Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

7 September 2017*

Reference for a preliminary ruling — Social policy — Directive 2010/18/EU — Revised Framework Agreement on parental leave — Clause 5(1) and (2) — Return from parental leave — Right to return to the same job or an equivalent or similar job — Rights acquired or in the process of being acquired to be maintained as they stand — Civil servant of a Land promoted to civil servant on probation in a managerial post — Rules of that Land providing for the ending of the probationary period by operation of law and with no possibility of extension on expiry of a two-year period, even in the case of absence as a result of parental leave — Incompatibility — Consequences

In Case C-174/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany), made by decision of 2 July 2015, received at the Court on 24 March 2016, in the proceedings

H.

v

Land Berlin,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Prechal (Rapporteur), A. Rosas, C. Toader and E. Jarašiūnas, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Ms H., by herself,

– Land Berlin, by M. Theis, E.-N. Voigt, K.-P. Nießner and A. Hollmann, acting as Agents,

– the European Commission, by C. Valero and M. Kellerbauer, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 April 2017,

* Language of the case: German

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Clause 5(1) and (2) of the revised Framework Agreement on parental leave, concluded on 18 June 2009 ('the revised Framework Agreement'), annexed to Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (OJ 2010 L 68, p. 13) and of Article 14(1)(a) and (c), Article 15 and Article 16 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23).

2 The request has been made in proceedings between Ms H. and Land Berlin (*Land* of Berlin, Germany) concerning a decision of the *Land*, addressed to Ms H. during her parental leave, informing her that, as she had not, due to her absence related to that leave, successfully completed the two-year probationary period in the managerial post to which she had been assigned before that leave, her status as a civil servant on probation had ended, and that she was accordingly returned to her former position at a lower level.

Legal framework

EU law

Directive 2010/18 and the revised Framework Agreement

3 Directive 2010/18 repealed, with effect from 8 March 2012, Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (OJ 1996 L 145, p. 4), concluded on 14 December 1995 ('the 1995 Framework Agreement').

4 Recitals 8 and 11 of Directive 2010/18 state:

'(8) Since the objectives of the Directive, namely to improve the reconciliation of work, private and family life for working parents and equality between men and women with regard to labour market opportunities and treatment at work across the Union, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. …

…

(11) Clause 1(1) of the revised Framework Agreement, in line with the general principles of Union law in the social policy area, states that the Agreement lays down minimum requirements.'

5 Article 3(1) of that directive provides:

'The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive or shall ensure that the social partners have introduced the necessary measures by agreement by 8 March 2012 at the latest. …'

6 The preamble to the revised Framework Agreement states the following, inter alia:

‘This framework agreement … revises the [1995 Framework Agreement] setting out the minimum requirements on parental leave, as an important means of reconciling professional and family responsibilities and promoting equal opportunities and treatment between men and women.

…

I. General considerations …

3. Having regard to the Charter of Fundamental Rights of the European Union of 7 December 2000 and Articles 23 and 33 thereof relating to equality between men and women and reconciliation of professional, private and family life; …

22. Whereas parental leave arrangements are meant to support working parents during a specific period of time, aimed at maintaining and promoting their continued labour market participation … …’

7 Clause 1(1) and (2) of the revised Framework Agreement states:

‘1. This agreement lays down minimum requirements designed to facilitate the reconciliation of parental and professional responsibilities for working parents, taking into account the increasing diversity of family structures while respecting national law, collective agreements and/or practice.

2. This agreement applies to all workers, men and women, who have an employment contract or employment relationship as defined by the law, collective agreements and/or practice in force in each Member State.’

8 Clause 2 of the framework agreement provides:

‘1. This agreement entitles men and women workers to an individual right to parental leave on the grounds of the birth or adoption of a child to take care of that child until a given age up to eight years to be defined by Member States and/or social partners.

2. The leave shall be granted for at least a period of four months …’

9 Clause 3(1) of the framework agreement states:

‘The conditions of access and detailed rules for applying parental leave shall be defined by law and/or collective agreements in the Member States, as long as the minimum requirements of this agreement are respected. Member States and/or social partners may, in particular:

(a) decide whether parental leave is granted on a full-time or part-time basis, in a piecemeal way or in the form of a time-credit system, taking into account the needs of both employers and workers;

(b) make entitlement to parental leave subject to a period of work qualification and/or a length of service qualification which shall not exceed one year. …

(c) define the circumstances in which an employer, following consultation in accordance with national law, collective agreements and/or practice, is allowed to postpone the granting of parental leave for justifiable reasons related to the operation of the organisation …

(d) in addition to (c), authorise special arrangements to meet the operational and organisational requirements of small undertakings.'

10 Entitled 'Employment rights and non-discrimination', Clause 5 of the framework agreement states:

'1. At the end of parental leave, workers shall have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship.

2. Rights acquired or in the process of being acquired by the worker on the date on which parental leave starts shall be maintained as they stand until the end of parental leave. At the end of parental leave, these rights, including any changes arising from national law, collective agreements and/or practice, shall apply.

