Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

27 November 2025 *

(Reference for a preliminary ruling – Freedom of movement for workers – Article 45 TFEU – Regulation (EU) No 492/2011 – Article 7(1) – Social policy – Equal treatment in employment and occupation – Directive 2000/78/EC – Prohibition of discrimination on grounds of age – Civil servants' salary scale – National legislation excluding the consideration of previous periods of equivalent service completed in another Member State – Exclusion following a decision, falling within the discretionary power of the administration, to grant a promotion to the civil servant – Promotion subject to completion of a certain number of years of service – National legislation excluding the consideration of previous periods of equivalent service completed in the Member State concerned)

In Case C-356/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesverwaltungsgericht Kärnten (Regional Administrative Court, Carinthia, Austria), made by decision of 16 May 2024, received at the Court on 16 May 2024, in the proceedings

A.B.

v

Kärntner Landesregierung,

THE COURT (Tenth Chamber),

composed of J. Passer, President of the Chamber, M.L. Arastey Sahún (Rapporteur), President of the Fifth Chamber, D. Gratsias, Judge,

Advocate General: R. Norkus,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Austrian Government, by A. Posch and J. Schmoll, acting as Agents,

– the European Commission, by S. Delaude and B.-R. Killmann, acting as Agents,

* Language of the case: German.

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 45 TFEU, Article 7(1) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1), Articles 1, 2 and 6 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) and Articles 20 and 21 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request was submitted in proceedings between A.B. and the Kärntner Landesregierung (Government of the Province of Carinthia, Austria) concerning the failure to take into account certain previous periods of professional service completed by A.B. both in Austria and abroad, in order to determine his seniority in the civil servants' salary scale.

Legal context

European Union law

Directive 2000/78

3 Article 1 of Directive 2000/78, entitled 'Purpose', provides:

'The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.'

4 Article 2 of that directive, entitled 'Concept of discrimination', is worded as follows:

'1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:
(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary, …

…’

5 Article 3 of that directive, entitled ‘Scope’, provides, in paragraph 1(c) thereof:

‘Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

…

(c) employment and working conditions, including dismissals and pay’.

6 Article 6 of that directive, entitled ‘Justification of differences of treatment on grounds of age’, provides:

‘1. Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

…

2. Notwithstanding Article 2(2), Member States may provide that the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of sex.’

Regulation No 492/2011

7 Article 7(1) of Regulation No 492/2011 provides:

‘A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his [or her] nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he [or she] become unemployed, reinstatement or re-employment.’

Austrian law

8 Paragraph 143 of the Kärntner Dienstrechtsgesetz (Law of the Province of Carinthia on the conditions of service of civil servants) of 1994 (LGBl. No 71/1994), in the version resulting from Law No 81 of the Province of Carinthia of 21 October 2021 (LGBl. No 81/2021) (‘the K-DRG’), entitled ‘Advancement’, provides:

‘(1) Advancement shall be determined on the basis of a reference date. Unless otherwise provided in this paragraph, the period required for advancement to the second incremental step in respect of grade III shall be five years, and two years for other incremental steps.

(2) Advancement shall take place on 1 January or 1 July following completion of the period of two or five years (advancement date), unless it is postponed or suspended on such date. The period of two or five years shall be deemed to have elapsed on the advancement date where it is completed before 31 March or 30 September following the advancement date.

…’

9 Under Paragraph 145 of the K-DRG, entitled ‘Reference date for advancement’:

‘(1) Subject to the restrictions set out in subparagraphs 4 to 8, the reference date to be taken into account for the purposes of advancement shall be calculated by counting backwards from the date of recruitment in respect of periods after 30 June of the year in which nine school years were completed or ought to have been completed after admission to the first level of education:

1. the periods specified in subparagraph 2 shall be taken into account in their entirety;

2. other periods
   (a) which fulfil the criteria set out in subparagraph 3 shall be taken into account in their entirety,
   (b) which do not fulfil the criteria set out in subparagraph 3,
      (aa) shall be taken into account in their entirety for three years and
      (bb) shall be taken into account to the extent of one half for three additional years.

…

(11) The periods referred to in subparagraph 2 and subparagraph 1(2) in which professional activities were completed which, with regard to the activities carried out at the time of entry into service, involved equivalent activities providing equivalent professional experience, are to be taken into account in their entirety where those periods were completed outside Austria

1. in the territory of a Contracting Party to the Agreement on the [European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3)] or of a Member State of the European Union, or

2. in a State whose nationals enjoy the same rights of access to a profession as Austrian nationals, or

3. at an institution of the European Union or another intergovernmental organisation to which Austria belongs.

…’

10 Paragraph 181 of the K-DRG, entitled ‘Promotion’, is worded as follows:

‘(1) Promotion is the appointment of a civil servant in the general administration to the next higher grade in his or her job category.

…

(3) If the salary corresponding to the lowest step of the new grade provided for a civil servant’s employment category is less than his or her previous salary, the civil servant shall receive the step

corresponding to the previous remuneration; but if no such remuneration is provided, he or she shall receive the step corresponding to the next higher remuneration.

