OPINION OF ADVOCATE GENERAL TIZZANO

delivered on 3 April 2003 [1]

1. By order of 10 December 2001 the Verwaltungsgericht (Administrative Court) Sigmaringen (Federal Republic of Germany) referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Article 141 EC and of Directives 75/117/EEC, [2] 76/207/EEC [3] and 97/81/EC. [4] In particular, the Verwaltungsgericht Sigmaringen asks whether a part-time employment scheme with a view to retirement that is open only to employees who have worked full-time for a total of at least three of the last five years constitutes discrimination against part-time workers and, at the same time, indirect discrimination on grounds of sex in consideration of the predominant percentage of women among part-time employees.

I — Legal background

A — *Community legislation*

2. Under Article 141 EC:

'1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

...'

1 — Original language: Italian.

2 — Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women (OJ 1975 L 45, p. 19, 'Directive 75/117').

3 — Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions (OJ 1976 L 39, p. 40, 'Directive 76/207').

4 — 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, 'Directive 97/81').

3. Article 1 of Directive 75/117 provides that:

'The principle of equal pay for men and women outlined in Article 119 (now 141 EC) of the Treaty, hereinafter called "principle of equal pay", means, for the same work or for work to which equal value is attributed, the elimination of all discrimination on grounds of sex with regard to all aspects and conditions of remuneration.

In particular, where a job classification system is used for determining pay, it must be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.'

4. Under Article 1 of Directive 76/207:

'1. The purpose of this Directive is to put into effect in the Member States the principle of equal treatment for men and women as regards access to employment, including promotion, and to vocational training and as regards working conditions and, on the conditions referred to in paragraph 2, social security. This principle is hereinafter referred to as "the principle of equal treatment."

...'

5. Article 2 of the same directive provides that:

'1. For the purposes of the following provisions, the principle of equal treatment shall mean that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status.

...'

6. Furthermore, Article 5 lays down that:

'1. Application of the principle of equal treatment with regard to working con-

ditions, including the conditions governing dismissal, means that men and women shall be guaranteed the same conditions without discrimination on grounds of sex.

...'

7. Under Article 1 of Directive 97/81:

'The purpose of this Directive is to implement the Framework Agreement on part-time work concluded on 6 June 1997 between the general cross-industry organisations... annexed hereto.'

8. Clause 4 of the Annex to that directive provides that:

'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.

...

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....'

B — *National legislation*

9. Paragraph 72b(1) of the Bundesbeamtengesetz (Law on public servants, 'the BBG'), in the version in force before 1 July 2000, provided for granting part-time employment status with a view to retirement to employees who applied for that status. Under that scheme, the employee could obtain a reduction in working hours

based on an application covering the entire working period until the start of the pension in accordance with one of the two following models: a halving of working hours (so-called 'Teilzeitmodell', or 'part-time model') or full-time working followed by a work-free period (so-called 'Blockmodell' or 'block model').

10. Admission to such working arrangements was subject to four conditions: (a) that the employee should be aged 55 or over; (b) that he should have worked full-time for a total of at least three of the last five years before admission to the scheme; (c) that part-time working should begin before 1 August 2004; and (d) that there should be no overriding work-related reasons why the employee ought not to be admitted to the scheme.

11. In order to encourage applications for admission to the scheme, employees who took advantage of it were granted certain salary and pension benefits. In particular, Paragraph 2(1) of the Verordnung über die Gewährung eines Zuschlags bei Altersteilzeit (Regulation concerning the grant of a pay supplement in the case to part-time work for older employees 'the ATZV'), in the version in force before 1 July 2000, provided that under the working arrangements in question the employee was to be entitled to 83% of the net salary paid for full-time work, in derogation from Paragraph 6(1) of the Bundesbesoldungsgesetz (Federal law on remuneration, 'the BBesG'), according to which the pay of part-time workers is reduced in proportion to the number of hours worked.

