



7.7.2023

NOTICE TO MEMBERS

Subject: **Petition No 1353/2015 by M. B. (Italian) on a possible breach of Community law in Italy by Legislative Decree 81/2015**

Petition No 0411/2016 by Davide Barnabà (Italian) on the repeated renewal of fixed-term contracts by the region of Sicily (Italy) and its violation of Directive 1999/70/EC.

Petition No 0413/2016 by A. T. (Italian) on the repeated renewal of fixed-term contracts by the region of Sicily (Italy) and its violation of Directive 1999/70/EC.

Petition No 0422/2016 by Paola Mangano (Italian) on the repeated renewal of fixed-term contracts by the region of Sicily (Italy) and its violation of Directive 1999/70/EC.

Petition No 0429/2016 by R. C. (Italian) on the repeated renewal of fixed-term contracts by the Sicilian Regional Government and its violation of Directive 1999/70/EC.

Petition No 0945/2016 by Francesco Orbitello (Italian) on abuse of fixed-term contracts in respect of employees in insecure teaching jobs

Petition No 0988/2016 by Gabriele Modeo (Italian) on the abuse of fixed-term contracts in the Italian health sector **Petition No 1011/2016 by Giovanna Portulano (Italian) on discriminatory treatment in the public health sector**

Petition No 1026/2016 by Marzena Korgol (Italian) on fixed-term employment contracts in the health sector in Italy

Petition No 1063/2016 by Pasqualino Ludovico (Italian) on the misuse of fixed-term contracts by Italy

Petition No 0188/2017 by N. D. (Italian) on the compatibility with

Community regulations of the repeated renewal of fixed-term contracts in the public health field (nurses)

Petition No 0268/2017 by Michele Chimienti (Italian) on the abuse by the Italian State of fixed-term contracts in schools

Petition No 0277/2017 by Annunziata Stano (Italian) on the misuse of fixed-term contracts within the Italian public administration

Petition No 0278/2017 by Cosmery Calò (Italian) on the misuse of fixed-term contracts within Italian public administration

Petition No 0279/2017 Caterina Pavone (Italian) on the misuse of fixed-term contracts within the Italian public administration

Petition No 0283/2017 by Letizia Spaventa (Italian) on the misuse of fixed-term contracts within the Italian public administration

Petition No 0302/2017 by Ivan Bisconti (Italian) concerning the establishment of nurses with fixed-term contracts in Puglia

Petition No 0640/2017 by Carlo Pari (Italian) on the abuse of fixed-term contracts in music and fine arts academies in Italy

Petition No 1257/2017 by Michele Chimienti (Italian) on the dismissal of certain workers in precarious employment within the public administration in Italy

Petition No 1258/2017 by Pier Paolo Volpe (Italian) on the unlawful dismissal of precarious workers within the local health authority (ASL) of Taranto

Petition No 0171/2018 by A. M. F (Italian) on the misuse of fixed-term employment contracts for forestry workers in Sicily

Petition No 0603/2018 by Pier Paolo Volpe (Italian) on the systematic disapplication of Directive 1999/70/EC by the Region of Sicily

Petition No 0665/2018 by Marco Bazzoni (Italian) on growing job insecurity in Italy

Petition No 1111/2018 by Nino Marra (Italian) on an alleged violation of Directive 1999/70/EC by Italy (personal case)

Petition No 0624/2019 by P. P. V. (Italian) on non-compliance with Directive 1999/70/EC arising from precarious employment in opera and orchestra foundations

Petition No 0850/2020 by Daniela Giardino (Italian) on the misuse and excessive use of fixed-term contracts in the Italian health service

Petition No 1464/2020 by A.M.F. (Italian) on behalf of 271 Italian nationals, bearing three signatures, on the repeated renewal of fixed-term contracts for

public service workers in Sicily (Italy)

Petition No 316/2021 by A.M.F. (Italian), on behalf of 20 Italian citizens, bearing 2 signatures, on the situation of temporary workers in Sicily

1. Summary of petition 1353/2015

The petitioner criticises the fact the Commission was not notified in a timely manner of Decree 81/2015 on the systematic regulation of employment contracts and the revision of legislation on job duties, fearing the risk of possible breaches of Directives 89/391/EEC, 1999/70/EEC and Directive 2008/104/EEC on temporary work.

Summary of petition 0411/2016

The petitioner has been employed for 15 years as a temporary worker in the civil defence sector in the region of Sicily. In that context, he alleges that the region has violated Directive 1999/70/EC in renewing fixed-term work contracts – for the performance of the same functions – for a period of more than 36 consecutive months.

Summary of petition 0413/2016

The petitioner has been employed for 15 years as a temporary worker in the civil defence sector in the region of Sicily. In that context, he alleges that the region has violated Directive 1999/70/EC in renewing fixed-term work contracts – for the performance of the same functions – for a period of more than 36 consecutive months.

Summary of petition 0422/2016

The petitioner has been employed for 15 years as a temporary worker in the civil defence sector in the region of Sicily. In that context, he alleges that the region has violated Directive 1999/70/EC in renewing fixed-term work contracts – for the performance of the same functions – for a period of more than 36 consecutive months.

Summary of petition 0429/2016

The petitioner has occupied a post with no job security in the civil protection sector for the past 15 years. He considers the regional government to have violated Directive 1999/70/EC by renewing fixed-term employment contracts – relating to the performance of the same duties – for more than 36 consecutive months.

Summary of petition 0945/2016

The petitioner refers to a recent judgment of the Italian Constitutional Court which seems to endorse the request of administrative and auxiliary (ATA) teaching staff to stop the open-ended renewal of fixed-term contracts for ‘vacant’ posts, and stresses that this judgment is in line with the Court of Justice ruling, which already had already deemed this to be incompatible with the Directive 1999/70/EC. However, the petitioner reports that despite the Italian legislator seeking to align national legislation (July 2015) with the provisions of the Court of Justice, a broad swathe of teachers and ATA staff remain unprotected, since despite

having already reached the maximum of 36 months laid down by Law 107/2015 for supply teachers, they are not to be given permanent teaching posts.

Summary of petition 0988/2016

The petitioner complains of precarious work in the Italian health sector. He also refers to his own personal situation: he himself made an appeal to the Employment Judge against the local health authority where he worked for over 36 months on a series of fixed-term contracts, claiming the right to fair compensation for the damage or to the conversion of the contract from fixed-term to open-ended on the grounds of infringement of Directive 1999/70/EC. Following the ‘Mascolo’ ruling by the Court of Justice, the Employment Judge ruled in favour of the petitioner and awarded damages in the form of very low monthly payments for unlawful precarious employment in 2015. In March 2016, the Court of Cassation issued a ruling which the petitioner believes is entirely at odds with the principle of proportionality and fair cooperation between Italy and the EU institutions. Finally, the petitioner requests greater protection in Italy for public sector employment against the abuse of fixed-term contracts by the public authorities.

Summary of petition 1011/2016

The petitioner complains about the chronic instability of employment contracts in the public health sector. She says that the employment courts have granted her neither the conversion of a fixed-term contract to an open-ended contract, nor compensation for damage. In particular, she makes reference to the March 2016 ruling of the Joint Chambers of the Court of Cassation (see info), which in the determination of compensation for unlawful reiteration of fixed-term contracts of a civil servant would not appear to respect the principle established by the European Court of Justice in the preliminary ruling of the Mascolo case of 26 November 2014 on the effective equivalence of judicial protection between employees in the public sector and those in the private sector.

Summary of petition 1026/2016

The petitioner denounces the problem of precarious employment in the health sector in Italy, with reference to her own personal situation as a nurse on a temporary contract. She has taken legal action at the employment tribunal against her local health authority in Taranto, on the grounds that it was misusing fixed-term contracts. She was not successful, however, as the judge rejected both her application for compensation for damages and her request to have her contract converted to a contract of unlimited duration. By judgment 5072/2016 the Italian Court of Cassation adopted a decision that the petitioner considered to be clearly in breach of the principles of proportionality, equivalence and effectiveness. She complains that Italy is failing to comply with EU case-law in this regard and is in breach of Directive 1999/70/EC, and is therefore calling for the European Parliament to take action.

