Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

18 January 2024*

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(Appeal – Arbitration clause – Staff of international missions of the European Union – Consecutive fixed-term contracts – Claim that all the contractual relationships should be re-categorised as a 'contract of indefinite duration' – Claim for compensation for unfair dismissal – Actions for damages – Principle of non-discrimination – Principle of *ne ultra petita* – Obligation to state reasons – Distortion of national law – Costs)

In Case C-46/22 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 20 January 2022,

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

appellant,

the other parties to the proceedings being:

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

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

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

Eulex Kosovo, represented by E. Raoult, avocate, and N. Reilly, Barrister,

defendants at first instance,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, L. Bay Larsen (Rapporteur), Vice-President of the Court, T. von Danwitz, A. Kumin and I. Ziemele, Judges,

Advocate General: J. Richard de la Tour,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 9 March 2023,

after hearing the Opinion of the Advocate General at the sitting on 17 May 2023,

gives the following

Judgment

1 By his appeal, Mr Liam Jenkinson seeks to have set aside the judgment of the General Court of the European Union of 10 November 2021, *Jenkinson* v *Council and Others* (T-602/15 RENV, EU:T:2021:764; 'the judgment under appeal'), by which the General Court dismissed his action concerning (i) an application pursuant to Article 272 TFEU seeking, on the one hand, to have of all of the appellant's contracts of employment re-categorised as an employment contract of indefinite duration and, on the other hand, to obtain compensation for the contractual loss that he claims to have suffered, and (ii) applications pursuant to Articles 268 and 340 TFEU seeking to establish the non-contractual liability of the Council of the European Union, the European Commission, the European External Action Service (EEAS) and the European Union Rule of Law Mission in Kosovo, referred to in Article 1 of 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; 'Eulex Kosovo').

Legal context

Joint Action 2008/124

2 Under Article 9(3) of Joint Action 2008/124:

'Eulex Kosovo may also recruit, as required, international staff and local staff on a contractual basis.'

3 Article 10(3) of the Joint Action provides:

'The conditions of employment and the rights and obligations of international and local civilian staff shall be laid down in the contracts between the Head of Mission and the members of staff.'

Regulation (EC) No 593/2008

4 Article 3(5) 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; 'the Rome I Regulation'), provides:

'The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 10, 11 and 13.'

5 Under Article 8 of that regulation:

'1. An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of this Article.

2. To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The

country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.

3. Where the law applicable cannot be determined pursuant to paragraph 2, the contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated.

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 paragraphs 2 or 3, the law of that other country shall apply.'

6 Article 9(1) and (2) of the regulation provides:

'1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

2. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.'

7 According to Article 10 of that regulation:

'1. The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under this Regulation if the contract or term were valid.

2. Nevertheless, a party, in order to establish that he did not consent, may rely upon the law of the country in which he has his habitual residence if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.'

8 Article 11(1) of the Rome I Regulation provides:

'A contract concluded between persons who, or whose agents, are in the same country at the time of its conclusion is formally valid if it satisfies the formal requirements of the law which governs it in substance under this Regulation or of the law of the country where it is concluded.'

9 Under Article 13 of that regulation:

'In a contract concluded between persons who are in the same country, a natural person who would have capacity under the law of that country may invoke his incapacity resulting from the law of another country, only if the other party to the contract was aware of that incapacity at the time of the conclusion of the contract or was not aware thereof as a result of negligence.'

Background to the dispute

10 The background to the dispute is set out in paragraphs 1 to 5 of the judgment under appeal. For the purposes of the present proceedings, it may be summarised as follows.

11 Mr Jenkinson, an Irish national, was first employed from 20 August 1994 to 5 June 2002 under various consecutive fixed-term employment contracts (FTCs) by the European Union Monitoring Mission in Yugoslavia ('the EUMM').

12 He was then employed from 17 June 2002 to 31 December 2009 under various consecutive FTCs by the European Union Police Mission in Bosnia and Herzegovina ('the EUPM').

13 Lastly, Mr Jenkinson was employed by Eulex Kosovo from 5 April 2010 to 14 November 2014 under 11 consecutive FTCs ('the 11 FTCs'), the first 9 of which were concluded with the Head of Eulex Kosovo and the last 2 with Eulex Kosovo itself.

14 During the 10th FTC, covering the period from 15 June to 14 October 2014, Mr Jenkinson was informed by letter of 26 June 2014 from the Head of Eulex Kosovo that, following the decision to restructure Eulex Kosovo taken by the Member States on 24 June 2014, the post he had held since being hired by Eulex Kosovo would be abolished with effect from 14 November 2014 and that, consequently, his contract would not be renewed beyond that date.

15 The 11th and final FTC was thus concluded between Mr Jenkinson and Eulex Kosovo for the period from 15 October to 14 November 2014 ('the final FTC').

16 With the exception of the final FTC, all the FTCs concluded by Mr Jenkinson concerning his work with Eulex Kosovo contained an arbitration clause conferring jurisdiction on the 'Belgian courts'.

17 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.

The procedure before the General Court and the judgment under appeal

18 By application lodged at the Registry of the General Court on 23 October 2015, Mr Jenkinson brought an action against the Council, the Commission, the EEAS and against Eulex Kosovo, by which he claimed that that court should:

– as a principal claim, re-categorise his contractual relationship as an 'employment contract of an indefinite duration', find that the defendants at first instance had infringed their contractual obligations, in particular, the obligation to give prior notice of termination of a contract of indefinite duration (CID), find that his dismissal was unfair, and, in consequence, order those parties to pay compensation for the loss sustained as a result of the abusive use of consecutive FTCs, the infringement 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 the period when he was engaged to work for the international missions of the European Union referred to in paragraphs 11 to 13 above, 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 at first instance, on the basis of non-contractual liability, to compensate the appellant for the harm resulting from their failure to comply with their obligations ('the third head of claim').

19 By order of 9 November 2016, *Jenkinson* v *Council and Others* (T-602/15, EU:T:2016:660), the General Court found that it manifestly lacked jurisdiction to rule on the first and second principal heads of claim and rejected the third head of claim as manifestly inadmissible. It therefore dismissed the action in its entirety and ordered Mr Jenkinson to pay the costs.

20 By application lodged at the Registry of the Court of Justice on 25 January 2017, Mr Jenkinson brought an appeal against that order.

21 By judgment of 5 July 2018, *Jenkinson* v *Council and Others* (C-43/17 P, EU:C:2018:531), the Court of Justice set aside that order, referred the case back to the General Court and reserved the costs.

22 By separate documents lodged at the Registry of the General Court on 31 October 2018 by the Commission and on 19 November 2018 by the Council and the EEAS respectively, those parties raised objections of inadmissibility by which they argued, inter alia, that the facts, decisions and possible irregularities relied on by the appellant are not attributable to them. Those objections of inadmissibility were reserved for the final judgment by order of the First Chamber of the General Court of 29 March 2019.

23 By the judgment under appeal, the General Court held that the first and second heads of claim were to be dismissed as unfounded and that the third head of claim was to be dismissed as manifestly inadmissible, with the result that the action was to be dismissed in its entirety, without it being necessary to rule on those objections of inadmissibility.

Forms of order sought by the parties before the Court of Justice

24 By his appeal, Mr Jenkinson claims that the Court of Justice should:

– set aside the judgment under appeal;

– dispose of the case;

– in the alternative, refer the case back to the General Court; and

– order the defendants at first instance to pay the costs of both sets of proceedings.

25 The Council contends that the Court of Justice should:

– dismiss the appeal; and

– order Mr Jenkinson to pay the costs of the present proceedings.

26 The Commission contends that the Court of Justice should:

– dismiss the appeal as inadmissible in so far it is directed against the Commission;

– in the alternative, dismiss the appeal as, in part, inadmissible and, in part, unfounded; and

– order Mr Jenkinson to pay the costs.

27 The EEAS contends that the Court of Justice should:

– dismiss the appeal as being unfounded;

– if the case is disposed of, declare Mr Jenkinson's action inadmissible in so far as it is directed against the EEAS;

– if the case is referred back to the General Court, declare that the EEAS can no longer be a defendant party; and

– order Mr Jenkinson to pay the costs.

28 Eulex Kosovo contends that the Court of Justice should:

– dismiss the appeal as, in part, inadmissible and, in part, unfounded; and

– order Mr Jenkinson to pay the costs.

The appeal

29 Mr Jenkinson puts forward six grounds of appeal in support of his appeal, alleging, in essence (i) misinterpretation of the claims and pleas submitted at first instance; (ii) an error of law in that, as regards the claim that the consecutive FTCs should be re-categorised as a single CID, the General Court took into account exclusively the final FTC; (iii) several errors of law made by the General Court in rejecting the first head of claim; (iv) misapplication of the principle of non-discrimination between servants of the European Union and infringement of Article 336 TFEU; (v) errors of law made by the General Court in rejecting the third head of claim and (vi) incorrect allocation of costs.

30 As a preliminary point, the Council, the Commission and the EEAS, although they did not lodge a cross-appeal, nevertheless state that they consider that, in the light of the judgment of 24 February 2022, *Eulex Kosovo* (C-283/20, EU:C:2022:126), the action at first instance should have been found inadmissible in so far as they are concerned.

31 In that regard, in the present case, the Court of Justice considers it appropriate to rule from the outset on the appeal (see, by analogy, judgment of 25 February 2021, *Dalli* v *Commission*, C-615/19 P, EU:C:2021:133, paragraph 35 and the case-law cited).

Admissibility of the appeal

Arguments of the parties

32 The Commission contends, in particular, that, in the light of paragraphs 40 and 46 of the judgment of 24 February 2022, *Eulex Kosovo* (C-283/20, EU:C:2022:126), the only respondent in the present dispute should be Eulex Kosovo and, consequently, that the appeal is inadmissible in so far as the Commission is concerned. It submits, moreover, that the appeal is also inadmissible in its respect because the Commission is not Mr Jenkinson's employer and is therefore extraneous to the dispute.

33 Mr Jenkinson disputes those arguments.

Findings of the Court

34 Article 171 of the Rules of Procedure of the Court of Justice provides that the appeal is to be served on the other parties to the relevant case before the General Court. It is apparent in particular from the operative part of the judgment under appeal that the parties to the proceedings before the General Court were, as defendant parties, the Council, the Commission, the EEAS and Eulex Kosovo. Thus, since the Commission was a party before the General Court, Mr Jenkinson was entitled to bring his appeal also against it (see, by analogy, judgments of 21 January 2016, *SACBO* v *Commission and INEA*, C-281/14 P, EU:C:2016:46, paragraphs 25 and 26, and of 5 July 2018, *Jenkinson* v *Council and Others*, C-43/17 P, EU:C:2018:531, paragraph 19).

35 Furthermore, the General Court was seised of claims relating to Mr Jenkinson's employment with, inter alia, the EUMM and the EUPM, with the result that the arguments based on the judgment of 24 February 2022, *Eulex Kosovo* (C-283/20, EU:C:2022:126), since they concern only the involvement and liability of the Council, the Commission and the EEAS concerning the conclusions to be drawn from Mr Jenkinson's employment with Eulex Kosovo, cannot, in any event, allow the finding in the preceding paragraph of the present judgment to be departed from.

36 The appeal is therefore admissible.

First ground of appeal

Arguments of the parties

37 By the first ground of appeal, Mr Jenkinson submits, in the first place, that the General Court erred in finding, in paragraph 48 of the judgment under appeal, that the claim based on the unlawfulness of Joint Action 2008/124 was not supported, in the application at first instance, by any arguments in law or in fact. Furthermore, he argues that the General Court wrongly held, in that paragraph, that that unlawfulness had been invoked, at most, in the second head of claim. According to Mr Jenkinson, that same unlawfulness was also raised in the first head of claim in his application initiating proceedings.

38 Mr Jenkinson submits that the pleas of illegality directed against Joint Action 2008/124 should have been interpreted as objections of illegality for the purposes of Article 277 TFEU, alleging, in particular, infringement of Article 336 TFEU, and should have been found admissible.

39 He is of the opinion that the same should have applied to those directed against 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'. In that regard, Mr Jenkinson submits that, through that communication, it is the Commission which lays down the conditions of employment instead of the Council, under Article 336 TFEU.

40 In his reply, Mr Jenkinson adds, in particular, that infringement of a provision of the FEU Treaty and that the lack of competence of the author of an act are matters of public policy. The same also applies to failure to comply with the procedural rules relating to the adoption of an act adversely affecting a person.

41 In the second place, according to Mr Jenkinson, in paragraph 52 of the judgment under appeal the General Court unlawfully limited the parties against whom the requests made under the first head of claim were directed, by failing to mention the Council, the Commission and the EEAS.

42 In the third place, assuming that, in paragraph 110 of that judgment, the General Court has limited the subject matter of the dispute to the field of employment law, Mr Jenkinson submits that such a limitation is unlawful since that dispute also falls within the field of social security.

43 The Council, the Commission, the EEAS and Eulex Kosovo contend that the first ground of appeal should be dismissed.

Findings of the Court

44 In the first place, Mr Jenkinson submits, in his reply, that the General Court should have examined of its own motion whether Joint Action 2008/124 was lawful. That said, under Article 127(1) of the Rules of Procedure of the Court of Justice, which applies to appeal proceedings by virtue of Article 190(1) of those rules, no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure. The complaint that the General Court should have examined of its own motion whether the joint action was lawful was raised for the first time by the appellant in his reply, without showing that that complaint was based on a matter of law or of fact which came to light in the course of the procedure. Consequently, that complaint must be regarded as raised out of time and must therefore be found inadmissible.

