the specific context of the CFSP, it is for the Council to decide on the means to be made available to the European Union and on the conditions for the implementation of the decisions it adopts as part of the relevant operational action of the European Union. Since that provision does not impose any limitation on the means covered by it, they must be considered to include staff resources made available to that action.

227 It was on the basis of those provisions specific to the CFSP, as contained in Article 14 of the EU Treaty in the version in force in 2008, that the Council provided, in Article 9(3) of Joint Action 2008/124, that the Eulex Kosovo Mission could also recruit international and local civilian staff on a contractual basis, depending on need. Concerning the conditions of employment of international civilian staff, the Council first of all decided, as is apparent from Article 10(3) of Joint Action 2008/124, as originally worded, that 'the conditions of employment and the rights and obligations of international … civilian staff [were to] be laid down in the contracts between the Head of Mission and the members of staff'. That provision remained unaltered until the adoption of Decision 2014/349, which amended it to take account of the grant of legal personality to the Eulex Kosovo Mission, pursuant to Article 15a which Decision 2014/349 inserted into Joint Action 2008/124. Accordingly, since then that provision refers to contracts concluded between the Eulex Kosovo Mission and the members of staff.

228 It follows from the above observations that it was on the basis of the provisions of primary law relating specifically to the CFSP that the legislative provisions concerning the Eulex Kosovo Mission expressly established a legal basis allowing the Head of Mission, then the mission itself, to recruit international civilian staff on a contractual basis.

229 Moreover, it is to no avail that the applicant relies on (i) the 2012 annual activity report drawn up by the Commission's Service for Foreign Policy Instruments, which he claims contains a proposal to apply the CEOS to members of the contract staff in CFSP missions, a proposal which was supposedly made in order to 'avoid legal, financial and reputational risks', and (ii) documents which he maintains were drawn up by the RELEX group for the attention of the Council, said to contain proposals for a new legal framework applicable to international civilian staff. Even if it were established that such proposals exist, the applicant has not demonstrated how the fact that they were not taken forward would, in itself, constitute a sufficiently serious breach of a rule of law intended to confer rights on individuals.

230 In the second place, concerning the alleged infringement of the principles of equal treatment and non-discrimination, first, the applicant is wrong to argue that there was discrimination between the different members of the contract staff of the Eulex Kosovo Mission, on account of the application of different national laws to which the contractual provisions deriving from Communication C(2009) 9502 referred. It is settled case-law that the principle of equal treatment requires that comparable situations must not be treated differently, and that different situations must not be treated in the same way, unless such treatment is objectively justified (see judgment of 10 October 2013, *Manova*, C-336/12, EU:C:2013:647, paragraph 30 and the case-law cited). In the light of that case-law, it must be held that notwithstanding the fact that international civilian staff members individually conclude their contracts with the Eulex Kosovo Mission, those staff members are treated in accordance with the same rules, which are reproduced verbatim in the contracts concerning them (see, to that effect, order of 30 September 2014, *Bitiqi and Others* v *Commission and Others*, T-410/13, not published, EU:T:2014:871, paragraph 35). Accordingly, that claim must be dismissed as unfounded.

231 Second, the applicant is also wrong to claim that he sustained loss as a result of being treated unequally and discriminated against in comparison with his European colleagues employed as staff subject to the CEOS, a status which he contends should have been conferred on him as a staff member employed by the EEAS, adding that, under the decision establishing the ECMM, staff were not to be hired other than as 'European staff'.

232 As is apparent from paragraphs 224 to 230 above, the legislature did not commit any error of law when it laid down, in the legislative provisions concerning the Eulex Kosovo Mission, a legal basis enabling the Head of Mission, then the mission itself, to recruit international civilian staff on a contractual basis. Furthermore, as regards the claim that it is clear from the decision establishing the ECMM that staff were not to be hired other than as 'European staff', it must be observed that the applicant does not produce that decision or any information in support of that claim. In any event, it must be stated that the Memorandum of Understanding signed at Belgrade on 13 July 1991, which established the ECMM, subsequently renamed the EUMM, does not contain any provision capable of demonstrating that it was unlawful for contract staff to be employed subsequently in the Eulex Kosovo Mission.

233 In the third place, it is also to no avail that the applicant refers to the judgment of the tribunal du travail francophone de Bruxelles (Brussels Labour Court (French-speaking), Belgium) of 30 June 2014 in Case RG No 12/3600/A and the judgment of 5 October 2004, *Sanders and Others* v *Commission* (T-45/01, EU:T:2004:289), as being not only indicative of the problem of discrimination arising from 'non-European' contracts, but also illustrative of the financial consequences that that entails for the European institutions.

