Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

19 June 2014*

(Reference for a preliminary ruling — Social policy — Directive 2000/78/EC — Equal treatment 'in employment and occupation' — Articles 2, 3(1)(c) and 6(1) — Direct discrimination on grounds of age — Basic pay for civil servants dependent upon age — Transitional system — Perpetuation of the difference in treatment — Justifications — Right to compensation — Liability of the Member State — Principles of equivalence and of effectiveness)

In Joined Cases C-501/12 to C-506/12, C-540/12 and C-541/12,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Berlin (Germany), made by decisions of 23 October 2012 (Cases C-501/12 to C-506/12) and of 13 November 2012 (Cases C-540/12 and C-541/12), received at the Court, respectively, on 8 and 28 November 2012 and in the proceedings

Thomas Specht (C-501/12),

Jens Schombera (C-502/12),

Alexander Wieland (C-503/12),

Uwe Schönefeld (C-504/12),

Antje Wilke (C-505/12),

Gerd Schini (C-506/12)

v

Land Berlin

and

Rena Schmeel (C-540/12),

Ralf Schuster (C-541/12)

v

Bundesrepublik Deutschland,

* Language of the case: German.

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, J.L. da Cruz Vilaça, G. Arestis, J.-C. Bonichot and A. Arabadjiev (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 19 September 2013,

after considering the observations submitted on behalf of:

— Mr Wieland, Mr Schönefeld, Mr Schini and Ms Schmeel and Mr Schuster by E. Ribet Buse and R. Hildebrand, Rechtsanwälte,

— Land Berlin, by M. Theis, acting as Agent,

— the German Government, by T. Henze and J. Möller, acting as Agents,

— the Council of the European Union, by M. Simm and J. Herrmann, acting as Agents,

— the European Commission, by D. Martin and T. Maxian Rusche, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 November 2013,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Articles 2, 3(1)(c) and 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 requests have been made in proceedings between, in Cases C-501/12 to C-506/12, Mr Specht, Mr Schombera, Mr Wieland, Mr Schönefeld, Ms Wilke and Mr Schini, Land Berlin civil servants and Land Berlin and in Cases C-540/12 and C-541/12, Ms Schmeel and Mr Schuster, between federal civil servants and the Federal Republic of Germany, concerning the methods of allocating to those civil servants a step or a transitional step within grades of the pay scheme applicable in each case.

Legal context

EU law

3 Under Article 1 of Directive 2000/78, the purpose of that 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 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;

…’

5 Under paragraph 1(c) of Article 3 of Directive 2000/78, entitled ‘Scope’, that directive applies to all persons, as regards both the public and private sectors, including public bodies, in relation to, inter alia, ‘employment and working conditions, including dismissals and pay’.

6 Article 6(1) of the directive is worded as follows:

‘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.

Such differences of treatment may include, among others:

(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

(b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;

…’

7 Under Article 9(1) of Directive 2000/78, entitled ‘Defence of rights’:

‘Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.’

8 Article 16 of Directive 2000/78, entitled ‘Compliance’, provides:

‘Member States shall take the necessary measures to ensure that:

(a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;

(b) any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations are, or may be, declared null and void or are amended.'

9 Under Article 17 of that directive, concerning sanctions:

'Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive …'

German law

10 Directive 2000/78 was transposed into German law by the General Law on equal treatment (Allgemeines Gleichbehandlungsgesetz) of 14 August 2006 (BGBl. 2006 I, p. 1897; 'the AGG').

The Federal Law on remuneration of civil servants

11 The Federal Law on remuneration of civil servants (Bundesbesoldungsgesetz), in the version in force on 6 August 2002 ('the old version of the BbesG'), remained applicable to federal civil servants until 30 June 2009 and to Land Berlin civil servants until 31 July 2011. That law constituted the legal basis for the system of remuneration applicable to those civil servants.

12 Under Paragraph 27 of the old version of the BbesG, entitled 'Calculation of basic salary':

'(1) In so far as the pay scales do not provide otherwise, basic pay shall be calculated in steps. Advancement in step shall depend on the civil servant's seniority for remuneration purposes and on performance. The civil servant or the member of the armed forces shall receive at least the initial basic pay for the grade allocated.

(2) Basic pay shall rise at intervals of two years up to the fifth pay step, then at intervals of three years up to the ninth step and at intervals of four years thereafter.

