

TYOLOGY AND EFFICACY OF FRAMEWORK AGREEMENTS NEGOTIATED BETWEEN THE EUROPEAN COMMISSION AND THE PROFESSIONAL AND UNION ORGANIZATIONS REPRESENTING ITS STAFF *

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FRAMEWORK AGREEMENTS, ACCORDING TO THE CASE-LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION.

RESUMEN: Basándose en el hecho de que la Comisión Europea ostenta la condición jurídica de empresario del personal (funcionario y laboral) a su servicio, el presente trabajo analiza los acuerdos colectivos (denominados «acuerdos marco») negociados entre la Comisión Europea y los sindicatos (que, casualmente, suelen ser sindicatos minúsculos) que considera representativos de dicho personal. Sorprendentemente, se trata de acuerdos negociados separadamente con los sindicatos representativos del personal activo y del personal pasivo. Respecto de los que afectan al personal activo, la jurisprudencia comunitaria viene sosteniendo que se trata de acuerdos que poseen eficacia obligacional, pero no verdadera eficacia normativa.

ABSTRACT: On the basis that the European Commission has the legal condition of employer of the staff (civil servants and employees) serving it, this work analyzes the collective agreements (called «framework agreements») negotiated between the European Commission and the trade unions (eventually, tiny trade unions) it considers representative of such staff. Surprisingly, they are agreements separately celebrated with the representative trade unions of serving and retired staff. Regarding those affecting to serving staff, the European case-law sustains that they are agreements having contractual efficacy, but not true normative efficacy.

PALABRAS CLAVE: Comisión Europea. Sindicatos representativos de su personal. Personal activo. Personal pasivo. Acuerdos marco.

KEYWORDS: European Commission. Representative trade unions of its staff. Serving staff. Retired staff. Framework agreements.

1. APPROACH

1. In dealing with the Law of the European Union, it is mandatory to distinguish its «*ad extra*» and «*ad intra*» aspects. The former is the most known, treated and cheered on of them. The European Union acts in it as an influential judge or legislator on the domestic laws of Member States. It firmly bets—in the social branch—on what can only be qualified as politically correct statements (defence of employment stability, solemn proclamation of causality in dismissals, concern about employee protection against work risks, and so on)¹. On the contrary, the latter is much lesser known and cheered on. It relates to European Union acting as a grossly capitalist employer, which practices employment precariousness together with free dismissal, and which bets in the subject-matter of working time on what should be qualified as a true «*stajanovism*»². On such a background, we pretend to analyze in this work the behaviour of the almighty European Commission relating to trade union movement—sometimes a flatulent unionism—acting within the institutions of the Union. It will go over the statutory and case-law frame which rules collective bargaining within the European Union (cf. *infra*, II), the framework agreements crystallizing such a right—a right covering in a separated way the action of trade unions representing before the European Commission not only its serving staff (cf. *infra*, III), but also its retired staff (cf. *infra*, IV)—and, lastly, the efficacy that the Court of Justice of the European Union assigns to this specific kind of agreements (cf. *infra*, V).

¹ See J. MARTÍNEZ GIRÓN and A. ARUFE VARELA, *Fundamentos de Derecho comunitario y comparado, europeo y norteamericano, del Trabajo y de la Seguridad Social. Foundations on Community and Comparative, European and North American, Labor and Social Security Law*, 2nd ed., Netbiblo (A Coruña, 2010), p. XXII.

² *Ibidem*, pp. XXII-XXIII.

2. THE STATUTORY AND CASE-LAW FRAMEWORK

2. The statutory framework ruling the right to collective bargaining within the European Union is contained in Regulation No. 31 (EEC), 11 (EAEC) of 1962, as amended, laying down «the Staff Regulations of Officials», on the one side, and «the Conditions of Employment of Other Servants», on the other side, of the European Economic Community and the European Atomic Energy Community. The «Staff Regulations» and the «Conditions of Employment» have in this Regulation their own separated articles. Furthermore, it must be pointed out that such «Other Servants» different of «Officials» are in this Regulation employment contract staff in the service of the institutions of the European Union³. In this complex Regulation, the key norm—to our specific effects—is article 10c of «Staff Regulations», according to which «each institution may conclude agreements concerning its staff with its representative trade unions and staff associations»⁴, bearing in mind that «such agreements may not entail amendment of the Staff Regulations or any budgetary commitments, nor may they affect the working of the institution concerned»⁵, and that «the representative trade unions and staff associations which are signatories shall operate in each institution subject to the statutory powers of the staff committee»⁶. The above cited «Conditions of Employment» declares this article on officials applicable as a whole to employment contract staff in the service of the European Union; and more specifically, to «temporary staff»⁷, to «contract staff for auxiliary tasks»⁸, and to «contract staff»⁹, all of them characterized by their employment precariousness¹⁰.