3. Member States and/or social partners shall define the status of the employment contract or employment relationship for the period of parental leave.

…'

Directive 2006/54

11 Article 14(1) of Directive 2006/54 provides:

'There shall be no direct or indirect discrimination on grounds of sex in the public or private sectors, including public bodies, in relation to:

(a) conditions for access to employment … including promotion;

…

(c) employment and working conditions …

…'

12 Article 15 of that directive provides:

'A woman on maternity leave shall be entitled, after the end of her period of maternity leave, to return to her job or to an equivalent post on terms and conditions which are no less favourable to her …'

13 Article 16 of the directive provides:

'This Directive is without prejudice to the right of Member States to recognise distinct rights to paternity and/or adoption leave. Those Member States which recognise such rights shall take the necessary measures to … ensure that, at the end of such leave, [working men and women] are entitled to return to their jobs or to equivalent posts on terms and conditions which are no less favourable to them …'

German law

14 Status as a civil servant on probation appointed to a managerial post is governed, as regards the *Land* of Berlin, by Paragraph 97 of the Landesbeamtengesetz (*Land* Civil Service Law, 'LBG'), of 19 March 2009.

15 Paragraph 97(1) of the LBG provides, inter alia, that the probationary period in such a post has a duration of two years, which may not be extended.

16 Under the second sentence of Paragraph 97(2) of the LBG:

'From the day of appointment, the rights and obligations relating to the post assigned to the civil servant most recently as a civil servant for life … shall be suspended for the duration of the probationary period …'

17 Under Paragraph 97(4) of the LBG, as amended by the Dienstrechtsneuordnungsgesetz (Law on the reorganisation of civil service law), of 22 June 2011:

'Upon successful completion of the probationary period, the civil servant shall be assigned the post … with the status of civil servant for life … If the post is not assigned on a permanent basis, the entitlement to remuneration from that post shall cease. No more extensive entitlements shall exist. The civil servant may not be reappointed as a civil servant on probation for that post within one year. In cases where the probationary period was not successfully completed for the first time only because the managerial post was not exercised for a long-term period, the highest administrative authority may permit exceptions to the seventh sentence.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

18 Ms H. entered the service of the *Land* of Berlin in 1999 and has the status of civil servant for life in its administration. From 23 September 2008 she occupied a post of counsellor in grade A16. Following a selection procedure, Ms H. was promoted on 20 September 2011, pursuant to Paragraph 97(1) of the LBG, to civil servant on probation with the position of counsellor falling within the higher grade B2. Consequently, on 18 October 2011, she was assigned to a vacant post in that grade which involved management tasks.

19 Ms H. did not, however, take up her duties in the new post. She was on sick leave for reasons linked to her pregnancy from 25 July 2011 to 19 January 2012, then on maternity leave from 20 January to 27 April 2012. Following that maternity leave, Ms H. was on leave until 29 May 2012, before being granted parental leave, which began on 30 March 2012 and was extended several times, ending on 20 February 2015.

20 In the meantime, the post to which Ms H. had been assigned as a civil servant on probation was readvertised in the second half of 2012, and then assigned to another civil servant.

21 On 4 September 2014 the Landesverwaltungsamt Berlin (Administrative Office for the *Land* of Berlin, Germany) informed Ms H. that she had not successfully completed her two-year probationary period in the abovementioned post, as she had not actually occupied it, and that her status as a civil servant on probation had consequently ended on 19 September 2013, in accordance with Paragraph 97(4) of the LBG. The Administrative Office also informed her that she would be returned to her former post of counsellor in grade A16.

22 As the complaint lodged by Ms H. was rejected by the Administrative Office by decision of 10 November 2014, she brought an action before the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany) for the annulment of that decision and a ruling that she should retain her status as a civil servant on probation for promotion to a managerial post in grade B2, beyond 19 September 2013. In support of that action, Ms H. claimed, inter alia, that the contested decision infringed Directives 2006/54 and 2010/18.

23 As regards Directive 2010/18 and the revised Framework Agreement, the Verwaltungsgericht Berlin (Administrative Court, Berlin) is uncertain, in particular, whether Paragraph 97 of the LBG is compatible with Clause 5(1) of the framework agreement, because, on expiry of her parental leave, Ms H. could not return to the post she had occupied before that leave or an equivalent post, but was reassigned to a post of lower status. That court also questions the compatibility of Paragraph 97 with Clause 5(2) of the Framework Agreement, which provides for the maintenance of rights acquired or in the process of being acquired, because that reassignment results in a reduction of salary. It cannot however be ruled out, in the court's view, that, as the *Land* of Berlin submits, the rules laid down by Paragraph 97 of the LBG may constitute national law within the meaning of the second sentence of Clause 5(2) of the Framework Agreement, from which, at the end of parental leave, changes to her worker's rights could legitimately arise.

24 Furthermore, the referring court states that, even if Paragraph 97 of the LBG does infringe the revised Framework Agreement and/or Directive 2006/54, it would be impossible to interpret Paragraph 97 in a way that ensures its compliance with those rules of EU law, with the result that those national rules would, in that case, have to be disapplied.