Summary of petition 1063/2016

The petitioner complains about job insecurity in the Italian health sector and refers to his own situation, having been a healthcare worker for 50 months at the local health authority of Taranto. He made an unsuccessful appeal to an employment tribunal for misuse of fixed-term contracts, the judge rejecting both his claim for damages and conversion of the fixed-term contract to a permanent one. In ruling 5072/2016 Italy’s Court of Cassation made a decision

that the petitioner considered to be a blatant infringement of his rights. The petitioner appealed to the European Court of Human Rights, and together with dozens of temporary workers complained to the Commission about the misuse of fixed-term contracts in the public sector in Italy. He complains that Italy does not comply with European case-law on this matter and about the infringement of Directive 1999/70/EC, and calls for the European Parliament to take action.

Summary of petition 0188/2017

The petitioner seeks clarification as to whether the 'public notice' selection procedure for nurses in the public health sector is compatible with the public service competition procedure provided for in the Italian Constitution.

He also complains at discrimination in the treatment of public and private workers, which he says is incompatible with Community law.

More specifically, with regard to nurses, he rails at the failure to convert fixed-term employment contracts to permanent ones, even when the fixed-term contracts have been renewed for a total period exceeding 36 months, albeit non-consecutively.

Summary of petition 0268/2017

The complaint concerns insecure employment in Italian state schools. The signatory claims that the Italian State has not taken adequate preventative measures and sanctions for the correct implementation of Directive 1999/70/EC regarding fixed-term contracts. The problems arising from the violation of the non-discrimination principle were allegedly not solved either by public administration reforms or by the 'good schools' law. He calls on the European Parliament to take action so that the Italian state complies with both European legislation and the case-law of the European Union Court of Justice to finally resolve, once and for all, the Italian issue of insecure employment in the public sector.

Summary of petition 0277/2017

The petitioner complains about the employment instability within the Italian public administration. She is a nurse with a temporary contract at the local healthcare service (ASL) in Taranto and refers to her personal situation and her own legal case. She claims that the Italian State has not provided adequate preventive and sanctioning measures to correctly incorporate Directive 1999/70/EC on fixed-term contracts into Italian law. The problems arising from the violation of the principle of non-discrimination have allegedly not been resolved by public administration reform. To finally bring an end to employment instability in the Italian public sector, the petitioner calls on the European Parliament to ensure that the Italian State complies with European law and the case-law of the European Court of Justice.

Summary of petition 0278/2017

The petitioner complains about the employment instability within the Italian public administration. The petitioner presents herself as an employment consultant who has dealt with the succession of contracts in public administration and the unlawful instability of the employment relationship. She claims that the Italian State has not provided adequate preventive and sanctioning measures to correctly incorporate Directive 1999/70/EC on fixed-

term contracts into Italian law. To finally bring an end to employment instability in the Italian public sector, the petitioner calls on the European Parliament to ensure that the Italian State complies with European law and the case-law of the European Court of Justice.

Summary of petition 0279/2017

The petitioner complains about the employment instability within the Italian public administration. She claims that the Italian State has not provided adequate preventive and sanctioning measures to correctly incorporate Directive 1999/70/EC on fixed-term contracts into Italian law. To finally bring an end to employment instability in the Italian public sector, the petitioner calls on the European Parliament to ensure that the Italian State complies with European law and the case-law of the European Court of Justice.

Summary of petition 0283/2017

The petitioner complains about the employment instability within the Italian public administration. She is a nurse with a temporary contract at the local healthcare service (ASL) in Taranto and refers to her personal situation and her own legal case. She claims that the Italian State has not provided adequate preventive and sanctioning measures to correctly incorporate Directive 1999/70/EC on fixed-term contracts into Italian law. To finally bring an end to employment instability in the Italian public sector, the petitioner calls on the European Parliament to ensure that the Italian State complies with European law and the case-law of the European Court of Justice.

Summary of petition 0302/2017

The petitioner (a nurse with a fixed-term contract in Puglia) refers to the infringement procedure (NIF 2014/4231) initiated against Italy for abuse of fixed-term contracts in the public sector, including in healthcare, and to several ECJ case laws. He also mentions the issue of constitutional legitimacy raised on 26/10/16 by the Court of Foggia on compliance with the Italian constitution of domestic law which does not permit the conversion into open-ended employment of fixed-term contracts of public health workers. Moreover, he argues that the 2016 Stability Law (28/12/15) had extended existing contracts, ruling out recruitment until the completion of the competition procedures, in order to bridge the structural shortage of manpower in local health trusts. In such a situation of illegal precariousness of the employment relationship (under Community law and case-law), the persons concerned appeal to the labour tribunal to obtain compensation for damages. On behalf of Puglia's committee of nursing staff in precarious employment, the petitioner therefore calls on the European Institutions to intervene with the Region of Puglia to convert precarious employment into open-ended employment in the health sector, in order to avoid further material losses to the finances of local health trusts.

Summary of petition 0640/2017

The petitioner expresses concern about unstable employment in the field of Higher Education in Art and Music (AFAM) in Italy, including music academies, fine arts academies and dance academies. The petitioner is a temporary professor in the AFAM sector, illegally employed, like others with progressive fixed-term contracts, for a period much longer than the maximum number of renewals permitted by national and European legislation. The petitioner also raises the issue of precarious employment within Italian public administration. The petitioner asks

the European Parliament to ensure that the Italian State complies with European legislation, in particular Directive 1999/70/EC on fixed-term contracts.

Summary of petition 1257/2017

The petitioner, a precarious social and healthcare worker at the local health authority (ASL) of Taranto, complains of the misuse of fixed-term contracts within the public administration in Italy. More specifically, the petitioner complains of retaliatory actions taken against him by the aforementioned ASL, which allegedly dismissed him in December 2017, along with two other people. The petitioner maintains that this dismissal was a form of retaliation for the fact that prior to this he received a favourable judgment from an employment tribunal, which upheld that his employment contract with the Italian public administration was unlawfully precarious. The petitioner asks the European Parliament to look into the matter and adopt a resolution accordingly.

Summary of petition 1258/2017

The petitioner complains that three precarious workers were dismissed by the ASL of Taranto in retaliation for their application to an employment tribunal for compensation for damages caused by unlawfully keeping them in precarious jobs (upheld by the Court of Cassation in its judgment No 14633 of 18 July, where there is misuse of a fixed-term contract by a PA). The petitioner therefore asks that the PETI Committee draws up a resolution in plenary on the topic of the hearing of 22 November 2017, 'Protection of the rights of workers in temporary or precarious jobs'.