(4) After a promotion civil servants shall advance at the time at which in their previous grade they would, under subparagraph 3, have fulfilled the condition for attaining the next higher salary grade for their new grade, but at the latest after two years. Any period spent at the highest salary grade for a grade shall be credited up to a maximum of four years. By way of derogation from the above, in cases where promotion to a higher grade is subject to the completion of two years at the highest salary grade for the lowest grade, the time spent at the highest salary grade for that grade shall be credited up to a maximum of four years in so far as it exceeds the time completed at that salary grade. Paragraphs 143 and 144 shall apply *mutatis mutandis*.

…'

11 Paragraph 305b of the K-DRG, entitled 'Scope of individual provisions', provides:

'…

(2) The reference date to be taken into account for purposes of advancement by an incremental step and the resulting remuneration status are to be recalculated *ex officio* in accordance with Paragraphs 143 and 145 of this Law, in the version resulting from Law [No 60 of the Province of Carinthia of 13 June 2019], without unnecessary delay and only in cases where the existing remuneration status is determined on the basis of the advancement reference date. …

…

(4) …

1. Paragraphs 143 and 145 of this Law shall continue to apply in the version in force on 31 December 2003 [to persons for whom there is no need to redetermine the advancement reference date in accordance with paragraph 2]. Where their advancement reference date has been set under Paragraph 145 of this Law in the version in force on 30 September 1995, Paragraphs 143 and 145 of this law shall continue to apply in their version in force on 30 September 1995.

…'

12 Under Paragraph VI(7) of the Gesetz, mit dem das Kärntner Dienstrechtsgesetz 1994 (20. K-DRG-Novelle), das Kärntner Landesvertragsbedienstetengesetz 1994 (17. Kärntner Landesvertragsbedienstetengesetz-Novelle), das Kärntner Gemeindebedienstetengesetz, das Kärntner Stadtbeamtengesetz 1993 und das Kärntner Gemeindeverragsbedienstetengesetz geändert werden (Law amending the Law of the Province of Carinthia on the conditions of service of civil servants of 1994 (twentieth amendment), the Law of the Province of Carinthia on contractual public servants of 1994 (seventeenth amendment), the Law of the Province of Carinthia on municipal authority employees, the Law of the Province of Carinthia on municipal civil servants of 1993 and the Law of the Province of Carinthia on contractual municipal authority employees), of 7 July 2011 (LGBl. No 82/2011) ('Law No 82/2011'):

'(7) The reference date to be taken into account for purposes of advancement by an incremental step and the resulting remuneration status may be recalculated in accordance with Paragraphs 143 and 145 of the [K-DRG], in the version laid down by Paragraph I, or Paragraphs 41 and 42 of the

[Kärntner Landesvertragsbedienstetengesetz of 1994 (Law of the Province of Carinthia on contractual public servants 1994)], in the version laid down by Paragraph II, only on request and only in cases where the existing remuneration status is determined on the basis of the advancement reference date. …'

13 Paragraph VIII(3) of the Gesetz, mit dem das Kärntner Dienstrechtsgesetz 1994 (39. K-DRG-Novelle), das Kärntner Landesvertragsbedienstetengesetz 1994 (32. K-LVBG-Novelle), das Kärntner Gemeindebedienstetengesetz, das Kärntner Gemeindevertragsbedienstetengesetz, das Kärntner Stadtbeamtengesetz 1993, das Kärntner Pensionsgesetz 2010 und das Kärntner Landes-Personalvertretungsgesetz geändert werden (Law amending the Law of the Province of Carinthia on the conditions of service of civil servants of 1994 (thirty-ninth amendment to the K-DRG), the Law of the Province of Carinthia on contractual public servants of 1994 (thirty-second amendment to the K-DRG), the Law of the Province of Carinthia on municipal authority employees, the Law of the Province of Carinthia on contractual municipal authority employees, the Law of the Province of Carinthia on municipal civil servants of 1993, the Pensions Law of the Province of Carinthia of 2010 and the Law on Staff Representation of the Province of Carinthia), of 21 October 2021 (LGBl. No 81/2021) ('Law No 81/2021'), is worded as follows:

'If a State employee or a municipal employee can demonstrate prior periods of service within the meaning of Paragraph 145(11) and (12) of the [K-DRG], in the version of Paragraph I of that law, or of Paragraph 41(12) and (13) of the Kärntner Landesvertragsbedienstetengesetz (Law of the Province of Carinthia on contractual public servants), in the version of Paragraph II of this law, which have not yet been fully taken into account for determining the reference date for promotion under another provision and which must now be taken fully into account under this law, the reference date for promotion must, at his or her request, be adjusted accordingly.'

14 The Beschluss der Kärntner Landesregierung zur Festlegung von Richtlinien für die Vorrückung, Zeitvorrückung und Beförderung der Beamten des Landes Kärnten (LAD-PW-22/1-98) (Decision of the Government of the Province of Carinthia of 20 October 1998 establishing the guidelines on the advancement, periodic advancement and promotion of civil servants of the Province of Carinthia (LAD-PW-22/1-98)) provides, in particular:

'The promotion of civil servants of the province is at the discretion of the provincial government.