3. Logically, the content of this article must be filled by means of a systematic interpretation with other articles of the «Staff Regulations», to which it

³ Given its countless amendments, this Regulation must be read using an updated «consolidated version», as the one stored in the website of the European Union, located in <http://europa.eu> (more specifically, under the link «Eur-lex»).

⁴ First sentence.

⁵ Second sentence.

⁶ Third sentence.

⁷ Cf. article 11.

⁸ Cf. article 54.

⁹ Cf. article 81.

¹⁰ On the subject, see J. MARTÍNEZ GIRÓN and A. ARUFE VARELA, *Fundamentos de Derecho comunitario y comparado, europeo y norteamericano, del Trabajo y de la Seguridad Social. Foundations on Community and Comparative, European and North American, Labor and Social Security Law*, 2nd ed., cit., pp. 161 ff.

impliedly refers. These referred articles consist of three different groups of norms. Firstly, article 24b (declared applicable by the «Conditions of Employment» to employment contract staff, too)¹¹, according to which «officials shall be entitled to exercise the right of association»¹², bearing in mind that «they may in particular be members of trade unions or staff associations of European officials»¹³. Secondly, articles relating to a number of «staff Committees» (also applicable to employment contract staff) or unitarian representation bodies of serving staff of the European Union, which have mere information and consultation competences, but not a true right to collective bargaining¹⁴, bearing in mind that article 10b states that «the trade unions and staff associations referred to in Article 24b shall act in the general interest of the staff, without prejudice to the statutory powers of the staff committees»¹⁵. Thirdly, the norm ruling the so-called «Staff Regulations Committee» —otherwise, a body having parity of composition—, regarding to which article 10 states, in its essentials, that «the Committee shall be consulted by the Commission on all proposals to revise the Staff Regulations»¹⁶, bearing in mind that «it shall deliver its opinion within the time set by the Commission»¹⁷, and furthermore —but according to article 10b again—, that «the Commission proposals referred to in Article 10 may be the subject of consultations by representative trade unions and staff associations»¹⁸.

4. From a negative point of view, this statutory framework is completed by the fact that neither the «Staff Regulations» nor the «Conditions of Employment» make any one reference (neither express nor implied) to the right to strike by officials or employment contract staff employed by the institutions of the European Union¹⁹. On this subject, the landmark decision is a Judgement of the Court of Justice of the European Communities of 18 March 1975, issued in the case «Marie-Louise Acton

¹¹ In a general way, through its articles 11, 54, and 81.

¹² First semi-sentence.

¹³ Second semi-sentence.

¹⁴ Cf., specially, article 9.

¹⁵ First paragraph.

¹⁶ Second paragraph, first sentence.

¹⁷ *Ibidem*, second sentence.

¹⁸ Second paragraph.

¹⁹ On this subject, see J. MARTÍNEZ GIRÓN and A. ARUFE VARELA, *Fundamentos de Derecho comunitario y comparado, europeo y norteamericano, del Trabajo y de la Seguridad Social. Foundations on Community and Comparative, European and North American, Labor and Social Security Law*, cit., p. 146 and footnote 4.

and others v. the Commission of the European Communities»²⁰. This Judgement confirms that «although certain Member States deny their public servants or certain categories of public servants the right to strike, whereas other Member States allow it, the Staff Regulations of Officials of the European Communities remain silent on the subject»²¹; and on this basis, it concludes that «according to a principle recognized in the labour law of the Member States, wages and other benefits pertaining to days on strike are not due to persons who have taken part in that strike»²², although putting into context that this last statement «in no way implies any decision in relation to the existence of an official [of the European Communities]’s right to strike or in relation to the detailed rules which may govern the exercise of such a right»²³.