12. As regards pensions, moreover, Paragraph 6(1)(3) of the Gesetz über die Versorgung der Beamten und Richter in Bund und Ländern (Law on the pensions of public servants and judges in the Bund and the Länder, 'the BeamtVG'), in the version in force before 1 July 2000, provided that during the period for which the employment scheme in question was in force the employee should acquire 90% of the pension rights of a full-time worker, in derogation from the rule that the pension rights of a part-time worker accrue in proportion to the hours actually worked.

13. While these proceedings have been pending, the disputed legislation has been amended with effect from 1 July 2000 by the Gesetz über die Anpassung von Dienst und Versorgungsbezügen in Bund und Ländern (Law on the adjustment of salaries and pensions in the Bund and Länder).

14. On the basis of the new version of Paragraph 72b of the BBG, workers may be authorised, at their request, to work part-time on grounds of age for half the working hours previously worked, without exceeding half the average working hours worked during the last two years, provided that: (a) they have reached the age of 55; (b) they have worked part-time for at least three of the last five years; (c) they enter the scheme before 1 January 2010, and (d) that are no overriding work-related reasons why they should not.

15. The version of Paragraph 2 of the ATZV in force since 1 July 2000 provides that workers benefiting from such a scheme be granted an income supplement consisting of the difference between the net salary to which they are entitled under Paragraph 6 of the BBesG and 83% of the net salary to which they would be entitled under the same paragraph if they had worked the number of hours used for calculating the reduction in working hours.

16. Finally, the version of Paragraph 6(1)(3) of the BeamtVG in force since 1 July 2000 lays down that during the period of application of the employment scheme in question the worker should acquire pension rights commensurate with 90% of the working hours taken into consideration for calculating the reduction in working hours.

II — Facts and the questions referred for preliminary ruling

17. Ms Erika Steinicke, who was born in 1944, has worked for the Bundesanstalt für Arbeit (Federal Employment Office) since 1962. Until 1976 she was employed full-time. From 19 November 1976 onwards her working hours were reduced by half, at her request, following the birth of a child. Upon request and subject to the volume of work, she was allowed to work full-time only on a monthly basis; as a result, the applicant worked full-time for a total of 10 months between 1 October 1994 and 30 September 1999.

18. On 30 June 1999 the applicant applied to the Federal Employment Office to be accorded part-time status on grounds of old age pursuant to Paragraph 72b of the BBG for the period from 1 October 1999 to 30 September 2007 (the date on which the applicant intended to retire), stating that she opted for the block model, with a period of working hours equivalent to those worked up to that time from 1 October 1999 until 30 September 2003 followed by a work-free period from 1 October 2003 until 30 September 2007.

19. On 12 July 1999 Ms Steinicke's application was turned down because she had not worked full-time for a total of at least three of the last five years, as required by the version of Paragraph 72b of the BBG then in force.

20. On 28 July 1999 Ms Steinicke challenged that decision before the Landesarbeitsamt Baden-Württemberg (Regional Employment Office of the Land of Baden-Württemberg). However, the latter dismissed her claim by a notice of 10 August 1999.

21. Ms Steinicke then brought an action before the Verwaltungsgericht Sigmaringen, claiming that the exclusion of part-time workers from the employment scheme under Paragraph 72b of the BBG constituted indirect discrimination on grounds of sex, it being undisputed that women form a clear majority of part-time workers.

22. Subsequently, however, as the above-mentioned amendments to the provisions in question (see paragraphs 13 to 16 above) had come into effect in the course of the proceedings, Ms Steinicke was accorded part-time status on grounds of old age as from 1 July 2000; the dispute therefore ceased as regards the period after that date. However, Ms Steinicke pursues her demand for annulment of the contested orders refusing her that status for the period between 1 October 1999 and 30 June 2000.

23. The court of reference has therefore submitted the following question for a preliminary ruling:

'Do Article 141 EC, Directives 75/117/EEC, 76/207/EEC and/or Directive 97/81/EC preclude the rule in point 2 of the first sentence of Paragraph 72b(1) of the Bundesbeamtengesetz (German Law on public servants), in the version of 3 March 1999 which was in force until 30 June 2000, that part-time work for older employees may be authorised only for public servants who have worked full-time for a total of at least three of the five years preceding that part-time work, where significantly more women than men work part-time and are consequently excluded by that provision from part-time work for older employees?'