Summary of petition 0171/2018

The petitioner reports the misuse of fixed-term contracts in the Italian public administration. In particular, the petitioner highlights the precarious circumstances of employees in the forestry sector in the region of Sicily. These forestry workers have fixed-term employment contracts with the Sicily region, which are systematically renewed with further contracts, leading to a situation of permanent precarious employment. The petitioner criticises the way in which the European Commission has monitored the situation to ensure Italy's compliance with Directive 1999/70/EC on fixed-term employment contracts. The petitioner asks the European Parliament to ensure that Italy complies with the relevant European legislation and case law

Summary of petition 0603/2018

The petitioner complains about the de facto non-application by the Sicilian legislature of national legislation (Legislative Decree No 368 of 6 September 2001) which implemented Directive 1999/70/EC on fixed-term contracts throughout the EU, which is opposed by regional legislation incompatible with Community legislation on fixed-term work. The workers (more than 5 000) to whom the petitioner refers are public employees of municipalities, health authorities, hospitals of various levels and other public administrative bodies, primarily in the Region of Sicily. Initially, they were assigned to work of social utility (LSU/ASU) or work of public utility (PUC). They were subsequently classified as beneficiaries of fixed-term employment contracts, by virtue of a plethora of laws from the 1990s to the present day. This regional legislation permitted the renewal 'within a period of approximately 28 years, after 1990, of fixed-term employment relationships, in breach of

Clause 5 of Directive 1999/70/EC (absence of measures imposing penalties for the abuse of fixed-term contracts beyond 36 months). In particular, the petitioner's criticisms focus on Regional Law No 17 of 28 December 2004, which the Sicilian courts use as a screen for not applying the national legislation implementing the Community Directive, stating that workers who leave the LSU/ASU category are not subject to state regulation of permanent employment, under Article 77.2 of Regional Law No 17 of 28 December 2004. As proof of the fallacious interpretation of Sicilian case-law, the petitioner refers to Court of Cassation Judgment No 25672 of 27 October 2013, which upheld the appeal of a Sicilian temporary worker who, having performed ordinary duties in the service of a local authority for many years, requested the recognition of the indefinite nature of his employment relationship, and consequently compensation for damages under national law (T.U. public sector employment). The Supreme Court thus overturned the judgment of the Court of Appeal of Palermo, which, by misinterpreting the case of the contract in question, 'found not in the temporary organisational and production requirements of the local authority, but in the political and social requirements, aimed at overcoming the welfare relationship, typical of work of social utility, to enable the staff in question to acquire professionalism and qualifications', relied on Clause 2(B) of the Framework Agreement annexed to Directive 1999/70/EC to justify its disapplication.

Summary of petition 0665/2018

The petitioner expresses big concern on the problem of growing job insecurity in Italy. The petitioner argues that Italian legislation in this matter does not provide adequate or effective protection against infringements, in violation of European law. According to the petitioner, the situation has not improved following recent labour market reforms in Italy, enacted in 2012 (the Fornero reform) and 2014 (Jobs Act). The petitioner criticises the way in which the European Commission has monitored the situation to ensure Italy's compliance with Directive 1999/70/EC on fixed-term employment contracts. The petitioner therefore asks the European Parliament to ensure that Italy complies with the relevant European legislation and case law.

Summary of petition 1111/2018

The petitioner, a teacher, questions the Member States' compliance with Directive 1999/70/EC. He denounces in particular the misuse of fixed-term contracts by the Italian Ministry of Education, which has resulted in his situation of permanent precarious employment, and calls on the Ministry to employ him on a permanent basis.

Summary of petition 0624/2019

The petitioner raises a number of concerns regarding precarious employment in opera and orchestra foundations, arguing that this is in breach of European legislation concerning the framework agreement on fixed-term work. The petitioner claims that, among others, Italian legislation fails to observe provisions regarding objective reasons justifying the renewal of fixed-term contracts in the entertainment sector, fails to prevent repeated renewal beyond an admissible maximum, fails to provide for the conversion of fixed-term into open-ended contracts and discriminates against those employed by opera and orchestra foundations, who are treated less favourably than those employed elsewhere in the entertainment sector.

Summary of petition 0850/2020

The petitioner is a nurse who has worked for years on a temporary contract for the Taranto health service. She raises the issue of the region's excessive use of fixed-term contracts in the health service, which she claims has more to do with the public sector's structural staff shortages than the COVID-19 emergency. She asserts that, in order to make up for the chronic shortage of permanent staff, the public sector has employed far more temporary workers than required to meet temporary and exceptional needs (as provided for by national law). In particular, the signatory objects to the discriminatory treatment of (managerial and non-managerial) medical, technical and nursing staff who have been allegedly excluded from recruitment procedures leading to permanent posts for temporary public sector workers in 2020. The petitioner supposes that the large numbers of temporary workers involved could file lawsuits, on the basis of the Court of Justice's ruling in judgment *Sciotto* of 25 October 2018 (case C-331/17), in order to obtain a permanent contract through legal action or, as an alternative, compensation for damages (see information). Indeed, only the signing of a permanent contract can remedy the misuse of fixed-term contracts, as can be inferred from the operative part of Court of Justice judgment *Rossato* of 8 May 2019 (in preliminary ruling C-494/17). Finally, the petitioner claims that the recent report from the Italian Court of Auditors supports her accusation of a flagrant breach of Directive 1999/70/EC, in particular clause 5.

Summary of petition 1464/2020

The petitioners indicate that they have, for 15 years, been employed by the Region of Sicily and a number of national bodies on successive fixed-term public service contracts that are renewed annually. They maintain that Region of Sicily is, in this way, infringing their rights by keeping them in constant precarious employment, adding that the Italian national and Sicilian regional authorities have also been infringing EU labour protection legislation, in particular Clause 5 of the Framework Agreement annexed to Directive 1999/70/EC. Finally, they call on the European Parliament to make its position known with a view to initiating infringement proceedings against Italy.

Summary of petition 0316/2021

The petitioner complains about an unlawful succession of fixed-term contracts for workers in the public sector, all of whom are in 'precarious' employment in the municipality of Randazzo. She therefore takes the view that this is in breach of Directive 1999/70, and in particular that the successive contracts in question do not comply with Clause 5 of the Framework Agreement. The petitioner alleges that the infringement of the legal rule governing open-ended contracts is the 'common form' of employment relationship and stresses the importance of the effects of the Mascolo judgment (EU Court of Justice, Third Chamber, 26 November 2014 in Joined Cases C-22/13, C-61/13, C-62/13, C-63/13, C-418/13, R. Mascolo and Others v. Ministry of Education and Others). She points out that damage is being done to the community as a result of the excessive use of temporary contracts, with improper conduct on the part of the regional government and the Italian national government, which, she says, do not want to find a solution.

All the petitioners are still employed on fixed-term contracts, which have been renewed for more than 20 years without any plausible legal justification for such conduct, leaving workers in a totally precarious situation.

The main petitioner also points out the lack of consistency between the rules and certain judgments of the CJEU (C-397/01-403/01 of 5 October 2004; C-462/99 of 22 May 2003; C-

160/01 of 15 May 2003; C-106/89 of 13 November 1990).

She complains of a 'permanent precariousness', which has extended well beyond the three-year limit laid down by Italian legislation.

She believes that Article 30 of the Charter of Fundamental Rights of the European Union and Article 24 of the European Social Charter have also been infringed.

2. Admissibility

Petition 1353/2015 declared admissible on 10 May 2016.

Petition 0411/2016, 0413/2016 and 0422/2016 declared admissible on 31 August 2016.

Petition 0429/2016 declared admissible on 15 of September 2016.

Petition 0945/2016 declared admissible on 28 February 2017.

Petition 0988/2016 declared admissible on 10 January 2017.

Petition 1011/2016 declared admissible on 10 January 2017.

Petition 1026/2016 declared admissible on 11 January 2017.

Petition 1063/2016 declared admissible on 11 January 2017.

Petition 0188/2017 declared admissible on 30 June 2017.

Petitions 0258/2017, 0277, 0278, 0279 and 0283 declared admissible on 14 July 2017.

Petition 0302/2017 declared admissible on 30 August 2017,

Petitions 0640/2017 declared admissible on 7 November 2017

Petitions 1257/2017 and 1258/2017 declared admissible on 4 April 2018

Petition 0171/2018 declared admissible on 12 June 2018.

Petition 0603/2018 declared admissible on 8 November 2018.

Petition 0665/2018 declared admissible on 19 November 2018

Petition 1111/2018 declared admissible on 4 March 2018.

Petition 0624/2019 declared admissible on 14 November 2019.

Petition 0850/2020 declared admissible on 13 November 2020.

Petition 1464/2020 declared admissible on 31 March 2021.

Petition 0316/2021 declared admissible on 24 June 2021.