45 As regards Mr Jenkinson's arguments disputing the General Court's failure to examine whether Joint Action 2008/124 was lawful, it should be noted that the General Court analysed, in paragraphs 46 to 48 of the judgment under appeal, whether the action at first instance included an objection of illegality raised against Joint Action 2008/124.

46 First, the General Court noted, in paragraphs 44 and 48 of that judgment, that Mr Jenkinson had invoked the unlawfulness of that joint action, at most, to obtain compensation in respect of the non-contractual loss alleged in the second head of claim. Second, the General Court held, in paragraph 48 of that judgment, that, even if the appellant indeed raised an objection of illegality against Joint Action 2008/124, on the basis of Article 277 TFEU, it must be held that that objection was not supported, in the application at first instance, by any arguments in law or in fact and that, therefore, it did not satisfy the conditions laid down in Article 76(d) of the Rules of Procedure of the General Court and must consequently be declared inadmissible.

47 In that regard, it must be noted that Mr Jenkinson confines himself to submitting that the General Court was wrong to hold that the objection of illegality raised against Joint Action 2008/124 was not substantiated either in fact or in law. In so doing, Mr Jenkinson has not succeeded in showing that the General Court erred in holding that that objection of illegality did not satisfy the conditions laid down in Article 76(d) of the Rules of Procedure of the General Court. Accordingly, that argument must be rejected as unfounded.

48 As regards the argument by which Mr Jenkinson submits that the General Court erred when it held, in paragraph 48 of the judgment under appeal, that he had invoked the unlawfulness of Joint Action 2008/124, at most, in the second head of claim, even though that unlawfulness was also invoked in the first head of claim, it must be pointed out that that argument must, in any event, be rejected as ineffective.

49 The General Court's conclusion that there was no need to examine the lawfulness of Joint Action 2008/124 is based, to the requisite legal standard, on the finding that the application at first instance did not satisfy the conditions laid down in Article 76(d) of the Rules of Procedure of the General Court.

50 As regards Mr Jenkinson's argument concerning the unlawfulness of Communication C(2009) 9502, it should be noted, first of all, that, in paragraphs 112 to 115 and 119 of the judgment under appeal, the General Court examined whether that communication, which was being challenged before it, could be relied on, and noted that it formed an integral part of the nine FTCs, referred to in paragraph 13 above, which Mr Jenkinson had concluded with the successive heads of Eulex Kosovo. The General Court inferred from this that that communication could be relied on against Mr Jenkinson.

51 Next, in paragraph 230 of the judgment under appeal, the General Court examined whether the application of the contractual provisions derived from that communication constituted an infringement of the principle of non-discrimination. Thus, irrespective of the merits of that examination, it must be held that the General Court carried out a review of the legality of the connecting factor set out in that communication, which refers to the law of the country of which the person concerned is a national, a criterion whose compatibility with the principle of non-discrimination had been challenged by Mr Jenkinson at first instance.

52 Furthermore, as regards the argument that the Commission, by adopting Communication C(2009) 9502, laid down the conditions of Mr Jenkinson's employment instead of the Council, it should be noted, as is apparent from paragraph 50 above, that that communication was applied in the present case since it formed an 'integral part' of those nine FTCs. It follows that the unlawfulness of that communication, based on the lack of competence of the author thereof, cannot lead to the setting aside of the judgment under appeal. Accordingly, that argument must therefore be regarded as ineffective.

53 In the absence of any other argument put forward before the Court of Justice to support the view that the General Court carried out a partial examination of the lawfulness of that communication, it must be held that, by his arguments, by which he claims, in particular, that he invoked the unlawfulness of Communication C(2009) 9502 to justify the fact that it could not be relied on or applied, Mr Jenkinson has not succeeded in showing that the General Court failed to rule on whether the communication is lawful or can be relied on. Consequently, those arguments must be rejected as unfounded.

54 It follows that Mr Jenkinson has not established that the General Court erred in law by failing to examine the lawfulness of Joint Action 2008/124 and by examining in the manner in which it did that of Communication C(2009) 9502.

55 Since no such error has been established, the General Court cannot be criticised either for failing to review the lawfulness of Joint Action 2008/124 and of that communication in the light of Article 336 TFEU.

56 In the second place, as regards the argument that the General Court erred, in paragraph 52 of the judgment under appeal, in determining the parties against whom the requests made under the first head of claim were directed, it must be recalled that, in that paragraph, the General Court stated that '[Mr Jenkinson] asks the General Court to re-categorise the consecutive FTCs as a CID and to make a finding that the circumstances in which [Eulex Kosovo] terminated that CID are contrary to the employment law applicable to that type of contract'.

57 It should be recalled, in that regard, that, as is apparent from paragraph 34 above, the General Court held that the action in its entirety was to be regarded as being directed against the Council, the Commission, the EEAS and Eulex Kosovo.

58 As it announced in paragraph 78 of the judgment under appeal, the General Court examined the merits of the requests made by Mr Jenkinson in his first head of claim and concluded, in paragraph 216 of that judgment, that that head of claim must be dismissed, without, therefore, determining to what extent those requests were well founded vis-à-vis each of the defendant parties.

59 It follows that, in paragraph 52 of the judgment under appeal, by stating that Eulex Kosovo had terminated Mr Jenkinson's alleged CID, the General Court did not intend to identify the parties against which the first head of claim must be deemed to have been directed. Consequently, that argument of Mr Jenkinson must be rejected as ineffective.

60 In the third place, it must be noted that according to settled case-law, it follows from the second subparagraph of Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court of Justice that an appeal must, if it is not to be inadmissible, indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and the legal arguments specifically advanced in support of that appeal (see, to that effect, judgment of 23 March 2023, *PV* v *Commission*, C-640/20 P, EU:C:2023:232, paragraph 199 and the case-law cited).

61 In particular, a ground of appeal supported by an argument that is not sufficiently clear and precise to enable the Court to exercise its powers of judicial review, in particular because essential elements on which the ground of appeal relies are not indicated sufficiently coherently and intelligibly in the text of the appeal, which is worded in a vague and ambiguous manner in that regard, does not satisfy those requirements and must be declared inadmissible (judgment of 23 March 2023, *PV* v *Commission*, C-640/20 P, EU:C:2023:232, paragraph 200 and the case-law cited).

62 Even if the General Court, in paragraph 110 of the judgment under appeal, had limited the subject matter of the dispute to the field of employment law, it must be found that Mr Jenkinson submits solely, in that regard, that his action related also to the field of social security, without putting

forward any specific arguments making it possible to identify what the consequence of such a limitation would have been in the context of the General Court's assessment of the action. In the absence of such specific legal arguments, that argument must therefore be rejected as inadmissible.

63 In the light of the foregoing, the first ground of appeal must be rejected as, in part, inadmissible, in part, ineffective and, in part, unfounded.

First part of the fourth ground of appeal

Arguments of the parties

64 By the first part of the fourth ground of appeal, Mr Jenkinson submits that the General Court failed, in paragraph 224 of the judgment under appeal, to examine his argument alleging infringement of Article 5 TEU, of Article 336 TFEU, to which he had referred in a footnote to his application at first instance, and of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1; 'the Financial Regulation').

65 Furthermore, he claims that, in paragraphs 226 to 228 of the judgment under appeal, the General Court infringed Article 336 TFEU by holding that the Council had lawfully delegated to the Head of Eulex Kosovo the power to adopt the conditions of employment of international civilian staff. In his opinion, that infringement of Article 336 TFEU also results from the fact, which the General Court accepted, that the conditions of employment of international civilian staff were laid down in the contracts between the Head of Eulex Kosovo and the members of staff of that mission, even though they are to be decided upon by the Council. Similarly, Mr Jenkinson maintains that the General Court infringed that article by accepting that Communication C(2009) 9502 could be a framework for determining those conditions, even though they should be adopted in accordance with the procedure laid down in that article. According to Mr Jenkinson, it was for the Council to adopt conditions of employment of international civilian staff similar to those set out in the Conditions of Employment of Other Servants of the European Union ('the CEOS').

66 Mr Jenkinson takes the view that, contrary to what was held in paragraphs 229 and 237 of the judgment under appeal, the infringement of Article 336 TFEU is a sufficiently serious breach of a rule of law intended to confer rights on individuals.

67 The Council, the Commission, the EEAS and Eulex Kosovo contend that the first part of the fourth ground of appeal should be dismissed.

Findings of the Court

68 It should be borne in mind that, under the second sentence of Article 170(1) of the Rules of Procedure of the Court of Justice, the subject matter of the proceedings before the General Court may not be changed in the appeal. In addition, as is apparent from settled case-law, to allow a party to put forward for the first time before the Court of Justice a ground for complaint which it did not raise before the General Court would be to authorise it to bring before the Court of Justice, whose jurisdiction in appeals is limited, a case of wider ambit than that which came before the

General Court. In an appeal, the Court's jurisdiction is thus confined to examining the assessment by the General Court of the pleas and arguments discussed before it (judgment of 17 December 2020, *De Masi and Varoufakis* v *ECB*, C-342/19 P, EU:C:2020:1035, paragraph 34 and the case-law cited).

69 In the present case, it is important, first of all, to note that, according to paragraph 217 of the judgment under appeal, which is not disputed by Mr Jenkinson, he had, inter alia, asked the General Court, in essence, to find that, by deciding, during his employment with the EUMM, the EUPM and Eulex Kosovo (together, 'the three missions concerned'), to recruit him not as a member of the temporary staff on the basis of the CEOS, but rather as an international civilian member of staff on a contractual basis, the Council, the Commission and the EEAS had infringed several rules of law, in particular various provisions of the 'Treaty', and had treated him in a discriminatory manner.

70 Next, it should be noted that, in the application at first instance, Mr Jenkinson maintained that the contracts such as those which he had concluded should not have been the method used for hiring the staff of the three missions. The staff of those missions were not to be hired other than as staff of the European Union. In that regard, it is stated, in a footnote to that application, that 'this is also consistent with Article [336] TFEU'.

71 Lastly, the references in the application at first instance to the lack of a framework similar to the CEOS for hiring staff for those missions did not entail a request for a declaration by the General Court that there had been an infringement of Article 336 TFEU through the failure to adopt, on the basis of that article, rules of employment applicable to situations such as that of Mr Jenkinson.

72 It follows that, in so far as Mr Jenkinson submits, in his appeal, that the application of the substantive national law applicable to his contractual relationship and of Communication C(2009) 9502 constitutes an infringement of Article 336 TFEU on account of the absence of a legal framework adopted on the basis of that article, it must be held that that complaint was not put forward in the application at first instance. Since that complaint was introduced for the first time before the Court of Justice, it must be regarded as inadmissible at the appeal stage.

73 Given that, in his action at first instance, Mr Jenkinson did not claim that an infringement of that article followed from the absence of a legal framework adopted on the basis of that article, the General Court cannot validly be criticised for failing to rule on that complaint. Consequently, the complaint alleging failure to rule on that infringement must be rejected as unfounded.

74 The same is true of the arguments alleging infringement of Article 5 TEU and the Financial Regulation. Those arguments had not been put forward at first instance by Mr Jenkinson in order for the non-contractual liability of the defendants at first instance to be recognised and the General Court was therefore not required to rule on those arguments.

75 Consequently, the first part of the fourth ground of appeal must be rejected as, in part, inadmissible and, in part, unfounded.

Third ground of appeal

First part of the third ground of appeal

– *Arguments of the parties*

76 By the first part of the third ground of appeal, Mr Jenkinson submits, first, that the General Court failed to examine the question of the inapplicability of Communication C(2009) 9502 as an instrument determining the substantive rules applicable to Eulex Kosovo's staff and to take into account his argument that the conditions of employment that applied to him had not been determined in accordance with Article 336 TFEU.

77 Second, he claims that the General Court did not examine the argument that the EU institutions have the status of employer under the Financial Regulation. That status and that of defendants at first instance of the EU institutions as well as the liability thereof were extensively discussed on the basis of that regulation.

78 Third, Mr Jenkinson considers that the General Court failed to draw conclusions from the finding, in paragraph 92 of the judgment under appeal, that the EU institutions has not complied with Article 336 TFEU. He argues that since no ad hoc framework for the hiring of Eulex Kosovo's staff was adopted on the basis of Article 336 TFEU, the conditions of employment which applied to Mr Jenkinson were unlawful. According to Mr Jenkinson, the international civilian staff of international missions of the European Union should, as all staff of the European Union, be subject to a substantive law to be designated by an act adopted in accordance with that article, which would make it possible to guarantee equal treatment for that staff. Mr Jenkinson submits in that respect, first, that the members of the international contract staff of the 'Registry-Kosovo Specialist Chambers', a body created by Eulex Kosovo, were subject to a body of substantive rules of law specific to that body and, second, that in paragraph 95 of the judgment under appeal, the General Court, by excluding the application of the European Code of Good Administrative Behaviour, expressly equated the appellant with other servants of the European Union, since it excluded the application of that code by pointing out that it did not apply to officials and other servants of the European Union.

79 Mr Jenkinson adds that the EU legislature did not envisage the Rome I Regulation being applicable to contracts governed by public law, such as those in the present case. That regulation applies to disputes relating to contracts governed by private law and, by combining Articles 270 and 336 TFEU, the EU legislature provided for the EU Courts to have jurisdiction to ascertain compliance with the obligations arising from the employment of a servant of the European Union.

80 Mr Jenkinson is of the opinion that, in any event, the General Court should have raised of its own motion the plea alleging infringement of the FEU Treaty or the EU Treaty. In his view, the same applies for the Financial Regulation.

81 The Council, the Commission, the EEAS and Eulex Kosovo contend that the first part of the third ground of appeal should be dismissed.