Only civil servants who fulfil the following conditions and whose performance and skills as well as their on-duty and off-duty conduct warrant promotion shall be eligible for promotion, whereby the respective list of posts and the job organisation chart shall be taken into account.

Temporal conditions:

Job category	Grade V	Grade VI	Grade VII	Grade VIII
A	9 years	13 years	19 years	30 years
B	19 years	25 years	31 years	
C	29 years			

Those years shall be calculated starting from the advancement reference date.

…'

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

15 A.B. is an Austrian national born in 1968 who began working for the Province of Carinthia ('the province') as a contractual agent on 3 October 2005. From 1 October 1987 to 4 April 2003 inclusive, he completed periods of service for private employers in Austria and abroad before being employed by the province on the basis of a service slip (*Dienstzettel*) covering the period from 13 October 2003 to 2 October 2005.

16 Upon entering into service as a contractual agent with the province, the reference date for A.B.'s advancement was set at 8 September 2001. Under Paragraph 41 of the Kärntner Landesvertragsbedienstetengesetz (Law of the Province of Carinthia on contractual public servants) of 1994 (LGBl. No 73/1994), in the version applicable on the date of that entry into service, a period of 4 years, 0 months and 25 days was taken into account for that purpose, corresponding to the period of completion of military service or reserve duty by A.B. and the period of service which he carried out in the service of the province on the basis of that service slip, to which a period of 1 year and 6 months was added. That latter period corresponds to the maximum period which, under Austrian law, could be taken into account for periods of service completed in the private sector which were not particularly important for employment in the service of the province and whose consideration was not justified as being in the public interest.

17 Subsequently, A.B. was appointed as a civil servant, with effect from 1 January 2010, in a post in employment category B, with grade III and salary step 7, and, since then, his situation with regard to the salary scale has been determined by the K-DRG. The reference date for advancement which was retained under Paragraph 145 of the Law of the Province of Carinthia on the conditions of service of civil servants, in the version applicable on the date of that appointment, is also that of 8 September 2001.

18 On 1 July 2011, A.B. advanced to the next higher salary step, and he subsequently received promotions to successive steps in the following years. On 1 January 2016, and then on 1 January 2022, A.B. was promoted to the next higher grade, namely, respectively, to grade V and then to grade VI.

19 On 14 November 2022, on the basis of Law No 81/2021, A.B. requested that previous periods of service equivalent to that which he carries out as a civil servant, which he had completed in Austria and abroad, be taken into account, and consequently, that he receive payment in arrears of the difference in salary to which he believes he is entitled.

20 By decision of 20 September 2023, the Government of the Province of Carinthia rejected that application on the basis of Paragraph VI(7) of Law No 82/2011, on the ground that, since the appointment of A.B. to grade VI was the result of a promotion, his situation with regard to the salary scale was therefore no longer determined on the basis of the advancement reference date.

21 A.B. lodged an appeal against that decision with the Landesverwaltungsgericht Kärnten (Regional Administrative Court, Carinthia, Austria), which is the referring court.

22 That court states that, under Paragraph 145(11) of the K-DRG, in the version resulting from Law No 81/2021, previous periods of equivalent service completed abroad must be taken into account in order to determine the reference date for advancement.

23 However, Paragraph 305b(2) of the K-DRG, like Paragraph VI(7) of Law No 82/2011, does not allow civil servants to apply for a review of their advancement reference date if they have benefited from a promotion, that promotion having the effect of making them subject to another salary and advancement scale.

24 In that regard, that court submits, first, that Article 45 TFEU and Article 7(1) of Regulation No 492/2011 preclude such national provisions if, for the purposes of determining seniority, previous periods of equivalent service completed abroad which have not been taken into account previously can no longer be taken into account in the event of promotion and that, as a result, seniority in the salary scale cannot be reassessed, whereas, under another provision of the K-DRG, which is of general application, such periods of equivalent service must, in principle, be taken into account.

25 Secondly, since the award of a promotion is subject to the completion of a certain number of years of service, the referring court infers from this that older civil servants are primarily concerned by that promotion and, consequently, by the consequence related to not being able to claim the taking into account of previous periods of equivalent service for the purpose of determining the advancement reference date. That court therefore submits that the Austrian regulations at issue may constitute indirect discrimination on grounds of age.

26 Thirdly, the referring court states that, although Paragraph 145 of the K-DRG requires full consideration of previous periods of equivalent service completed outside Austria, that is not the case for previous periods of equivalent service completed in the private sector and on the national territory. Such an exclusion is incompatible with Article 20 of the Charter, which enshrines the principle of equal treatment, and with Article 45 TFEU and Article 7(1) of Regulation No 492/2011, which enshrine freedom of movement for workers.