3. THE FRAMEWORK AGREEMENT IN FORCE, RULING THE RELATIONS BETWEEN THE EUROPEAN COMMISSION AND THE REPRESENTATIVE UNION AND PROFESSIONAL ORGANIZATIONS OF ITS SERVING STAFF

5. On the basis of this statutory and case-law background, the nowadays called European Commission and the union and professional organizations it considers «representative» have signed, since 1974, a number of «framework agreements» ruling the relationship between both parties²⁴. They make a row of four agreements corresponding to years 1974, 2003, 2006, and 2009. Regarding their texts, it is mandatory to talk about European Union’s obscurantism²⁵, since the Internet

²⁰ Joint cases 44, 46, and 49/74.

²¹ Marginal 15.

²² Marginal 12.

²³ Marginal 14.

²⁴ The European Parliament has its own «framework agreement» of 12 July 1990, similar to those negotiated by the European Commission. It is stored in French in the website of the «Syndicat des Fonctionnaires Internationaux et Européens», located in www.sfie-pe.eu (under «Trade Union»). About the efficacy of such «framework agreement», see below No. 13.

²⁵ About the typology of collective bargaining agreements computer files (integral, publicist, confidentialist, secretist, and, as in the case of the community «ad intra» one, occultist), see J. MARTÍNEZ GIRÓN and A. ARUFE VARELA, *Fundamentos de Derecho Comunitario y Comparado, Europeo y Norteamericano, del Trabajo y de la Seguridad Social. Foundations on Community and Comparative, European and North American, Labor and Social Security Law*, 2nd ed., cit., pp. 35 ff.

website where all this information is apparently stored —that is, «the Social Dialog website in the address:

http://intracomm.cec.eu-admin.net/home/dial_soc/index.htm²⁶— is only accessible to serving staff of the European Union. This fact forces to resort to other Internet websites (for example, to those of the trade unions acting within the European institutions)²⁷ or to other different sources (for example, the case-law of the Court of Justice of the European Union), to the effect of finding —sometimes only in a partial way— the texts of the agreements at issue. The «framework agreement» of 2009 nowadays in force is stored, for example, in the website of the «Fédération de la Fonction Publique Européene» or FFPE, located in www.ffpe-bxl.eu²⁸. This «framework agreement» consists of 47 articles gathered in six Titles, together with a «Glossary» and a «Summary». This last (in fact, a surprising annex) will be analyzed later.

6. This «framework agreement» was preceded by a final draft²⁹. Its article 46 must be highlighted, because it stated that «the present agreement shall enter in force on [date of signature with the first signatory representative organisation], for an indefinite period». As it is self-evident, this article conceived the «framework agreement» as a final document, to be presented by the European Commission to union and professional organisations to be signed by them³⁰. Everything shows that the

²⁶ It is cited on page 2 of an «Avis [de Le Controleur Européen de la Protection des Données] sur la notification d'un contrôle préalable reçue du délégué à la protection des données de la Commission européenne à propos du traitement administratif générique de la participation à la grève», dated in Brussels on 25 September 2006 (Dossier 2004-222), searchable through <http://europa.eu>.

²⁷ A line-up of some of these websites, in J. MARTÍNEZ GIRÓN and A. ARUFE VARELA, *Fundamentos de Derecho comunitario y comparado, europeo y norteamericano, del Trabajo y de la Seguridad Social. Foundations on Community and Comparative, European and North American, Labor and Social Security Law*, 2nd ed., cit., p. 123.

²⁸ Under «FFPE Commission Brussels & Outside Union», then under «Our tracks-our news- our events», and lastly, under «06/02/2009».

²⁹ It appears stored in the website of the trade union «Solidarity, Independence, Democracy», located in www.sidtu.org (under the link «All about Sidtu»).