– *Findings of the Court*

82 First, as has been pointed out in paragraphs 50 to 55 above, contrary to what Mr Jenkinson submits, the General Court, in the judgment under appeal, examined whether Communication C(2009) 9502 could be relied on and whether it was lawful. Furthermore, in so far as Mr Jenkinson submits that, before the General Court, he had claimed that the conditions of employment as determined by the application of that communication were unlawful since they were established in breach of Article 336 TFEU, it must be held that that argument is indissociable from that put forward in the first ground of appeal in the present appeal, which was rejected in paragraph 52 above.

83 Second, it is apparent from paragraphs 79 and 216 of the judgment under appeal that the General Court, in the interests of the sound administration of justice, did not examine the objections of inadmissibility raised by the defendants at first instance by which they claimed, inter alia, that the facts, decisions and possible irregularities relied on by the appellant were not attributable to them and thus decided to dismiss the action at first instance without specifying which defendant at first instance, as the case may be, might have been held liable for those facts, decisions and alleged irregularities. Therefore, the complaint alleging failure to examine the argument put forward at first instance, according to which the EU institutions have the status of employer and defendant party, cannot, in any event, succeed.

84 In so far as that argument relates to the imputability of and liability for the irregularities alleged by Mr Jenkinson and in so far as the General Court did not resolve that issue, it must be held that, even if that argument were well founded, it would not be such as to cause the judgment under appeal to be set aside.

85 Third, it should be noted that the complaints relating to paragraphs 92 and 95 of that judgment are the result of a misreading of that judgment.

86 In paragraph 92 of the judgment under appeal, the General Court stated, with a view to responding to the argument of the EEAS and Eulex Kosovo that it was necessary, in the present case, to apply an autonomous law specific to Eulex Kosovo, that the EU legislature had not adopted, under, in particular, Article 336 TFEU, rules intended to regulate the conditions of employment of the members of the contract staff of a mission such as Eulex Kosovo. However, it did not find any infringement of that article.

87 In paragraph 95 of that judgment, the General Court did not identify Mr Jenkinson as one of the ‘other servants of the European Union’ falling within the scope of the CEOS. In that paragraph, the General Court found that the European Code of Good Administrative Behaviour on which Mr Jenkinson relies applies only to the institutions, bodies, offices or agencies of the European Union, their authorities and their staff in their dealings with the public. It is true that it referred to the provisions of that code which state that it does not apply to the relations between those entities and their officials or other servants of the European Union. However, since Mr Jenkinson relied on that code in the context of the dispute relating to his employment relationship, the General Court was entitled to take the view that that code was relied on, not because of relations between the defendants at first instance and Mr Jenkinson as ‘the public’ within the meaning of the European Code of Good Administrative Behaviour, but on the basis that those defendants were to be regarded as his employers.

88 Furthermore, in so far as Mr Jenkinson submits that, by holding, in paragraph 92 of the judgment under appeal, that no rule applicable to the dispute had been adopted pursuant to Article 336 TFEU, the General Court should have found that that article had been infringed because, like for the staff subject to the CEOS, a rule adopted pursuant that article should have been applied to Mr Jenkinson, it is apparent from paragraphs 99 and 102 of that judgment that, since the General Court was seised pursuant to an arbitration clause under Article 272 TFEU, it considered that, unless there was a clear indication of the substantive rules of national law in that contract, it was for the General Court to resolve the dispute on the basis of the substantive rules of the national law applicable to the contract, which it was for the General Court to identify.

89 It is indeed apparent from the arguments put forward by Mr Jenkinson at first instance in support of his first head of claim, as is apparent from paragraph 84 of the judgment under appeal, that he was of the opinion that that head of claim was to be resolved under Belgian law, which, in his view, was applicable by virtue of the connecting factors laid down in Article 8 of the Rome I Regulation.

90 However, as has already been pointed out in paragraphs 68 to 72 above, Mr Jenkinson did not put forward, at first instance, a complaint alleging infringement of Article 336 TFEU on account of the absence of a legal framework for hiring Eulex Kosovo's staff adopted on the basis of that article. It follows that the General Court was not required to verify whether the absence of such a legal framework was lawful.

91 As regards Mr Jenkinson's argument that the General Court should have examined of its own motion the infringement of the acts referred to in paragraph 80 above, it is clear from the case-law of the Court of Justice that a plea going to the substantive legality of an act can be examined only if it is raised by the applicant (see, to that effect, judgments of 2 April 1998, *Commission* v *Sytraval and Brink's France*, C-367/95 P, EU:C:1998:154, paragraph 67; of 2 December 2009, *Commission* v *Ireland and Others*, C-89/08 P, EU:C:2009:742, paragraph 40; and of 14 January 2021, *ERCEA* v *Aristoteleio Panepistimio Thessalonikis*, C-280/19 P, EU:C:2021:23, paragraph 53). It follows that, in so far as such an infringement was not alleged before the General Court, that argument must be rejected as unfounded.

92 It follows from the foregoing that the first part of the third ground of appeal must be rejected as, in part, inadmissible, in part, ineffective and, in part, unfounded.

Second part of the third ground of appeal

– *Arguments of the parties*

93 By the second part of the third ground of appeal, Mr Jenkinson submits, first of all, that, in paragraph 99 of the judgment under appeal, the General Court wrongly excluded any application of the principles of EU law and that it wrongly confined itself to examining the application of the principles stemming from the substantive rules of the national law applicable to the contract. The General Court thus manifestly disregarded the lessons to be drawn from the judgments of 16 July 2020, *ADR Center* v *Commission* (C-584/17 P, EU:C:2020:576), and of 16 July 2020, *Inclusion Alliance for Europe* v *Commission* (C-378/16 P, EU:C:2020:575), from which it follows that the institutions, bodies, offices or agencies of the European Union remain, when performing a contract, subject to their obligations under the Charter of Fundamental Rights of the European Union ('the Charter') and the general principles of EU law.

94 The statement, in paragraph 100 of the judgment under appeal, that the Member States are required to transpose directives, which constitute only minimum rules of protection, is not sufficient to justify the conclusion that the national employment law applicable to the contractual relationship is sufficiently protective of rights stemming from the principles of EU law.

95 Next, Mr Jenkinson submits that the application of national law by the General Court is contrary to the principle of non-discrimination in that it entails three instances of unequal treatment, namely: (i) Mr Jenkinson being treated differently to the servants of the European Union whose conditions of employment are to be determined exclusively by the Council and the Parliament pursuant to Article 336 TFEU; (ii) the servants of the European Union, such as Mr Jenkinson, and national workers governed by private law being treated the same; and (iii) international staff of different nationalities working for the same employer under the same conditions and circumstances being treated in a discriminatory manner. In that regard, Mr Jenkinson states that, given that, according to the General Court, it is the law of the citizenship or tax residence prior to the employment of the members of the contract staff with the EU mission which is applicable to that staff, the principle of non-discrimination is undermined, since the applicable substantive rules could be those of a third country which has not ratified the various instruments allowing the application of the general principles of EU law or the fundamental rights stemming from the Charter.

96 Finally, Mr Jenkinson points out that, in the present case, Belgian law was the only law applicable, since Irish law on unfair dismissal does not apply to workers pursuing an activity outside Ireland.

97 The Council, the Commission, the EEAS and Eulex Kosovo contend that the second part of the third ground of appeal should be dismissed.

– *Findings of the Court*

98 As has been pointed out in paragraph 88 above, the General Court, in paragraph 99 of the judgment under appeal, considered that it was for the General Court, in the present case, to resolve the dispute on the basis of the substantive rules of the national law applicable to the contract.

99 In paragraph 100 of that judgment, the General Court noted, inter alia, that, according to the case-law of the Court of Justice, when implementing the measures transposing 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 those directives which would be in conflict with the various fundamental rights protected by the EU legal order or with the other general principles of EU law.

100 In paragraph 101 of that judgment, the General Court held that it 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.

101 In paragraph 150 of that judgment, after finding that the law which, in the Irish legal order, transposed 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) was applicable

in the present case, the General Court held that it was not apparent from either the case file or the parties' arguments that that law was incompatible with that directive or with the principle prohibiting abuse of rights.

102 It follows that the General Court considered that it was for the General Court to verify whether that principle had been observed. Thus, it did not deny that it was incumbent upon it to ensure compliance with the general principles of EU law. Furthermore, Mr Jenkinson has not shown that, in the present case, the General Court failed to apply a general principle of EU law.

103 It follows that the General Court did not disregard the lessons to be drawn from the judgments of 16 July 2020, *ADR Center* v *Commission* (C-584/17 P, EU:C:2020:576), and of 16 July 2020, *Inclusion Alliance for Europe* v *Commission* (C-378/16 P, EU:C:2020:575), according to which, if the parties decide, in the contract between them, to confer on the EU Courts, by means of an arbitration clause, jurisdiction over disputes relating to that contract, it will be for the EU Courts, independently of the applicable law designated by that contract, to examine any infringements of the Charter and of the general principles of EU law. Consequently, the argument alleging a failure to have regard to the lessons to be drawn from those judgments must be rejected as unfounded.

104 As regards, next, the complaint alleging infringement of the principle of non-discrimination, it should be noted that, in the first head of claim, Mr Jenkinson did not claim that the application of the substantive rules of national law to the contractual relationship at issue was such as to entail an infringement of that principle. Rather, as the General Court noted in paragraph 84 of the judgment under appeal, he maintained that the General Court, in the present case, must adjudicate on the requests made under the first head of claim on the basis of a national law, namely Belgian law, identified pursuant to the Rome I Regulation.

105 As the General Court pointed out in paragraph 217 of the judgment under appeal, Mr Jenkinson, however, claimed, in the second head of claim, that he was treated in a discriminatory manner as a result of his recruitment as an international civilian staff member on a contractual basis. This was examined in paragraphs 230 to 232 of that judgment, which are not covered by the second part of the third ground of appeal.

106 Therefore, if the Court of Justice were to rule on the complaint referred to in paragraph 104 above, it would have to rule on a plea which was not raised at first instance. In those circumstances, that complaint must be regarded as a new complaint and, as such, inadmissible, in accordance with the case-law cited in paragraph 68 above.

107 Finally, as regards the argument that Irish law is inapplicable in the present case, it must be borne in mind that, in the case of an interpretation of national law by the General Court, the Court of Justice has jurisdiction, on appeal, only to determine whether that law was distorted, and the distortion must be obvious from the documents in the file, without there being any need to carry out a new assessment of the facts and the evidence (see, to that effect, judgments of 5 July 2011, *Edwin* v *OHIM*, C-263/09 P, EU:C:2011:452, paragraph 53; of 21 December 2016, *Commission* v *Hansestadt Lübeck*, C-524/14 P, EU:C:2016:971, paragraph 20 and the case-law cited; and of 14 January 2021, *ERCEA* v *Aristoteleio Panepistimio Thessalonikis*, C-280/19 P, EU:C:2021:23, paragraph 67).

108 In the present case, Mr Jenkinson submits that the Irish law on unfair dismissal does not apply to workers who pursue their activities outside Ireland, without, however, claiming that the General Court erred by distorting that law. That argument is therefore inadmissible.

109 It follows that the second part of the third ground of appeal must be rejected as, in part, inadmissible and, in part, unfounded.

Third part of the third ground of appeal

– *Arguments of the parties*

110 By the third part of the third ground of appeal, Mr Jenkinson alleges that the General Court erred in law in determining the law applicable to the contractual relationship at issue.

111 As a preliminary point, he submits, first, that, in deciding to exclude the application of Article 8(2) and (3) of the Rome I Regulation, the General Court failed to take account, in paragraph 106 of the judgment under appeal, of the fact that Eulex Kosovo also had a place of business in the city of Brussels (Belgium).

112 Second, he argues that, in paragraph 111 of that judgment, the General Court decided, without giving any specific reasons and incorrectly, to begin its analysis with the first nine FTCs referred to in paragraph 13 above, concluded between Mr Jenkinson and the successive heads of Eulex Kosovo.

113 He states, third, that the parties never envisaged that their contractual relationship should be governed by Irish law, as allegedly affirmed by Eulex Kosovo itself. He argues that the latter had relied, at first instance, on the application of a '*sui generis* right'.

114 As regards, in the first place, the determination of the law applicable to the last two FTCs at issue, Mr Jenkinson criticises, first, the General Court, for failing, in paragraph 126 of the judgment under appeal, to draw conclusions from the fact that those contracts did not mention the conditions of employment or the rights and obligations of international civilian staff, in breach of Joint Action 2008/124, and did not refer to Communication C(2009) 9502, which required those contracts to be adapted to the national law applicable to the contract, and for having made the manifestly erroneous finding that the parties had given informed consent. Mr Jenkinson claims that the General Court disregarded the intention of the parties to remove, in the last two contracts relating to Mr Jenkinson's work with Eulex Kosovo, the reference to Communication C(2009) 9502 with a view to amending the law applicable to the employment relationship.

115 Second, Mr Jenkinson is of the opinion that the General Court infringed its obligation to state reasons, since it did not justify the exclusion of Belgian law as the law applicable to FTCs pursuant to Article 8(3) and (4) of the Rome I Regulation.

116 Third, he submits, first of all, that the General Court's finding, in paragraph 130 et seq. of the judgment under appeal, as to the existence of a closer connection with Irish law is erroneous, because the General Court, first of all, in its assessment, took into consideration Eulex Kosovo's status as employer, without regard to the fact that the EU institutions might have the status of co-employer.