Information requested from Commission under Rule 216(6) (new Rule 227(6)).

3. Commission reply to petition 1353/2015, received on 3 August 2016

The Commission refers the Committee on Petitions to the Commission's Communications in relation to Petition 0786/2014.

The Commission received a considerable number of messages from the petitioner on the same issue. It has already extensively informed the petitioner in the context of these multiple complaints about its assessment of the compatibility of Legislative Decree 81/2015 with the directives mentioned above.

On 10 March 2016, Italy formally notified the adoption of Decree 81/2015. Member States are indeed obliged to notify transposition measures of a directive so that the Commission can control their conformity with the directive in question. As explained to the petitioner in reply to his complaints, the Commission's services were already proceeding with the analysis of Decree 81/2015 before its official notification.

The information available to the Commission indicates that Legislative Decree 81/2015 does not infringe Directive 2008/104/EC on Temporary Agency Work.

The Commission has informed the petitioner that it is aware of the issue of fixed-term employment in the Italian public sector and has therefore launched infringement proceedings against Italy under the reference NIF 2014/4231. These infringement proceedings relate notably to the prevention of abuses in the renewal of fixed-term contracts and the compensation of damages suffered in relation to such an abuse. These infringements are already the topic of another petition, 0389/2015.

As regards Directive 89/391/EEC¹, further to a complaint lodged by the petitioner on the issue of an alleged violation of its Article 12(1) by Article 3(1) of Legislative Decree 81/2005, the Commission services submitted to the Italian authorities a request for information within the framework of EU Pilot 7999/15/EMPL. The petitioner received information on the latest developments on that matter by letter of 3 June 2016.

Conclusion

The information available to the Commission indicates that the Legislative Decree 81/2015 does not infringe Directive 2008/104/EC on Temporary Agency Work.

The Commission is aware of the situation of fixed-term employment in the Italian public sector and has launched infringement proceedings in this regard. This is however already the topic of another petition, 0389/2015.

The Commission will continue to keep the petitioner informed on the developments of EU Pilot 7999/15/EMPL, concerning the issue of an alleged violation of Article 12(1) of Directive 89/391/EEC by Article 3(1) of Legislative Decree 81/2015.

4. Commission reply to petition 1353/2015 (REV), received on 28 March 2018

The Commission refers the Committee on Petitions to the Commission's communications in relation to Petition 0786/2014.

The Commission received a considerable number of messages from the petitioner on the same issue. It has already extensively informed the petitioner in the context of these multiple complaints about its assessment of the compatibility of Legislative Decree 81/2015 with the directives mentioned in the petition.

On 10 March 2016, Italy formally notified the adoption of Decree 81/2015. Member States are indeed obliged to notify transposition measures of a directive so that the Commission can control their conformity with the directive in question. As explained to the petitioner in reply to his complaints, the Commission's services were already proceeding with the analysis of Decree 81/2015 before its official notification.

The information available to the Commission indicates that Legislative Decree 81/2015 correctly transposes Directive 2008/104/EC on Temporary Agency Work.

¹ Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC); OJ L 183, 29.6.1989, p. 1.

The Commission has informed the petitioner that it is aware of the issue of fixed-term employment in the Italian public sector and has therefore launched infringement proceedings against Italy. These infringement proceedings relate notably to the insufficient prevention of abuses in the renewal of fixed-term contracts and the insufficient compensation of damages suffered in relation to such an abuse.

There is also a very recent preliminary ruling on this topic. In Case C-494/16 Santoro a lower Italian Court has made a request for a preliminary reference to the Court of Justice of the European Union (CJEU) asking for guidance on the question of compensation for abusive succession of fixed term contracts - one of the central issues in these infringements. These infringements are already the topic of another petition, 0389/2015.

As regards Directive 89/391/EEC², further to a complaint lodged by the petitioner on the issue of an alleged violation of its Article 12(1) by Article 3(1) of Legislative Decree 81/2005, the Commission services submitted to the Italian authorities a request for information within the framework of EU Pilot. Further to the analysis of the replies of the national authorities as well as of all the available elements, the case was closed on 06/07/2016 and the petitioner was informed accordingly.

Conclusion

The information available to the Commission indicates that the Legislative Decree 81/2015 correctly transposes Directive 2008/104/EC on Temporary Agency Work.

The Commission is aware of the situation of fixed-term employment in the Italian public sector and has launched infringement proceedings in this regard. This is however already the topic of another petition, 0389/2015. The Commission is assessing the conformity of the Italian legislation governing the situation of public sector employees with clause 5 of the framework agreement on fixed-term work. Before it finalizes its assessment, the Commission will take into account the very recent ruling of the CJEU in case C-494/16 Santoro, which will be of relevance for the above mentioned assessment.

The Commission informed the petitioner on the developments of the EU Pilot investigation concerning the issue of an alleged violation of Article 12(1) of Directive 89/391/EEC by Article 3(1) of Legislative Decree 81/2015 and in particular of its decision to close the case on 06/07/2017.

5. Commission reply, received on 31 January 2017

Petitions 0411/2016, 0413/2016, 0422/2016 and 0429/2016

Clause 5(1) of the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP annexed to Directive 1999/70/EC ("the Framework Agreement") provides that in order to prevent abuse arising from the use of successive fixed-term employment contracts or relationships, Member States, in the absence of existing equivalent legal measures, shall introduce "*one or more of the following measures*": (a) objective reasons justifying the

² Council Directive of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC); OJ L 183, 29.6.1989, p. 1

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.

The Court of Justice of the European Union ("CJEU"), interpreting these provisions, has specified, in several judgments related to the Italian public sector, that national law "must include, in that sector, an effective measure to prevent and, where relevant, punish the misuse of successive fixed-term contracts"³. The CJEU has made clear, however, that there is no requirement under the Framework Agreement for a fixed-term contract to be converted into a permanent contract.⁴

In September 2016 an Italian civil court (Tribunale civile di Trapani) made a further request for a preliminary ruling to the CJEU, asking for guidance on whether Italian law provides effective protection - in particular adequate compensation - for public sector employees whose rights under clause 5(1) of the Framework Agreement have been breached.⁵

The Commission has received hundreds of complaints concerning employees employed on successive fixed-term contracts in the Italian public sector. In the framework of infringement 2014/4231, it is in ongoing discussion with the Italian authorities on how to ensure that Italian legislation and practice fulfil the requirements of the Framework Agreement. This follows on from several requests made by the Commission to the Italian authorities in the context of EU-Pilot in 2013, 2014 and 2015.

Conclusion

The Commission is aware of the situation of fixed-term employment in the Italian public sector and has launched infringement proceedings in this regard. A further preliminary reference is pending before the CJEU concerning whether, in relation to the Framework Agreement, Italian law effectively protects the rights of public sector employees in Italy.

6. Commission reply (REV.), received on 30 May 2018

Petitions 0411/2016, 0413/2016, 0422/2016 and 0429/2016

Clause 5 (1) of the Framework Agreement on fixed term work concluded by ETUC, UNICE and CEEP annexed to Directive 1999/70/EC ("the Framework Agreement")⁶ provides that in order to prevent abuse arising from the use of successive fixed-term employment contracts or relationships, Member States, in the absence of existing equivalent legal measures, shall introduce 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.

³ Joined Cases C-362/13, C-363/13 and C-407/13, *Fiamingo v. RFI SpA*; orders in *Affatato*, EU:C:2010:574, and *Papalia*, EU:C:2013:873.

⁴ Case C-212/04 *Adeneler*, EU:C:2006:443.

⁵ Case C-494/16 *Santoro*.

⁶ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, OJ L 175, 10.07.1999, p. 43.

Directive 1999/70/EC does not provide that, after 36 months of service, those in precarious employment are entitled to receive open-ended contracts. This requalification is provided for by the Italian legislator but only in the private sector. Clause 5 merely sets out what measures Member States are obliged to introduce in order to prevent abuse arising from the use of successive fixed-term employment contracts.

