2. Does Article 49(1)(b)(ii) of Regulation (EEC) No 1408/1971 of the Council of 14 June 1971 preclude a national rule such as the Italian rule laid down in Article 71 of Law No 388 of 23 December 2000, according to which a request for aggregation of social security contributions made to several pension funds, in particular in the home Member State and in another Member State of the European Union, is confined to those who have not yet acquired the right to a pension from any social security fund?

([1]) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ 1971 L 149, p. 2).

([2]) Council Regulation (EC) No 1606/98 of 29 June 1998 amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation (EEC) No 1408/71 with a view to extending them to cover special schemes for civil servants (OJ 1998 L 209, p. 1).

Request for a preliminary ruling from the Tribunal da Concorrência, Regulação e Supervisão (Portugal) lodged on 13 October 2016 — MEO — Serviços de Comunicações e Multimédia S.A. v Autoridade da Concorrência

(Case C-525/16)

(2017/C 014/26)

Language of the case: Portuguese

Referring court

Tribunal da Concorrência, Regulação e Supervisão

Parties to the main proceedings

Applicant: MEO — Serviços de Comunicações e Multimédia S.A.

Defendant: Autoridade da Concorrência

Other party: GDA — Cooperativa de Gestão dos Direitos dos Artistas Intérpretes ou Executantes, 'GDA'

Questions referred

1. If, in infringement proceedings, facts concerning the effects of any charging of discriminatory prices by an undertaking in a dominant position in relation to one of the retail undertakings, which prejudice that undertaking with regard to its competitors, are proven or evidenced, in order for that conduct to be characterised as *placing at a competitive disadvantage* within the meaning of subparagraph (c) of [the second paragraph of] Article 102 TFEU must there have been an additional assessment of the gravity, relevance or importance of those effects on the affected undertaking's competitive position and/or ability to compete, in particular as regards its capacity to absorb the difference in the costs incurred in the context of the wholesale service?

2. If there is proof or evidence in infringement proceedings that the discriminatory prices charged by an undertaking in a dominant position are of *significantly reduced importance* for the costs incurred, income obtained and profitability achieved by the affected retail undertaking, is an assessment that there is no evidence of abuse of a dominant position and prohibited practices compatible with an interpretation consistent with subparagraph (c) of [the second paragraph of] Article 102 TFEU and the case-law established in the judgments in *British Airways* ([1]) and *Clearstream*? ([2])

3. Or, on the contrary, is such a circumstance insufficient to preclude the conduct in question from being characterised as abuse of a dominant position and a prohibited practice within the meaning of subparagraph (c) of [the second paragraph of] Article 102 TFEU, that circumstance being of relevance only for the purposes of determining the degree of liability or punishment of the infringing undertaking?

4. Must the phrase *thereby placing them at a competitive disadvantage* in subparagraph (c) of [the second paragraph of] Article 102 TFEU be interpreted as corresponding to the requirement that the advantage arising from the discrimination must in turn correspond to a minimum percentage of the affected undertaking's costs structure?

5. Must the phrase *thereby placing them at a competitive disadvantage* in subparagraph (c) of [the second paragraph of] Article 102 TFEU be interpreted as corresponding to the requirement that the advantage arising from the discrimination must in turn correspond to a minimum difference between the average costs incurred by the competitor undertakings in the wholesale service in question?

6. May the phrase *thereby placing them at a competitive disadvantage* in subparagraph (c) of [the second paragraph of] Article 102 TFEU be interpreted as corresponding to the requirement that the advantage arising from the discrimination must, in the context of the market and service in question, correspond to values higher than the differences indicated in […] Tables 5, 6 and 7, for the purposes of characterising the conduct as a prohibited practice?

7. If the answer to any of questions (iv) to (vi) is in the affirmative, how must such a minimum threshold of significance for the disadvantage in relation to the costs structure or the average costs incurred by the competitor undertakings in the retail service in question be defined?

8. If such a minimum threshold has been defined, does the failure to meet it in each year enable the presumption in the *Clearstream* judgment, according to which it must be considered that '*the application to a trading partner of different prices for equivalent services continuously over a period of five years and by an undertaking having a de facto monopoly on the upstream market could not fail to cause that partner a competitive disadvantage*', ([3]) to be rebutted?

([1]) C-95/04 P, EU:C:2007:166.
([2]) T-301/04, EU:T:2009:317.
([3]) Paragraphs 194 and 195.

Action brought on 12 October 2016 — European Commission v Republic of Poland

(Case C-526/16)

(2017/C 014/27)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: M. Owsiany-Hornung and C. Zadra, acting as Agents)

Defendant: Republic of Poland

Form of order sought

The Commission claims that the Court should:

— declare that, by excluding projects to locate and search for mineral deposits by means of drilling to a depth of 5 000 metres — with the exception of drilling in areas intended for water extraction, areas containing protected inland waters and nature protection areas in the form of national parks, nature reserves, landscape parks and 'Natura 2000' protection areas and the contiguous protection zones, in which drilling to a depth of more than 1 000 metres is subject to the procedure for determining whether an environmental impact assessment is necessary — from the procedure for determining whether an environmental impact assessment is necessary, by setting, for drilling outside areas intended for water extraction, areas containing protected inland waters and the various nature protection areas indicated and their contiguous protection zones, a threshold value triggering that procedure which fails to take account of all of the essential selection criteria set out in Annex III to Directive 2011/92 on the assessment of the effects of certain public and private projects on the environment, ([1]), the Republic of Poland has failed to comply with its obligations under Articles 2(1) and 4(2) and (3) of that directive, read in conjunction with Annexes II and III thereto;

— order the Republic of Poland to pay the costs.