27 In those circumstances the Landesverwaltungsgericht Kärnten (Regional Administrative Court, Carinthia) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is EU law, in particular Article 45 TFEU and Article 7(1) of Regulation No 492/2011, to be interpreted as precluding national legislation under which previous periods of relevant service completed in other EU Member States are no longer taken into account when setting the advancement reference date where a civil servant’s existing remuneration status has been attained by a discretionary act (promotion) on the part of the employer rather than by periodic advancement, and such national legislation provides that the advancement reference date is recalculated only where the existing remuneration status is determined on the basis of the advancement reference date?

(2) Is EU law, in particular Articles 1, 2 and 6 of Directive 2000/78 in conjunction with Article 21 of the Charter, to be interpreted as precluding national legislation under which previous periods of relevant service completed in other EU Member States are no longer taken into account when setting the advancement reference date where a civil servant’s existing remuneration status has been attained by a discretionary act (promotion) on the part of the employer rather than by periodic advancement and such national legislation provides that the advancement reference date is recalculated only where the existing remuneration status is determined on the basis of the advancement reference date, but under the employer’s

corresponding guidelines such promotion is usually only available after 19 and 25 years of service (calculated from the advancement reference date), and therefore concerns older civil servants?

(3) [Does the principle] of freedom of movement for workers laid down in Article 45 TFEU and Article 20 of the Charter preclude national legislation according to which periods of equivalent professional activity are taken into account in their entirety when setting the advancement reference date where that professional activity was [completed] outside Austria (in the territory of a Contracting Party to the [Agreement on the European Economic Area] or of an EU Member State, in a State the nationals of which enjoy the same rights of access to a profession as Austrian nationals, or at an institution of the European Union or another intergovernmental organisation to which Austria belongs), whereas equivalent professional activities in the private sector that were carried out in Austria are not taken into account?'

Admissibility of the request for a preliminary ruling and the jurisdiction of the Court of Justice

28 The Austrian Government disputes the admissibility of the request for a preliminary ruling.

29 According to the Austrian Government, first, the considerations and explanations of the referring court as regards the first and second questions relate to Paragraph 305b of the K-DRG, which, however, are not applicable to the circumstances of the main proceedings. Therefore, it is not necessary to answer those two questions in order to rule on this dispute. Secondly, the first and third questions are not relevant to the resolution of the dispute in the main proceedings as they relate to the interpretation of the provisions of EU law applicable to free movement for workers. In particular, as regards the first question, the Austrian Government argues that the periods of service completed by the appellant in the main proceedings outside Austria occurred in the context of a secondment initiated by his Austrian employer, with the result that those periods of service fall within the scope of the provisions relating to the free movement of services. As for the third question, the Austrian Government submits that it concerns a purely domestic situation.

30 In that respect, it should be borne in mind that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that national court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 9 November 2023, *Keolis Agen*, C-271/22 to C-275/22, EU:C:2023:834, paragraph 38 and the case-law cited).

31 It follows from that case-law that the Court cannot call into question the interpretation of national law on which the referring court based its decision, nor the factual context which that national court is responsible for defining, as the Austrian Government, in essence, requests it to do in its arguments summarised in paragraph 29 of the present judgment.

32 Therefore, the first and second questions are admissible.

33 As for the argument that the provisions relating to the free movement of workers are not applicable to the situation envisaged in the third question since that situation is purely domestic in nature, it should be recalled that, if the provisions of EU law to which a question referred relates are not applicable to the dispute in the main proceedings, those provisions are irrelevant in resolving that dispute and the preliminary ruling sought is not necessary to enable the referring court to give judgment, with the result that that question must be held to be inadmissible (see, to that effect, judgment of 22 October 2024, *Kolin Inşaat Turizm Sanayi ve Ticaret*, C-652/22, EU:C:2024:910, paragraph 38).

34 Furthermore, according to settled case-law, where a legal situation does not come within the scope of EU law, the Court does not have jurisdiction to rule on it and any provisions of the Charter relied upon cannot, of themselves, form the basis for such jurisdiction (judgment of 4 September 2025, *Gnattai*, C-543/23, EU:C:2025:653, paragraph 56 and the case-law cited).

35 In the present case, it should be noted that Article 45(1) TFEU, which, in principle, prohibits any restriction on free movement for workers, applies to cross-border situations within the European Union and not in a purely national context.

36 The same applies with regard to the prohibition of discrimination provided for in Article 45(2) TFEU and in Article 7 of Regulation No 492/2011.

37 The scenario described by the referring court in its third question, namely the failure to take into account, in order to determine the situation of a civil servant with regard to the salary scale, periods of equivalent service completed in the private sector in Austria, falls within a purely national context.

38 It follows that Article 45(1) and (2) TFEU and Article 7 of Regulation No 492/2011 are not applicable to such a case.

39 Therefore, the existence of a connection under Article 51 of the Charter, which justifies an assessment of the situation at issue with regard to Article 20 thereof, is lacking in the present case.

40 In the light of the foregoing considerations, it must be found that, in so far as the third question relates to the interpretation of Article 20 of the Charter, the Court has no jurisdiction to rule on it and that, in so far as it relates to Article 45 TFEU, that question is inadmissible.