25 In that respect, the referring court takes the view that the most appropriate solution would be to extend the probationary period by the duration of the period not yet elapsed at the beginning of the parental leave, either in the initial post or, where, as in the present case, that post has in the meantime been reassigned to another civil servant, in a similar managerial post. However, it also asks which solution should be adopted if no similar post were available. Finally, to the extent that the national law requires, when a new post is assigned, a new selection procedure to be held, with the risk in that case that a candidate other than the civil servant returning from parental leave should be retained, the referring court is uncertain as to whether EU law requires that such a procedure should not be held.

26 In those circumstances, the Verwaltungsgericht Berlin (Administrative Court, Berlin) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Are the provisions of [Directive 2010/18] and the provisions of the [revised Framework Agreement] to be interpreted as precluding rules of national law under which the probationary period, during which a managerial post has been assigned to a person with the status of a civil servant on probation, ends by operation of law and with no possibility of extension even in the case where the civil servant was on parental leave for most of that probationary period, and still is?

(2) Are the provisions of [Directive 2006/54], in particular Article 14(1)(a) or (c), Article 15 or Article 16, to be interpreted as meaning that rules of national law with the content referred to in Question 1 constitute indirect discrimination on grounds of sex in the case where a very much higher number of women than men is affected, or may potentially be affected, by those rules?

(3) If the answers to Questions 1 or 2 are in the affirmative, does the interpretation of the abovementioned provisions of EU law preclude such rules of national law even in the case where the latter are justified by the objective of being able to assess, during the probationary period, the probation for a managerial post to be assigned permanently only if the duties are actually performed over a long-term period?

(4) If the answer to Question 3 is also in the affirmative, does the interpretation of EU law allow a legal consequence other than continuation of the probationary period immediately following the end of the parental leave — for the duration of the period not yet elapsed at the beginning of the parental leave — for the same or a comparable official position, for example, when such a position or an equivalent established post is no longer available?

(5) Does the interpretation of EU law require, in this case, for the purpose of filling another official position or another managerial post, that a new selection procedure including other candidates in accordance with the provisions of national law should not be held?'

Consideration of the questions referred

The first question and first part of the third question

27 By its first question, the referring court asks, in essence, whether Clause 5(1) and (2) of the revised Framework Agreement must be interpreted as precluding rules of national law, such as those at issue in the main proceedings, which subject definitive promotion to a managerial post in the civil service to the condition that the candidate selected successfully carries out a prior two-year probationary period in that post, and by virtue of which, in a situation where such a candidate was on parental leave for most of that period and still is, that probationary period ends by operation of law after two years with no possibility of extending it and the person concerned is consequently, on her return from parental leave, reinstated in the post, at a lower level both in status and in terms of remuneration, occupied before that probationary period. If the answer to the first question is in the affirmative, the referring court asks, by the first part of its third question, whether Clause 5(1) and (2) must be interpreted as meaning that such rules of national law may nevertheless be justified by the objective pursued by the probationary period, which is to enable the assessment of suitability for the managerial post to be assigned permanently and, consequently, requires that probation to extend over a long-term period.

Preliminary observations

28 It should be stated from the outset that, as Ms H. had been absent as a result of her parental leave during most of the probationary period required to obtain the managerial post concerned and was still on parental leave when the Administrative Office for the *Land* of Berlin informed her that she would be reinstated in her former post, the national legislation at issue in the main proceedings should be examined solely in the light of Directive 2010/18 and the revised Framework Agreement.

29 As is apparent from the first paragraph in the preamble to the revised Framework Agreement, it constitutes a commitment by the social partners, represented by the general cross-industry organisations, to introduce, through minimum requirements on parental leave, measures to reconcile professional and family responsibilities and to promote equal opportunities and treatment between men and women.

30 Recital 8 of Directive 2010/18 implementing the revised Framework Agreement likewise states that the objectives pursued by that directive are to improve the reconciliation of work, private and family life for working parents and equality between men and women with regard to labour market opportunities and treatment at work across the Union.

31 It should be recalled, furthermore, that the principle of equal treatment between men and women, in particular in matters of employment, occupation and remuneration, and the right to parental leave in order to reconcile family and professional life are enshrined in Articles 23 and 33(2) of the Charter of Fundamental Rights of the European Union ('the Charter') respectively, provisions to which paragraph 3 of the general considerations of the revised Framework Agreement refers.

32 The right to parental leave was included in Article 33(2) of the Charter among the fundamental social rights grouped together in Title IV, under the heading 'Solidarity'. That provision states that, in order to reconcile family and professional life, everyone has the right inter alia to parental leave following the birth or adoption of a child.

33 Moreover, the objectives thus pursued by the revised Framework Agreement are associated with the improvement of living and working conditions and with the existence of proper social protection for workers, which, as is apparent from Article 151 TFEU, are included among the objectives pursued by EU social policy (see, to that effect, as regards the 1995 Framework Agreement, judgment of 22 October 2009, *Meerts*, C-116/08, EU:C:2009:645, paragraph 37).