In order for clause 5(1) of the framework agreement to be complied with, it must be verified that the renewal of successive fixed-term employment contracts or relationships is intended to cover temporary needs, and that a national provision is not being used to meet fixed and permanent staffing needs of the employer⁷.

The provisions of Legislative Decree No 368/01, invoked by the petitioner, have been abrogated in the meantime and replaced by Legislative Decree No 81 of 15 June 2015. The Commission is assessing the conformity of this Legislative Decree and the entirety of the Italian legislation governing the situation of public sector employees with clause 5 of the framework agreement on fixed-term work, which obliges Member States to adopt measures to prevent the abuse of successive fixed-term contracts.

Regarding the question of compensation for damages suffered due to the abuse of successive fixed-term contracts, in September 2016, an Italian civil court (Tribunale civile di Trapani) made a request for a preliminary ruling to the Court of Justice of the European Union ('CJEU' or 'the Court'), asking for guidance on whether Italian law provides effective protection – in particular adequate compensation – for public sector employees whose rights under clause 5(1) of the Framework Agreement have been breached.⁸

More precisely, the CJEU had been asked to rule on the question whether the current measures to prevent the abuse of successive fixed term contracts in the Italian public sector are effective, and also whether they are equivalent to the measures existing in the private sector.

If a person is employed in the private sector beyond the time limit established in the contract or beyond the maximum limit of 36 months, Italian legislation provides for the automatic conversion of a fixed term employment contract into an indefinite contract in the private sector.

In the public sector, this is different. There, the measures in case of abuse are currently compensation in the form of a flat-rate sum and payment for damages for the loss of favourable opportunities.

The question whether the current measures in case of abuse, notably a flat-rate sum and payment for damages for the loss of favourable opportunities, as interpreted by the Italian Court of Cassation, can be considered as "equivalent and effective measures" for the purpose of compensating abusive successions of fixed-term contracts under the Fixed Term Directive, was subject of the recent ruling C-494/16 Santoro.

⁷ See, to that effect, judgments of 26 January 2012, *Kücük*, C-586/10, EU:C:2012:39, paragraph 39 and the case-law cited, and of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13, C-63/13 and C-418/13, EU:C:2014:2401, paragraph 101.

⁸ Case C-494/16 Santoro.

In its ruling of 7 March 2018 (Case C-494/16, *Santoro*), the CJEU confirmed that Member States may treat abuse of successive fixed-term contracts differently in the public sector, provided that other effective measures exist.

The CJEU also confirmed that, as there is no legal obligation of conversion of fixed-term contracts into permanent contracts for workers in the public service (as the latter have to pass an open competition before they can become permanent), these workers are not entitled to a compensation for lack of conversion to which the private sector employees are entitled. However, the public sector employees should be entitled to a compensation for the loss of opportunity. The calculation of this compensation is left to the national court, but the CJEU has indicated, through its reference to the difficulties inherent in demonstrating the existence of a loss of opportunity, that the burden of proof that this loss of opportunity did not exist should not be on the employee.

An excessively high burden of proof might deprive a measure of its effectiveness. The Court noted that, given the difficulties inherent in demonstrating the existence of loss of opportunity, a mechanism of presumption designed to guarantee a worker who has suffered a loss of employment opportunities, due to the misuse of successive fixed-term contracts, the possibility of nullifying the consequences of such a breach of EU law would satisfy the requirements of effectiveness.

The Court also points at other existing measures to prevent and penalise the misuse of fixed-term contracts, such as the managers liability as enshrined in Article 36(5) of Legislative Decree No 165/2001.

The Court concludes that it is up to the referring Court to verify whether the existing penalties imposed on public authorities (the lump sum compensation, the loss of opportunity compensation and the manager's liability) are sufficiently effective and dissuasive so as to ensure that the provisions adopted pursuant to the Framework Agreement are fully effective. Hereby the Court refers again to the importance of the possibility for the employee to rely on a presumption such that it is to the State to prove that the employee who was subject to abusive successive fixed term contracts did not face any loss of opportunity to find employment or would not have been successful if a recruitment competition had been duly organized.

This will make it easier in the future for Italian public sector workers who have been on abusive successive fixed term contracts to obtain compensation for the loss of opportunity they have faced due to these abusive successive fixed term contracts.

The petitioner thus can refer the matter to the national competent labour court and claim compensation for the damages he has suffered.

Regarding the claims by the petitioner that several of his fundamental rights have been violated (Articles 1, 3, 15, 20, 21, 31 of the EU Charter of Fundamental Rights), it should be noted that in accordance with its Article 51, the Charter only applies to the Member States when they are implementing Union law. The legal obligation under Union law on the Member States is confined to adopting measures to prevent the abuse of successive fixed term contracts. Furthermore, the petitioner invokes these articles, but does not substantiate in his petition why he believes that these Articles have been violated by the Italian State in the exercise of the obligations of the Italian State under EU law.

Conclusion

The Commission is aware of the situation of fixed-term workers in the Italian public sector and is assessing the conformity of the Italian legislation governing the situation of public sector employees with clause 5 of the Framework Agreement on fixed-term work.

The recent ruling in case C-494/16 Santoro has addressed the problem of compensation and should make it easier in the future for Italian public sector workers who have been on abusive successive fixed term contracts to obtain compensation within the national judicial system for the loss of opportunity.

7. **Commission replies** to petitions 0988/2016, 1011/2016, 1026/2016, 1063/2016 and 0188/2017 , received on 29 November 2017 and 30 May 2018, see CM 1156915.
8. **Commission reply** to petition 0640/2017, received on 31 January 2018; see CM1144931.
9. **Commission reply** to petitions 0945/2016 and 0268/2017, received on 30 May 2018 see CM 1154886.
10. **Commission reply** to petitions 0277/2017, 0278/2017, 0279/2017, 0283/2017, 0302/2017, 1257/2017 and 1258/2017, received on 27 April 2018 see CM 1152767
11. **Commission reply (REV. II)**, received on 28 October 2019

Petitions 1353/2015, 0411/2016, 0413/2016, 0422/2016, 0429/2016, 0945/2016, 0988/2016, 1011/2016, 1026/2016, 1063/2016, 0188/2017, 0268/2017, 0277/2017, 0278/2017, 0279/2017, 0283/2017, 0302/2017, 0640/2017, 1257/2017, 1258/2017, 0171/2018, 0603/2018, 0665/2018 and 1111/2018

The Commission's observations

1. Measures to prevent abusive use of successive fixed-term contracts

Clause 5 (1) of the Framework Agreement on fixed term work concluded by the European Trade Union Confederation (ETUC), the Union of Industrial and Employers' Confederations of Europe (UNICE) and the European Centre of Employers and Enterprises providing Public Services (CEEP) annexed to Council Directive 1999/70/EC ("the Framework Agreement")⁹ provides that in order to prevent abuse arising from the use of successive fixed-term employment contracts or relationships, Member States, in the absence of existing equivalent legal measures, shall introduce 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.

⁹ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, OJ L 175, 10.07.1999, p. 43.

In order for clause 5(1) of the framework agreement to be complied with, it must be verified that the renewal of successive fixed-term employment contracts or relationships is intended to cover temporary needs, and that a national provision is not being used to meet fixed and permanent staffing needs of the employer¹⁰.

The provisions of Legislative Decree No 368/01, invoked by the petitioner, have been abrogated in the meantime and replaced by Legislative Decree No 81 of 15 June 2015, which sets a limit of 36 months to successive contracts both in the private and public sector and provides that workers must be granted compensation if this limit is not respected. It also limits the maximum number of renewals of fixed-term contracts to five.

The limit of 36 months to successive contracts in the private sector has been reduced to 12 (or, in some cases, 24) months by the Dignity Decree, Act No. 96 of 12 July 2018. The same Decree has also limited the number of maximum extensions of fixed-term contracts to four, always respecting the overall maximum duration of 24 months.

