Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

13 July 2017*

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Articles 1, 2 and 6 — Equal treatment — Prohibition of any discrimination on grounds of sex — Occupational pension — Directive 97/81/EC — Framework Agreement on part-time work — Clause 4.1 and 4.2 — Method for calculating acquired pension rights — Legislation of a Member State — Different treatment of part-time workers)

In Case C-354/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Arbeitsgericht Verden (Labour Court, Verden, Germany), made by decision of 20 June 2016, received at the Court on 27 June 2016, in the proceedings

Ute Kleinsteuber

v

Mars GmbH,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, J.-C. Bonichot, A. Arabadjiev (Rapporteur), C.G. Fernlund and S. Rodin, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Ms Kleinsteuber, by T. Ameis, Rechtsanwalt,

– Mars GmbH, by W. Ahrens, Rechtsanwalt,

– the German Government, by A. Lippstreu and T. Henze, acting as Agents,

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

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

* Language of the case: German.

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Clause 4.1 and 4.2 of the Framework Agreement on part-time work, concluded on 6 June 1997 ('the Framework Agreement') which is set out in the Annex to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ 1998 L 14, p. 9), as amended by Council Directive 98/23/EC of 7 April 1998 (OJ 1998 L 131, p. 10), as well as Article 4 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) and of Articles 1 and 2 as well as Article 6(1) 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).

2 The request has been made in proceedings between Ms Ute Kleinsteuber and Mars GmbH regarding the calculation of the amount of an occupational pension accrued by a part-time worker who left the undertaking before the occurrence of the pensionable event.

Legal context

EU law

3 Clause 4.1 to 4.4 of the Framework Agreement is worded as follows:

'Clause 4: Principle of non-discrimination

1. In respect of employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part time unless different treatment is justified on objective grounds.

2. Where appropriate, the principle of *pro rata temporis* shall apply.

3. The arrangements for the application of this clause shall be defined by the Member States and/or social partners, having regard to European legislation, national law, collective agreements and practice.

4. Where justified by objective reasons, Member States after consultation of the social partners in accordance with national law, collective agreements or practice and/or social partners may, where appropriate, make access to particular conditions of employment subject to a period of service, time worked or earnings qualification. Qualifications relating to access by part-time workers to particular conditions of employment should be reviewed periodically having regard to the principle of non-discrimination as expressed in Clause 4.1.'

4 Article 1 of Directive 2000/78 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.'

5 Article 2 of that directive, concerning the concept of discrimination, provides:

‘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 ...’

6 Article 6 of that directive, entitled ‘Justification of differences of treatment on grounds of age’, is worded as follows:

‘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.

… ’

7 Article 4, in Chapter 1, entitled ‘Equal pay’, of Title II of Directive 2006/54, provides:

‘Prohibition of discrimination

For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

…’

German law

8 The first sentence of Paragraph 2(1) of the Gesetz zur Verbesserung der betrieblichen Altersversorgung (Betriebsrentengesetz) (Law on the improvement of occupational pensions, ‘the Law on Pensions’) is worded as follows:

‘Paragraph 2 — Amount of the acquired right

Upon the occurrence of the pensionable event by reaching the age of retirement, invalidity or death, a worker leaving early whose rights are maintained by virtue of Paragraph 1(b) of the present Law and his successors in title enjoy an entitlement at least equivalent to the fraction of the benefit which they would have enjoyed had he not left early that corresponds to the ratio between the length of service and the length of the period between taking up employment in the undertaking and reaching the normal retirement age under the statutory pension scheme. Instead of the normal retirement age, an earlier date is taken into account when the pension scheme provides that that date constitutes the age

limit, and, at the latest, the date on which the worker reaches the age of 65, in the case where he leaves the undertaking and at the same time claims an old-age pension pursuant to the statutory pension scheme for the long-term insured ...'