34 Finally, it should be recalled that the revised Framework Agreement, like the 1995 Framework Agreement, is intended also to apply to workers who, like the applicant in the main proceedings, have the status of civil servant. Clause 1(2) of the revised Framework Agreement covers generally 'all workers … who have an employment contract or employment relationship as defined by the law, collective agreements and/or practice in force in each Member State' and Clause 2(1) of the Framework Agreement covers 'workers', without drawing a distinction according to whether their employer is in the public or private sector, thereby encompassing all workers (see, to that effect, judgment of 16 September 2010, *Chatzi*, C-149/10, EU:C:2010:534, paragraphs 28 to 30).

Clause 5 of the revised Framework Agreement

35 It is important to note, first of all, that paragraphs 1 to 3 of Clause 5 of the revised Framework Agreement are worded in terms almost identical to those of paragraphs 5 to 7 of Clause 2 of the 1995 Framework Agreement, with the result that the interpretation given by the Court concerning the latter provisions are also valid in relation to the former (see, to that effect, judgment of 16 June 2016, *Rodríguez Sánchez*, C-351/14, EU:C:2016:447, paragraph 47).

36 With a view to enabling new parents to interrupt their professional activities to devote themselves to their family responsibilities, the revised Framework Agreement gives them the assurance, set out in Clause 5(1) of that framework agreement, that they will return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or relationship at the end of parental leave. That provision therefore guarantees the return to the job at the end of the leave on the same conditions as those existing when the leave was taken (see, to that effect, judgment of 13 February 2014, *TSN and YTN*, C-512/11 and C-513/11, EU:C:2014:73, paragraph 39 and the case-law cited).

37 In the same vein, the first sentence of Clause 5(2) is intended to avoid the loss of or reduction in rights derived from an employment relationship, acquired or being acquired, to which the worker is entitled when he starts parental leave, and to ensure that, at the end of that leave, with regard to those rights, he will find himself in the same situation as that in which he was before the leave (see, to that effect, judgments of 16 July 2009, *Gómez-Limón Sánchez-Camacho*, C-537/07, EU:C:2009:462, paragraph 39, and of 22 October 2009, *Meerts*, C-116/08, EU:C:2009:645, paragraph 39 and the case-law cited).

38 That provision does not, admittedly, govern the rights and obligations derived from an employment relationship during parental leave, which are to be defined, pursuant to Clause 5(3) of the revised Framework Agreement, by the Member States and/or by the social partners. However, as the Court has held, such a reference to national law and collective agreements is to be understood without prejudice to the minimum requirements laid down by the revised Framework Agreement and in particular those set out in Clause 5(1) and (2) of the framework agreement (see, to that effect, judgments of 16 July 2009, *Gómez-Limón Sánchez-Camacho*, C-537/07, EU:C:2009:462, paragraph 46, and of 22 October 2009, *Meerts*, C-116/08, EU:C:2009:645, paragraph 45).

39 Having regard to the line of arguments developed by the *Land* of Berlin, it should be noted, in the first place, that, contrary to what it has submitted, the right to return to the post occupied and the maintenance of rights acquired or in the process of being acquired thus guaranteed by Clause 5(1)

and (2) of the revised Framework Agreement must benefit the worker even where the parental leave taken under the applicable national provisions exceeds the minimum period of four months referred to in Clause 2(2) of the revised Framework Agreement.

40 Apart from the fact, pointed out by the Advocate General in point 20 of his Opinion, that that conclusion follows implicitly from the case-law of the Court (see, to that effect, judgment of 20 June 2013, *Riežniece*, C-7/12, EU:C:2013:410, paragraphs 12, 17, 32, 50 and 51), the opposing view, defended by the *Land* of Berlin, finds no basis in the text of the revised Framework Agreement, Clause 5 of which refers, in paragraphs 1 and 2 respectively, to the right to return to the same job 'at the end of parental leave' and the right to maintain rights acquired or in the process of being acquired 'until the end of parental leave'.

41 Moreover, depriving the worker concerned of the guarantee of returning to the post previously occupied and continuing to enjoy such rights acquired or in the process of being acquired, where the parental leave exceeds a minimum period of four months, would have the effect of dissuading that worker from deciding to exercise his right to parental leave, thereby undermining the effectiveness of that right and the effectiveness of Directive 2010/18 and the revised Framework Agreement (judgment of 13 February 2014, *TSN and YTN*, C-512/11 and C-513/11, EU:C:2014:73, paragraph 51) and thus frustrating the objective of reconciling professional and family responsibilities pursued by the revised Framework Agreement (judgment of 27 February 2014, *Lyreco Belgium*, C-588/12, EU:C:2014:99, paragraph 40).

42 In the second place, the *Land* of Berlin's view that, having not actually occupied the probationary post at issue in the main proceedings, Ms H. could not derive from Clause 5(1) and (2) of the revised Framework Agreement the rights to return to that post at the expiry of her parental leave and to continue benefiting from rights acquired or in the process of being acquired, in particular those linked to that post, at the date on which that leave starts, cannot be accepted either.