Legislative Decree No 81 of 2015 applies to both private and public sector workers. However, several categories of public sector workers are excluded from its scope of application.

Article 29 of Legislative Decree No 81 of 2015 excludes the following categories from its scope of application:

A. fixed-term contracts concluded with teachers and administrative and technical auxiliary staff ('ATA staff') in order to fill temporary vacancies;

B. fixed-term contracts concluded with healthcare staff, including managers, in the National Health Service;

C. fixed-term contracts concluded with workers in the higher art, music and dance education ('AFAM') for which the overseeing authority is the Ministero dell'Istruzione Università e Ricerca ('MIUR'), the Ministry of Education, University and Research¹¹;

D. the artistic and technical staff of the musical production foundations referred to in Legislative Decree No 367 of 29 June 1996;

E. fixed-term contracts concluded in accordance with Law No 240 of 30 December 2010. Law No 240 of 30 December 2010 contains rules on the organisation of universities, academic personnel and their recruitment;

F. employment relationships between agricultural employers and fixed-term workers as defined by Article 12, subparagraph 2 of Legislative Decree No 375 of 11 August 1993;

G. call-ups of the voluntary staff of the national fire brigade.

The Commission has examined whether Italian law has introduced, in accordance with clause

¹⁰ See, to that effect, judgments of 26 January 2012, *Kücük*, C-586/10, EU:C:2012:39, paragraph 39 and the case-law cited, and of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13, C-63/13 and C-418/13, EU:C:2014:2401, paragraph 101.

¹¹ The AFAM staff is listed in Article 36, 5 quinquies of Legislative Decree No 165 of 2001, which also exempts them from all protective measures stipulated under Article 36 (Article 36 (5) stipulates that fixed-term contracts can be concluded within the limits set out in Articles 19 and following of Legislative Decree No 81 of 2015).

5 of the Framework Agreement, measures to prevent abuse arising from the use of successive fixed-term employment contracts or relationships for the above categories, either in the form of a certain limit to successive contracts or a maximum number of renewals of fixed-term contracts, or in the form of ‘equivalent legal measures’.

The Commission considers that the Italian national legislation on fixed-term contracts applying to the above-mentioned categories of public sector workers is not in compliance with clause 5 of the Framework Agreement.

The Commission therefore sent a letter of formal notice to Italy on 25 July 2019 (infringement procedure NIF 2014/4231). In the letter, the Commission addressed questions to the Italian authorities regarding the mentioned categories of public sector workers who are excluded from legal protection against the abusive use of successive fixed-term contracts. The Commission particularly inquired about existence of measures to prevent the abusive recourse to successive fixed-term contracts, or stabilisation measures to offer redress for those who have been subject to such practices.

2. Compensation for damages suffered due to the abuse of successive fixed-term contracts

In September 2016, an Italian civil court (Tribunale civile di Trapani) made a request for a preliminary ruling to the Court of Justice of the European Union (‘the Court’), asking for guidance on whether Italian law provides effective protection – in particular adequate compensation – for public sector workers whose rights under clause 5(1) of the Framework Agreement have been breached¹².

The Court was asked to rule on the question whether the current measures to prevent the abuse of successive fixed-term contracts in the Italian public sector are effective, and also whether they are equivalent to the measures existing in the private sector.

For workers in the private sector, the Italian legislation provides for the automatic conversion of a fixed-term employment contract into an indefinite contract after 36 months. In the public sector, the measures in case of abuse are currently compensation in the form of a flat-rate sum and payment for damages for the loss of favourable opportunities.

In its ruling of 7 March 2018 (Case C-494/16, *Santoro*), the Court of Justice of the European Union confirmed that Member States may treat abuse of successive fixed-term contracts differently in the private and public sectors, provided that other effective measures exist.

The Court confirmed that, as there is no legal obligation of conversion of fixed-term contracts into permanent contracts for workers in the public sector, these workers, unlike those in the private sector, are not entitled to compensation for lack of conversion. However, public sector workers should be entitled to compensation for the loss of opportunity. The calculation of this compensation is left to the national court, but the Court of Justice of the European Union has indicated that the burden of proof that this loss of opportunity exists should not be on the worker.

¹² Case C-494/16 *Santoro*.

The Court also considered other existing measures to prevent and penalise the misuse of fixed-term contracts, such as the manager's liability as enshrined in Article 36(5) of Legislative Decree No 165/2001.

The Court concluded that it is for the national court to verify whether the existing penalties imposed on public authorities (lump sum compensation, loss of opportunity compensation and the manager's liability) are sufficiently effective and dissuasive as to ensure that the provisions adopted pursuant to the Framework Agreement are fully effective.

The ruling should make it easier in the future for Italian public sector workers who have been subject to abusive successive fixed-term contracts to obtain compensation for the loss of opportunity they have faced due to these abusive successive fixed-term contracts.

In other proceedings (Case C-494/17 *Rossato*)¹³, concerning a teacher who had been employed for 11 years under 17 successive fixed-term contracts and who was eventually granted a permanent position, with a limited retroactive effect and without compensation for damages, the Court of Justice of the European Union ruled that:

- the conversion of the abusive fixed-term contract is, by itself, an effective measure to prevent the abuse and, therefore, the Framework Agreement does not impose an obligation to award compensation for the damage suffered prior to the conversion;
- while the education sector displays a particular need for flexibility, Member States cannot disregard the obligation to lay down appropriate measures designed to duly punish the misuse of successive fixed-term employment contracts. Nevertheless, the Framework Agreement leaves to them the choice as to how to achieve it;
- a measure to punish abuse should be proportionate and effective, as well as have a deterrent effect. Whereas the Member State can take into account the needs of specific sectors, they cannot excessively limit the retroactive effect and thus limit the proportionality of the measure. The Court of Justice of the European Union ruled that it is for the national court to determine whether the limited retroactive effect of the period of service completed under the successive fixed-term employment contracts constitutes a proportionate measure punishing an abuse of successive fixed-term contracts in an individual case.

Regarding the claims by the petitioner that several of his fundamental rights have been violated (Articles 1, 3, 15, 20, 21, 31 of the EU Charter of Fundamental Rights), it should be noted that in accordance with its Article 51, the Charter only applies to the Member States when they are implementing Union law. The legal obligation under Union law on the Member States is confined to adopting measures to prevent the abuse of successive fixed term contracts. Furthermore, the petitioner invokes these articles, but does not substantiate in his petition why he believes that these articles have been violated by the Italian State in the exercise of the obligations under EU law.

Conclusion

The Commission is aware of the situation of fixed-term workers in the Italian public sector.

¹³ Case C-494/17 *Rossato*, ECLI:EU:C:2019:387.

The Commission has examined the Italian legislation governing the successive use of fixed-term contracts for public sector workers who have been excluded from the scope of application of Legislative Decree No 81 of 2015. The Commission considers that the national rules do not protect these workers against the abusive use of successive fixed-term contracts and are therefore not in compliance with clause 5 of the Framework Agreement. Therefore the Commission issued a letter of formal notice to Italy on 25 July 2019, the contents of which are summarized in a press release of 25 July 2019¹⁴. The Commission will keep the Committee on Petitions informed of any follow-up that the Commission decides to give to this infringement procedure.

Regarding the question of compensation for damages suffered due to the abuse of successive fixed-term contracts, the ruling in case C-494/16 *Santoro* should make it easier in the future for Italian public sector workers who have been on abusive successive fixed-term contracts to obtain compensation within the national judicial system for the loss of opportunity. It must be recalled that, in the absence of relevant EU rules on specific penalties in the event that instances of abuse are established under clause 5 of the Framework Agreement, the detailed implementing rules are a matter for the domestic legal order of the Member States, under the principle of procedural autonomy.