(3) In the event of consistently exceptional performance, civil servants and military personnel on pay scale A may receive in advance the basic pay corresponding to the next step (performance step). The number of performance steps awarded by an administrative authority in a calendar year may not exceed 15% of the number of civil servants and military personnel on pay scale A who have not yet reached the basic pay maximum. If it is established that the performance of the civil servant or member of the armed forces does not meet the average requirements attached to the position, that person shall remain on his existing step until his performance justifies advancement to the next step. …'

13 Paragraph 28 of that Law, entitled 'Seniority', provided that:

'(1) Seniority shall be calculated from the first day of the month in which the civil servant or member of the armed forces reached the age of 21.

(2) The starting point for calculating seniority under subparagraph (1) shall be deferred by a period determined by the length of time during which, after reaching the age of 31, the person concerned had no claim to remuneration as a civil servant or as a member of the armed forces, that is to say, by one quarter of that length of time until the age of 35 and by one half thereafter. … Periods of less than one month shall be rounded down to the next unit. Remuneration shall be treated as remuneration as

a civil servant or as a member of the armed forces, for the purposes of the first sentence above, where it is remuneration from a main occupation in the service of a public-law employer (Paragraph 29), in the service of public-law religious bodies and their associations or in the service of any other employer which applies the collective agreements in force in relation to the public service or collective agreements with essentially the same content and to which the State or other public authorities contribute significantly through the payment of contributions or allowances or in some other way.

...'

The new Law on the remuneration of federal civil servants

14 The scope of the federal Law on remuneration of civil servants in force on 1 July 2009 ('the new Law on the remuneration of federal civil servants'), in the amended version set out in Paragraph 2 of the Law on the reorganisation and modernisation of federal civil service law (Dienstrechtsneuordnungsgesetz — DneuG), of 5 February 2009, is limited to civil servants remunerated by the federal government.

15 Paragraph 27 of the new Law on the remuneration of federal civil servants, entitled 'Calculation of basic pay', provides:

'(1) Save legislative provision to the contrary, basic pay shall be calculated in steps. Progression to the next step shall depend on the duration of periods of service completed in accordance with the relevant requirements (experience).

(2) For every first appointment to a job carrying a claim to service pay within the scope of the present Law, basic pay shall be set at step 1, without prejudice to the taking into account of earlier periods pursuant to Paragraph 28(1) in the case of civil servants, or, in the case of military personnel, without prejudice to other methods of calculating basic pay pursuant to the fourth sentence of Paragraph 4. …

(3) Basic pay shall rise upon completion of two years of experience in step 1, three years of experience in each case in steps 2, 3 and 4, and then four years of experience in each case in steps 5, 6 and 7. … Without prejudice to Paragraph 28(2), progression shall be deferred in the case of a civil servant by a period equivalent to any periods carrying no claim to service pay. …

(7) In the event of consistently exceptional performance, the basic pay of civil servants on pay scales A may be set in advance at the next experience step (performance step). …'

16 Paragraph 28 of that law, entitled 'Periods which may be taken into account', provides:

'(1) For the purposes of allocating the initial pay step, the following earlier periods shall be taken into account as periods of experience within the meaning of Paragraph 27(3):

periods in an equivalent main occupation, in the service of a public-law employer (Paragraph 29) or in the service of public-law religious bodies or their associations, which are not a requirement for admission to the career ...'

The Law on the remuneration of Land Berlin civil servants

17 Under the Law reforming the remuneration of civil servants of Land Berlin (Gesetz zur Besoldungsneuregelung für das Land Berlin — Berliner Besoldungsneuregelungsgesetz) of 29 June 2011, the rules governing Land Berlin civil servants whose status had already been confirmed by 1 August 2011 ('established civil servants') are different from those applicable to civil servants who entered into service with Land Berlin after that date ('new civil servants').

– The regional Law on the remuneration of new civil servants

18 A modified version of the new Law on the remuneration of federal civil servants was applied to Land Berlin. That law, entitled 'Law on the remuneration of civil servants of Land Berlin' (Bundesbesoldungsgesetz Berlin), applies to new civil servants. For the purposes of the disputes before the referring court, the relevant provisions of the new Law on the remuneration of Land Berlin civil servants are, in essence, identical to those of the new Law on the remuneration of federal civil servants, referred to in paragraphs 15 and 16 above.

– The Law on the remuneration of established civil servants

19 The Law establishing a transitional system for the remuneration of Land Berlin civil servants (Berliner Besoldungsüberleitungsgesetz; 'the Law establishing the Land Berlin transitional system') of 29 June 2011 sets out the detailed rules for reclassifying established civil servants within the new system as well as the transitional measures applicable to those civil servants.