III — Legal assessment

24. In its question the court of reference asks in essence whether rules that make

admission to a part-time employment scheme with a view to retirement subject to the condition that the worker should have worked full-time for at least three of the last five years infringe the principle of equal treatment for men and women laid down in Article 141 EC and Directives 75/117 and 76/207 and the principle of equal treatment of part-time and full-time workers under Directive 97/81.

25. Ms Steinicke, the Commission and the Portuguese Government agree that the reply to the question should be in the affirmative and dispute the opposite view put forward by the Federal Labour Office, which is the defendant in the main proceedings but has not appeared before the Court.

26. According to the claims made by the Federal Labour Office in the main proceedings, the exclusion of part-time workers from the employment scheme in question is allegedly justified both by the purpose of the scheme and by budgetary and practical considerations.

27. As to the purpose of the scheme, the Office maintains that the objective of the employment scheme in question is to create jobs. If part-time workers were allowed to join the scheme the effects on the labour market would not be equivalent to those that could be achieved by allowing full-time workers to join. Indeed, as part-time workers are already working part-time, they would not free appreciable working time in the labour market.

28. As to budgetary considerations, the Office states that, since workers admitted to the scheme enjoy special benefits in terms of salary and social security, it would be excessively costly to open up the scheme to part-time workers as well.

29. Lastly, on the practical level, the Office observes that if a part-time worker were admitted to the scheme in question on the basis of the block model, the employer would be forced to provide the worker with a full-time post in line with his abilities. As it is extremely rare for such a post to be immediately available, one would have to be created, which would entail considerable planning and allocation of posts. During the subsequent work-free period the worker, who was now the holder of a

full-time post, would have to be replaced by a part-time worker because only half an established post would be freed. This would again entail considerable effort in terms of planning and allocating posts.

30. Ms Steinicke challenges these arguments. First, in her opinion it is not true that admitting part-time workers to the scheme in question makes it impossible to have a positive effect on the labour market. Furthermore, she contends that the argument regarding the problems of planning and allocating posts resulting from the admission of part-time workers to such a scheme is also unfounded because such problems also arise when full-time workers are admitted to the scheme. Nor, last, is it correct, in her view, to claim that the discrimination created by the provisions in question is justified on financial grounds, given that part-time workers help to reduce costs and to free the labour market.

31. The Portuguese Government is of the same opinion, adding that the employment policy objectives raised by the defendant in the main proceedings can also be pursued by applying non-discriminatory regulations, such as those adopted as from 1 July 2000.

32. For its part, the Commission points out first that because the financial advantages provided for under the scheme in question are only incentives aimed at attaining the employment policy objectives, the scheme does not fall within the concept of 'pay' laid down in Article 141 EC or Article 1 of Directive 75/117 but within that of 'working conditions' set out in Article 5 of Directive 76/207. It goes on to observe that, on the basis of the statistics mentioned by the national court, the exclusion of part-time workers from the scheme in question constitutes prima facie indirect discrimination on grounds of sex which, for the reasons which I shall set out below, is not justified in the light of the Court's case-law.

33. As to an assessment of the debate that I have just summarised, it seems to me first of all above that I can agree with the Commission as to the need to identify first the Community law applicable in the present case.

34. As we have seen, in this regard the national court cites both Article 141 EC and Directives 75/117, 76/207 and 97/81.

35. I have to say straight away that I do not think that Article 141 EC and Directive 75/117 are relevant to the present case. The point at issue here is not so much whether the German legislation in question treats female and male workers in the same way as regards pay for the same work or for work of equal value, but rather whether it is more difficult for female workers than for male workers to join the part-time employment scheme with a view to retirement which is governed by that legislation.