³⁰ The other article of this same Title, which is article 47 (headed «Annulment»), states the following: «After an initial period of three years from the date of its entry into force, this Agreement may be annulled by one of the signatory parties provided that it gives three months' notice in writing to the other parties concerned» (first sentence); and «this Agreement shall cease to have effect as of the first of the month following expiry of the period for the party/ies that have requested its annulment» (second sentence).

negotiating initiative in this peculiar kind of collective bargaining always pertains to the employer side (that is, the European Commission), being founded this statement —apart from the text of the aforementioned article of the final draft— on the two following arguments: (1) the general rule —for negotiations covered by the «framework agreement»— is that «at the beginning of each year, the Commission shall send the recognised organisations a provisional list of the main items that are to be the subject of social dialogue»³¹; and (2) the internal Commission's document «SEC (2001) 1944/1» —which is cited in an Order of the Court of First Instance of 6 May 2004, later analyzed³²—, showing that the initiative leading to the substitution of the old «framework agreement» of 1974 by the second «framework agreement» of 2003 was activated by the European Commission, since such internal document states that «in the framework of modernising the social dialogue within the Commission, the College adopted three specific measures on 13 October 1999 to be negotiated with the staff unions and associations»³³, on the basis that «the main objective of the *initiative* was to establish a new and comprehensively reformed framework agreement on the relations between the Commission and the staff unions and associations»³⁴.

7. According to this same internal document, the objective aimed by the Commission was to reach —by means of a new «framework agreement»— a different ruling of the subject of the «representativity» of the unions acting before it. Likewise, this objective seems to be the objective pursued by the new «framework agreement» of 2009, with the result of making accessible to more unions (tiny unions, too) the privileged status of «representative» union before the European Commission. The comparison between the ruling contained in the agreements of 2006 and 2009 supports this conclusion, because: (1) in the «framework agreement» of 2006³⁵, the unions having the status of «representative» unions before the Commission were those simultaneously fulfilling an audience requirement (literally, the unions «representing at least a 10% of the Commission staff»)³⁶, bearing in mind that «this criterion is measured on the basis of the results of Staff Committee election»³⁷) and a membership

³¹ Cf. article 13, first paragraph.

³² *Infra*, No. 15.

³³ First paragraph, first sentence.

³⁴ *Ibidem*, second sentence.

³⁵ Its text, in French and English, is stored in the website of the trade union SID, located in <http://sidtu.org> (under «Is Admins Monologue even vaguely democratic?»).

³⁶ Article 4.1), first paragraph, first sentence.

³⁷ *Ibidem*, second sentence.

requirement (literally, those «having a cipher of members of at least 1,000 people»³⁸ ; whereas (2) on the contrary, in the current «framework agreement» of 2009, both requirements are reduced, because it is nowadays required a «6%» audience at the central level and a «5%» audience at the local level (on the place) of European Commission staff, as well as a membership amounting «at least to 400 fully-paid members»³⁹ , which allows to consider «representative» those unions representing only a 1,18 percent of officials and employees of the European Union affiliated to them⁴⁰ .

8. The signing of the «framework agreement» by a «representative» union has the important added value of allowing to classifying the unions acting within the institutions of the European Union in three different categories, which are «recognised» unions, «representative» unions, and «signatory representative» unions. These three categories enjoy three different ensembles of collective and union rights, which are described —with a suspicious pedagogical clarity— in the final «Summary» of the own agreement. According to this conclusive appendix, the «recognised» unions —which are, in short, the legally constituted unions, supposing that they act within the European Union Administration⁴¹ — are lead back to the category of mere union pariahs, because from a total of twenty-six possible union rights to be exercised within the European Union Administration, the «framework agreement» only recognises four of them to such unions (more specifically, the rights relating to «sending of a list of the items in the Commission's work programme that may be the subject of social dialogue»⁴² , «distributing trade union documents»⁴³ , «making available administration facilities in return for payment against invoices»⁴⁴ , and «making available an

³⁸ *Ibidem*, second paragraph, first sentence.

³⁹ *Ibidem*, second hyphen.

⁴⁰ Supposing that «33.681» represents the total number of serving staff of the European Union, according «Key-Figures-2009-externe.indd 1», searchable in <http://europa.eu>.

⁴¹ Article 7 defines such trade unions and staff organisations in the following way: «if they declare that their statutory aim is the defence of the interests of all members of staff without any discrimination based on any ground, such as function group, nationality, nature of connection with the Commission, gender, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation» (first hyphen); and «if they confirm that they have been legally constituted» (second hyphen).

⁴² Cf. article 13.

⁴³ Cf. article 25.

⁴⁴ Cf. article 26.