9 Paragraph 4(1) of the Gesetz über Teilzeitarbeit und befristete Arbeitsverträge (Law on part-time work and fixed-term contracts) is worded as follows:

'A part-time worker shall not, on account of working part-time, be treated in a less favourable manner than a comparable full-time worker, unless there are objective reasons justifying a different treatment. The part-time worker shall be remunerated or receive *pro rata* benefits, the scope of which shall at least correspond to the amount of his work as compared with that of a comparable full-time worker. … '

10 Section 3.4 of Mars' pension scheme included in the collective agreement of 6 November 2008 ('the pension scheme') provides:

'The "income" of a person entitled to claim his pension rights is equivalent to the total annual remuneration that that person receives for the services he provides to the undertaking … When a person entitled to claim his pension rights has, during his years of pensionable service, worked part-time, on a permanent or temporary basis, his "income" under the first sentence shall be determined on the basis of his contractual weekly working hours. That "income" is distributed over weekly working hours corresponding to the average rate of activity during the years of service to be taken into consideration. The rate of activity is the ratio of the agreed normal weekly hours and the normal weekly hours pursuant to Mars' manual, a ratio which cannot, however, exceed 100%'.

11 Section 3.5 of the pension scheme provides:

'The "pensionable salary" of a person entitled to claim his pension rights is equal to the maximum average amount of the income that that person has received during three of the last five full calendar years of his pensionable service … '

12 Pursuant to Section 4.1 of the pension scheme:

'Having regard to the conditions and restrictions provided for by the present pension scheme, a person entitled to claim his pension rights receives, upon retiring, whether at the "normal" age or later, for each full pensionable year of service, an annual pension equal to:

A) 0,6% of his salary band giving entitlement to a pension that is lower than the average amount of the ceiling for the calculation of contributions to the statutory pension scheme for the calendar years on which the calculation of the pensionable salary is based, and

B) 2,0% of his salary band giving entitlement to a pension exceeding that average amount.

… pensionable years of service are nevertheless capped at 35 full years in total'.

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

13 Ms Kleinsteuber, born on 3 April 1965, was employed by Mars and its predecessor in law between 1 October 1990 and 31 May 2014, in various positions. She worked both full-time and part-time, with rates of activity of between 50% and 75% of the activity of a full-time employee. Mrs Kleinsteuber enjoys, in relation to Mars and after having reached the age of 55, the right to an occupational pension.

14 According to the pension plan, in the case of a worker who is not employed full-time, first of all, the relevant annual salary of the worker who is entitled to a pension is calculated. Then, that salary is reduced by the average rate of activity during the whole of the period of employment. Finally, the different rates relating to the salary's components are applied to the resulting amount. The amount of the occupational pension is thus calculated using a so-called 'split pension' formula.

15 A distinction is thus drawn between the income earned falling below the ceiling for calculating contributions to the statutory pension scheme and income exceeding that ceiling. The ceiling for calculating contributions is, in German social security law, the amount up to which the salary of a person benefiting from statutory cover is used for social insurance. The salary components above the contributions calculation ceiling were valued, during the calculation of Ms Kleinsteuber's occupational pension, at 2% whereas the salary components under that limit were valued at 0.6%.

16 As is apparent from the order for reference, in case of early retirement of an employee, a *pro rata temporis* calculation is carried out pursuant to the first sentence of Paragraph 2(1) of the Law on Pensions. First of all, the 'notional maximum entitlement' is calculated, namely the right to a pension which a worker would enjoy if he were not to leave his employment early, but remained employed until reaching the negotiated retirement age. Then, the 'non-forfeitability quotient' is calculated by determining the ratio between the actual length of service and the length of service remaining until the employee would have reached retirement age had he not retired early. The notional maximum entitlement is then multiplied by the non-forfeitability quotient in order to determine the amount of the occupational pension or his future entitlement to that pension.

17 Mars' pension scheme lays down, in addition, a ceiling for the years of service which can be taken into account, set at 35 years.