36. On the other hand, as regards Directive 76/207, which is also cited in the order for reference, I must first point out that in Case C-187/00 *Kutz-Bauer* I expressed the opinion that that directive is not applicable to an employment scheme identical to the one under examination in the present case, [5] inasmuch as, that scheme having the dual purpose of enabling workers of a certain age to make a smooth transition from work to retirement and to help reduce the unemployment rate, in my opinion it 'bridged the old-age and unemployment schemes' and therefore fell within the scope of Directive 79/7 [6] rather than that of Directive 76/207. [7]

37. In the judgment in that case, however, the Court preferred to give prominence not to the purposes of that scheme but to the fact that the scheme affected the exercise of the workers' occupation by adjusting their working time. On the basis of that consideration, the Court concluded that the scheme in question governed 'working conditions' and ought therefore to be assessed in the light of Directive 76/207 rather than Directive 79/7. [8]

38. I am therefore bound to assume that, for the reasons set out in the judgment just cited, the Court will also hold in the present case that the national legislation at issue affects 'working conditions' and must therefore be examined in the light of Directive 76/207. I shall therefore base the remarks that follow on that assumption.

5 — The employment scheme discussed in that case was governed by the Altersteilzeitgesetz (Law on part-time employment on grounds of old age) of 23 July 1996. Under that law, workers aged 55 or more can apply, on the basis of an agreement with the employer, to be allowed to work part-time in accordance with the traditional formula or under a 'block model' formula. To encourage recourse to the scheme, the law provides that workers admitted to the scheme, despite working part-time, are entitled to a salary equal to 70% of the net full-time salary.

6 — Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24, hereinafter 'Directive 79/7').

7 — Opinion in Case C-187/00 [2003] ECR I-2741, paragraph 38.

8 — Judgment in Case C-187/00 *Kutz-Bauer* v *Freie und Hansestadt Hamburg* [2003] ECR I-2741, paragraphs 43 to 46.

39. Lastly, as regards Directive 97/81, I wish to observe that in my opinion that directive is also at least partly relevant to the present case. [9] In point of fact, it lays down in the sphere of 'employment conditions' the principle of equal treatment of part-time and full-time workers [10] and applies to 'part-time workers who have an employment contract or employment relationship as defined by the law', [11] as is the case of Ms Steinicke.

40. That being so, and returning to the question in hand, it is appropriate first to ascertain whether Paragraph 72b of the BBG, in the version in force until 30 June 2000, created inequality of treatment within the meaning of Directive 76/207 or Directive 97/81 or possibly both these directives.

41. There seems to me to be no doubt that, by preventing a large proportion of part-time workers from joining the employment arrangements in question, this measure clearly led to unequal treatment to the detriment of such workers and that therefore as a matter of principle it is incompatible with Directive 97/81.

42. Moreover, I believe that it cannot seriously be disputed either that the measure also conflicts with Directive 76/207, in that, although worded in neutral terms, in reality it placed women at a greater disadvantage than men. Indeed, not only, as the Court has already stated, is it 'common ground that in Germany part-time workers are far more likely to be women than men', [12] but this is even more pronounced in the sector in which Ms Steinicke is employed — the Federal public service — where, according to the order for reference, around 90% of part-time workers are women. As can be seen from the order, this fact does not even appear to be contested by the Federal Labour Office.

43. That having been said, I must also point out, however, that according to established case-law where a national measure works to the disadvantage of a much higher percentage of women than men, as in the case in point, it entails a discrimination against women prohibited by Community law, specifically by Directive 76/207, only if that difference in treatment cannot be justified by objective

9 — This directive is applicable only in part to the present case, as the period for its transposition into national law expired on 20 January 2000, whereas the period on which the court of reference has to rule runs from 1 October 1999 to 30 June 2000.

10 — See Clause 4 of the Annex to that directive.

11 — See Clause 2 of the Annex to that directive.