Additional elements to petition 0945/2016 on discrimination between fixed-term workers and comparable permanent workers:

The petitioner claims that temporary workers in the public education sector in Italy are not entitled to leave for bereavement, study or training or to career advancement or salary increases, whereas comparable permanent workers are.

Clause 4 (1) of the Framework Agreement provides that, in respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation, unless different treatment is justified on objective grounds.

The expression ‘employment conditions’ should be understood to mean the rights, entitlements and obligations that define a given employment relationship, including both the conditions under which a person takes up employment and those concerning the termination of that relationship¹⁵.

With regard to the concept of ‘employment conditions’ within the meaning of clause 4(1) of the Framework Agreement, the Court has held that the decisive criterion for determining whether a measure falls within the scope of that concept is, precisely, the criterion of employment, that is to say the employment relationship between a worker and his employer¹⁶.

The concept of ‘employment conditions’, within the meaning of Clause 4(1) of the Framework Agreement, thus covers three-yearly length-of-service increments (see, to that effect, judgment of C-307/05, *Del Cerro Alonso*, paragraph 47; C-444/09 and C-456/09,

¹⁴ https://ec.europa.eu/commission/presscorner/detail/en/inf_19_4251

¹⁵ Case C-158/16 *Vega Gonzalez*, at para 34.

¹⁶ Case C-158/16 *Vega Gonzalez*, at para 30. See also judgments of 12 December 2013, *Carratù*, C-361/12, EU:C:2013:830, paragraph 35; of 13 March 2014, *Nierodzik*, C-38/13, EU:C:2014:152, paragraph 25; of 14 September 2016, *de Diego Porras*, C-596/14, EU:C:2016:683, paragraph 26; and order of 9 February 2017, *Rodrigo Sanz*, C-443/16, EU:C:2017:109, paragraph 32.

Gavieiro and Iglesias Torres, paragraphs 50 to 58; C-177/14, *Regojo Dans*, paragraph 43), six-yearly continuing professional education increments (see, to that effect, order C-556/11, *Lorenzo Martínez*, paragraph 38), rules concerning periods of service to be completed in order to be classified in a higher salary grade or calculation of the periods required to have performance assessed each year (see, to that effect, judgment C-177/10, *Rosado Santana*, paragraph 46 and the case-law cited), the right to participate in a teaching evaluation plan and the ensuing financial incentive (order of the Court C-631/15, *Álvarez Santirso*, paragraph 36), as well as the reduction of working hours by half and the consequent reduction in wages (order C-443/16, *Rodrigo Sanz*, paragraph 33).

In the opinion of the Commission, leave for bereavement, study or training, career advancement and salary increases are employment conditions within the meaning of clause 4 of the Framework Agreement.

The Commission is assessing the conformity of Italian legislation governing the situation of the education sector employees with clause 4 of the Framework Agreement in respect of other employment conditions, such as those mentioned by the petitioner.

12. Commission reply (REV. III), received on 3 February 2021

Petitions 1353/2015, 0411/2016, 0413/2016, 0422/2016, 0429/2016, 0945/2016, 0988/2016, 1011/2016, 1026/2016, 1063/2016, 0188/2017, 0268/2017, 0277/2017, 0278/2017, 0279/2017, 0283/2017, 0302/2017, 0640/2017, 1257/2017, 1258/2017, 0171/2018, 0603/2018, 0665/2018, 1111/2018, 0624/2019 and 0850/2020.

The Commission's observations

On 3 December 2020 the Commission sent a supplementary letter of formal notice to Italy, as the explanations provided by Italy in its replies to the initial letter of formal notice of July 2019 were not satisfactory and, moreover, raised further issues of non-compliance. Italy has two months to reply and dispel the doubts of the Commission as regards compliance with the Directive¹⁷. The Commission may then decide to send a reasoned opinion.

13. Commission reply (on petition 1464/2020), received on 25 June 2021

All the petitioners (271 Italian citizens) have been working for the Region of Sicily on a fixed-term basis for more than 15 years. They work in regional administrative departments, schools, courts, and hospitals. They have the status of 'ex *Emergenza Palermo PIP*' (PIP = piani di inserimento professionali)¹⁸.

¹⁷ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, *OJ L 175, 10.7.1999, p. 43–48*.

¹⁸ According to the Commission's research PIP was a programme to support the insertion of young unemployed people into the labour market through their participation in projects involving socially useful activities and training initiatives aimed at acquiring professional qualifications. According to the regional authorities, the 'ex *Emergenza Palermo PIP*' workers continue to perform activities of public and social interest and therefore do not have an employment relationship with the public administration.

The petitioners claim that the Region of Sicily is abusing the status of these workers because they do not in fact perform activities of social and public interest, but rather the same activities in the public administration as those performed by public employees, but without having an employment relationship with the public administration.

The petitioners claim that they should be considered as having an employment relationship with the administration and request the Commission to investigate whether Italy respects clause 5 of the Framework Agreement on fixed-term work annexed to Council Directive 1999/70/EC¹⁹.

While the legal status of ‘*ex Emergenza Palermo PIP*’ workers is not clearly defined in the petition itself, their situation seems comparable to that of “socially useful workers” (LSU), who do not have worker status under Italian national law.

The petitioners are requested to submit additional information detailing the regional and national legal provisions, which govern their status, and in particular, whether the provisions applicable to LSU apply to them.

Compliance of the national legislation on socially useful workers with the provisions of the Framework Agreement on Fixed-Term Work

Article 8 of Legislative Decree No 468/1997 and Article 4 of Legislative Decree No 81/2000 expressly exclude the existence of an employment relationship between the LSU and the host institution.

The Corte di Cassazione (Italian Supreme Court) has confirmed that LSU do not qualify as subordinate employees. Indeed, the Corte di Cassazione in its judgment of 3 March 2020, n 5896 mentioned that the rationale behind the contract concluded with the LSU is to make up for worker’s unemployment. It held that “only in the case in which the service concretely rendered presents a radical divergence from the project does the relationship become subordinate and remains regulated by Article 2126 of the Italian Civil Code”²⁰.

Italian case law states that the use of LSU “does not lead to the establishment of an employment relationship but creates a special relationship involving several parties (in addition to the worker, the public administration benefiting from the service and the social security institution) of a welfare matrix and with a training purpose aimed at retraining staff for possible redeployment”²¹.

Clause 2(2) of the Framework Agreement on fixed-term work annexed to Council Directive

¹⁹ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, *OJ L 175, 10.7.1999, p. 43–48*.

²⁰ Paragraph 12 of the judgment.

²¹ Court of Cassation (Sez. Lav.) no. 2887 of 2008, no. 2605 of 2013, no. 22287 of 2014.

1999/70/EC creates the possibility for Member States to exempt certain employment relationships from the scope of the Directive. This provision reads as follows:

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

(a) initial vocational training relationships and apprenticeship schemes;

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

Where Member States exempt workers from the scope of Council Directive 1999/70/EC, the provisions of clause 5 of the Framework Agreement annexed to Council Directive 1999/70/EC would not apply either.

Requalification of socially useful workers as workers under an employment relationship

It is important to distinguish between ‘genuine’ LSU who have a training relation with the host institution, and LSU covering a structural staffing need.

In cases where an LSU is used to cover a structural staffing need and the relation with the host institution is no longer one of training, but becomes subordinate, the national courts can requalify the LSU as a worker.

This is confirmed by a recent decision by the Court of Appeal of Palermo (Sicily), which held that:

“the legal classification of LSU as a special relationship, which has a welfare matrix and an educational component, does not exclude the possibility that in practice the relationship may have the characteristics of an ordinary employment relationship with the consequent application of Article 2126 of the Civil Code. For the purposes of classifying the relationship as an employment relationship *de facto* working for a public administration, it is important that the employee is actually part of the public organisation and assigned to a service falling within the institutional purposes of the administration, and the absence of a formal act of appointment is not relevant in the opposite sense, nor is it relevant that the relationship is a fixed-term relationship, nor that the relationship is affected by nullity due to breach of the mandatory rules on the prohibition of new recruitment. Consequently, the case falls within the scope of the 1999 Framework Agreement and in turn of Legislative Decree 368/2001, which transposed that legislation” (Corte d’Appello Palermo, sez. lav., 4 May 2020, no. 291).