234 First, the applicant does not explain how those two decisions could serve as a basis in this case for the claim for compensation contained in the second head of claim.

235 Second, it is clear that the dispute considered in the judgment of the tribunal du travail francophone de Bruxelles (Brussels Labour Court (French-speaking)) of 30 June 2014 in Case RG No 12/3600/A related to facts with no ostensible relevant link to those of the present case. That dispute was primarily concerned with a claim for compensation for breach of an FTC of an international civilian staff member employed in the Eulex Kosovo Mission following his dismissal for serious misconduct. In that judgment, the tribunal du travail francophone de Bruxelles (Brussels Labour Court (French-speaking)) held that the employment contract at issue had been terminated before its normal expiry date for reasons other than just cause, unfitness for work or *force majeure*, contrary to the applicable provisions of French employment law, with the result that the applicant was entitled to compensation. Therefore, since the applicant has failed to state the inferences to be drawn from that decision, the Court is in no position to identify them.

236 Similarly, as regards the judgment of 5 October 2004, *Sanders and Others* v *Commission* (T-45/01, EU:T:2004:289), on which the applicant also relies, the principles laid down in that judgment cannot be transposed by analogy to the present case. In paragraph 142 of that judgment, the Court held that by failing to offer the applicants contracts as temporary staff members in breach of the statutes of the joint undertaking for which they worked, the Commission had disregarded, in carrying out its administrative responsibilities, the right which the persons concerned derived from those statutes. In the present case, the applicant has failed to demonstrate that, under EU law, he had a right to be employed in the missions referred to in paragraphs 1 to 3 above in accordance with the rules of the CEOS (or equivalent).

237 In the light of all the considerations set out in paragraphs 224 to 236 above, it must be held that the applicant has not proven that there was a sufficiently serious breach of any rule of law intended to confer rights on him.

238 Consequently, since one of the cumulative conditions for the European Union to incur non-contractual liability has not been satisfied, the claim for compensation set out in the second head of claim must be dismissed as unfounded, without it being necessary to rule on the

objections of inadmissibility of that claim for compensation, mentioned in paragraphs 74 and 218 above, raised by the defendants, in accordance with the case-law referred to in paragraph 216 above.

3. The alternative claim for non-contractual compensation (third head of claim)

239 In the alternative, if the Court dismisses the principal claims made in the first two heads of claim, the applicant submits a claim for compensation based on the non-contractual liability of the 'European institutions'. He submits that the defendants, by virtue of the contractual relationship that they imposed upon him, breached the principles of legal certainty, respect for vested rights and protection of legitimate expectations, the right to sound administration, the principle of administrative transparency, and the duty to have regard for the welfare of officials, the principle of the protection of individuals, and the Code of Good Behaviour. He maintains that dismissing the first two principal heads of claim as inadmissible or unfounded would prove that the defendants had breached the principles and the right, duty and code mentioned above. In that situation, it would be 'impossible [for him] to determine which rights governed his contracts or within what timescales and to what extent those rights, or infringements thereof, could be relied upon'. Accordingly, he argues that a decision by the Court dismissing the first two principal heads of claim as inadmissible or unfounded would cause him loss which he values at EUR 150 000.

240 In his observations on the objections of inadmissibility raised by the defendants, the applicant asserts that it is readily apparent from the application that he seeks, in the alternative, to establish the non-contractual liability of the institutions with regard to the infringement of fundamental rights. He states that he is not in a position to explain in greater detail which of his rights have been infringed, since that infringement could be established only if the Court were to dismiss the claims set out in the first two principal heads of claim. Those particular circumstances of the present case and the legal framework applicable to it should be taken into account when determining whether Article 76 of the Rules of Procedure has been complied with. For the same reasons as those set out in relation to the second head of claim, the applicant contends that the Court of Justice of the European Union has jurisdiction to rule on the third head of claim. Given the lack of clarity, consistency and foreseeability of the legal framework which was put in place, the Commission cannot take issue with the applicant for failing to apportion a specific share of liability to each of the institutions referred to in the third head of claim.

241 The Council, the Commission and the EEAS submit that if the third head of claim is declared admissible, which they dispute on the ground that the applicant's arguments lack clarity, that claim should be dismissed as unfounded.

242 The General Court considers it necessary to examine the admissibility of the claim for non-contractual compensation made in the third head of claim.