43 The concepts 'job' and 'rights acquired or in the process of being acquired' referred to in Clause 5(1) and (2) must, failing any express reference to the law of the Member States for the purpose of determining their meaning and scope, normally be given an autonomous and uniform interpretation throughout the European Union, having regard to the context of the provisions and the objective pursued by the legislation in question (see, to that effect, judgment of 22 October 2009, *Meerts*, C-116/08, EU:C:2009:645, paragraph 41).

44 Having regard to the objectives pursued by the revised Framework Agreement and Directive 2010/18, as recalled in paragraphs 29 and 30 above, and to the fact that Clause 5(1) and the first sentence of Clause 5(2) of the revised Framework Agreement, first, articulate a particularly important principle of EU social law and, secondly, give specific expression to the right to parental leave also guaranteed as a fundamental right in Article 33(2) of the Charter, that provision cannot be interpreted restrictively (see, to that effect, judgments of 22 October 2009, *Meerts*, C-116/08, EU:C:2009:645, paragraph 42, and of 27 February 2014, *Lyreco Belgium*, C-588/12, EU:C:2014:99, paragraph 36).

45 It is therefore sufficient, for the purposes of applying Clause 5(1) and (2) of the revised Framework Agreement, that, on the date when Ms H. took her parental leave, she had, following a selection procedure and her promotion, already been assigned as a civil servant on probation to the post concerned, therefore also enjoying remuneration corresponding to the higher grade associated with that post. The fact that, at the time when that assignment took place, the person concerned was on sick leave for reasons connected with her pregnancy, on the other hand, does not affect the fact that that new post had, from that moment, become hers, so that it must be held that when, subsequently, she took her parental leave, she already occupied that post and enjoyed any rights acquired or in the process of being acquired relating to it.

46 To accept the interpretation proposed by the *Land* of Berlin would, moreover, amount to dissuading the workers concerned from taking parental leave and frustrating the objectives pursued by the agreement.

47 In the third place, the issue needs to be addressed as to whether, by not providing for any extension of the probationary period where the civil servant on probation occupying a managerial post is on parental leave, legislation such as that at issue in the main proceedings fails to take account of Clause 5(1) and (2) of the revised Framework Agreement.

48 As regards, first, the rights conferred on the worker on parental leave in Clause 5(1) of the revised Framework Agreement, namely, to return, at the end of that leave, to the same job or, if that is not possible, to an equivalent or similar job consistent with his employment contract or employment relationship, it is apparent from the order for reference that Paragraph 97 of the LBG has the automatic consequence of precluding a civil servant in the situation of the applicant in the main proceedings from being able, at the end of her parental leave, to return to the post of civil servant on probation she occupied before taking that leave. As she was on parental leave during the authorised duration of the probationary period and, as a result, had neither exercised that post nor, consequently, been able to demonstrate her suitability to be appointed definitively to it, it is common ground that, on her return from leave, she could not return to that post.

49 That rule of national law also, as is apparent from the order for reference, has the automatic consequence of precluding the person concerned from being offered, at the end of her parental leave, a post of civil servant on probation equivalent or similar to that which she occupied before that leave, since the two-year period during which she was authorised to carry out a probationary period for the purposes of demonstrating her suitability to occupy a managerial post had elapsed and could not be extended.

50 It follows that Clause 5(1) of the revised Framework Agreement precludes legislation such as that at issue in the main proceedings.

51 As regards, secondly, the first sentence of Clause 5(2) of the revised Framework Agreement, providing for the maintenance of 'rights acquired or in the process of being acquired' as they stand, it should be recalled that that concept covers all the rights and benefits, whether in cash or in kind, derived directly or indirectly from the employment relationship, which the worker is entitled to claim from the employer at the date on which parental leave starts (see, to that effect, judgment of 22 October 2009, *Meerts*, C-116/08, EU:C:2009:645, paragraph 43).

52 Such rights and benefits include those resulting from the provisions establishing the conditions of access to a higher level of the professional hierarchy, since they are derived from the employment relationship (see, to that effect, judgment of 18 November 2004, *Sass*, C-284/02, EU:C:2004:722, paragraph 31). That is, in the present case, the situation of the right, laid down in Paragraph 97 of the LBG, for a civil servant to obtain potential definitive promotion to a managerial post by carrying out, during the performance of the employment relationship in the service of the *Land* of Berlin and following a prior selection procedure, a probationary period of a certain duration.

53 It is clear in that respect that, as a consequence of Ms H. taking parental leave, Paragraph 97 of the LBG had, in the present case, the effect of depriving her of any possibility of demonstrating her suitability to exercise the managerial role to which she aspired and, as the case may be, of being definitively promoted to that role following the probationary period for which she had been selected before that leave.