20 Under Paragraph 2 of the Law establishing the Land Berlin transitional system, entitled 'Allocation of steps or transitional steps in grades on pay scale A':

'(1) On 1 August 2011 civil servants shall be allocated, in accordance with the rules laid down in the subparagraphs hereunder, the steps or transitional steps provided for in Annex 3 to the [Law reforming the remuneration of Land Berlin civil servants], on the basis of the post held on 31 July 2011 and the basic pay that would accrue to them on 1 August 2011 pursuant to Law on the Adjustment of the Remuneration and Pensions of Civil Servants (Land Berlin) 2010/2011 of 8 July 2010.

(2) In accordance with subparagraph 1, the civil servant shall be allocated the step or transitional step that corresponds to the basic pay rounded up to the next unit …'

21 Paragraph 3 of the Law establishing the Land Berlin transitional system, entitled 'Subsequent advancement of civil servants allocated a step or a transitional step in grades on pay scale A', provides:

'(1) The period of experience required for advancement under Paragraph 27(3) of the [new Law on the remuneration of Land Berlin civil servants] shall begin upon the allocation of a step as provided for under Annex 3 to the [Law reforming the remuneration of Land Berlin civil servants]. Advancement to the next step shall be governed by Paragraph 27(3) of [the present Law].

…'

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

22 The facts of the various cases before the referring court, joined before the Court, are similar or even the same. They can be summarised as follows.

23 Ms Wilke and Mssrs. Specht, Schombera, Wieland, Schönefeld, Ms Wilkie and Mr Schini were appointed as civil servants of Land Berlin between 1992 and 2003. Ms Schmeel and Mr Schuster were appointed as permanent civil servants of the Federal Republic of Germany in 1998 and 1992 respectively. They were all recruited under the old version of the BbesG and initially remunerated on the basis of that Law, before being reclassified in accordance with the new remuneration system applicable in each case.

24 By means of an administrative complaint, the applicants in the main proceedings challenged the method of calculating their pay, arguing that, as that method took account of their age, they are or have been discriminated against on grounds of age. As that complaint was unsuccessful, they brought proceedings before the Verwaltungsgericht Berlin (Administrative Court of Berlin).

25 Mssrs Specht, Schombera, Wieland, Schönefeld, Ms Wilke, Mr Schini and Ms Schmeel and Mr Schuster submit that the old version of the BbesG infringed the prohibition of age discrimination enshrined in the AGG and Directive 2000/78. In that regard, they claim in particular that they should be paid, with retrospective effect, the difference between, on the one hand, the remuneration that they would have received if they had been allocated the highest pay step in their function grade and, on the other, the remuneration actually received.

26 Mssrs Specht, Wieland, Schönefeld and Ms Wilkie submit that the reclassification rules laid down by the Law establishing the Land Berlin transitional system unlawfully perpetuate the principle that formerly governed the remuneration of civil servants, which was based not on experience in the service but on 'seniority', since the reclassification of those civil servants was carried out solely by reference to their previous basic pay.

27 The referring court is accordingly uncertain, in each of the cases before it, whether the national legislation at issue in those cases is compatible with EU law and, more specifically, whether it is compatible with Directive 2000/78, in that that national legislation may have given rise to discrimination on grounds of age, which is prohibited by that directive.

28 In those circumstances, the Verwaltungsgericht Berlin decided to stay the proceedings and to refer the following questions — those referred in Cases C-501/12, C-503/12 and C-505/12, but which also incorporate all the questions raised in Cases C-502/12, C-504/12, C-506/12, C-540/12 and C-541/12 — to the Court of Justice for a preliminary ruling:

'(1) Is primary and/or secondary EU law — specifically, in this context, Directive [2000/78] — to be interpreted, for the purposes of applying fully the prohibition of unjustified discrimination on grounds of age, to the effect that that directive also covers national rules on the remuneration of … civil servants?

(2) If Question 1 is answered in the affirmative: does that interpretation of primary and/or secondary EU law mean that a provision of national law under which the basic pay of a civil servant, upon his entry into the public service, is to be decisively determined by reference to his age, and thereafter to rise primarily on the basis of his length of public service constitutes direct or indirect discrimination on grounds of age?

(3) If Question 2 is answered in the affirmative: does that interpretation of primary and/or secondary EU law preclude the possibility of justifying such a provision of national law in terms of the legislative aim of rewarding professional experience?

(4) If Question 3 is answered in the affirmative: does that interpretation of primary and/or secondary EU law permit — pending the introduction of a non-discriminatory remuneration system — a legal consequence other than the retrospective grant to those discriminated against of the remuneration corresponding to the highest step in their grade?