117 Next, the General Court took account only of the connection between the FTCs at issue and Ireland, without analysing either the relevant circumstances of the case, as a whole, in order to determine whether there was a closer connection with another Member State, or the legal framework relating to the employment of international civilian staff of missions. Nor did it take

account of the country from which all the instructions addressed to the Heads of Mission and to the missions themselves came or of the fact that Eulex Kosovo had a place of business in the EEAS premises located in the city of Brussels. The General Court also failed to take account of the fact that the Council and the Parliament, which are based in Brussels, are, in principle, competent to lay down the legal framework for the employment of international civilian staff for missions and of the fact that the Commission, which is also based in Brussels, gives instructions on the basis of Communication C(2009) 9502.

118 Lastly, Mr Jenkinson claims that the grounds justifying, according to the General Court, the application of Irish law under Article 8(3) and (4) of the Rome I Regulation are manifestly incorrect. First, the General Court confused the concepts of continuity of employment and continuity of applicable law. Second, the provisions of the FTCs relating to the law applicable to the social security and pension schemes are contrary to the principles of EU law and the directives on tax or social matters. A national tax system can be imposed on an employee only if he or she is physically and actually present in the territory of the Member State concerned for more than 183 days a year. In addition, an employer is prohibited from making the creation and constitution of a social security and pension scheme the responsibility of the employee.

119 In the second place, as regards the determination of the law applicable to the first nine FTCs concluded between Mr Jenkinson and the successive heads of Eulex Kosovo, referred to in paragraph 13 above, the appellant criticises, first of all, paragraph 113 of the judgment under appeal, by which the General Court held that Communication C(2009) 9502 could be relied on against Mr Jenkinson solely on the basis that he had had knowledge of it before the signature of the first contract concluded with the Head of Eulex Kosovo. He claims that fact that the communication was incorporated into the contractual provisions by common intention of the parties, despite the repeal thereof, shows that, in the absence of express inclusion of the content of a repealed communication in FTCs, the mechanism for determining the law applicable to the contract cannot rely upon that communication. In his view, the General Court, in so doing, disregarded the case-law on whether contractual terms may be relied on against the weaker party to a contract and the EU law on the validity of general terms unilaterally drawn up by an undertaking. Mr Jenkinson refers, in that respect, to the judgment of 14 September 2017, *Nogueira and Others* (C-168/16 and C-169/16, EU:C:2017:688).

120 Next, according to Mr Jenkinson, the specific analysis of that communication was carried out, in paragraphs 116 to 119 of the judgment under appeal, without any consideration for the fact that consent was possibly vitiated, although the existence of vitiated consent should have been assessed in accordance with the law applicable to the contract, as provided for in Articles 10, 11 and 12 of the Rome I Regulation.

121 Finally, Mr Jenkinson criticises paragraph 119 of the judgment under appeal, claiming that the parties never intended to apply Irish law to the whole of the contractual relationship. His residence for tax purposes prior to his initial employment and his citizenship were relevant only for the purpose of determining the individual rights arising from the payment of travel expenses.

122 In the third place, relying on a failure to rule, Mr Jenkinson submits that he could not, by means of a contractual undertaking, waive observance of the more favourable or public policy provisions laid down by the law which would have applied in the absence of choice, in accordance with Article 8(1) of the Rome I Regulation. He states, in that regard, that, in the absence of a framework similar to the CEOS, that law is Belgian law. That law should have been taken into account in order to ascertain whether the parties had waived observance of more favourable

provisions and public policy provisions. Similarly, the General Court should have applied the rules of the *lex fori*, including principles identified as 'overriding mandatory provisions' within the meaning of Article 9 of that regulation. In Mr Jenkinson's view, by excluding the application of the principles of EU law, in particular the principles of foreseeability and of legal certainty, the General Court infringed the scope of that regulation.

– *Findings of the Court*

123 As regards the preliminary arguments put forward by Mr Jenkinson, it should be noted that, in paragraph 106 of the judgment under appeal, the General Court merely set out the rules of private international law which it deemed relevant in order to determine the law applicable in the present case. Among those rules, it referred to the rule laid down in Article 8(3) of the Rome I Regulation, according to which, in particular, 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. In those circumstances, the General Court cannot validly be criticised for not taking into account, in that paragraph, a factual element relating to the existence of a Eulex Kosovo place of business located in the city of Brussels.

124 In addition, it must be noted that according to the settled case-law of the Court of Justice, it is apparent from Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that an appeal is to be limited to points of law and that the General Court therefore has exclusive jurisdiction to find and appraise the relevant facts and to assess the evidence. The assessment of the facts and evidence does not, save where the facts or evidence are distorted, constitute a point of law, which is subject, as such, to review by the Court of Justice on appeal. Such a distortion must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and evidence (judgment of 10 July 2019, *VG* v *Commission*, C-19/18 P, EU:C:2019:578, paragraph 47).

125 By claiming, in his appeal, that the parties in question had never envisaged that their contractual relationship should be governed by Irish law, Mr Jenkinson is asking the Court of Justice to carry out an assessment of matters of a factual nature, that is to say, to rule on the intention of the parties as regards the law applicable in the present case, which, save in the case of distortion, falls outside its jurisdiction when an appeal is brought before it. Furthermore, Mr Jenkinson does not claim that the General Court's assessment of the intention of the parties is based on a distortion of the facts produced before it that is obvious from the documents on the file. This argument must consequently be dismissed as unfounded.

126 As regards, in the first place, the determination of the law applicable to the last two FTCs at issue, it should be noted, first, that it is apparent, in particular, from paragraph 128 of the judgment under appeal that the General Court considered that, since the parties did not make a choice as to the law applicable in the present case, it was necessary to determine the applicable law on the basis of the criteria set out in Article 8(2) to (4) of the Rome I Regulation.

127 In so far as Mr Jenkinson submits that, in paragraph 126 of the judgment under appeal, the General Court should have drawn conclusions from its finding that the last two FTCs, concluded between him and Eulex Kosovo, made no reference to the requirements laid down in Joint Action 2008/124 and Communication C(2009) 9502, and states that the General Court erred in ruling on the intention and consent of the parties to those contracts, suffice it to note that that argument is based on a misreading of the judgment under appeal. Like paragraph 125 of that judgment,

paragraph 126 entails a mere finding of fact by the General Court which precedes the assessment it begins to make in paragraph 127 of that judgment. The General Court therefore did not rule, in that paragraph 126, on the conclusions to be drawn from its findings of fact.

128 In addition, in paragraph 127 of the judgment under appeal, the General Court took account of the fact that, unlike the previous contracts relating to Mr Jenkinson's work with Eulex Kosovo, the last two FTCs concluded between those parties no longer contained any reference to Communication C(2009) 9502. However, the General Court did not infer from the absence of express reference to that communication that the parties excluded the application of the national law which would have been designated if there had been such a reference, namely Irish law.

129 It must therefore be held that the General Court's finding in paragraph 127 of the judgment under appeal concerns facts, the review of which, save in the case of distortion, falls outside the jurisdiction of the Court of Justice when an appeal is brought before it. In the present case, no distortion has been alleged, let alone demonstrated. Consequently, Mr Jenkinson's argument must be held to be inadmissible in accordance with the case-law referred to in paragraph 124 above.

130 As regards, second, the complaint alleging failure to comply with the obligation to state reasons, it should be borne in mind, first of all, that the obligation to state reasons is an essential procedural requirement that must be distinguished from the question whether the reasoning is well founded, which goes to the substantive legality of the measure at issue (judgment of 29 April 2021, *Achemos Grupė and Achema* v *Commission*, C-847/19 P, EU:C:2021:343, paragraph 62).

131 It follows that, according to the settled case-law of the Court of Justice, the General Court fulfils that obligation when the statement of reasons for a judgment or an order clearly and unequivocally discloses the General Court's reasoning, in such a way as to enable the persons concerned to ascertain the reasons for the decision taken and to enable the Court of Justice to exercise its power of review. The obligation to state reasons incumbent on the General Court does not require the General Court to provide an account which follows exhaustively and one by one all the arguments put forward by the parties to the case, the reasoning may thus be implicit, on condition that it enables the persons concerned to ascertain the reasons why it has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review (judgment of 29 September 2022, *HIM* v *Commission*, C-500/21 P, EU:C:2022:741, paragraph 58 and the case-law cited).

132 It should be noted that, in paragraph 129 of the judgment under appeal, the General Court held that, pursuant to Article 8(2) and (3) of the Rome I Regulation, the law applicable to the last two FTCs concluded between Mr Jenkinson and Eulex Kosovo would, in principle, be Kosovan law. It noted, however, that that law itself excluded its applicability to employment relationships in international missions and, in paragraph 130 of that judgment, it held that, in any event, the last two FTCs concluded between Mr Jenkinson and Eulex Kosovo were more closely connected with Irish law, while explaining the reasons for that finding in paragraphs 131 to 138 of that judgment.

133 It is apparent from those paragraphs in that judgment that the General Court, having noted that the law applicable in the present case was a law other than Belgian law, ruled out the application of Belgian law in the present case, as made explicit in paragraph 139 of that judgment. Accordingly, the complaint alleging failure to comply with the obligation to state reasons must be rejected as unfounded.

134 Third, as regards Mr Jenkinson's line of arguments that the General Court failed to examine whether the EU institutions might have the status of co-employer and to take account of factors establishing a connection between the FTCs at issue and Belgium, in so far as they must be understood as relating to the application by the General Court of Article 8(3) of the Rome I Regulation, it must be noted that, even if the General Court had deemed those institutions to be co-employers of Mr Jenkinson, together with Eulex Kosovo, that alone is not capable of rebutting the General Court's finding that the place of business which had to be taken into account for the purposes of the application of that provision was the one which, according to the General Court, was situated in Kosovo.

135 It is clear from the case-law of the Court that the use of the term 'engaged' in Article 8(3) of that regulation refers purely to the conclusion of the contract of employment and not to the way in which the employee's actual employment is carried out (see, by analogy, judgment of 15 December 2011, *Voogsgeerd*, C-384/10, EU:C:2011:842, paragraph 46).

136 Furthermore, the Court has found that since the factor of the place of business of the undertaking which employs the employee is unrelated to the conditions under which the work is carried out, the fact that the undertaking is established in one place or another has no bearing on the determination of that place of business (see, by analogy, judgment of 15 December 2011, *Voogsgeerd*, C-384/10, EU:C:2011:842, paragraph 48).

137 It follows that the place where the place of business through which the employee was engaged is situated is not necessarily the same as that where the employee's employer has its registered office.

138 It is true that it is only if matters relating to the engagement procedure support the conclusion that the undertaking which concluded the employment contract in actual fact acted in the name of and on behalf of another undertaking that the court called upon to apply Article 8(3) of the Rome I Regulation might consider that the connecting factor contained in that provision makes a *renvoi* to the law of the country in which the latter undertaking's place of business is situated (see, by analogy, judgment of 15 December 2011, *Voogsgeerd*, C-384/10, EU:C:2011:842, paragraph 49).

139 However, Mr Jenkinson does not rely on objective factors supporting the conclusion that, for the purposes of applying that provision, the General Court should have taken account not of the place of business situated in Kosovo with which Mr Jenkinson had concluded the last two FTCs at issue but of the seat of the EU institutions.

140 It follows that Mr Jenkinson's argument concerning the need to establish prior to the application of Article 8(3) of the Rome I Regulation that those institutions have the status of co-employer must be regarded as unfounded.

141 The same is true of the other matters put forward by Mr Jenkinson in order to challenge the application by the General Court of Article 8(3) of that regulation.

142 As regards, first of all, Mr Jenkinson's argument that the General Court should have taken account of the country from which all the instructions given to the Heads of Mission and to the missions themselves came for the purposes of the application of that provision, it must be stated that that is not connected with circumstances related to the conclusion of the employment contract and thus capable of rebutting the determination of Mr Jenkinson's place of employment, as established by the General Court.

143 Next, the mere fact that Eulex Kosovo had a place of business in the EEAS premises located in Brussels, even if proved, does not demonstrate that the General Court erred in law in finding that the relevant place of business for the purposes of the application of Article 8(3) of the Rome I Regulation was that in Pristina (Kosovo). The mention of a Eulex Kosovo place of business situated in the EEAS premises located in Brussels is not sufficient to show that the General Court erred in its assessment of the place of business which must be regarded as having engaged Mr Jenkinson.

144 Similarly, as regards, lastly, the argument that the General Court failed to take account of the legal framework for Mr Jenkinson's employment and of the seat, in Brussels, of the Council and of the Parliament, it must be pointed out that those factors, which are based on the unsubstantiated premiss that only those institutions are competent to determine the legal framework for Mr Jenkinson's employment, do not show that the seat of those institutions was relevant in order to determine his place of engagement, for the purposes of Article 8(3) of the Rome I Regulation.

145 With regard, moreover, to the appellant's complaints concerning the application by the General Court of Article 8(4) of the Rome I Regulation, it must be noted that it is clear from the case-law of the Court of Justice that the application of that provision requires the court to make an overall assessment of all the elements which define the employment relationship and single out one or more as being, in its view, the most significant (see, by analogy, judgment of 12 September 2013, *Schlecker*, C-64/12, EU:C:2013:551, paragraph 40).

146 Among the significant factors suggestive of a connection with a particular country, the Court of Justice has already held that account should be taken in particular of the country in which the employee pays taxes on the income from his or her activity and the country in which he or she is covered by a social security scheme and pension, sickness insurance and invalidity schemes. In addition, the Court must also take account of all the circumstances of the case, such as the parameters relating to salary determination and other working conditions (see, by analogy, judgment of 12 September 2013, *Schlecker*, C-64/12, EU:C:2013:551, paragraph 41).