54 It follows that the first sentence of Clause 5(2) of the revised Framework Agreement also precludes legislation such as that at issue in the main proceedings. As they are likely to dissuade a worker finding herself in the situation of Ms H. from deciding to exercise the right to parental leave, those rules moreover undermine the effectiveness of that right as guaranteed by the revised Framework Agreement.

55 As regards the line of argument raised by the referring court that the provisions of Paragraph 97(1) and (2), second sentence, of the LBG may constitute provisions of 'national law' within the meaning of the second sentence of Clause 5(2) of the revised Framework Agreement, which may lawfully result, at the end of parental leave, in changes to worker's rights such as those at issue in the main proceedings, it should be noted first of all that there are differences between the various language versions of that provision. While certain language versions, such as the German language version, provide that rights acquired or in the process of being acquired, including any changes arising inter alia from national law, shall apply at the end of parental leave, the French language version for its part provides that the rights referred to in the first sentence of Clause 5(2) of the framework agreement shall apply at the end of parental leave, as well as changes made, inter alia, 'to national law'.

56 In this respect, it should be recalled that, according to settled case-law, where there is a divergence between the language versions of an EU text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see, inter alia, judgments of 4 September 2014, *Vnuk*, C-162/13, EU:C:2014:2146, paragraph 46, and of 26 April 2017, *Popescu*, C-632/15, EU:C:2017:303, paragraph 35).

57 In the present case, having regard to the objectives pursued by the revised Framework Agreement, as recalled in paragraphs 29 and 30 above, and to the importance of the protection granted to workers by virtue of Clause 5(1) and (2) of the revised Framework Agreement, set out in paragraph 44 above, the second sentence of Clause 5(2) of the revised Framework Agreement cannot be interpreted in such a way that it undermines the effectiveness of the protection granted to workers by virtue of the first sentence of Clause 5(2) of the framework agreement. That would, however, be the case if it were to be accepted, in circumstances such as those at issue in the main proceedings, that it is possible, under the second sentence of Clause 5(2) of the revised Framework Agreement, to justify the loss of a worker's right acquired or in the process of being acquired, because national legislation provides that such a right comes to an end by operation of law following a non-renewable period, which continues to run during the absence of the worker concerned as a result of her parental leave.

58 In the fourth and last place, the referring court's question as to whether the infringements of the rights guaranteed under Clause 5(1) and (2) of the revised Framework Agreement resulting from the application of Paragraph 97 of the LBG could, where necessary, be justified by the objective of the probationary period at issue in the main proceedings, which aims to enable the assessment of suitability for the managerial post to be assigned permanently, which can be established only if the duties relating to that post are actually performed continuously over a long-term period, must be examined.

59 In this regard, it should be noted, as did the Advocate General in point 30 of his Opinion, that the revised Framework Agreement contains no provisions authorising derogations from rights thus guaranteed. In any event, the infringements, in the present case, of those rights appear in no way necessary to achieve the objective thus pursued. An objective such as that stated by the referring court could be protected by means of certain arrangements intended to enable, as required by the first sentence of Clause 5(2) of the revised Framework Agreement, the professional promotion procedure under way to be fully maintained and the probationary period carried out, for the required duration, at the end of parental leave, either in the post occupied when that leave was taken or, if that proves impossible, in an equivalent or similar post, as required by Clause 5(1) of the revised Framework Agreement.

60 Nor can the *Land* of Berlin's argument be accepted that, for the employer, having to guarantee the worker's return to the post previously occupied during a period up to the maximum duration of authorised parental leave, which is three years in Germany, while being, where necessary, required to leave that post vacant during such a period, would be liable to jeopardise the good functioning of the *Land*'s offices, or even, in the private sector, the very existence of the undertaking.

61 In accordance with Clause 3(1) of the revised Framework Agreement, it is for the Member States to lay down the detailed rules for the application of parental leave and, inter alia, to determine its authorised duration, as long as the minimum requirements set by the framework agreement are respected. As is apparent from the very wording of Clause 3(1), the needs of employers, in particular those linked to the operation and organisation of undertakings, especially small undertakings, are, like the needs of workers, among the criteria on the basis of which the Member States and/or social partners are, where necessary, called upon to define the conditions of access to parental leave and the detailed rules for applying it.

62 It cannot therefore be accepted that, once the authorised duration of leave has been set, pursuant to that provision, workers who have opted for parental leave covering the period thus authorised may, in the name of those same needs, be deprived of the minimum requirements guaranteed by the revised Framework Agreement, such as, in particular, those laid down in Clause 5(1) and (2) of that agreement.

63 In the light of all the foregoing considerations, the answer to the first question and the first part of the third question is that Clause 5(1) and (2) of the revised Framework Agreement must be interpreted as precluding rules of national law, such as those at issue in the main proceedings, which subject definitive promotion to a managerial post in the civil service to the condition that the candidate selected successfully carries out a prior two-year probationary period in that post, and by virtue of which, in a situation where such a candidate was on parental leave for most of that period and still is, that probationary period ends by operation of law after two years with no possibility of extending it and the person concerned is consequently, on return from parental leave, reinstated in the post, at a lower level both in status and in terms of remuneration, occupied before that probationary period. The infringements of that clause cannot be justified by the objective pursued by the probationary period, which is to enable the assessment of suitability for the managerial post to be assigned permanently.