Once an LSU is requalified as a worker, (s)he no longer falls under the exception of Clause

2(2) of the Framework Agreement on fixed-term work annexed to Council Directive 1999/70/EC, and hence all the provisions of the Framework Agreement on fixed-term work apply to such LSU.

The petitioners may therefore pursue through the national courts their case that they are subject to an ordinary employment relationship and therefore have the status of worker.

Conclusion

In order to properly assess their case, the petitioners are requested to submit additional information detailing the regional and national legal provisions, which govern their status, and in particular, whether the provisions applicable to LSU apply to them.

The petitioners may pursue through the national courts their case that they are subject to an ordinary employment relationship and therefore have the status of worker.

14. Commission reply (on petition 0316/2021), received on 28 July 2021

The petitioners are invited to provide the Commission with more information about the national, regional or municipal law governing their status as fixed-term workers at the municipality of Randazzo. Without that information, the Commission cannot conduct a proper legal analysis.

In particular, the petitioners are invited to specify whether they belong to one or more of the following categories:

A. teachers and administrative and technical auxiliary staff ('ATA staff');

B. healthcare staff, including managers, in the national health service;

C. workers in the higher art, music and dance education ('AFAM') for which the overseeing authority is the Ministero dell'Istruzione Università e Ricerca ('MIUR'), the Ministry of Education, University and Research;

D. artistic and technical staff of the musical production foundations referred to in Legislative Decree No 367 of 29 June 1996;

E. workers subject to Law No 240 of 30 December 2010. Law No 240 of 30 December 2010 contains rules on the organisation of universities, academic personnel and their recruitment;

F. workers in the agricultural and forestry sector;

G. voluntary staff of the fire brigade.

The petitioners are also invited to provide more information on the three-year limit laid down by Italian legislation: in case the three-year limit applies to them, it would be useful to know the reasons invoked by the municipality for not respecting it.

The petitioners are also requested to provide information about whether any of the petitioners has resorted to national judicial proceedings in order to obtain compensation for the non-respect of the three-year limit.

For further information on the ongoing infringement proceedings against Italy for the lack of protection against the use of successive fixed-term contracts in the Italian public sector, the Commission refers to its observations to petition 0411/2016.

The European Social Charter is not an instrument of EU law, but rather a Council of Europe treaty that guarantees fundamental social and economic rights as a counterpart to the European Convention on Human Rights, which refers to civil and political rights. Any complaints on a possible violation of the European Social Charter should not be addressed to the EU but rather to the Council of Europe.

Conclusion

The Commission requests the petitioners to provide the above-mentioned additional information.

“Commission reply to petition 0411/2016, received on 3 February 2021

The Commission’s observations

On 3 December 2020 the Commission sent a supplementary letter of formal notice to Italy, as the explanations provided by Italy in its replies to the initial letter of formal notice of July 2019 were not satisfactory and, moreover, raised further issues of non-compliance. Italy has two months to reply and dispel the doubts of the Commission as regards compliance with the Directive²². The Commission may then decide to send a reasoned opinion”.

²² Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, *OJ L 175, 10.7.1999, p. 43–48*.

15. Commission reply (REV IV), received on 10 December 2021

Petitions 1353/2015, 0411/2016, 0413/2016, 0422/2016, 0429/2016, 0945/2016, 0988/2016, 1011/2016, 1026/2016, 1063/2016, 0188/2017, 0268/2017, 0277/2017, 0278/2017, 0279/2017, 0283/2017, 0302/2017, 0640/2017, 1257/2017, 1258/2017, 0171/2018, 0603/2018, 0665/2018, 1111/2018, 0624/2019, 0850/2020, 1464/2020 and 0316/2021.

The Commission's observations

On 3 December 2020 the Commission sent a supplementary letter of formal notice to Italy on the abuse of fixed term contracts in the public sector in Italy, as the explanations provided by Italy in its replies to the initial letter of formal notice of July 2019 were not satisfactory.

Italy has replied to the additional letter of formal notice, but some issues still remained unclear. Therefore, a follow-up meeting with the Italian authorities took place in the summer of 2021. After that meeting, the Italian authorities submitted another reply to the additional letter of formal notice in autumn 2021.

The analysis of that reply is ongoing.

Conclusion

The Commission may issue a reasoned opinion if all or some of the grievances remain unresolved.

16. Commission reply (REV V), received on 14 October 2022

Petitions 1353/2015, 0411/2016, 0413/2016, 0422/2016, 0429/2016, 0945/2016, 0988/2016, 1011/2016, 1026/2016, 1063/2016, 0188/2017, 0268/2017, 0277/2017, 0278/2017, 0279/2017, 0283/2017, 0302/2017, 0640/2017, 1257/2017, 1258/2017, 0171/2018, 0603/2018, 0665/2018, 1111/2018, 0624/2019, 0850/2020, 1464/2020 and 0316/2021.

The abuse of fixed term contracts in the public sector in Italy is part of an ongoing infringement procedure against Italy (INFR n. 2014/4231). This infringement procedure concerns a wide number of issues on the rules applicable to the employment of different categories of workers in the Italian public sector, including the abuse of fixed term contracts of workers in a number of sectors²³ and their compatibility with Directive EC/1999/70²⁴.

Since issuing an additional letter of formal notice on 3 December 2020 under that procedure, the Commission has received several replies from the Italian authorities and is in a dialogue with them on the different grievances set out in the additional letter of formal notice. The

²³ https://ec.europa.eu/commission/presscorner/detail/en/inf_20_2142

²⁴ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, OJ L 175 of 10.7.1999

Commission is analysing the information submitted by the national authorities, including recent exchanges in August 2022, and will take into account, in that framework, the information recently provided by some of the petitioners, in particular as regards forestry workers in different Italian regions.

Once its assessment is finalised, the Commission will take a decision on the possible next steps in the infringement procedure.

Conclusion

The Commission is assessing the information submitted by the Italian authorities in the framework of the ongoing infringement procedure. Once this assessment is finalised, the Commission will take a position on the possible next steps in the infringement procedure.

17. Further reply from the Commission (REV. VII), received on 7 July 2023

Petition 0411/2016 and linked petitions 1353/2015, 0413/2016, 0422/2016, 0429/2016, 0945/2016, 0988/2016, 1011/2016, 1026/2016, 1063/2016, 0188/2017, 0268/2017, 0277/2017, 0278/2017, 0279/2017, 0283/2017, 0302/2017, 0640/2017, 1257/2017, 1258/2017, 0171/2018, 0603/2018, 0665/2018, 1111/2018, 0624/2019 and 0850/2020.

The Commission's observations

The abuse of fixed term contracts in the public sector in Italy is part of an ongoing infringement procedure against Italy (INFR n. (2014)4231). This infringement procedure concerns a wide number of issues on the rules applicable to the employment of different categories of workers in the Italian public sector, including the abuse of fixed term employment contracts, and their compatibility with Directive EC/1999/70²⁵.

On 3 December 2020, the Commission issued an additional letter of formal notice. Following the assessment of the replies of the Italian authorities, the Commission decided on 19 April 2023 to issue a Reasoned Opinion²⁶. Italy submitted a reply on 20 June 2023. The reply is under assessment.

Conclusion

The Commission issued a Reasoned Opinion on 19 April 2023 in the framework of infringement n. (2014)4231. The reply of Italy is under assessment.

²⁵ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, OJ L 175 of 10.7.1999, p. 43

²⁶ https://ec.europa.eu/commission/presscorner/detail/EN/inf_23_1808