147 As regards, first of all, Mr Jenkinson's argument that the General Court confused the concepts of continuity of employment and of continuity of applicable law, it is apparent, on the one hand, from paragraphs 131 and 136 of the judgment under appeal that account had to be taken of the existence of a continuous employment relationship since the first of the 11 FTCs referred to in paragraph 13 above for the purposes of determining the law applicable to the last 2 FTCs concerned and, on the other hand, from paragraph 137 of that judgment, that the law that is applicable to the 9 FTCs concerned was to apply to those last 2 FTCs.

148 However, Mr Jenkinson's argument is not such as to demonstrate that the taking into account of the law that was applicable to contracts which preceded those examined by the General Court might constitute an incorrect analysis of the circumstances characterising the employment relationship established by those last contracts and, therefore, an incorrect application of Article 8(4) of the Rome I Regulation. It must be pointed out that the existence of links between contracts such as those referred to by the General Court in paragraphs 131 to 137 of the judgment under appeal may, in accordance with the case-law referred to in paragraph 145 of the present judgment, be found to constitute a significant circumstance which may be taken into account in order to designate an 'other country' within the meaning of that provision. This argument must consequently be dismissed as unfounded.

149 As regards, moreover, Mr Jenkinson's argument that the General Court should not have taken into account the criterion mentioned in the last two FTCs concluded between him and Eulex Kosovo in order to determine the law applicable to the social security and pension schemes and to the tax arrangements, since that criterion is contrary to the principles of EU law and the directives on tax and social matters, it must be noted that, in paragraph 138 of the judgment under appeal, the General Court did not verify whether Irish law was that which validly governed those schemes and arrangements, but merely noted that those last two FTCs referred, in order to determine the law governing those schemes and arrangements, to the law of the 'country of permanent (tax) residence' before Mr Jenkinson took up his duties with Eulex Kosovo.

150 In the light of the case-law referred to in paragraph 146 above, Mr Jenkinson's arguments cannot succeed since, according to that case-law, the General Court is entitled to take into account the circumstance examined in paragraphs 131 to 137 of the judgment under appeal independently of whether that law applies to those schemes and arrangements.

151 It follows that Mr Jenkinson cannot claim that the General Court, in breach of Article 8(4) of the Rome I Regulation, took into account the factors referred to in paragraphs 131 to 138 of the judgment under appeal.

152 In addition, the other factors put forward by Mr Jenkinson in support of the complaint that the General Court partially assessed the factors characterising Mr Jenkinson's employment relationship with Eulex Kosovo must be rejected as unfounded since, by those factors, Mr Jenkinson has not succeeded in establishing that that assessment is incorrect.

153 While those factors which relate to (i) the alleged status of co-employer of the EU institutions having their seat in Brussels; (ii) the legal framework for the employment of international civilian staff of the international missions of the European Union; (iii) the place from which all the instructions to the Head of Eulex Kosovo came; and (iv) that mission and the existence of a Eulex Kosovo place of business in the EEAS premises located in Brussels contribute to designating a country other than Ireland in the light of Article 8(4) of the Rome I Regulation, Mr Jenkinson has not succeeded in establishing that those factors were significant, as regards the last two FTCs concluded between him and Eulex Kosovo, so that they may establish that the General Court erred in its assessment of whether there are links between those FTCs and Ireland by relying on the factors referred to in paragraphs 131 to 138 of the judgment under appeal.

154 The purported legal framework for the employment of international civilian staff of international missions of the European Union defined by the EU institutions having their seat in Brussels, the place from which all the instructions addressed to the Head of Eulex Kosovo and to that mission came, as well as the existence of a Eulex Kosovo place of business in the EEAS premises located in Brussels are, admittedly, circumstances of the case which must be taken into account in the overall assessment referred to in paragraph 145 above. However, unlike those analysed by the General Court, those circumstances relate more to the general context of the last two FTCs concluded between Eulex Kosovo and Mr Jenkinson than to the characteristics more directly linked to those FTCs. Consequently, the argument based on those elements does not show that the General Court erred in its assessment of whether there was a closer connection under Article 8(4) of the Rome I Regulation.

155 Similarly, as regards the argument that it was necessary to examine whether the EU institutions could be deemed to be co-employers of Mr Jenkinson, together with Eulex Kosovo, it must be held that, even if that argument were well founded, it would not be capable of demonstrating that the

seat of those institutions in Brussels constitutes a decisive factor for the purpose of identifying the country which, within the meaning of Article 8(4) of that regulation, is more closely connected with those last two FTCs.

156 It follows from the foregoing that Mr Jenkinson has not established that the General Court erred in law when it applied Article 8 of the Rome I Regulation in order to determine the law governing the last two FTCs concluded between Mr Jenkinson and Eulex Kosovo.

157 In the second place, as regards the determination of the law applicable to the first nine FTCs concluded between Mr Jenkinson and the Head of Eulex Kosovo, referred to in paragraph 13 above, it must be held that the arguments based on an alleged failure to have regard to the case-law on whether contractual terms can be relied on against the weaker parties in a contract and to EU law relating to the validity of general terms unilaterally drawn up by an undertaking as well as the arguments relating to Articles 10, 11 and 12 of the Rome I Regulation do not satisfy the requirements set out in paragraphs 60 and 61 above, since Mr Jenkinson does not substantiate with sufficient precision the matters of law supporting those arguments which must, therefore, be regarded as inadmissible.

158 By maintaining, moreover, that the General Court misinterpreted the parties' intention in relation to their country of origin, it is clear that Mr Jenkinson is asking the Court of Justice to carry out a factual assessment which, in accordance with the case-law cited in paragraph 124 above, save in the case of distortion, falls outside its jurisdiction when an appeal is brought before it.

159 It must be noted, in the third place, that the application of Article 8 of the Rome I Regulation requires, in a first step, that the court hearing the dispute identify the law that would have applied in the absence of a choice and determine, in accordance with that law, the rules that cannot be derogated from by agreement and, in a second step, that that court compare the level of protection afforded to the employee under those rules with that provided for by the law chosen by the parties. If the level of protection provided for by those rules is greater, those same rules must be applied (judgment of 15 July 2021, *SC Gruber Logistics*, C-152/20 and C-218/20, EU:C:2021:600, paragraph 27).

160 However, in the present case, Mr Jenkinson refers generally to Belgian law, but does not identify any specific rule which should have been taken into consideration by the General Court in the application of that article, with the result that he does not show that the General Court erred in law by not granting him the benefit of the application of that allegedly more favourable rule.

161 In those circumstances, it must be held that the General Court did not err in law in having neither reviewed nor applied a more favourable rule under the law that would have been applicable in the present case in the absence of a choice. The same is true of the argument based on the application of EU law pursuant to Article 9 of the Rome I Regulation.

162 It follows from the foregoing that the General Court did not err in law in determining the law applicable to the first nine FTCs referred to in paragraph 13 above and to the last two FTCs, with the result that the arguments summarised in paragraph 112 above concerning the order chosen by the General Court, in its examination of those FTCs, to determine the law applicable to the contractual relationship at issue cannot, in any event, succeed.

163 In the light of the foregoing, the third part of the third ground of appeal must be rejected as, in part, inadmissible and, in part, unfounded.

Second and third complaints in the fourth part of the third ground of appeal

– *Arguments of the parties*

164 By the second complaint in the fourth part of the third ground of appeal, Mr Jenkinson criticises the General Court for distorting Irish law in the context of the interpretation and application of section 9 of the Protection of Employees (Fixed-Term Work) Act 2003 ('the 2003 Act').

165 He submits, as a preliminary point, that the General Court erred in law, in paragraph 151 of that judgment, by not holding that the Council alone has the power to determine the conditions of employment of mission staff. He claims that that point is also contrary to Communication C(2009) 9502, which imposes specific types of contracts for each function. He also notes that section 9 of the 2003 Act refers to the concept of 'associated employer'.

166 As regards, in the first place, the analysis of the objective invoked by Eulex Kosovo to justify the series of consecutive FTCs, Mr Jenkinson submits that, in paragraphs 152, 154 and 155 of the judgment under appeal, the General Court should have applied the case-law of the Irish courts, not that of the Court of Justice. The General Court thus unlawfully limited the protection afforded by Irish law to workers. In particular, according to Mr Jenkinson, in paragraphs 157 to 175 of that judgment, the General Court, wrongly and without explanation, limited the analysis of the objective grounds justifying the use of consecutive FTCs to the temporary nature of Eulex Kosovo, whereas the Irish courts, in order to justify the series of consecutive FTCs, allegedly refer to various objective grounds, such as significant restructuring which an employer faces, the need for temporary expertise in a particular field, the need to employ workers for a clearly defined, temporary, short-term project and staff absence due, for example, to an employee's sick leave. In Mr Jenkinson's view, the General Court's analysis is therefore manifestly contrary to the case-law of the Irish courts he relied on before it.

167 In particular, as regards, first, the General Court's consideration for the duration of Eulex Kosovo's mandates, Mr Jenkinson submits that the General Court should have taken into account the nature of the work he performed within Eulex Kosovo, which met the fixed and lasting needs of the employer, rather than refer, in paragraphs 157 to 160 of the judgment under appeal, to the activities of Eulex Kosovo or take into account, in paragraphs 177 to 180 of that judgment, irrelevant considerations such as the employment, as a priority, of seconded staff. He claims that, in so doing, the General Court distorted the concept of 'fixed and lasting needs of the employer'. Mr Jenkinson refers, in that regard, to an extract from a decision of an 'adjudication officer'.

168 As regards, second, the General Court's assessment, in paragraphs 161 and 162 of the judgment under appeal, concerning the periods covered by the financial reference amounts, which appear in the successive versions of Article 16 of Joint Action 2008/124, Mr Jenkinson is of the opinion that the taking into account of the limited duration of those periods, in order to find that the conclusion of consecutive FTCs was justified, is contrary to the case-law of the Irish courts. In particular, Mr Jenkinson refers to extracts of decisions by those courts which, in his view, clearly show that the requirement that a budget must be available to pay a worker in the course of a specific activity is not sufficient to justify the conclusion of FTCs. Furthermore, had the EU institutions been deemed to be co-employers of Mr Jenkinson, together with Eulex Kosovo, the arguments relating to the financing of Eulex Kosovo would not have been accepted by the General Court.

169 Third, Mr Jenkinson submits that the General Court's assessment, set out in paragraphs 163 to 169 of the judgment under appeal, that Eulex Kosovo's competence and scope of action were subject to adjustments in step with developments in the field and in the relations between the European Union and the Kosovan authorities, does not take into consideration the standard operating procedures (SOP), which lay down rules for staff redeployment either within Eulex Kosovo or within another international mission of the European Union.

170 Fourth, Mr Jenkinson submits that the criterion relating to the duration of the mandates of the successive heads of Eulex Kosovo, referred to in paragraphs 170 to 175 of the judgment under appeal, must be disregarded, since it allows the employer to conclude only contracts of limited duration. In his view, the General Court did not establish, in that regard, that it was possible to have recourse, in that context, to such a criterion. It thus deprived the employee of an effective review of the lawfulness of such use, in the light, in particular, of section 9 of the 2003 Act. In addition, the appellant submits that paragraph 175 of that judgment manifestly contradicts the finding that Eulex Kosovo lacked legal personality and that the heads of that mission had no powers.

171 Fifth, as regards the findings of the General Court concerning the final FTC, Mr Jenkinson claims that the General Court was not entitled to find, as it did in paragraphs 185 and 187 of the judgment under appeal, that the reasons for its assessment were the same as those for the previous FTCs, whereas Eulex Kosovo had explained that the purpose of the final FTC was to coordinate the end of the FTCs concluded with various employees of Eulex Kosovo.

172 In the second place, he argues that the General Court failed to analyse whether the use of consecutive FTCs was appropriate in the light of Irish law. Thus, according to Mr Jenkinson, the General Court justified the use of a series of consecutive FTCs as legitimate by the ease with which that type of contract can be terminated without financial consequences, although none of the defendants at first instance have proved that such consequences would arise if a CID were concluded. Furthermore, the appellant maintains that the General Court wrongly rejected, in paragraphs 181 and 184 of the judgment under appeal, the proposal for another measure which he put forward, without analysing whether there was an alternative less detrimental to employee stability and rights, for the purposes of the case-law of the Irish courts. In so doing, he argues, the General Court reversed the burden of proof which lies with the employer.

173 In paragraph 187 of the judgment under appeal, the General Court held that the use of the final FTC was necessary and appropriate, thereby distorting Irish law, since it was not determined on the basis of a specific examination of the situation in question and in the light of other less disadvantageous and precarious means of satisfying the interests of both parties.

174 In the alternative, Mr Jenkinson claims breach of the principle of non-discrimination and of the principle that the law of a single Member State must apply. He relies on the need to examine the fixed and lasting nature of the employer's needs under Irish law, which refers to the judgment of 4 July 2006, *Adeneler and Others* (C-212/04, EU:C:2006:443, paragraphs 58 to 75). The examination of whether such needs are of a fixed and lasting nature should be modelled on that followed by the EU legislature in the context of the adoption of the CEOS pursuant to Article 336 TFEU. Consequently, Mr Jenkinson criticises the judgment under appeal in so far as it gave a significantly broader interpretation of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Directive 1999/70, than that adopted by the EU

institutions in the context of the CEOS, by limiting the number of FTC renewals to two. In support of that argument, Mr Jenkinson also refers to the judgments of 11 July 1985, *Maag* v *Commission* (43/84, EU:C:1985:328), and of 15 April 2008, *Impact* (C-268/06, EU:C:2008:223).

175 By the third complaint in the fourth part of the third ground of appeal, Mr Jenkinson submits that the General Court failed to take account of the fact that Eulex Kosovo lacked legal personality and of the considerations he raised concerning delegations of power, including in budgetary matters.