Consideration of the questions referred

The first question

41 At the outset, it should be noted that, by its first question, the referring court asks, in particular, whether Article 45 TFEU precludes the regulations of a Member State which, in certain circumstances, exclude the consideration of periods of equivalent service completed by a person in another State of the European Economic Area (EEA) before that person entered into service as a civil servant in that Member State.

42 In order to answer that question, it should be emphasised, at the outset, that taking into account prior periods of equivalent service completed by a worker from one Member State in another EEA State, with the aim of rewarding the professional experience previously acquired, must be done in

a manner that excludes, first, any discrimination based on nationality under Article 45(2) TFEU and Article 7 of Regulation No 492/2011 and, secondly, any restriction on the freedom of movement enshrined in Article 45(1) TFEU (see, to that effect, judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraphs 21 and 54).

43 It is therefore appropriate to find that the first question is divided into two parts.

The first part

44 For the purposes of examining the first part of the first question, it should be noted that, according to the information provided by the referring court, summarised in paragraph 26 of the present judgment, Paragraph 145 of the K-DRG requires previous periods of equivalent service completed outside Austria to be taken into account in full, whereas such taking into account is not provided for for previous periods of equivalent service completed in the private sector and on the national territory.

45 In those circumstances, it must be found that, by the first part of the first question, the referring court is asking, in essence, whether Article 45(2) TFEU and Article 7(1) of Regulation No 492/2011 must be interpreted as precluding the regulations of a Member State under which periods of equivalent service completed by a person in another EEA State before that person entered into service as a civil servant in the first Member State and which were not previously taken into account for the purposes of his or her salary classification, are retroactive when the situation of that civil servant with regard to the salary scale results from advancement based on seniority and not from promotion granted by virtue of a decision falling within the discretionary power of the administration, while such consideration is not provided for for previous periods of equivalent service completed in the private sector and on the national territory.

46 Article 45(2) TFEU prohibits all discrimination based on nationality between workers of the Member States as regards employment, remuneration or other conditions of work and employment. Article 7(1) of Regulation No 492/2011 constitutes merely the specific expression of the principle of non-discrimination laid down in Article 45(2) TFEU within the specific field of conditions of employment and work and must therefore be interpreted in the same way as Article 45(2) TFEU (judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 21 and the case-law cited).

47 The regulations of a Member State, such as those at issue in the main proceedings, which establish the procedures for taking into account periods of equivalent service completed by a worker in an EEA State, prior to his or her entry into service as a civil servant of that Member State, for the purposes of establishing his or her salary classification, indisputably form part of the field of employment and working conditions. They thus come within the scope of the provisions cited in the preceding paragraph of the present judgment (see, by analogy, judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 22 and the case-law cited).

48 According to settled case-law, the principle of equal treatment laid down in Article 45 TFEU prohibits not only direct discrimination on the ground of nationality but also all indirect forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result (judgment of 15 June 2023, *Ministero dell'Istruzione, dell'Università e della Ricerca (Special lists)*, C-132/22, EU:C:2023:489, paragraph 28 and the case-law cited).

49 As regards, in the first place, the existence of discrimination based directly on nationality, it should be noted that the national legislation at issue in the main proceedings, in so far as it is indiscriminately applicable to all civil servants hired by the province, regardless of their nationality, cannot be regarded as constituting such discrimination.

50 In the second place, a provision of national law, even if it applies to all workers regardless of nationality, must be regarded as indirectly discriminatory if it is intrinsically liable to affect workers who are nationals of other Member States more than national workers and if there is a consequent risk that it will place the worker from a different Member State at a particular disadvantage, unless it is objectively justified and proportionate to the aim pursued (judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 24 and the case-law cited).

51 In the present case, admittedly, the exclusion of any retroactive consideration of periods of equivalent service completed in another EEA State before entering into service and not previously taken into account for the purposes of the salary classification of a civil servant promoted under a decision falling within the discretionary power of the administration is likely to disadvantage that civil servant compared to a civil servant who is in an equivalent situation and who has not benefited from a promotion.

52 However, in order for such a difference in treatment between workers to be regarded as being indirectly discriminatory, within the meaning of Article 45(2) TFEU and Article 7(1) of Regulation No 492/2011, it must be intrinsically liable to affect workers who are nationals of other Member States more than national workers (see, by analogy, judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 31).

53 This is not the case for a regulation of a Member State which, like that referred to in the first part of the first question, excludes the consideration of any professional experience acquired in the private sector of that Member State, while providing for the consideration of periods of equivalent service completed in another EEA State, provided that the civil servant concerned has not been promoted under a decision falling within the discretionary power of the administration. While nationals of EEA States other than the Member State concerned are more likely than workers who are nationals of that Member State to have acquired professional experience in another EEA State, the latter are more likely to have acquired, before entering into service, professional experience in the private sector in that Member State, with the result that such a regulation cannot be considered, by its very nature, to be disadvantageous to civil servants who are nationals of other Member States.