The second question and second part of the third question

64 In view of the answer to the first question and first part of the third question, there is no need to answer the second question and second part of the third question.

The fourth and fifth questions

65 By its fourth and fifth questions, which should be examined together, the referring court asks, in essence, what consequences arise under EU law, in circumstances such as those in the main proceedings, from the incompatibility of rules such as those at issue in the main proceedings with Clause 5(1) and (2) of the revised Framework Agreement.

66 A preliminary point to note is that the Court has consistently held that when national courts apply domestic law they are bound to interpret that law, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive and, consequently, comply with the third paragraph of Article 288 TFEU (see, inter alia, judgment of 24 January 2012, *Dominguez*, C-282/10, EU:C:2012:33, paragraph 24 and the case-law cited). The same

also applies in the case of agreements which, like the revised Framework Agreement, have been implemented by a directive of the Council, of which they are thus an integral component (see, by analogy, judgment of 16 September 2010, *Chatzi*, C-149/10, EU:C:2010:534, paragraphs 43 and 44).

67 In the present case, the referring court expressly underlines, however, in its request for a preliminary ruling, that such a compliant interpretation is not possible in respect of the rules at issue in the main proceedings.

68 In those circumstances, it should also be recalled that, as is clear from settled case-law, wherever the provisions of a directive appear, as far as their subject matter is concerned, to be unconditional and sufficiently precise, those provisions may be relied upon by individuals as against the Member State, particularly in its capacity as an employer. Moreover, the Court has previously held that that case-law can be applied to agreements which, like the framework agreements on parental leave, are the product of a dialogue between management and labour at EU level and have been implemented, in accordance with their legal basis, by a directive of the Council, of which they are thus an integral component (see, to that effect, judgment of 22 April 2010, *Zentralbetriebsrat der Landeskrankenhäuser Tirols*, C-486/08, EU:C:2010:215, paragraphs 22 and 23).

69 Clause 5(1) and (2), first sentence, of the revised Framework Agreement assures, generally and in unequivocal terms, the worker's rights to return to the same job or, if that is not possible, to an equivalent or similar job, and to retain rights already acquired or in the process of being acquired at the start of his parental leave, at the end of that leave. The content of such provisions thus is unconditional and sufficiently precise to be relied on by an individual and applied by courts (see, by analogy, judgment of 16 July 2009, *Gómez-Limón Sánchez-Camacho*, C-537/07, EU:C:2009:462, paragraph 36).

70 It follows that, according to the Court's case-law, where they are unable to interpret and apply national law in compliance with the requirements of EU law, it is for the national courts and administrative bodies to apply EU law in its entirety and to protect rights which the latter confers on individuals, disapplying, if necessary, any contrary provision of domestic law (judgment of 25 November 2010, *Fuß*, C-429/09, EU:C:2010:717, paragraph 40 and the case-law cited).

71 Consequently, it is for the referring court to ascertain, in particular, whether, in circumstances such as those of the main proceedings, it was not actually possible for the *Land* of Berlin, in its capacity as an employer, to guarantee to Ms H. that she could return to her post at the end of her parental leave and, if so, to ensure that she would then be assigned, as required by Clause 5(1) of the revised Framework Agreement, an equivalent or similar post consistent with her employment contract or employment relationship, so as to enable her to continue a probationary period there under conditions that were, moreover, in compliance with the requirements arising from Clause 5(2) of that framework agreement (see, by analogy, judgment of 20 June 2013, *Riežniece*, C-7/12, EU:C:2013:410, paragraph 51).

72 As regards the fact that the managerial post to which Ms H. had been assigned as a civil servant on probation on 18 October 2011 was, after she took her parental leave on 30 May 2012, reassigned definitively to another civil servant, following a selection procedure in the second half of 2012, it should be noted that the *Land* of Berlin has not explained before the Court how it would have been objectively impossible for it to ensure that Ms H. could return to her position of civil servant on probation in the managerial post concerned, at the end of her leave. The *Land* has not, inter alia, set out the objective reasons for which it would have been impossible for it either to keep that post temporarily vacant or, if necessary, to appoint another civil servant to it on a transitional basis, until the return of Ms H.

73 Although the Court has, admittedly, recognised that an employer is allowed to reorganise its services in order to ensure efficient management of its organisation, it has nonetheless made clear that this is subject to compliance with the applicable provisions of EU law (see, by analogy, as regards the 1995 Framework Agreement, judgment of 20 June 2013, *Riežniece*, C-7/12, EU:C:2013:410, paragraph 36).

74 In that context, the employer therefore bears the burden of proving before the referring court that it was, for objective reasons, impossible for it to ensure that the applicant in the main proceedings could return, at the end of her parental leave, to the managerial post to which she had been assigned as a civil servant on probation before taking that leave.