12 — Judgment in Case C-322/98 *Kachelmann* v *Bankhaus Hermann Lampe* [2000] ECR I-7505, paragraph 24. See also to that effect the Opinion of Advocate General Geelhoed in Case C-25/02 *Rinke* v *Ärztekammer Hamburg* [2003] ECR I-8349.

factors unrelated to any discrimination on grounds of sex. [13]

44. Similarly, Directive 97/81 does not prohibit differences in treatment to the detriment of part-time workers that are 'justified on objective grounds'. [14]

45. Hence, in order to establish whether Paragraph 72b of the version of the BBG that was in force until 30 June 2000 infringed Directives 76/207 and 97/81, it is also necessary to examine whether the differences in treatment between part-time and full-time workers and, indirectly, between workers of different sexes deriving from that measure are justified on objective grounds.

46. In this regard, I would recall that 'it is settled law that although in preliminary-ruling proceedings it is for the national court to establish whether such objective factors exist in the particular case before it, the Court of Justice, which has to provide answers of use to the national court, may provide guidance based on the documents before the national court and on the written and oral observations which have been submitted to it, in order to enable the national court to give judgment'. [15]

47. Since, as we have seen, before the court of reference the Federal Labour Office essentially relied upon three grounds to justify the above differences in treatment, those grounds must be examined and analysed.

48. As I have noted above, the first is based on the consideration that by allowing full-time workers to halve their working hours, the scheme in question pursued employment policy objectives that could not otherwise be pursued — or would be pursued less effectively — if part-time workers were also permitted to join the scheme.

13 — That principle was stated by the Court with specific reference to Directive 76/207 in a number of judgments, including in particular those in Cases C-1/95 *Gerster* v *Freistaat Bayern* [1997] ECR I-5253, paragraphs 30 and 34 (which contain further references), C-226/98 *Jørgensen* [2000] ECR I-2447, paragraph 29 (which contains further references), C-322/98 *Kachelmann*, cited above, paragraph 23, and C-187/00 *Kutz-Bauer*, cited above, paragraph 50. It was also stated with reference to Article 141 EC and/or Directive 75/117 in, inter alia, the judgments in Cases C-243/95 *Hill and Stapleton* v *The Revenue Commissioners and Department of Finance* [1998] ECR I-3739, paragraph 34, C-167/97 *Seymour-Smith and Perez* [1999] ECR I-623, paragraph 69, and C-249/97 *Gruber* v *Silhouette International Schmied* [1999] ECR I-5295, paragraphs 25 and 26; also, with reference to Directive 79/7, in, inter alia, Cases C-33/89 *Kowalska* v *Freie und Hansestadt Hamburg* [1990] ECR I-2591, paragraph 16, C-229/89 *Commission* v *Belgium* [1991] ECR I-2205, paragraph 13, C-343/92 *Roks and Others* [1994] ECR I-571, paragraph 33, and C-444/93 *Megner and Scheffel* v *Innungskrankenkasse Rheinhessen-Pfalz* [1995] ECR I-4741, paragraph 24. The same principle has now also been codified in a number of directives: see Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex (OJ 1998 L 14, p. 6), or 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), or again Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC (OJ 2002 L 269, p. 15).

14 — Clause 4 of the Annex to Directive 97/81.

15 — Judgment in Case C-278/93 *Freers and Speckmann* v *Deutsche Bundespost* [1996] ECR I-1165, paragraph 24; see also to that effect the judgments in *Seymour-Smith and Perez*, cited above, paragraphs 67 and 68, Case C-381/99 *Brunnhofer* v *Bank der österreichischen Postsparkasse* [2001] ECR I-4961, paragraph 65, and *Kutz-Bauer*, cited above, paragraph 52.

49. In that regard, I would recall that it is settled case-law that social and employment policy objectives can justify differences in treatment only if it can be shown 'that the measures chosen... are *suitable* and *necessary* for achieving that aim'. [16]

50. Now, it seems to me, first, that to prevent part-time workers from joining the employment scheme in question did not constitute a *suitable* means of achieving the objectives. Since part-time working is an instrument of labour-market flexibility that favours employment, by discriminating against part-time workers the rules in question threatened, as the Commission has rightly observed, to discourage recourse to that type of work, thus having precisely the opposite effect to that intended.