54 It follows from those considerations that a regulation of a Member State, such as that referred to in the first part of the first question, cannot be regarded as being indirectly discriminatory in nature towards workers who are nationals of EEA States other than that Member State and, consequently, as being contrary to Article 45(2) TFEU and Article 7(1) of Regulation No 492/2011.

55 In the light of all of the foregoing considerations, the answer to the first part of the first question is that Article 45(2) TFEU and Article 7(1) of Regulation No 492/2011 must be interpreted as not precluding the legislation of a Member State under which periods of equivalent service completed by a person in another EEA State before that person entered into service as a civil servant in the first Member State, and which were not previously taken into account for the purposes of their salary classification, are taken into account retroactively when the situation of that civil servant with regard to the salary scale results from advancement based on seniority and

not from promotion granted by virtue of a decision falling within the discretionary power of the administration, while such consideration is not provided for for previous periods of equivalent service completed in the private sector and on the national territory.

The second part

56 By the second part of the first question, the referring court asks, in essence, whether Article 45(1) TFEU must be interpreted as precluding the legislation of a Member State under which periods of equivalent service completed by a person in another EEA State before that person entered into service as a civil servant in the first Member State and which have not previously been taken into account for the purposes of his or her salary classification must be taken into account retroactively where the situation of that civil servant with regard to the salary scale results from advancement based on seniority and not from promotion granted by virtue of a decision falling within the discretionary power of the administration.

57 In that regard, it should be borne in mind that Article 45(1) TFEU prohibits, in principle, any obstacle to freedom of movement for workers within the European Union and that the provisions of the FEU Treaty on freedom of movement for persons are intended to facilitate the pursuit by nationals of the Member States of occupational activities of all kinds throughout the European Union, and preclude measures which might place nationals of the Member States at a disadvantage when they wish to pursue an activity as an employed person in the territory of another Member State (see, to that effect, judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 40 and the case-law cited).

58 Nationals of the Member States have in particular the right, which they derive directly from the Treaty, to leave their Member State of origin to enter the territory of another Member State and reside in that Member State in order to pursue an activity there. As a result, Article 45 TFEU precludes any national measure which is capable of hindering or rendering less attractive the exercise by EU nationals of the fundamental freedom guaranteed by that article (judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 41 and the case-law cited).

59 The Court has recalled that national legislation which, for the purposes of determining the amount of a worker's remuneration, does not take into account in full previous periods of equivalent service completed in an EEA State other than the State of origin of that migrant worker is likely to render less attractive freedom of movement for workers, in breach of Article 45(1) TFEU (judgment of 23 April 2020, *Land Niedersachsen (Previous periods of relevant activity)*, C-710/18, EU:C:2020:299, paragraph 26 and the case-law cited).

60 In the present case, it must be found that the regulations of a Member State such as those at issue in the main proceedings may have the effect of excluding the consideration, for the purposes of establishing the salary classification of a worker, of certain previous periods of equivalent service depending on the EEA State in which the professional experience was acquired.

61 That finding is not called into question by the fact that, when a civil servant has been promoted, his or her step advancement in his or her new grade is linked, in principle, to the number of years of service completed in that grade. It cannot be ruled out that, even in such a situation, the professional experience acquired by that civil servant before entering into service may have an impact on his or her salary classification. In the present case, as the Commission pointed out in its observations, it is apparent from Paragraph 181(3) of the K-DRG that the retroactive consideration of professional experience acquired by a civil servant before entering into service is

likely to have the effect of modifying his or her salary classification prior to his or her promotion and, consequently, of affecting the step classification of that civil servant in his or her grade after that promotion.

62 Therefore, national legislation such as that referred to in paragraph 60 of the present judgment is likely to discourage workers from leaving their home Member State to enter the territory of another EEA State to perform a professional activity equivalent to that which they could have performed for their employer because, following their return to the territory of that Member State, despite the equivalence of the activity they would have carried out in that other EEA State, their professional experience acquired in that EEA State would not have been taken into account in full in order for that employer to determine their salary classification (see, to that effect, judgment of 23 April 2020, *Land Niedersachsen (Previous periods of relevant activity)*, C-710/18, EU:C:2020:299, paragraph 29 and the case-law cited).

63 It follows that such national legislation renders less attractive the freedom of movement of workers, in breach of Article 45(1) TFEU, and therefore constitutes an obstacle to that freedom.

64 However, national legislation of that kind cannot be accepted unless it pursues one of the legitimate aims listed in the FEU Treaty or is justified by overriding reasons in the public interest. It is also necessary, in such a case, that the measure be capable of ensuring the achievement of the objective in question and not go beyond what is necessary to attain that objective (judgment of 23 April 2020, *Land Niedersachsen (Previous periods of relevant activity)*, C-710/18, EU:C:2020:299, paragraph 34 and the case-law cited).

65 In the present case, it should be noted that, in the observations it submitted to the Court, the Austrian Government did not argue that the legislation at issue in the main proceedings pursued a legitimate aim set out in the FEU Treaty or that it was justified by overriding reasons in the public interest.