18 Ms Kleinsteuber challenges before the Arbeitsgericht Verden (Labour Court, Verden) Mars' calculation of the amount of her occupational pension and considers that she is entitled to a larger pension than that calculated by Mars. The Bundesarbeitsgericht (Federal Labour Court, Germany) has already indicated in that respect that the rules in Paragraph 2 of the Law on Pensions are appropriate and necessary for achieving a legitimate aim.

19 In those circumstances, the Arbeitsgericht Verden (Verden Labour Court) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

1. (a) Is the relevant EU law, in particular Clause 4.1 and 4.2 of the Framework Agreement and Article 4 of Directive 2006/54/EC in conjunction with Directive 2000/78/EC to be interpreted as precluding national statutory provisions or practices which, in determining the amount of an occupational old-age pension, distinguish between employment income falling below the ceiling for the assessment of contributions to the statutory pension scheme and employment income exceeding that ceiling (the 'split pension formula') and in so doing do not treat income from part-time employment in such a manner that the income payable in respect of corresponding full-time employment is first determined, the proportion above and below the contribution assessment ceiling is established on that basis, and that proportion is then applied to the reduced income from part-time employment?

   (b) If Question 1(a) is answered in the negative: Is the relevant EU law, in particular Clause 4.1 and 4.2 of the Framework Agreement and Article 4 of Directive 2006/54/EC in conjunction with Directive 2000/78/EC to be interpreted as precluding national statutory provisions or practices which, in determining the amount of an occupational old-age pension, distinguish between employment income falling below the ceiling for the assessment of contributions to the statutory pension scheme and employment income exceeding that ceiling (the 'split pension formula') and, in the case of an employee who has worked on both a full-time and

part-time basis, do not take account of specific periods (e.g. individual calendar years) but determine a uniform degree of employment for the total duration of the employment relationship and apply the split pension formula only to the resulting average remuneration?

2. Is the relevant EU law, in particular the principle of non-discrimination on grounds of age, enshrined in Article 21 of the Charter of Fundamental Rights of the European Union and given specific expression by Council Directive 2000/78/EC, in particular Articles 1, 2 and 6 thereof, to be interpreted as precluding national statutory provisions or practices which provide for an occupational old-age pension in the amount corresponding to the ratio of the employee's actual length of service to the time from the beginning of his employment up to his reaching the normal retirement age under the statutory pension scheme and in so doing apply a maximum limit of reckonable years of service, with the result that employees having completed their period of service in an undertaking at a younger age receive a smaller occupational pension than their colleagues who completed their period of service at an older age, even though both sets of employees completed an equal length of service in the undertaking?'

Consideration of the questions referred

The first question

Preliminary observations

20 It is apparent from the wording of paragraphs (a) and (b) of the first question referred for a preliminary ruling that the referring court asks the Court to interpret Clause 4.1 and 4.2 of the Framework Agreement and Article 4 of Directive 2006/54, in conjunction with Directive 2000/78.

21 It follows, however, from a reading of the grounds set out by the referring court that in actual fact it asks the Court whether national legislation such as that at issue in the main proceedings is capable of resulting in discrimination towards part-time employees, within the meaning of the Framework Agreement. If it were the case, the applicant would also be justified in invoking an infringement of the principle of equal opportunity and equal treatment between men and women, within the meaning of Directive 2006/54, in that, according to the referring court, part-time work is mostly carried out by women.

22 On the other hand, there is nothing in the order for reference making it possible to assess whether the legislation constitutes discrimination on the ground of age, within the meaning of Articles 1 and 2 of Directive 2000/78.

23 In these circumstances, it must be considered that paragraphs (a) and (b) of the first question referred for a preliminary ruling concerns the interpretation of Clause 4.1 and 4.2 of the Framework Agreement as well as Article 4 of Directive 2006/54.