176 The Council, the Commission, the EEAS and Eulex Kosovo contend that the second and third complaints of the fourth part of the third ground of appeal should be rejected.

– *Findings of the Court*

177 As a preliminary point, it should be noted that the arguments put forward by Mr Jenkinson against paragraph 151 of the judgment under appeal are indissociable from those put forward in the first ground of the present appeal, which was dismissed in paragraphs 45 to 55 above, since, by those arguments, Mr Jenkinson seeks, in reality, to challenge the lawfulness of Article 9(3) and Article 10(3) of Joint Action 2008/124 in so far as those provisions state that Eulex Kosovo may also recruit international civilian staff, as required, on a contractual basis and that the conditions of employment and the rights and obligations of such staff are to be laid down in the contracts between the Head of Eulex Kosovo or Eulex Kosovo itself and the members of staff.

178 Furthermore, Mr Jenkinson has not shown that Communication C(2009) 9502 applied to the successive heads of Eulex Kosovo and to that mission for the purposes of determining the type of contract offered to him. Those arguments are therefore unfounded.

179 As regards, in the first place, the argument alleging distortion of the case-law of the Irish courts on the grounds justifying the conclusion of consecutive FTCs, it must be borne in mind, as is apparent from paragraph 107 above, that, as regards the review of the interpretation of national law adopted by the General Court, the Court of Justice has jurisdiction, on appeal, only to determine whether that law was distorted, and the distortion must be obvious from the documents on the file. That is not the case here.

180 In that regard, it must be held that the General Court took into account, in paragraphs 156 to 187 of the judgment under appeal, several aspects to reach the conclusion, through an overall assessment, that Mr Jenkinson had carried out, within a specific legal framework and professional context characterised by their temporary nature, the tasks entrusted to him with Eulex Kosovo, whose ultimate fate was, moreover, to cease to exist.

181 In that context, it should be noted at the outset that, in so far as Mr Jenkinson's argument must be understood as alleging an error on the part of the General Court, in paragraph 153 of the judgment under appeal, in failing to analyse whether, in the present case, it was possible to consider that Mr Jenkinson had concluded FTCs with 'associated employers', it must be noted that Mr Jenkinson has not put forward anything to suggest that the failure to analyse that possibility disregards the content and scope of Irish law, with the result that that argument must be regarded as unfounded.

182 As regards the taking into account by the General Court of the temporary nature of Eulex Kosovo in order to find that the conclusion of consecutive FTCs was justified by objective grounds, it is not apparent from the extracts from the decisions to which Mr Jenkinson refers, including those

referring to the existence of objective grounds capable of justifying, under Irish law, the series of consecutive FTCs, that that temporary nature could not be taken into consideration by the General Court to justify the conclusion of consecutive FTCs.

183 In particular, it is important to note, first, that the extract from the adjudication officer's decision, which Mr Jenkinson puts forward in order to prove that the General Court distorted the case-law of the Irish courts, states that grounds relating to the existence of a specific project limited in time and subject to specific funding rather than to the general funding of a permanent entity constitute objective reasons for the conclusion of consecutive FTCs.

184 In the present case, the General Court held, in paragraphs 157 to 160 of the judgment under appeal, that Eulex Kosovo had been established for a fixed period, which was extended. Thus, it is not apparent from the extract from the decision on which Mr Jenkinson relies that, in paragraphs 157 to 160 of the judgment under appeal, the General Court obviously misunderstood Irish law and thus distorted the content or scope thereof.

185 Second, it must be held that, in the light of what has been stated in paragraph 180 above, the same is true of the arguments relating to paragraphs 161 and 162 of the judgment under appeal, referred to in paragraph 168 above.

186 The extracts from the decisions relied on by Mr Jenkinson show that the requirement that a budget must be available to pay a worker in the course of a specific activity is not sufficient to justify the conclusion of consecutive FTCs. However, those extracts do not permit the inference that the taking into account of the fact that Eulex Kosovo's financing was circumscribed and limited in time is a factor that is irrelevant in the context of an overall examination of the circumstances that led an employer to propose to its employee the conclusion of consecutive FTCs.

187 It follows that Mr Jenkinson has not succeeded in demonstrating that the General Court, in so far as it took into account, in the overall assessment referred to in paragraph 180 above, the fact that the budget allocated to Eulex Kosovo was limited in time, manifestly failed to have regard to the content or scope of those judgments.

188 Third, Mr Jenkinson does not put forward anything to establish that, under Irish law, neither the developments in Eulex Kosovo's competences nor the changes in its scope of action can be taken into consideration. The argument put forward by the appellant to challenge the General Court taking this into account seeks, in fact, to have the Court of Justice reassess certain information in the file, namely that relating to the rules stemming from the SOP. However, the Court of Justice, on appeal, does not have jurisdiction in that regard. It follows that that argument must be rejected as inadmissible.

189 Fourth, the argument that the purpose of the final FTC was to coordinate the end of the FTCs concluded with various Eulex Kosovo employees is based on a misreading of the judgment under appeal. In paragraph 187 of that judgment, the General Court pointed out that the end of the final FTC coincided with the date on which the post hitherto held by Mr Jenkinson had to be abolished as part of the restructuring of Eulex Kosovo decided upon by the Council. Thus, the General Court took into consideration the specific features of the context of the final FTC, without basing itself solely, as Mr Jenkinson wrongly submits, on the reasons which led to the conclusion of the FTCs which preceded the final FTC. Consequently, that argument must be rejected as unfounded.

190 As regards, fifth, the General Court's reasons relating to the duration of the mandates of the successive heads of Eulex Kosovo, it should be noted that, in paragraphs 170 to 175 of the judgment under appeal, the General Court took into account, for the purposes of analysing the existence of objective grounds justifying the conclusion of consecutive FTCs, the fact that the duration of the mandates of the successive heads of Eulex Kosovo was limited in time and fixed 'for variable and intermittent periods' and found that that circumstance illustrated the temporary nature of Eulex Kosovo.

191 In that regard, it must be held that, even if those grounds of the judgment under appeal were erroneous, such an error would not be capable of leading to that judgment being set aside. Those grounds are only one of the factors taken into account by the General Court in its overall assessment, recalled in paragraph 180 above, which led it to consider that the conclusion of consecutive FTCs formed part of a context characterised by the temporary nature of Eulex Kosovo.

192 In the light of the overall assessment based on the analysis of the aspects examined, in particular, in paragraphs 156 to 169 of the judgment under appeal and in paragraphs 185 to 187 thereof, the General Court was entitled to conclude that there were objective grounds justifying the conclusion of the FTCs under examination. Consequently, the arguments concerning those paragraphs must be regarded as ineffective. The same is true of the arguments covering paragraphs 177 to 180 of the judgment under appeal, referred to in paragraph 167 above.

193 In the second place, it is apparent from the extracts from the decisions relied on by Mr Jenkinson in support of his argument that the General Court failed to review the appropriateness of the proposed recruitment measure that, in order to prove the existence of objective grounds justifying that measure, a defendant must demonstrate the existence of a legitimate objective to which that measure relates and establish that that measure is appropriate and necessary in order to achieve that objective. It is also apparent from those extracts that, in order to determine whether a ground may be regarded as an objective ground, the court must ask itself whether the measure in question constitutes the minimum unfavourable treatment of the employee while enabling the employer to achieve that objective.

194 In that regard, in paragraph 146 of the judgment under appeal, the General Court held that section 7 of the 2003 Act requires, in essence, that, 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 for the purpose of achieving a legitimate objective of the employer, in an appropriate and necessary manner.

195 In the remainder of its reasoning, the General Court held, inter alia, in paragraphs 181 to 184 of that judgment, that the very nature of Eulex Kosovo inevitably had an impact on the conditions of employment of its staff and the employment prospects thereof. In that regard, it ruled out the possibility of following the proposal put forward by Mr Jenkinson that a CID containing a termination clause to be triggered if Eulex Kosovo's mandate came to an end could have been concluded, and held, in essence, that recourse to a 10th FTC was the necessary and appropriate means of ensuring that Eulex Kosovo had the necessary resources to carry out its mandate, which was characterised by financing that was circumscribed and limited in time.

196 In addition, in paragraph 187 of the judgment under appeal, the General Court noted that the specific context linked, in particular, to the restructuring of Eulex Kosovo, supported the view that the conclusion of the final FTC was a necessary and appropriate means of meeting the needs for which the contractual relationship had been entered into.

197 It is apparent from the foregoing that, in the circumstances of the present case, the General Court, as the Advocate General observed, in essence, in point 154 of his Opinion, considered that Mr Jenkinson's recruitment on the basis of consecutive FTCs was the only way to meet Eulex Kosovo's needs, which were limited in time and depended on factors external to that mission.

198 In so doing, it is not obvious that the General Court misconstrued the content and scope of the obligation alleged by Mr Jenkinson, according to which the court must determine whether the disputed measure constitutes the minimum unfavourable treatment of the employee while enabling the employer to achieve its objective. It follows that the distortion of Irish law alleged by Mr Jenkinson has not been proven by him.

199 It should be added, as regards the argument put forward by Mr Jenkinson that, by referring solely to the case-law of the Court of Justice, the General Court disregarded the case-law of the Irish courts, that, as is apparent from the foregoing, the General Court did not distort that case-law when it applied Irish law in the present case. Thus, since no other specific evidence was put forward by Mr Jenkinson in his appeal, it must be held that that argument cannot succeed.

200 As regards the complaint raised in the alternative by Mr Jenkinson, alleging infringement of the principle of non-discrimination and of the principle that the law of a single Member State must apply, it should be noted, first of all, that the interpretation of Clause 5(1)(a) of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Directive 1999/70, adopted in the judgment of 4 July 2006, *Adeneler and Others* (C-212/04, EU:C:2006:443), is also reflected in the judgment of 26 January 2012, *Kücük* (C-586/10, EU:C:2012:39), which the General Court referred to in particular in paragraph 154 of the judgment under appeal.

201 Furthermore, the references to the judgments of 11 July 1985, *Maag* v *Commission* (43/84, EU:C:1985:328), and of 15 April 2008, *Impact* (C-268/06, EU:C:2008:223), are not such as to prove that the General Court made any error of law. How those judgments are relevant for the analysis of the judgment under appeal was not explained by Mr Jenkinson in his appeal and is not immediately apparent from their content.

202 In so far as Mr Jenkinson submits that it was for the General Court to base its interpretation of the needs that could satisfy the requirements laid down in Clause 5(1)(a) of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Directive 1999/70, on the interpretation adopted by the EU legislature in the context of the adoption of the CEOS pursuant to Article 336 TFEU, that argument does not satisfy the requirements set out in paragraphs 60 and 61 above.

203 Lastly, Mr Jenkinson does not indicate precisely which rules laid down by the EU legislature should have been taken into account by the General Court.

204 In particular, as regards the reference to a limit of two FTC renewals which would be applicable to the staff of the European Union, Mr Jenkinson has not shown that that rule is applicable to the present case.

205 It follows that, in the absence of any other argument capable of supporting the complaint raised by Mr Jenkinson in the alternative, that complaint must be regarded as, in part, inadmissible and, in part, unfounded.

206 In the third place, since the complaint referred to in paragraph 175 above does not relate to any specific part of the judgment under appeal and does not develop any legal argument enabling the Court of Justice to carry out its review, in so far as, in particular, it does not set out the consequences that would follow from Eulex Kosovo acquiring legal personality, it must be found inadmissible in so far as it does not satisfy the requirements set out in paragraphs 60 and 61 above.

207 It follows from all of the foregoing that the second and third complaints of the fourth part of the third ground of appeal must be rejected as, in part, inadmissible and, in part, unfounded.

Fifth part of the third ground of appeal

– *Arguments of the parties*

208 By the fifth part of the third ground of appeal, Mr Jenkinson criticises the General Court for having misinterpreted his submissions in paragraph 197 of the judgment under appeal. In addition, the General Court failed to have regard to the prohibition on ruling *ultra petita* when it ruled out the award of fair and equitable compensation to Mr Jenkinson on account of the infringement of section 8 of the 2003 Act.

209 While it would appear from that paragraph 197 that Mr Jenkinson had expressly stated that his claim for compensation in respect of contractual loss, linked to the unlawful termination of his contractual relationship, was based on the re-categorisation of that relationship on the basis of the application of section 9 of the 2003 Act, Mr Jenkinson considers that he expressly stated, in his observations lodged in response to a measure of organisation of procedure before the General Court, that 'however, as such, [section] 8 of [that] Act … is not the sole legal basis for compensation in connection with the unlawful termination of his employment relationship, which relies principally on a failure to comply with the legislation applicable to the conditions governing dismissal in a contract which he considers should be re-categorised as a [CID], on the basis of the application of [section] 9 [of that Act]'.

210 In addition, Mr Jenkinson maintains that he indicated, in commenting on an Irish decision, that the penalty for infringement of section 8 of that act had to entail fair and equitable compensation.

211 Mr Jenkinson also complains that the General Court failed to draw conclusions in terms of compensation that followed from reliance on that article, when it should have done so, in particular, by exercising its unlimited jurisdiction, as an Irish court would have. By failing to rule in that way, it infringed the principle that the Court cannot rule *ultra petita* and misapplied Articles 76 and 84 of the Rules of Procedure of the General Court.

212 The Council, the Commission, the EEAS and Eulex Kosovo contend that the fifth part of the third ground of appeal should be dismissed.

– *Findings of the Court*

213 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 (judgment of 17 September 2020, *Alfamicro* v *Commission*, C-623/19 P, EU:C:2020:734, paragraph 41).