66 In any event, it should be borne in mind that, first, according to the Court's settled case-law, rewarding experience acquired in a particular field, which enables the worker to perform the tasks conferred on him or her, constitutes a legitimate objective of pay policy (judgment of 8 May 2019, *Österreichischer Gewerkschaftsbund*, C-24/17, EU:C:2019:373, paragraph 86 and the case-law cited).

67 However, national legislation, such as that at issue in the main proceedings, which excludes certain previous periods of equivalent service completed by a worker from being taken into account for the purposes of classification and calculation of remuneration of that worker, cannot be regarded as aiming to reward entirely the experience which he or she has thus acquired and, consequently, is not capable of guaranteeing the achievement of that objective (see, to that effect, judgment of 8 May 2019, *Österreichischer Gewerkschaftsbund*, C-24/17, EU:C:2019:373, paragraph 88).

68 Secondly, even assuming that the legislation at issue in the main proceedings indeed pursues the objective of rewarding workers' loyalty to their employers and that such an objective constitutes an overriding reason of public interest (judgment of 8 May 2019, *Österreichischer Gewerkschaftsbund*, C-24/17, EU:C:2019:373, paragraph 89 and the case-law cited), it must be stated that, given the characteristics of that legislation, the obstacle to freedom of movement for workers which it constitutes does not appear to be such as to ensure achievement of that objective.

69 Under the national legislation at issue in the main proceedings, periods of equivalent service completed by a civil servant in an EEA State other than the Republic of Austria before that civil servant entered into service in the latter Member State, and which have not previously been taken into account for the purposes of establishing his or her salary classification, can no longer be taken into account retroactively when that civil servant has been promoted under a decision falling within the discretionary power of the administration, even though those previous periods must be taken into account when the situation of the civil servant with regard to the salary scale results exclusively from advancement based on seniority.

70 In those circumstances, it must be found that that restriction is not justified by overriding reasons in the public interest such as those referred to in paragraphs 66 and 68 of the present judgment.

71 Lastly, it is not possible to accept that the aim of administrative simplification, designed merely to reduce the public administration's workload, inter alia by simplifying the calculations which that administration must carry out, constitutes an overriding reason in the public interest capable of justifying the restriction of a freedom so fundamental as freedom of movement for workers guaranteed by Article 45 TFEU (judgment of 5 December 2013, *Zentralbetriebsrat der gemeinnützigen Salzburger Landeskliniken*, C-514/12, EU:C:2013:799, paragraph 42).

72 In any event, the fact that simplification of that kind makes it possible for administrative costs to be reduced is a purely economic consideration and in consequence cannot, according to settled case-law, constitute an overriding reason in the public interest (judgment of 5 December 2013, *Zentralbetriebsrat der gemeinnützigen Salzburger Landeskliniken*, C-514/12, EU:C:2013:799, paragraph 43).

73 It follows that Article 45(1) TFEU precludes national legislation such as that at issue in the main proceedings.

74 In the light of the foregoing, the answer to the second part of the first question is that Article 45(1) TFEU must be interpreted as precluding the legislation of a Member State under which periods of equivalent service completed by a person in another EEA State before that person entered into service as a civil servant in the first Member State and which have not previously been taken into account for the purposes of his or her salary classification must be taken into account retroactively where the situation of that civil servant with regard to the salary scale results from advancement based on seniority and not from promotion granted by virtue of a decision falling within the discretionary power of the administration.

The second question

75 By its second question, the referring court asks, in essence, whether Articles 1, 2 and 6 of Directive 2000/78, read in conjunction with Article 21 of the Charter, must be interpreted as precluding the legislation of a Member State under which, first, periods of equivalent service completed by a person in another Member State before that person entered into service as a civil servant in that first Member State cannot be taken into account for the purposes of his or her advancement where that civil servant has been promoted by virtue of a decision falling within the discretionary power of the administration and, secondly, such a promotion can, in principle, only take place after several years of service, calculated from the reference date for the advancement.

76 As a preliminary point, it should be borne in mind that the prohibition of discrimination based on, inter alia, age is incorporated in Article 21 of the Charter and that that prohibition was given specific expression by Directive 2000/78 in the field of employment and occupation (judgment of 20 April 2023, *Landespolizeidirektion Niederösterreich and Finanzamt Österreich*, C-650/21, EU:C:2023:300, paragraph 45 and the case-law cited).

77 Therefore, it is necessary, first of all, to ascertain whether legislation such as that referred to in the second question falls within the scope of Directive 2000/78.

78 In that regard, it is apparent from paragraph 47 of the present judgment that such regulations indisputably form part of the field of employment and working conditions. They thus come within the scope of that directive (see, by analogy, judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 22 and the case-law cited).

79 Next, as regards the question of whether the legislation at issue in the main proceedings introduces a difference of treatment on grounds of age within the meaning of Article 2(1) of Directive 2000/78, it must be borne in mind that, under that provision, the 'principle of equal treatment' means that there is to be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1 of that directive.