IntraComm home page»⁴⁵). However, the contrast between the rights recognised to «representative» and «signatory representative» unions is more significant, because the former —likewise the merely «recognised» or, in other words, merely tolerated unions by the Commission— do not hold a number of elementary union rights, such as «the conclusion of agreements with the Commission through the concertation procedure»⁴⁶, the one of «sending to the Administration of a list of the items that may be the subject of social dialogue»⁴⁷, of «making available human and financial resources [of the Commission]»⁴⁸, or above all, the fundamental union right we will immediately deal with.

9. On the basis that —despite the silence of the «Staff regulations of Officials»⁴⁹— the consecutive «framework agreements» rule since 1974 the right to strike of officials and contract employees in the service of the administrative institutions of the European Union (this regulation is nowadays contained in Title 5 of the «framework agreement» of 2009, under the general headline «Work Stoppages»)⁵⁰, such right is denied to «representative» unions and granted to «signatory representative» unions. The latter are the sole unions entitled to exercise the right to call a strike («concerted work stoppages may only be decided on by one or more signatory representative organisations») —bearing in mind that this right is conceived as the *ultima ratio* («only after all the means of social dialog have been exhausted, save in exceptional circumstances»)⁵¹—, the right to «serve notice of any concerted work stoppages»⁵² —as a general rule, «this notice will be served five working days before the planned start of the strike»⁵³—, the right of «concertation concerning the list of staff required to remain at their posts»⁵⁴ —bearing in mind, as a general rule, that «jobs whose holders may be required to remain at their posts shall include those involving responsibility for the safety of persons and property»⁵⁵—, and the right of concertation

⁴⁵ Ibidem.

⁴⁶ Cf. article 12.

⁴⁷ Cf. article 13.

⁴⁸ Cf. article 26.

⁴⁹ See *supra*, No. 4.

⁵⁰ Articles 35 to 45.

⁵¹ Cf. article 35.

⁵² Cf. article 36.

⁵³ Cf. article 37.

⁵⁴ Cf. article 40.

⁵⁵ Cf. article 41.

the return of work [«the arrangements for returning to work shall be the subject of concertation between the Commission and the signatory representative organisation(s) involved in the dispute »]⁵⁶ .

4. THE FRAMEWORK AGREEMENT IN FORCE, RULING THE RELATIONS BETWEEN THE EUROPEAN COMMISSION AND THE UNION AND PROFESSIONAL ORGANIZATIONS REPRESENTING ITS RETIRED STAFF

10. Although the above cited «framework agreement» of 2009 does not include any express limit referred to its personal scope, it is self-evident that it only rules the right to collective bargaining between the Commission and certain unions representing its serving staff (officials and employees), because the European Commission maintains since 2002 separate collective negotiations with its former or retired staff⁵⁷. The organisation representing these people is the «Association Internationale des Anciens de L'Union Européenne (Association of Former Staff of the European Union)», created in 1969 and which has its own website located in www.aiace-europa.eu. According to its Statutes, «the Association shall be non-profit-making»⁵⁸, and has been «set up in accordance with the Belgian Law of 27 June 1921, as amended and supplemented»⁵⁹. One of its main aims is «to ensure close contact with the institutions and bodies of the European Union and to represent the interests of former staff in dealings with those bodies as broadly as possible and to protect those interests»⁶⁰. To pursue this aim, it can «reach agreements with the institutions or bodies of the European Union and, as part of those agreements, to show solidarity with and provide support to all former staff who request such help»⁶¹. Under this

⁵⁶ Cf. article 45.

⁵⁷ As it is well-known, our Organic Act 11/1985, on Freedom Union, states that «in spite of stated in article 1.2, the employees ... having terminated their employment activity due to incapacity or retirement shall be entitled to join union organisations constituted under this Act, but not to create unions having as a goal the defence of their specific interests, notwithstanding their capacity to create associations under their specific legislation» (article 3.1).

⁵⁸ See article 1, second sentence.

⁵⁹ *Ibidem*, third sentence.

⁶⁰ See article 3, paragraph 1).

⁶¹ See article 4, paragraph 2).

statutory norm, it has signed in Brussels on 29 February 2008 the current agreement with the European Commission governing their relations, in which it is stated that «this agreement replaces the [first] agreement signed by the parties on 14 June 2002»⁶².