214 It should be noted, in that regard, that it is apparent from the application at first instance that Mr Jenkinson had, in the first head of claim, put forward claims for compensation in lieu of notice linked to the termination of his contractual relationship, which he considered should be re-categorised as a CID, as a consequence of the unlawfulness of that termination and of the failure to transfer the end of employment documents.

215 There is nothing in the application at first instance to suggest that Mr Jenkinson sought compensation for breach of his right to be informed in writing of the grounds justifying the conclusion of a FTC rather than the conclusion of a CID.

216 It is true that, in response to a measure of organisation of procedure adopted by the General Court on 1 December 2020, Mr Jenkinson stated, as he points out in the fifth part of the third ground of appeal, that section 8 of the 2003 Act does not constitute, as such, the exclusive legal basis on which he intends to rely in support of his claim for compensation in connection with the termination of his contractual relationship, that claim being based principally on failure to comply with the legislation on the conditions governing dismissal applicable to that relationship, which he considers should be re-categorised as a CID pursuant to section 9 of that act.

217 However, as the General Court pointed out in paragraph 87 of the judgment under appeal, in reply to a measure of organisation of procedure adopted by the General Court on 6 September 2019, Mr Jenkinson argued that the breach of section 8 of the 2003 Act *ipso facto* entailed the re-categorisation of the consecutive FTCs at issue as a CID.

218 It follows that the General Court, in paragraph 197 of the judgment under appeal, did not manifestly alter the subject matter and substance of Mr Jenkinson's claims by stating that, by relying on a breach of section 8 of the 2003 Act, he considered that that breach should lead to the re-categorisation of the consecutive FTCs at issue as a CID and that the claim for compensation of the alleged loss arising from the termination of his contractual relationship hinged on the re-categorisation thereof.

219 Thus, since no claim for damages based on the infringement of the right to be informed in writing, at the latest on the date of renewal of the FTC, of the grounds justifying the conclusion of a new FTC rather than that of a CID was put forward at first instance, it must be concluded that the General Court could not, without ruling *ultra petita*, award compensation on the basis of section 8 of the 2003 Act, even by exercising unlimited jurisdiction.

220 It follows that, by refraining from ruling on a claim which, contrary to what Mr Jenkinson asserts, was not brought by him, the General Court did not disregard the limits of the principle that a court may not rule *ultra petita*.

221 The fifth part of the third ground of appeal must therefore be rejected as unfounded.

Sixth part of the third ground of appeal

– *Arguments of the parties*

222 By the sixth part of the third ground of appeal, Mr Jenkinson complains that the General Court failed to rule on the claim for compensation in respect of contractual loss set out, in particular, in paragraphs 180 to 186 of the application at first instance.

223 The Council, the Commission, the EEAS and Eulex Kosovo contend that the sixth part of the third ground of appeal should be dismissed.

– *Findings of the Court*

224 It should be borne in mind that Mr Jenkinson had submitted the claim for compensation in respect of contractual loss, set out in paragraphs 180 to 186 of his application at first instance, in the first head of claim.

225 In that regard, the General Court found, in paragraphs 52 and 54 of the judgment under appeal, that all the claims for damages brought by Mr Jenkinson in the first head of claim were based on the re-categorisation of his contractual relationship as a CID or as a result of that re-categorisation.

226 Having dismissed the request for re-categorisation of that contractual relationship as a CID, the General Court, in paragraph 215 of that judgment, consequently dismissed the claim for compensation in respect of the contractual loss alleged by Mr Jenkinson in the first head of claim.

227 Thus, since it was in that head of claim that Mr Jenkinson had requested payment of compensation *ex aequo et bono* in the amount of EUR 50 000 and that claim must be understood as following the request for re-categorisation of his contractual relationship as a CID, which is not effectively challenged in the appeal, it must be held that, in paragraph 215 of that judgment, the General Court ruled on that claim for compensation by rejecting it jointly with the other claims for compensation put forward in that head of claim.

228 It follows that the General Court did not fail to rule on the claim for compensation in respect of contractual loss set out, in particular, in paragraphs 180 to 186 of his application at first instance.

229 Consequently, the sixth part of the third ground of appeal must be rejected as unfounded.

Second ground of appeal and first complaint in the fourth part of the third ground of appeal

Arguments of the parties

230 By the second ground of appeal, Mr Jenkinson challenges, in the first place, paragraph 82 of the judgment under appeal, by which the General Court decided, without giving reasons for that decision, to take account, for the purposes of ruling on the request for re-categorisation of Mr Jenkinson's contractual relationship as a CID, only of the 11 FTCs, excluding the FTCs

previously concluded in respect of his employment with the EUMM and the EUPM. Mr Jenkinson takes the view that the final FTC should be regarded as forming part of a longer contractual relationship with the defendants at first instance which also includes those FTCs.

231 Mr Jenkinson submits, in essence, that, under the national law applicable in the present case, all the FTCs concluded for the purposes of his employment with the three missions concerned must be taken into account. Furthermore, in paragraph 232 of the judgment under appeal, the General Court noted Mr Jenkinson's continuity of employment with those three missions. It would therefore have been imperative, in order to determine whether the use of the consecutive FTCs at issue constituted an abuse, to examine those FTCs in chronological order, which the General Court did not do.

232 Furthermore, the failure to examine, first, the contractual relationship between Mr Jenkinson and the defendant parties other than Eulex Kosovo and, second, the application of the concept of 'continuous employment with one or more employers', within the meaning of Irish law, amounts to negating the effect of paragraph 77 of the judgment under appeal, which draws certain conclusions from the lack of legal personality of the three missions concerned, including Eulex Kosovo before it acquired it.

233 In the second place, Mr Jenkinson considers that, in the light of Irish law, the General Court should have ascertained, as a first step, whether the contractual relationship with the three missions concerned could be regarded as continuous and entered into with 'associated employers', and then determined, as a second step, the consequences that such a relationship entailed. He claims that, in the absence of that two-step analysis, the General Court did not rule out the possibility that the FTCs concluded for the purposes of his employment with the EUMM and the EUPM could be regarded as constituting a single, continuous contractual relationship with the European Union.

234 By the first complaint in the fourth part of the third ground of appeal, Mr Jenkinson claims that the General Court erred, in paragraph 153 of the judgment under appeal, in that it failed to take into consideration, when examining his requests submitted under the first head of claim, all the FTCs relating to the work which he had carried out with the three missions concerned. The General Court wrongly failed to analyse, before ruling out the examination of all of those FTCs, whether, in the present case, it was possible to consider that Mr Jenkinson had concluded FTCs with 'associated employers', even though that is an essential condition under Irish law.

235 The Council, the Commission, the EEAS and Eulex Kosovo contend that the second ground of appeal and the first complaint in the fourth part of the third ground of appeal should be rejected.

Findings of the Court

236 In the first place, as regards the second ground of appeal, it is apparent from paragraph 82 of the judgment under appeal that, in so far as the final FTC, which alone contained an arbitration clause conferring jurisdiction on the EU Courts, formed part of the 11 FTCs, the General Court decided to examine Mr Jenkinson's request for re-categorisation of the 11 FTCs as a single CID. He stated that, in the event that that request were rejected, the General Court would not have jurisdiction to examine the request for re-categorisation as a CID of the consecutive FTCs relating to Mr Jenkinson's employment with the EUMM and the EUPM as those FTCs did not contain an arbitration clause conferring jurisdiction on the EU Courts.

237 Those considerations of the General Court, which take place in the context of a broader line of reasoning, sought to define the framework within which the assessment of that request for re-categorisation was to be carried out.

238 First, contrary to what Mr Jenkinson claims, that statement of reasons enables him and the Court of Justice to understand why the General Court decided to take into account, for the purposes of that assessment, not the FTCs relating to Mr Jenkinson's employment with the EUMM and the EUPM, but only the 11 FTCs.

239 Second, as regards the merits of that approach by the General Court, it is apparent from that statement of reasons that the General Court considered that, by the first head of claim, Mr Jenkinson was requesting that conclusions be drawn from the termination of the final FTC in so far as that contract was to be regarded as forming part of a contractual relationship which began with Mr Jenkinson's employment with the EUMM and, therefore, that Mr Jenkinson's submissions under the first head of claim depended on whether the final FTC formed part of a series of consecutive FTCs which must, as a whole, be regarded as forming a single CID.

240 In fact, the General Court noted in paragraph 52 of the judgment under appeal, as regards the subject matter of the requests made under the first head of claim, that Mr Jenkinson was asking the General Court to re-categorise the consecutive FTCs, which he had concluded in order to enter into a contractual relationship with the three missions concerned, as a single CID, and to make a finding that the circumstances in which that CID had been terminated were contrary to the employment law applicable to that type of contract.

241 In paragraph 66 of that judgment, the General Court found that, as concerns the requests put forward under the first head of claim, it must examine those requests by also taking account of the employment contracts preceding the final FTC.

242 In paragraph 81 of the judgment under appeal, the General Court stated, however, that its jurisdiction stemmed from the arbitration clause conferring jurisdiction the EU Courts, which appeared exclusively in the final FTC.

243 Furthermore, in so far as the request made under the first head of claim, relating to the termination of his contractual relationship which occurred at the end of that final FTC, was based on the premiss that the final FTC formed part of a series of consecutive FTCs, the General Court necessarily had to rule also on the FTC that preceded the final FTC.

244 In those circumstances, given that it was for the General Court to rule by taking into account the termination of the contractual relationship which occurred at the end of the final FTC which Mr Jenkinson considers to be part of a single CID, it is not apparent that the General Court erred in law by beginning its analysis with an examination of the alleged links between the 11 FTCs rather than examining from the outset all the FTCs concluded by Mr Jenkinson, including those relating to his employment with the EUMM and the EUPM.

245 Since the General Court concluded, in paragraph 188 of the judgment under appeal, that there were objective grounds justifying the conclusion of each of the 11 FTCs and that, therefore, the request for re-categorisation of those 11 FTCs as a single CID had to be dismissed, the General Court cannot validly be criticised for failing to extend, for the purposes of ruling on the first head of claim, its examination to the FTCs relating to its employment with the EUMM and the EUPM.

246 Given that the General Court held, without it being validly disputed, that the last contract concluded between Mr Jenkinson and Eulex Kosovo had been lawfully concluded for a fixed term, it could infer therefrom that that contract was not part of a contractual relationship of indefinite duration. Since that assessment was sufficient to rule out the possibility that the end of the latter contract might have constituted a breach of a CID, the assessment that could be made of the FTCs relating to Mr Jenkinson's work with the EUMM and the EUPM could not have altered that finding in any event.

247 It follows from the foregoing that Mr Jenkinson has not succeeded in demonstrating that the General Court erred in law in holding, in paragraph 82 of the judgment under appeal, that it was not necessary to take those FTCs into account in order to rule on the requests made in the first head of claim.

248 That conclusion is not called into question by Mr Jenkinson's argument that, in paragraph 232 of that judgment, the General Court observed that there was a continuity of employment with the three missions concerned. The General Court made no such observation in that paragraph. Accordingly, that argument, which is based on a misreading of that paragraph, must be rejected as unfounded.

249 As regards Mr Jenkinson's argument referred to in paragraph 232 above, it is sufficient to note that he merely asserts that the failure to examine, on the one hand, the contractual relationship between himself and the defendant parties other than Eulex Kosovo and, on the other, the concept of 'continuous employment with one or more employers' would amount to negating the effect of paragraph 77 of the judgment under appeal, without developing any arguments in support of that assertion. It follows that that argument does not satisfy the requirements referred to in paragraphs 60 and 61 above and must therefore be rejected as inadmissible.

250 In the second place, as regards, first, the argument relating to the General Court's failure to examine whether the contractual relationship with the three missions concerned should be regarded as continuous and as having been entered into with 'associated employers' and, second, the first complaint in the fourth part of the third ground of appeal, it should be noted that it is apparent from paragraph 247 above that the General Court was right to find that it was not for the General Court to rule on the categorisation of all the consecutive FTCs relating to Mr Jenkinson's activity with the EUMM and the EUPM as a single, continuous contractual relationship, with the result that the General Court cannot be criticised for not having examined that issue and for not having taken those FTCs into account when examining the first head of claim, including in paragraph 153 of the judgment under appeal.

251 Furthermore, the General Court could not find, before even identifying the applicable national law, whether the defendants at first instance should be regarded as 'associated employers', since that concept derives from the substantive rules of national law.

252 Consequently, the second ground of appeal and the first complaint in the fourth part of the third ground of appeal must be rejected as, in part, inadmissible and, in part, unfounded.

Second part of the fourth ground of appeal

Arguments of the parties

253 By the second part of the fourth ground of appeal, Mr Jenkinson complains, in the first place, that the General Court did not examine, in paragraph 230 of the judgment under appeal, whether Eulex Kosovo's staff were subject to the same rights and obligations, not in the light of the rules for determining the applicable law, but with regard to the substantive rules of the national law applicable. According to Mr Jenkinson, establishing the applicability of different national laws would create manifest inequalities, particularly as regards the application of the principles of EU law and the Charter. In so doing, the General Court failed to examine the objective pursued by that unequal treatment and to review compliance with the principle of proportionality under Article 52 of the Charter.

254 In the second place, the appellant submits that, by agreeing to apply national law to the resolution of a conflict arising from a public law contract concluded between a member of staff and the European Union, the General Court imposed on the European Union fewer obligations than it imposes on itself in respect of staff subject to the CEOS. There is therefore a contradiction between, on the one hand, paragraph 95 of the judgment under appeal and, on the other, paragraphs 231 and 232 of that judgment.