80 Article 2(2)(a) of Directive 2000/78 states that, for the purposes of Article 2(1) thereof, direct discrimination is to be taken to occur where one person is treated less favourably than another is treated in a comparable situation, on any of the grounds referred to in Article 1 of that directive. It also follows from Article 2(2)(b) of Directive 2000/78 that, for the purposes of that directive, indirect discrimination on grounds of age is to be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular age at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

81 The second question does not concern national legislation that would explicitly make the promotion of a civil servant dependent on his or her age. It should be noted that, in the present case, the non-retroactive consideration in full of previous periods of equivalent professional service completed by A.B. depends on the adoption, by the province, of a decision, falling within that province's discretionary power, to grant a promotion to that civil servant which is linked not to the age of the civil servant but to the length of professional experience he or she has acquired.

82 Thus, it must be noted, in the first place, that national legislation such as that at issue in the main proceedings does not lead to a difference in treatment directly based on age (see, to that effect, judgment of 7 June 2012, *Tyrolean Airways Tiroler Luftfahrt Gesellschaft*, C-132/11, EU:C:2012:329, paragraph 29 and the case-law cited).

83 In the second place, as regards the question of whether such legislation constitutes indirect discrimination on the grounds of age, it should be noted that this implies that the legislation, although worded in a neutral manner, is likely to disadvantage, in particular, a specific age group. This would be the case with legislation that made the promotion of a civil servant dependent only on the completion of a high number of years of service, so that only older civil servants would be likely to obtain a promotion.

84 In the present case, it should be noted that, under the national legislation at issue in the main proceedings, civil servants in employment category A can claim promotion to grade V at the earliest after 9 years of service from the date of reference for advancement, whereas, to access the same grade, civil servants in employment category C must have completed 29 years of service. Therefore, in view of the significant difference between those two periods of service, it cannot be found that a civil servant's access to promotion depends on belonging to a specific age category.

85 Furthermore, according to that national legislation, the award of a promotion is not automatic but falls within the discretionary power of the government of the province concerned. Lastly, a civil servant's access to promotion depends on their service record, their abilities and their behaviour both within and outside the service.

86 However, those criteria are clearly unrelated to any consideration of age of the civil servants concerned.

87 Accordingly, it must be found that the system established by the national legislation at issue in the main proceedings is based on a criterion which is neither inextricably nor indirectly linked to the age of civil servants. It follows that the regulations of a Member State, such as those at issue in the main proceedings, under which periods of equivalent service completed by a person in another Member State before that person entered into service as a civil servant in the first Member State cannot be taken into account for the purposes of his or her advancement where that civil servant has been promoted under a decision falling within the discretionary power of the administration, do not result in a difference in treatment indirectly based on age.

88 In the light of the foregoing considerations, the answer to the second question is that Articles 1, 2, and 6 of Directive 2000/78, read in conjunction with Article 21 of the Charter, must be interpreted as not precluding the legislation of a Member State under which, first, periods of equivalent service completed by a person in another Member State before that person entered into service as a civil servant in that first Member State cannot be taken into account for the purposes of promotion where that civil servant has been promoted by virtue of a decision falling within the discretionary power of the administration and, secondly, such promotion can, in principle, take place only after several years of service, calculated from the reference date for advancement, provided that, first, the number of years of service to be completed before being eligible for promotion is not such that only older civil servants would be concerned and, secondly, the award of a promotion also depends on other criteria, unrelated to any consideration of age.

Costs

89 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Tenth Chamber) hereby rules:

1. **Article 45(2) TFEU and Article 7(1) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union**

must be interpreted as not precluding the legislation of a Member State under which periods of equivalent service completed by a person in another State of the European Economic Area before that person entered into service as a civil servant in the first Member State and which were not previously taken into account for the purposes of his or her salary classification, are taken into account retroactively when the situation of that civil servant with regard to the salary scale results from advancement based on seniority and not from promotion granted by virtue of a decision falling within the discretionary power of the administration, while such consideration is not provided for for previous periods of equivalent service completed in the private sector and on the national territory.

2. **Article 45(1) TFEU**

must be interpreted as precluding legislation of a Member State under which periods of equivalent service completed by a person in another State of the European Economic Area before that person entered into service as a civil servant in the first Member State and which have not previously been taken into account for the purposes of his or her salary classification must be taken into account retroactively where the situation of that civil servant with regard to the salary scale results from advancement based on seniority and not from promotion granted by virtue of a decision falling within the discretionary power of the administration.

3. **Articles 1, 2 and 6 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, read in conjunction with Article 21 of the Charter of Fundamental Rights of the European Union,**

must be interpreted as not precluding the legislation of a Member State under which, first, periods of equivalent service completed by a person in another Member State before that person entered into service as a civil servant in that first Member State cannot be taken into account for the purposes of promotion where that civil servant has been promoted by virtue of a decision falling within the discretionary power of the administration and, secondly, such promotion can, in principle, take place only after several years of service, calculated from the reference date for advancement, provided that, first, the number of years of service to be completed before being eligible for promotion is not such that only older civil servants would be concerned and, secondly, the award of a promotion also depends on other criteria, unrelated to any consideration of age.

[Signatures]