51. Furthermore, that the regulations in question discouraged part-time working seems in my opinion to be demonstrated both by the fact that Ms Steinicke, with the intention of benefiting from the arrangements in question, had asked her employer to allow her to transfer from part-time working to full-time working and by the fact that the new version of Paragraph 72b of the BBG in force from 1 July 2000 onwards remedies that problem by allowing only workers who have worked part-time for at least three of the last five years to join the scheme.

52. Nor, in my opinion, could the differences in treatment in question be considered *necessary* as a means of achieving the declared employment policy objectives, as proved by the fact that the new rules in this area make it possible to achieve the same objectives without such discrimination.

53. The second ground upon which the Federal Labour Office relies in order to justify the German legislation in question is the excessive burden it would place on the staff budget if part-time workers were admitted to the employment scheme in question.

54. To rebut the relevance of that argument it is sufficient, for present purposes, to recall the settled case-law of the Court, according to which 'budgetary considerations... cannot... justify discrimination against one of the sexes'. [17]

16 — Judgment in *Seymour-Smith and Perez*, cited above, paragraph 69; the italics are mine. See also the judgments in *Megner and Scheffel*, cited above, paragraphs 29 and 30, and *Freers and Speckmann*, cited above, paragraph 28.

17 — See the judgments in *Roks and Others*, cited above, paragraphs 35 and 36, *Hill and Stapleton*, cited above, paragraph 40, Case C-104/98 *Buchner and Others* v *Sozialversicherungsanstalt der Bauern* [2000] ECR I-3625, paragraph 28, and *Kutz-Bauer*, cited above, paragraphs 59 to 61.

55. Finally, I also consider the last argument adduced by the Federal Labour Office to be unfounded, that is to say, the fact that admitting a part-time worker to the employment scheme in question would have caused the employer serious problems in the planning and allocation of work.

56. I note, as the Commission has also observed, that the rules at issue could give rise to the same problems. By providing that employees who had worked full-time for at least three of the last five years could be admitted to the employment scheme in question, those rules could not preclude the admission of workers who were already working part-time when they applied to be admitted to the scheme.

57. In the light of the above, it does not, in short, seem to me that the arguments put forward by the Federal Labour Office before the national court constitute objective grounds suitable to justify the differences in treatment between part-time and full-time workers and, indirectly, between male and female workers stemming from the version of Paragraph 72b of the BBG that was in force until 30 June 2000.

58. I therefore propose that the answer to the question referred should be that, in the absence of objective justification, it is contrary to Directive 97/81 and — where there are many more women than men among part-time public servants — Directive 76/207 for a measure of national law to provide that a part-time employment scheme with a view to retirement may be granted only to public servants who have been employed full-time for a total of at least three of the previous five years.

59. Before concluding, I wish to point out that, without raising a specific question for a preliminary ruling in this regard, in its order for reference the national court asks the Court to clarify whether, if the legislation in question is discriminatory and Ms Steinicke must therefore be admitted to the employment scheme in question for the disputed period, she is entitled for that period to the benefits associated with the employment scheme in question laid down in the rules in force until 30 June 2000 or to the benefits associated with that scheme laid down in the regulations in force from 1 July 2000 onwards.

60. In this regard I merely observe that it is not for the Court of Justice but for the national court to ascertain, in the light of the facts at its disposal, which provisions of national law are applicable in the specific case in order to ensure respect for the principle of non-discrimination set out in Directives 76/207 and 97/81.

IV — Conclusion

61. In the light of the above considerations, I therefore suggest that the Court reply as follows to the question submitted to it by the Verwaltungsgericht Sigmaringen by order of 10 December 2001:

'In the absence of objective justification, it is contrary 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 and — if many more women than men are employed part-time — Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, for a measure of national law to provide that a part-time employment scheme with a view to retirement may be granted only to public servants who have been employed full-time for a total of at least three of the previous five years'.