75 Assuming that the referring court concludes that there was such an impossibility in the present case, the fact would still remain, in any event, that the post reassigned to Ms H. by the *Land* of Berlin in view of her return to work following parental leave cannot be considered 'equivalent or similar' to the managerial post she occupied when she took that leave, within the meaning of Clause 5(1) of the revised Framework Agreement, since it is common ground that she was reassigned to the post she occupied before her promotion to that managerial post, namely a post at a lower level both in status and in terms of remuneration.

76 Compliance with Clause 5(1) in fact required the *Land* of Berlin to assign Ms H., as a civil servant on probation, to a managerial post characterised, at the very least, by a degree of status, a level of remuneration and management tasks corresponding to those relating to the post for which she had initially been selected.

77 Moreover, the referring court must satisfy itself that the continuation of the probationary period in the managerial post initially occupied or, if that is objectively established to be impossible, in an equivalent or similar post, takes place, as regards the duration of that probationary period, in compliance with the requirements of Clause 5(2) of the revised Framework Agreement.

78 Such compliance implies that, at the end of her parental leave, Ms H. retains the possibility of continuing her probationary period in one of those posts in such a way that she receives an actual probationary period with the same total duration as that which she would have received if she had not taken parental leave. She must continue to enjoy, at the end of her parental leave, the same possibilities of demonstrating her suitability to exercise the managerial post occupied and, accordingly, the same prospect of possible definitive appointment to that post at the end of the probationary period.

79 Finally, as regards the potential requirement of making the assignment of the applicant in the main proceedings, as a civil servant on probation, to a similar or equivalent managerial post conditional upon holding a new selection procedure beforehand, it is clear that this would render nugatory the right of a worker, such as that at issue in the main proceedings, who has taken parental leave to be transferred to another post, in accordance with the conditions laid down in Clause 5(1) of the revised Framework Agreement, in order to continue a probationary period there under conditions that are, moreover, in compliance with the requirements arising from the first sentence of Clause 5(2) of that framework agreement (see, by analogy, judgment of 20 June 2013, *Riežniece*, C-7/12, EU:C:2013:410, paragraph 54).

80 Regardless of the fact that the person concerned already participated in such a selection procedure leading to her appointment as a civil servant on probation and her assignment to the managerial post occupied at the time when she took her parental leave, such a selection procedure would further delay her appointment to that new post and, consequently, her possibility of demonstrating her suitability to be appointed definitively to that post. It would, furthermore, and more fundamentally, have the effect of giving such an appointment a random nature, since it would then depend on the results of that selection procedure.

81 A requirement such as that mentioned in paragraph 79 above cannot therefore be accepted and it is, consequently, for the referring court to disapply it, in accordance with the case-law recalled in paragraph 70 above.

82 In the light of the foregoing considerations, the answer to the fourth and fifth questions is that it is for the referring court, if necessary by disapplying the rules of national law at issue in the main proceedings, to ascertain, as required by Clause 5(1) of the revised Framework Agreement, whether, in circumstances such as those of the main proceedings, it was not objectively possible for the *Land* concerned, in its capacity as an employer, to enable the person concerned to return to her post at the end of her parental leave and, if so, to ensure that she is assigned to an equivalent or similar post consistent with her employment contract or relationship, without that assignment of a post being made conditional upon holding a new selection procedure beforehand. It is also for that court to ensure that the person concerned may, at the end of parental leave, continue, in the post thus returned to or newly assigned, a probationary period under conditions that are in compliance with the requirements of Clause 5(2) of the revised Framework Agreement.

Costs

83 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. **Clause 5(1) and (2) of the revised Framework Agreement on parental leave set out in the Annex to Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC must be interpreted as precluding rules of national law, such as those at issue in the main proceedings, which subject definitive promotion to a managerial post in the civil service to the condition that the candidate selected successfully carries out a prior two-year probationary period in that post, and by virtue of which, in a situation where such a candidate was on parental leave for most of that period and still is, that probationary period ends by operation of law after two years with no possibility of extending it and the person concerned is consequently, on return from parental leave, reinstated in the post, at a lower level both in status and in terms of remuneration, occupied before that probationary period. The infringements of that clause cannot be justified by the objective pursued by the probationary period, which is to enable the assessment of suitability for the managerial post to be assigned permanently.**

2. **It is for the referring court, if necessary by disapplying the rules of national law at issue in the main proceedings, to ascertain, as required by Clause 5(1) of the revised Framework Agreement on parental leave set out in the Annex to Directive 2010/18, whether, in circumstances such as those of the main proceedings, it was not objectively possible for the *Land* concerned, in its capacity as an employer, to enable the person concerned to return to her post at the end of her parental leave and, if so, to ensure that she is assigned to an equivalent or similar post consistent with her employment contract or relationship, without that assignment of a post being made conditional upon holding a new selection procedure beforehand. It is also for that court to ensure that the person concerned may, at the end of parental leave, continue, in the post thus returned to or newly assigned, a probationary period under conditions that are in compliance with the requirements of Clause 5(2) of the revised Framework Agreement.**

[Signatures]