255 In the third place, Mr Jenkinson considers that the judgment of 5 October 2004, *Sanders and Others* v *Commission* (T-45/01, EU:T:2004:289), and the judgment of the tribunal du travail francophone de Bruxelles (Brussels Labour Court (French-speaking), Belgium) of 30 June 2014, which he had relied on before the General Court and which were examined in paragraphs 233 to 236 of the judgment under appeal, were relevant, in particular in so far as they illustrate the limits of the budgetary mandate granted to Eulex Kosovo. Furthermore, the General Court wrongly rejected any analogy between the present case and that which gave rise to the judgment of 5 October 2004, *Sanders and Others* v *Commission* (T-45/01, EU:T:2004:289), since, according to Mr Jenkinson, he should have been employed on the same terms as a member of the temporary staff, that claim being the same as that put forward by the applicants in the latter case.

256 The Council, the Commission, the EEAS and Eulex Kosovo contend that the second part of the fourth ground of appeal should be dismissed.

Findings of the Court

257 In the first place, it should be noted that, according to the settled case-law of the Court of Justice, the principle of non-discrimination 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 (judgments of 8 September 2011, *Rosado Santana*, C-177/10, EU:C:2011:557, paragraph 65, and of 15 September 2022, *Brown* v *Commission and Council*, C-675/20 P, EU:C:2022:686, paragraph 66).

258 In paragraph 230 of the judgment under appeal, the General Court held, with regard to the alleged infringement of the principles of equal treatment and non-discrimination, that there was no discrimination between the members of Eulex Kosovo's contract staff, on account of the

application of different national laws to which the contractual provisions deriving from Communication C(2009) 9502 referred, since those members of staff are treated in accordance with the same rules, which are reproduced verbatim in the contracts concerning them.

259 It must be found that, in so ruling, the General Court erred in law.

260 It is apparent from that paragraph 230 that the General Court took the view, without indicating whether it considered that the members of Eulex Kosovo's contract staff were in a comparable or different situation, that, given the identical nature of the terms of all the contracts of those members of staff, which referred to that communication for the purpose of identifying the law applicable to the contract, those members had to be regarded as being treated in the same way.

261 The General Court thus held that it was sufficient, in order to ensure compliance with the principle of non-discrimination, that the same rules for determining the law applicable to those members of staff be laid down.

262 Even if the members of Eulex Kosovo's contract staff were in a comparable situation, it must be noted that the application of various national laws might, in practice, result in the persons concerned being treated differently as regards the rights conferred on them and the obligations imposed on them in a given situation. Therefore, the General Court could not, without depriving the principle of non-discrimination of all practical effect and without thereby erring in law, confine itself to finding that the contract terms which made it possible to identify the applicable substantive rules were the same for all members of Eulex Kosovo's contract staff.

263 That said, the error of law identified in paragraph 259 above is not such as to require the judgment under appeal to be set aside.

264 In accordance with settled case-law, if the grounds of a decision of the General Court contain an infringement of EU law but its operative part is shown to be well founded on other legal grounds, such an infringement is not one that should cause that decision to be set aside, and a substitution of grounds must be made (judgment of 6 May 2021, *Bayer CropScience and Bayer* v *Commission*, C-499/18 P, EU:C:2021:367, paragraph 54 and the case-law cited).

265 In that regard, it should be recalled that Mr Jenkinson relies on an alleged breach of the principle of non-discrimination between the various members of Eulex Kosovo's international civilian staff on account of the application, to those staff members, of the different national laws designated pursuant to the connecting factor in Communication C(2009) 9502, which refers to the law of the country of which the person concerned is a national.

266 It is important to note, however, that the General Court took the view, without being validly challenged in the present appeal, that it was expressly permitted, in accordance with the provisions of primary and secondary law referred to in paragraphs 226 to 228 of that judgment, for the successive heads of Eulex Kosovo, and then Eulex Kosovo itself, to recruit international civilian staff on a contractual basis.

267 It follows from the contractual nature of the relationships thus established that, in the absence of a common European regime applicable to the members of Eulex Kosovo's staff, the substantive rules intended to supplement the contractual terms are derived from a national law which will have been identified under the rules of private international law and by agreement between the parties to the contract.

268 In the present case, as is apparent in particular from paragraph 119 of the judgment under appeal, which was not disputed by Mr Jenkinson in the present appeal, the connecting factor resulting from Communication C(2009) 9502, which refers to the law of the country of which the person concerned is a national, had been mentioned in the nine FTCs concluded between Mr Jenkinson and Eulex Kosovo, in accordance with the rules of private international law applicable to those contracts and by agreement between the parties to those contracts.

269 It follows that the members of Eulex Kosovo's contract staff from different Member States were, for the purposes of concluding their contracts, not in a comparable situation, but in different legal and factual situations, in particular because of the different laws which were applicable to them, by virtue of their origin, at the time when those contracts were concluded.

270 In those circumstances, the application of different substantive rules to the members of Eulex Kosovo's international civilian staff must be regarded, first, as taking into account objective circumstances defined by the relevant rules of private international law and, second, as a consequence of the fact that they were placed in situations that were not comparable.

271 Consequently, Mr Jenkinson has failed to show that, in the circumstances of the present case, the application of different substantive rules of national law to the members of Eulex Kosovo's international civilian staff constitutes a breach of the principle of non-discrimination.

272 In the second place, it should be noted that the General Court held, in paragraph 231 of the judgment under appeal, that Mr Jenkinson was wrong to claim that he had sustained loss as a result of the discrimination he allegedly had been the subject of compared with the members of staff subject to the CEOS, which should have been applied to him as a staff member employed by the EEAS, adding that, in accordance with the Memorandum of Understanding signed at Belgrade on 13 July 1991 establishing the ECMM, subsequently renamed the EUMM, staff were not to be hired other than as 'European staff'.

273 In paragraph 232 of that judgment, the General Court found, first, that neither that memorandum nor any other piece of information had been produced by Mr Jenkinson in support of his arguments and that, in any event, that memorandum did not contain any provision capable of demonstrating that the employment of international civilian staff with Eulex Kosovo was unlawful.

274 Second, in that paragraphs 232, the General Court noted that the EU legislature had provided, in the context of the legislative provisions concerning Eulex Kosovo, a legal basis enabling the Head of Eulex Kosovo, then the mission itself, to recruit international civilian staff on a contractual basis.

275 As has been pointed out in paragraph 86 above, the General Court simply held, in paragraph 95 of the judgment under appeal, that the European Code of Good Administrative Behaviour on which Mr Jenkinson relies applies only to the institutions, bodies, offices or agencies of the European Union, their authorities and their staff in their dealings with the public, with the result that Mr Jenkinson cannot rely on it as regards his employment relationship.

276 It follows that there is no contradiction between, on the one hand, paragraph 95 of the judgment under appeal and, on the other, paragraphs 231 and 232 of that judgment.

277 In addition, it should be noted that, by claiming that the General Court erred in law by imposing on the European Union fewer obligations than it imposes on itself in respect of members of staff subject to the CEOS, Mr Jenkinson puts forward a complaint relating to the lack of a legal framework governing his situation as a member of Eulex Kosovo's international civilian staff which, as noted in paragraphs 68 to 72 above, was not raised at first instance. This complaint must consequently be dismissed as inadmissible.

278 In the third place, as regards the argument based on the relevance, in the present case, of the judgment of 5 October 2004, *Sanders and Others* v *Commission* (T-45/01, EU:T:2004:289), and of the decision of the tribunal du travail francophone de Bruxelles (Brussels Labour Court (French-speaking)) of 30 June 2014, relied on by Mr Jenkinson before the General Court, it must be held that Mr Jenkinson has not established how those decisions are relevant for the purposes of the present case, so that the General Court could not, in paragraphs 234 and 236 of the judgment under appeal, rule out any analogy with those decisions. Although he argues that that judgment and that decision support the finding that that Eulex Kosovo had the possibility of being awarded additional sums and that, consequently, the arguments relating to the Financial Regulation had to be examined, Mr Jenkinson has not succeeded in establishing, by that argument, what conclusions were to be drawn from that judgment and from that decision in the present case. This argument must consequently be dismissed as unfounded.

279 As regards Mr Jenkinson's argument that the General Court wrongly ruled out any analogy between the present case and the case which gave rise to the judgment of 5 October 2004, *Sanders and Others* v *Commission* (T-45/01, EU:T:2004:289), since, in his view, he should have been employed in the three missions concerned in accordance with the rules of the CEOS applicable to members of the temporary staff, it should be recalled that although, according to the case-law of the Court of Justice, the European Union may conclude employment contracts governed by the law of a Member State, it must nevertheless determine the terms of employment in the light of the needs of the service and not with a view to avoiding the application of the Staff Regulations of Officials of the European Union or the CEOS or both (see, to that effect, judgment of 6 December 1989, *Mulfinger and Others* v *Commission*, C-249/87, EU:C:1989:614, paragraphs 10 and 11).

280 Thus, contrary to what Mr Jenkinson maintains, it cannot be inferred from Article 336 TFEU that there is a right to be engaged under the same rules as those applicable to a member of staff subject to the CEOS. Furthermore, Mr Jenkinson has not shown that, in the present case, his recruitment took place on that basis or that the conditions of his employment were defined with a view to avoiding the application of the CEOS. Consequently, the argument based on the existence of that alleged right must be rejected as unfounded.

281 It follows that Mr Jenkinson cannot claim that the General Court erred in law in paragraphs 231 to 235 of the judgment under appeal.

282 Therefore the second part of the fourth ground of appeal must be rejected.

Fifth ground of appeal

Arguments of the parties

283 By the fifth ground of appeal, Mr Jenkinson criticises the General Court's examination of the admissibility of the third head of claim.

284 He is of the opinion that a lack of clarity, of foreseeability, of legal certainty and of equal treatment clearly follows from, and is inevitably linked to, the exchanges between the parties to the proceedings as regards the first head of claim. He claims that the General Court failed to take into account all the factual and legal considerations put forward at first instance and to verify the legality of the practice relating to the employment of international civilian staff with Eulex Kosovo. It thus unlawfully reduced the scope of review of the legality of the action of the defendants at first instance and infringed Article 5 TEU.

285 Furthermore, in his view, the General Court wrongly held, in paragraph 244 of the judgment under appeal, that none of the issues raised by Mr Jenkinson had been clearly set out and, in paragraph 245 of that judgment, that the request made under the third head of claim was linked to an act on the part of the General Court.

286 The Council, the Commission, the EEAS and Eulex Kosovo contend that the fifth ground of appeal should be dismissed.

Findings of the Court

287 In paragraphs 244 to 247 of the judgment under appeal, the General Court set out the reasons which led it to consider that the third head of claim lacked clarity and should therefore be rejected as manifestly inadmissible. In particular, in paragraphs 245 and 246 of that judgment, the General Court held that Mr Jenkinson relied at first instance on the existence of loss sustained as a result of the General Court dismissing the first and second principal heads of claim, which was attributable to the defendants.

288 Mr Jenkinson puts forward, in the fifth ground of appeal, a series of general statements relating to the legal and factual situation surrounding the action at first instance and criticises the General Court for failing to examine the various legal issues which he had raised, without, however, explaining to the requisite legal standard what error the General Court allegedly made in finding that the third head of claim did not meet the requirements of clarity which it identified in paragraph 243 of the judgment under appeal.

289 In particular, while he submits that that head of claim was not intended to establish an infringement deriving from an act on the part of the General Court in the analysis of the first and second heads of claim, he also points out that the rejection of the first two heads of claim could be regarded as illustrative of all the legal issues raised in the third head of claim.

290 Those considerations do not demonstrate that the General Court erred in finding that Mr Jenkinson had not clearly substantiated the claim for compensation made in that third head of claim.

291 Consequently, this ground of appeal must be rejected as unfounded.

Sixth ground of appeal

Arguments of the parties

292 By the sixth ground of appeal, Mr Jenkinson argues that the General Court incorrectly allocated the costs of the proceedings at first instance. Mr Jenkinson takes the view, in particular, that, at the very least, the lack of transparency as to the reasons for the use of consecutive FTCs should have justified his not bearing the costs relating to the proceedings at first instance.

293 The Council, the Commission, the EEAS and Eulex Kosovo contend that this ground of appeal should be dismissed.

Findings of the Court

294 According to settled case-law, where all the other grounds put forward in an appeal have been rejected, any ground challenging the decision of the General Court on costs must be rejected as inadmissible by virtue of the second paragraph of Article 58 of the Statute of the Court of Justice of the European Union, under which no appeal is to lie regarding only the amount of the costs or the party ordered to pay them (judgment of 17 December 2020, *BP* v *FRA*, C-601/19 P, EU:C:2020:1048, paragraph 101 and the case-law cited).

295 Since Mr Jenkinson has been unsuccessful in all of his grounds relied on in support of the appeal, the present ground of appeal, relating to the allocation of costs, must, therefore, be found inadmissible.

296 In the light of all the foregoing, since none of the grounds relied on in support of the appeal has been upheld, the appeal must be dismissed in its entirety.

297 In those circumstances, it is not necessary to examine the objections from the Council, the Commission and the EEAS relating to the admissibility of the action at first instance, referred to in paragraph 30 of the present judgment.

Costs

298 Under Article 138(1) of the Rules of Procedure of the Court, which applies to appeal proceedings by virtue of Article 84(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council, the Commission, the EEAS and Eulex Kosovo have applied for costs and Mr Jenkinson has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (First Chamber) hereby:

1. **Dismisses the appeal;**

2. **Orders Mr Liam Jenkinson to bear his own costs and to pay those incurred by the Council of the European Union, the European Commission, the European External Action Service (EEAS) and Eulex Kosovo in the context of this appeal.**

[Signatures]