11. This agreement consists of eleven articles, two interesting Annexes, and a long Preamble. It is obvious that the Commission considers in it that the Association is similar to a union organisation. This conclusion can be founded of the three following statements of its Preamble: (1) «the former officials and persons entitled under them (“pensioners”) retain links under the Staff Regulations with the European Institutions»⁶³; (2) «the number of pensioners is equal to more than one third of the number of serving officials and other staff, and this number is set to increase in the coming years»⁶⁴; and (3) «the Commission considers that, for any organisation representing pensioners, to be regarded as “representative association” it must be meet» three requirements («it must have a number of subscribing members representing at least 20% of the number of pensioners»; «it must have in at least nine Member States residing in each of those Member States that represent at least 20% of the total number of pensioners residing in each of those Member States»; «its articles of association must comply with legal provisions in force in Member States in question»)⁶⁵, resulting that «AIACE meets these requirements»⁶⁶.

12. It is true that this agreement states that «AIACE is a fully independent body»⁶⁷. However, the two Annexes of the agreement rule in detail the material and financial support granted to it by the European Commission. This support turns AIACE into an organisation protected by the European Commission and, consequently, suspicious association from the point of view of Trade Union Law⁶⁸. To this respect, the agreement states that the Commission «will make available to AIACE logistical and financial assistance designed to fulfil its objectives and facilitate its operations in accordance with the provisions of Annex 1 to this agreement»⁶⁹. This

⁶² See article 10.

⁶³ First hyphen. In the footnote corresponding to this hyphen, it is stated —referring to the «Staff Regulations»— the following: «See in particular Articles 16, 17, 19, 72, 76, 76a, 77 to 85a, 86, 90, 90a-c, 91, Annex IX-Art. 9(2), etc.».

⁶⁴ Third hyphen.

⁶⁵ Cf. Fourth hyphen.

⁶⁶ Cf. Sixth hyphen

⁶⁷ Article 2, first sentence.

⁶⁸ About company unions, see J. MARTÍNEZ GIRÓN, A. ARUFE VARELA and X.M. CARRIL VÁZQUEZ, *Derecho del Trabajo*, 2nd ed, Netbiblo (A Coruña, 2006), p. 390.

⁶⁹ Article 6, paragraph 2, second sentence.

Annex provides, among many other things, for that «the Commission will bear the expenses of inserting into envelopes, sending and franking mail relating to the activities of AIACE and all its sections»⁷⁰, that «the Commission will bear the expenses of inserting into envelopes, sending and franking AIACE's newsletter, which is sent to all pensioners and distributed to serving officials and other staff of all the Institutions»⁷¹, or that «the Commission will bear the expenses of representatives of AIACE participating in the social dialog and in the joint committees»⁷². On the other side, the agreement also states that «the Commission will, within the limitations of its budgetary possibilities, grant annual financial aid to AIACE ..., in accordance with the provisions of Annex 2 to this agreement»⁷³. This Annex, in its turn, states that «AIACE will submit its request for financial assistance to the Commission by 15 January of the current year»⁷⁴, bearing in mind that «once the payment has been made by the Commission, AIACE will manage the funds and, if necessary, make bank transfers to the country sections in accordance with the apportionment indicated in its request»⁷⁵.

5. THE EFFICACY OF THESE FRAMEWORK AGREEMENTS, ACCORDING TO THE CASE-LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

13. At present, on the basis that the term «Court of Justice of the European Union» is used by the legal communitarian sources in a broad sense as well as in a narrow sense —according to the former, «such Court consists of the Civil Service Tribunal, the General Court and the Court of Justice (or Luxembourg Court)»⁷⁶—, there are no communitarian case-law about «framework agreements» of retired staff of the European Union, neither in a broad sense nor in a narrow one. But the situation is different regarding to «framework agreements» of serving staff. About these last

⁷⁰ Article 2, second sentence, of Annex 1.

⁷¹ *Ibidem*, article 3, first sentence.

⁷² *Ibidem*, article 4.

⁷³ Article 8, first sentence.

⁷⁴ Article 2, first sentence, of Annex 2.

⁷⁵ *Ibidem*, third sentence.