Question 1(a)

24 By question 1(a), the referring court asks, in essence, whether Clause 4.1 and 4.2 of the Framework Agreement and Article 4 of Directive 2006/54/EC must be interpreted as precluding national legislation which, in determining the amount of an occupational pension, distinguishes between employment income falling below the ceiling for the calculation of contributions to the statutory pension scheme and employment income above that ceiling, and which does not treat income from

part-time employment by calculating first the income payable in respect of corresponding full-time employment, then determining the proportion above and below the contribution calculation ceiling and finally applying that proportion to the reduced income from part-time employment.

25 Clause 4.1 of the Framework Agreement lays down, in respect of employment conditions, a prohibition on treating part-term workers in a less favourable manner than comparable full-time workers solely because they work part-time, unless a different treatment is justified on objective grounds.

26 In the present case, it is common ground that the method of calculating the occupational pension whereby a distinction is drawn between salaries below the ceiling for the calculation of contributions and those above that ceiling ('the split formula') applies both to full-time and part-time employees.

27 Ms Kleinsteuber nevertheless claims that that calculation method results in too low a proportion of the annual pensionable income being allocated to the higher 2% rate. Whereas, in accordance with its pension scheme, Mars calculated, on the basis of full-time employment, the pensionable annual salary applicable to the applicant before reducing it on the basis of her part-time rate of activity, broke down the amount thus obtained into a band below the ceiling for the calculation of contributions and a band above it and applied to them the various rates, Ms Kleinsteuber considers that the calculation for persons employed part-time should be carried out by calculating the notional income of a full-time employee and applying the split formula to him. Only then can a reduction be carried out on the basis of the part-time rate of activity.

28 It is not, however, apparent from the file before the Court that Mars' calculation method results in discrimination against part-time workers.

29 Indeed, it must be noted that the taking into account of the ratio between a worker's actual years of service throughout his career and the years of service of a worker who has worked full-time during his entire career amounts to a strict application of the *pro rata temporis* principle. In the present case, Mars calculated and applied a rate of 71.5%

30 In that regard, it must be recalled that the taking into account of the actual years of service of a worker throughout his career is an objective criterion that is unrelated to any discrimination, allowing his pension entitlement to be reduced proportionately (see, to that effect, judgment of 23 October 2003, *Schönheit and Becker*, C-4/02 and C-5/02, EU:C:2003:583, paragraph 91).

31 Furthermore, it must be stated that, if Ms Kleinsteuber's occupational pension rights do not correspond to the *pro rata temporis* share of a better paid full-time position, this does not stem from the fact that Ms Kleinsteuber worked part-time, but from the application of that principle and of the split formula.

32 It is apparent, in that regard, from the documents before the Court that the full occupational pension complements, on a voluntary basis by the employer, the benefits received from the statutory pension scheme. Thus, the objective of Mars' pension scheme is to reflect at the age of retirement, if possible in a full and proportionate way, the standard of living which the employee enjoyed during his employment.

33 The split formula aims, for its part, to take into account the different cover needs for remuneration bands below and above the ceiling for the calculation of contributions, the latter not being taken into account during the calculation of the pension paid by the statutory pension scheme.

34 First, it must be noted that, for employees who, because of part-time work, received a pensionable income generally below the ceiling for the calculation of contributions, the statutory pension scheme does not contain a gap in the benefits awarded, since all their income is covered by that scheme.

35 Moreover, as argued by the German Government and the Commission, the calculation method suggested by Ms Kleinsteuber, noted in paragraph 27 above, may lead to the shares of income above the ceiling for calculation of contributions being artificially increased. Similarly, if part-time remuneration is below that ceiling, the method suggested by the applicant in the main proceedings would result in the 2% rate being applied, since the split formula would be applied directly to the annual remuneration of a corresponding full-time employee, before even reducing it on the basis of the part-time activity of the employee concerned. However, there is no need for supplementary cover in the case of remuneration at a level below that ceiling.

36 As the Commission has pointed out, this would amount to overestimating the applicant's professional activity, and would lead to establishing noticeably more generous rights unrelated to the actual activity carried out by Ms Kleinsteuber.