243 In that regard, it must be recalled that under the first paragraph of Article 21, in conjunction with the first paragraph of Article 53, of the Statute of the Court of Justice of the European Union and Article 76(d) of the Rules of Procedure of the General Court, every application must state the subject matter of the proceedings and contain a summary of the pleas in law on which it is based. That statement must be sufficiently clear and precise to enable the defendant to prepare its defence and the General Court to rule on the application, if necessary, without any further information. In order to guarantee legal certainty and sound administration of justice, it is necessary, in order for an action to be admissible, that the essential legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application

itself. More specifically, in order to satisfy those requirements, an application seeking compensation for damage caused by an EU institution must state the evidence from which the conduct which the applicant alleges against the institution can be identified, the reasons why the applicant considers that there is a causal link between the conduct and the damage it claims to have suffered, and the nature and extent of that damage (see judgment of 2 March 2010, *Arcelor* v *Parliament and Council*, T-16/04, EU:T:2010:54, paragraph 132 and the case-law cited, and order of 5 October 2015, *Grigoriadis and Others* v *Parliament and Others*, T-413/14, not published, EU:T:2015:786, paragraph 30).

244 It must be pointed out that neither the application, even when considered as a whole, nor the applicant's subsequent pleadings allow a sufficiently direct causal link to be identified with the required degree of clarity and precision between the infringements allegedly committed by the defendants and the loss alleged by the applicant in the claim for compensation made in the third head of claim.

245 In essence, the applicant pleads the existence of loss as a result of the Court dismissing his first two principal heads of claim. That loss serves as the basis for his claim seeking to establish the non-contractual liability of the defendants, under Articles 268 and 340 TFEU.

246 Thus, although the applicant bases his claim for compensation on an act by the Court in order to determine the alleged loss, it is indeed the non-contractual liability of the defendants which he seeks to establish on account, in essence, of the alleged unlawful conduct on their part, complained of in the first two heads of claim, which he argues caused him contractual or non-contractual loss. Against that background, the Court cannot understand how its decision to dismiss the first two principal heads of claim as unfounded could have caused the applicant loss attributable to the defendants.

247 It follows that the third head of claim put forward in the alternative does not satisfy the requirements laid down in Article 76(d) of the Rules of Procedure and must therefore be dismissed as manifestly inadmissible on the ground that it lacks clarity (see paragraphs 73 and 241 above).

248 In the light of the considerations set out in paragraphs 216, 238 and 247 above, since the first and second heads of claim must be dismissed as unfounded and the third as inadmissible, the action must be dismissed in its entirety, without it being necessary to rule on the other objections of inadmissibility raised by the defendants, in accordance with the case-law referred to in paragraph 216 above.

V. Costs

249 Under Article 219 of the Rules of Procedure, in decisions given after its decision has been set aside and the case referred back to it, the General Court is to decide on the costs relating, first, to the proceedings instituted before the General Court and, secondly, to the proceedings on the appeal before the Court of Justice.

250 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.

251 Under Article 134(3) of the Rules of Procedure, where each party succeeds on some and fails on other heads, the parties are to bear their own costs.

252 In the judgment under appeal, the Court of Justice reserved the costs. It is therefore for the General Court to decide in this judgment on the costs relating to the proceedings instituted before it and to the appeal proceedings before the Court of Justice, in accordance with Article 219 of the Rules of Procedure.

253 Since the defendants were unsuccessful in the appeal proceedings before the Court of Justice in Case C-43/17 P, they must be ordered to bear their own costs and to pay those incurred by the applicant relating to those proceedings and the proceedings before the General Court prior to the appeal, in Case T-602/15, as of the point at which they respectively raised objections of inadmissibility by separate documents in Case T-602/15.

254 Since the applicant has been unsuccessful on the merits in the proceedings referred back to the General Court in Case T-602/15 RENV, he must be ordered to bear his own costs, including those relating to the lodging of the application, and to pay those of the defendants in those proceedings.

On those grounds,

THE GENERAL COURT (Second Chamber, Extended Composition)

hereby:

1. **Dismisses the action;**

2. **Orders the Council of the European Union, the European Commission, the European External Action Service (EEAS) and the Eulex Kosovo Mission to bear their own costs and pay those incurred by the applicant relating to the appeal proceedings before the Court of Justice, in Case C-43/17 P, and relating to the initial proceedings before the General Court, in Case T-602/15, as of the point at which they respectively raised objections of inadmissibility by separate documents in Case T-602/15;**

3. **Orders Liam Jenkinson to bear the costs of the proceedings referred back to the General Court, in Case T-602/15 RENV, including those relating to the lodging of the application and to pay those incurred by the defendants in connection with those proceedings.**

Van der Woude Tomljenović Schalin

Škvařilová-Pelzl Nõmm

Delivered in open court in Luxembourg on 10 November 2021.

[Signatures]

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