⁷⁶ See J. MARTÍNEZ GIRÓN and A. ARUFE VARELA, *Fundamentos de Derecho comunitario y comparado, europeo y norteamericano, del Trabajo y de la Seguridad Social. Foundations on Community and Comparative, European and North American, Labor and Social Security Law*, 2nd ed., cit., pp. 88 ff.

agreements (and more specifically, about the first «framework agreement» of 1974), the General Court had the occasion of adjudging several times such agreement and of explaining the specific efficacy it holds. According to the two most controlling cases of such Court⁷⁷, the «framework agreement» at issue is not a true collective bargaining agreement, since it has contract efficacy, but not true normative efficacy⁷⁸.

14. The first of such two controlling Judgements is the «case Martine Browet and others v. Commission of the European Communities», adjudged by the Court of First Instance (later General Court) on 15 July 1994⁷⁹. It was a case dealing with the challenge by seven striking officials of the deduction made from their salaries by the Commission, since —according to the officials— such deduction violated a number of articles of the first «framework agreement» of 1974, then in force. However, the Court of First Instance —considering that «the applicants’ submissions raise above all the question whether an official, acting in his individual capacity, may validly invoke ... the breach of an agreement between the Commission and the T[rade]U[nions and]S[taff]A[ssociation]s, such as the Agreement [of 1974]»⁸⁰ — disclaimed such submissions, in arguing about the efficacy of the «framework agreement» the following statements: (1) «it is clear from a reading of those provisions as a whole that the Agreement and its annex are intended only to govern collective labour relations between the Commission and the T[rade]U[nions and]S[taff]A[ssociation]s and that they did not give rise, for each official taken individually, to any obligation or to any right»⁸¹; (2) «in fact, they do not fall within the sphere of individual working relations between the employer and the official, but in the wider context of relations between an institution and the T[rade]U[nions and]S[taff]A[ssociation]s»⁸²; and (3) «it must be therefore be held that in any event an official cannot validly invoke an alleged breach of the provisions of the Agreement or

⁷⁷ See, likewise, Judgement of the Court of First Instance of 15 November 2001, in the «case Giorgio Lebedef v. Commission of the European Communities» (case T-349/00).

⁷⁸ Defending the statement that without normative efficacy («the soul» of the agreement, about what F. CARNELUTTI spoke), whichever it is, cannot exist a true collective agreement, see J. MARTÍNEZ GIRÓN, «La negociación colectiva extraestatutaria», *Revista del Ministerio de Trabajo y Asuntos Sociales-Derecho del Trabajo*, No. 68 (2007), pp. 181 ff. About the same peculiar efficacy of the European Parliament’s «framework agreement» of 12 July 1990, see Order of the Civil Service Tribunal of 9 April 2014 (case F-87/13).

⁷⁹ Joined cases T-576/93 to T-582/93.

⁸⁰ Cf. marginal 33.

⁸¹ Cf. marginal 44, first sentence.

⁸² *Ibidem*, second sentence.

of its annex in order to challenge in contentious proceedings a decision, relating to him individually, to make deductions from pay following a strike»⁸³.

15. This same doctrine was later expressly confirmed in the «case André Hecq v. Commission of European Communities», adjudged by Order of the Court of First Instance of 6 May 2004⁸⁴. It dealt with an official who was deprived by the Commission of the union benefits he enjoyed, because his trade union refused to sign some partial amendments to the «framework agreement» of 1974, preceding its substitution by the second «framework agreement» of 2003. However, the Court concluded that the official's claim was «inadmissible»⁸⁵, in arguing —on the basis of the doctrine of the above cited «case Martine Browet and others v. Commission of the European Communities»— that: (1) «a framework agreement between an institution and the trade unions and staff associations which is designed to define their relations is a measure of general application and is intended only to govern collective labour relations between the institution concerned on the one hand and the trade unions and staff associations on the other»⁸⁶; (2) «it does not give rise, for each official taken individually, to any obligation or to any right, and does not fall within the sphere of individual working relations between the employer and the official, but in the wider context of relations between an institution and the trade unions and staff associations»⁸⁷; and (3) «the termination of such an agreement is not a measure producing binding legal effects liable to have a direct effect on the interests of an individual official who is a member of a trade union by significantly altering his legal situation as an official, against which he could bring proceedings on that basis»⁸⁸.

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⁸³ *Ibidem*, third sentence.

⁸⁴ Case T-34/03.

⁸⁵ See marginal 4.

⁸⁶ Marginal 2, first sentence.

⁸⁷ *Ibidem*, second sentence.

⁸⁸ *Ibidem*, third sentence.