37 The referring court has, in that regard, noted that, by following the approach of the applicant in the main proceedings, Mars would have to assign to the parts of Ms Kleinsteuber's salary below the ceiling, in addition to the statutory pension scheme contributions, the higher percentage of 2% set by the pension plan and, ultimately, to thus pay an occupational pension proportionally higher for those salary bands also.

38 It must be held, first, that the objective of the split formula, which aims to take account of the difference of cover needs for the remuneration bands below and above the contributions calculation ceiling, is an objective reason, for the purpose of Clause 4.1 of the Framework Agreement, justifying a difference in treatment such as that at issue in the main proceedings.

39 In these circumstances, it cannot be held that the legislation at issue in the main proceedings amounts to discrimination on the ground of the type of work, for the purpose of the Framework Agreement or, therefore to infringement of the principle of equal opportunities and equal treatment between men and women within the meaning of Directive 2006/54.

40 Having regard to the foregoing, the answer to paragraph (a) of the first question is that Clause 4.1 and 4.2 of the Framework Agreement and Article 4 of Directive 2006/54 must be interpreted as not precluding national legislation which, in calculating the amount of an occupational pension, distinguishes between employment income falling below the ceiling for the calculation of contributions to the statutory pension scheme and employment income above that ceiling, and which does not treat income from part-time employment by calculating first the income payable in respect of corresponding full-time employment, then determining the proportion above and below the contribution calculation ceiling and finally applying that proportion to the reduced income from part-time employment.

Question 1(b)

41 By question 1(b), the referring court asks in essence whether Clause 4.1 and 4.2 of the Framework Agreement and Article 4 of Directive 2006/54 must be interpreted as precluding national legislation which, for the purpose of calculating the amount of the occupational pension of an employee who has accumulated full-time and part-time employment periods, determines a uniform rate of activity for the total duration of the employment relationship.

42 In accordance with Clause 4.1 and 4.2 of the Framework Agreement, it must be determined whether part-time workers are treated less favourably than comparable full-time workers, by reason of the determination of a uniform rate of activity for reckonable years of service.

43 The determination of a rate of part-time work appears to be a method of assessing the whole of the work carried out by the part-time worker. It cannot, on the other hand, be presumed, for the calculation concerning part-time workers, that they would have worked full-time during the period as a whole.

44 Mars submits that the application of a uniform rate of activity for reckonable years of service merely reflects the various working hours in the course of employment, but not the various amounts of remuneration received during that period. According to that company, the pension scheme includes a commitment to pay a pension linked to the last remuneration and the remuneration received in the course of the employment relationship has no effect for the purpose of the calculation of the pension.

45 In that regard, there is nothing in the documents before the Court to establish that another calculation method, such as dividing the time worked for Mars into periods, would allow a more appropriate and fair calculation, in the light of the *pro rata temporis* principle.

46 It is for the referring court, which alone has in-depth knowledge of the file, to verify that such is the case in the main proceedings and, in particular, to check that the calculation method of the pension at issue in the main proceedings does not violate that principle, compliance with which is, in the main proceedings, required by Clause 4.1 and 4.2 of the Framework Agreement.

47 In the light of the foregoing considerations, the answer to question 1(b) is that Clause 4.1 and 4.2 of the Framework Agreement and Article 4 of Directive 2006/54 must be interpreted as not precluding national legislation which, in calculating the amount of the occupational pension of an employee who has accumulated full-time and part-time employment periods, determines a uniform rate of activity for the total duration of the employment relationship, in so far as that calculation method of the pension does not violate the *pro rata temporis* rule. It is for the national court to satisfy itself that this is the case.

The second question

48 By its second question, the referring court asks, in essence, whether Articles 1 and 2 as well as Article 6(1) of Directive 2000/78 must be interpreted as precluding national legislation which provides for an occupational pension in the amount corresponding to the ratio between (i) the employee's length of service and (ii) the length of the period between taking up employment in the undertaking and the normal retirement age under the statutory pension scheme, and in so doing applies a maximum limit of reckonable years of service.

