



Court of Justice of the European Union

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Judgment in Joined Cases C-362/13, C-363/13, and C-407/13  
Maurizio Fiamingo v Rete Ferroviaria Italiana SpA, Leonardo Zappalà v Rete  
Ferroviaria Italiana SpA and Francesco Rotondo and Others v Rete  
Ferroviaria Italiana SpA

Press and Information

**By setting a maximum period of one year for successive fixed-term contracts for seafarers and by laying down a penalty in the event of misuse of such contracts, Italian law complies with the principles of EU law**

*National courts must carry out an assessment in each case to satisfy themselves that such contracts are not misused by employers*

In Italy, the employment contracts of seafarers are governed by the Navigation Code. That code sets the maximum duration of fixed-term contracts at one year and requires the start date and the duration of the contract to be specified. Every contract concluded for a period exceeding one year is converted into a contract of indefinite duration. If several contracts are concluded for a fixed term, or for specified voyages, the employment is considered to be continuous where no more than 60 days elapse between two contracts. Those employment relationships are thus not subject to the legislation which was adopted in order specifically to implement the Framework Agreement on fixed-term work. That Framework Agreement, concluded between the general cross-industry organisations,<sup>1</sup> lays down the general principles and minimum requirements relating to fixed-term work and establishes a general framework in order to ensure the equal treatment of those workers on fixed-term contracts.

Maurizio Fiamingo, Leonardo Zappalà, Francesco Rotondo and the other parties to the litigation are seamen enrolled in the register of seafarers. After 2001, they were employed by Rete Ferroviaria Italiana (RFI) under successive fixed-term contracts concluded for one or several voyages and for a maximum of 78 days. The seafarers concerned were employed on board ferries for the crossing between Sicily and Calabria (Messina/Villa San Giovanni, Messina/Reggio Calabria). They worked for RFI for less than one year, with periods of less than 60 days elapsing in each gap between contracts.

Considering that their fixed-term employment contracts had been unlawfully terminated, the seafarers concerned brought an action before an Italian court seeking a declaration that those contracts were void and their conversion into contracts of indefinite duration. They also sought reinstatement and compensation for loss suffered.

The Corte di Cassazione (Court of Cassation, Italy), hearing the case on appeal, has asked the Court of Justice whether the Framework Agreement applies to maritime labour and whether it permits national legislation which (i) provides that fixed-term employment contracts have to specify the duration of the contract (but not its termination date), (ii) considers that the mere indication of the voyage(s) to be made constitutes objective justification and (iii) provides for the conversion of successive fixed-term contracts into an employment relationship of indefinite duration where a worker has been employed *continuously* for a period exceeding one year (the employment relationship being deemed continuous when the time elapsing between contracts is less than or equal to 60 days).

<sup>1</sup> 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).

In today's judgment, the Court first recalls that the scope of the Framework Agreement covers all 'fixed-term workers', irrespective of whether their employer is in the private or public sector, and that seafarers' contracts are not excluded from that Agreement.

The Court thus holds that workers such as those at issue in the case (namely, workers employed as seafarers under successive fixed-term contracts on board ferries making crossings between two ports in the same Member State), come within the scope of the Framework Agreement, given that it does not exclude any particular sector.

The Court adds that the Maritime Labour Convention of 2006 ('MLC 2006'), which is annexed to the Directive on Maritime Labour,<sup>2</sup> does not apply to seafarers employed on ships navigating exclusively in internal waters (as in the present case). Neither the MLC 2006 nor the other provisions of EU law concerning the maritime sector contain rules intended to guarantee the application of the principle of non-discrimination to fixed-term workers or to prevent abuse arising from the use of successive fixed-term contracts.

**It follows that all other provisions of EU law which are more specific or afford a higher degree of protection are applicable to seafarers. That is the case with the Framework Agreement.**

The Court also declares that since the Framework Agreement does not contain any provision relating to the formal particulars that must be included in fixed-term contracts, Italy was entitled, under EU law, to provide in its legislation that it is only the duration of the contract (and not its termination date) that has to be stated.

Next, the Court recalls that the Framework Agreement is founded on the idea that one of the major elements for the protection of workers is stability of employment. In order to prevent abuse arising from the use of successive fixed-term contracts, the Framework Agreement obliges Member States to provide for **(i) objective reasons** justifying the renewal of the contract, **(ii) the maximum total duration** of such contracts **or (iii) the number of possible renewals of the contract**. However, it does not require them to provide for the conversion of fixed-term contracts into contracts of indefinite duration and does not specify the conditions in which contracts of indefinite duration may be used, **provided that national law – whatever measure is chosen – is effective in preventing the misuse of fixed-term employment contracts.**

The national authorities are therefore required to adopt measures that are proportionate, effective and dissuasive in order to ensure that the measures taken pursuant to the Framework Agreement are fully effective.

According to the Court, the **Italian legislation complies with those requirements since it provides for both a preventive measure** (maximum duration of one year for successive fixed-term contracts) **and a penalty in the event of abuse** (conversion of successive fixed-term contracts into an employment relationship of indefinite duration, where a worker has been employed continuously by the same employer for longer than one year).

When they are required to rule on the use of successive fixed-term employment contracts, national courts must examine the circumstances of the case, taking into account the number of successive contracts concluded with the same person or for the purposes of performing the same work, in order to ensure that the use of such contracts is not abused by employers.

The Court also states that a finding of abuse might be made if the maximum duration is calculated not by reference to the *number of calendar days* covered by the contract, but by reference to the *number of days' service actually completed* by the employee (in particular when the latter number is considerably lower than the former, because of the low volume of crossings).

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<sup>2</sup> Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC (OJ 2009 L 124, p. 30). Directive 2009/13/EC implements the Agreement on the Maritime Labour Convention, 2006.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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