49 In accordance with Article 2(2)(a) of that directive, there is direct discrimination where a person, on the basis of his age, is treated less favourably than another is, has been or would be treated in a comparable situation. Under Article 2(2)(b) of Directive 2000/78, indirect discrimination occurs where an apparently neutral provision, criterion or practice would put persons of 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.

50 As regards the question whether there exists a difference in treatment directly or indirectly based on age, the referring court notes that the calculation method at issue in the main proceedings has the effect that employees who gained their years of service when they were younger receive a smaller occupational pension than that of colleagues who gained their years of service when they were older, despite the years of service being the same.

51 As noted by the German Government, neither national legislation nor the ceiling set by the pension scheme refers directly to the age criterion. Furthermore, the legislation at issue in the main proceedings applies in the same way to workers of all ages.

52 The legislation at issue is therefore not directly based on the criterion of age, but on that of years of service in the undertaking.

53 It is nevertheless apparent from the order for reference that the side effect resulting from capping the reckonable years of service always appears when the age of entry into service of an employee who has retired early is lower than the difference between the maximum retirement age and the ceiling of reckonable years of service. Thus, if the maximum retirement age is 65 and the reckonable years of service are capped at 35, an employee retiring early who started working before the age of 30 is disadvantaged as regards the calculation of occupational pension entitlement.

54 Thus, it must be held that such a difference in treatment would result from the interaction between the capping of the reckonable years of service and other factors, such as the *pro rata temporis* reduction method laid down in the first sentence of Paragraph 2(1) of the Law on Pensions.

55 The existence of a disadvantage for a specific age group consequently stems from the combined application of provisions and the conjunction of specific parameters.

56 The referring court notes, moreover, that 'abstractly, it is possible to say that the disadvantageous effect of the legislation at issue in the main proceedings is all the more important where the employee was young when the employment relationship started, the periods of service were short and the ceiling of reckonable years of service was set low'. The German Government notes, for its part, that the calculation method at issue in the main proceedings typically has the effect, 'in certain circumstances', of causing indirect unequal treatment of younger workers since it is only in their circumstances that, during the calculation of the maximum notional entitlement, the ceiling of years of service is reached and is thus included in the calculation.

57 On the other hand, Mars states, first, that the referring court's second question is not useful for resolving the dispute in the main proceedings, since, when her entitlement was calculated, Ms Kleinsteuber's career length was not reduced.

58 Second, Mars submits that the *pro rata temporis* rule laid down in the first sentence of Paragraph 2(1) of the Law on Pensions does not always result in disadvantage to younger workers and that provision is not, in any event, set according to age, but to years of service.

59 It is for the referring court, which alone has direct knowledge of the case before it, to carry out the necessary verifications to establish whether the legislation at issue in the main proceedings is, concretely and except in unforeseeable circumstances, likely to result in a difference in treatment indirectly based not on years of service, but on age.

60 It is also for the referring court to verify that the problem raised is not hypothetical but relates to the facts at issue in the main proceedings. Such a question cannot be addressed in an abstract and hypothetical manner, but must be analysed on a case-by-case basis when it arises.

61 It should be noted that, according to the Court's settled case-law, in the context of the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it (judgment of 11 September 2014, *B.*, C-394/13, EU:C:2014:2199, paragraph 21 and the case-law cited). Furthermore, the spirit of cooperation which must prevail in the preliminary ruling procedure requires the national court to have regard to the function entrusted to the Court of Justice, which is to assist in the administration of justice in the Member States and not

to deliver advisory opinions on general or hypothetical questions (judgments of 12 June 2003, *Schmidberger*, C-112/00, EU:C:2003:333, paragraph 32 and of 26 February 2013, Åkerberg Fransson, C-617/10, EU:C:2013:105, paragraph 42).

62 If that court were to find, at the end of that assessment, that there is such a difference in treatment, it must be recalled that, under Article 6(1) of Directive 2000/78, that difference will not be considered discrimination within the meaning of that directive, inasmuch as it is justified by a legitimate aim and the means to achieve that objective are appropriate and necessary.

63 In that regard, it is apparent from the documents before the Court that the legislation at issue in the main proceedings simultaneously pursues objectives of social policy relating to mobility and the pension system, and also the prime objective of occupational pensions, which is to reward employees' loyalty to the undertaking. That legislation also takes into account the undertaking's interest that the burden stemming from occupational pensions as a result of acquired rights is clear and measurable.

64 In that regard, Mars has submitted that the objective of that legislation and, specifically, the occupational pension scheme at issue is to find a rule applicable to the calculation of the amount of the acquired rights in the event of early withdrawal from the employment relationship, which complies with the broad concept of the occupational pension system governing ordinary pension plans, and to thus contribute to the generalisation of occupational pensions, the latter being awarded on a voluntary basis by the employer.

65 It must be considered that such objectives, which aim to establish a balance between the interests at issue, in the context of concerns falling within employment policy and social protection, in order to guarantee the provision of an occupational pension, may be considered public interest objectives.

66 As regards the appropriateness of the legislation at issue in the main proceedings, it must be noted that the adoption of a method of calculating a right legally acquired in the event of early withdrawal from the employment relationship based on the *pro rata temporis* duration of the actual years of service compared to the possible years of service up to the normal age of retirement, and on the capping of reckonable years of service, does not seem unreasonable in the light of the objective of the occupational pension scheme at issue in the main proceedings.

67 The same is true as regards the necessity of the legislation at issue in the main proceedings. Indeed, it must be noted that an incentive to remain in the undertaking until the statutory age of retirement cannot be created without giving the employee making that choice an advantage compared to the employee who leaves the undertaking early. Moreover, there is nothing in the documents before the Court to seriously call into question the necessity of such legislation, nor any other calculation rule, such as that advocated by Ms Kleinsteuber, which would make it possible to usefully meet the objectives referred to, in particular that of the generalisation of occupational pensions.

68 In the light of all of those considerations, the answer to the second question is that Articles 1 and 2 as well as Article 6(1) of Directive 2000/78 must be interpreted as not precluding national legislation which provides for an occupational pension in the amount corresponding to the ratio between (i) the employee's length of service and (ii) the length of the period between taking up employment in the undertaking and the normal retirement age under the statutory pension scheme, and in so doing applies a maximum limit of reckonable years of service.

Costs

69 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 (First Chamber) hereby rules:

1) **Clause 4.1 and 4.2 of the Framework Agreement on part-time work concluded on 6 June 1997, annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, as amended by 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, must be interpreted as not precluding national legislation which, in calculating the amount of an occupational pension, distinguishes between employment income falling below the ceiling for the calculation of contributions to the statutory pension scheme and employment income above that ceiling, and which does not treat income from part-time employment by calculating first the income payable in respect of corresponding full-time employment, then determining the proportion above and below the contribution assessment ceiling and finally applying that proportion to the reduced income from part-time employment.**

2) **Clause 4.1 and 4.2 of the Framework Agreement and Article 4 of Directive 2006/54 must be interpreted as not precluding national legislation which, in calculating the amount of the occupational pension of an employee who has accumulated full-time and part-time employment periods, determines a uniform rate of activity for the total duration of the employment relationship, in so far as that calculation method of the pension does not violate the *pro rata temporis* rule. It is for the national court to satisfy itself that this is the case.**

3) **Articles 1 and 2 and Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as not precluding national legislation which provides for an occupational pension in the amount corresponding to the ratio between (i) the employee's length of service and (ii) the length of the period between taking up employment in the undertaking and the normal retirement age under the statutory pension scheme, and in so doing applies a maximum limit of reckonable years of service.**

[Signatures]