Does the legal consequence of breach of the prohibition of discrimination flow in that case directly from primary and/or secondary EU law itself — specifically, in this context, from Directive [2000/78] — or is the sole basis for a claim on the part of the victim of discrimination the application of the principle of EU law that Member States incur liability if provisions of EU law are incorrectly transposed into national law?

(5) Does that interpretation of primary and/or secondary EU law preclude a national measure which makes the right to (retrospective) payment or to compensation conditional upon that right being asserted by the civil servants concerned within relatively narrow time-limits?

(6) If Questions 1, 2 and 3 are answered in the affirmative, does it follow from that interpretation of primary and/or secondary EU law that a law establishing a transitional system which lays down the rules governing the reclassification under the new system of [established] civil servants — under which the step in the new system to which they are allocated is to be determined solely on the basis of the amount of basic pay that they received under the old (discriminatory) remuneration system on the date set for transition to the new system, and further advancement to higher steps is thereafter to be based solely on the periods of experience completed after the entry into force of that law, irrespective of the overall length of experience of the civil servant concerned — perpetuates the existing discrimination on grounds of age, until such time as the civil servant has reached the highest pay step?

(7) If Question 6 is answered in the affirmative: does that interpretation of primary and/or secondary EU law preclude the possibility that the perpetuation of discrimination can be justified in terms of the legislative aim of protecting not (only) the acquired rights existing on the transition date but (also) the expectations of [established] civil servants regarding the prospects of increased income within the relevant grade, as guaranteed under the old system?

Can the perpetuation of discrimination against [established] civil servants be justified by the fact that the alternative approach (consisting in the individual reclassification of [established] civil servants on the basis of their experience) would be relatively expensive to implement in administrative terms?

(8) In the event that the Court rejects the reasons suggested as justification in Question 7: does that interpretation of primary and/or secondary EU law permit — pending the introduction of a non-discriminatory remuneration system — a legal consequence other than the retrospective and ongoing grant to [established] civil servants of the remuneration corresponding to the highest step in their grade?

Does the legal consequence of breach of the prohibition of discrimination flow in that case directly from primary and/or secondary EU law itself — specifically, in this context, from Directive [2000/78] — or is the sole basis for a claim on the part of the victim of discrimination the application of the principle of EU law that Member States incur liability if provisions of EU law are incorrectly transposed into national law?'

29 By order of 3 December 2012, the President of the Court ordered Cases C-501/12 to C-506/12, Case C-540/12 and Case C-541/12 to be joined for the purposes of the written procedure, the oral procedure and the judgment.

Consideration of the questions referred

Question 1

30 By its first question, the referring court asks, in essence, whether Article 3(1)(c) of Directive 2000/78 must be interpreted as meaning that the treatment of civil servants falls within the scope of that directive.

31 That question concerns the material and personal scope of Directive 2000/78.

32 As regards the material scope of Directive 2000/78, the referring court is uncertain as to the relationship between, on the one hand, Article 3(1)(c) of that directive, under which, within the limits of the powers conferred on the European Union, the directive applies to all persons, whether in the public or the private sector, including public bodies, as regards 'employment and working conditions' — a term that covers, inter alia, dismissals and pay — and, on the other hand, Article 153(5) TFEU, under which, by way of an exception to its powers in relation to social policy, the European Union is not entitled to intervene in matters of pay.

33 The Court has held, however, that that exception must be construed as covering measures — such as the equivalence of all or some of the constituent parts of pay and/or the level of pay in the Member States, or the setting of a minimum guaranteed wage — that amount to direct interference by EU law in the determination of pay within the European Union. On the other hand, it cannot be extended to any question involving any sort of link with pay; otherwise some of the areas referred to in Article 153(1) TFEU would be deprived of much of their substance (*Impact*, C-268/06, EU:C:2008:223, paragraphs 124 and 125, and *Bruno and Others*, C-395/08 and C-396/08, EU:C:2010:329, paragraph 37).

34 Consequently, it is necessary to draw a distinction between the term 'pay' as used in Article 153(5) TFEU and the same term 'conditions, including … pay' as used in Article 3(1)(c) of Directive 2000/78. The latter term forms part of the employment conditions and, as noted by the Advocate General in point 45 of his Opinion, it does not relate directly to the setting of a level of pay.

35 In the case of the German civil service, the amount of pay for each grade and step is determined by the competent national courts and the European Union has no competence in that regard. On the other hand, the national rules governing the methods of allocating those grades and steps cannot be severed from the material scope of Directive 2000/78.

36 As regards the personal scope of Directive 2000/78, it suffices to note that Article 3(1)(c) of that directive expressly states that it applies, inter alia, to all persons in the public sector.

37 In those circumstances, the answer to Question 1 is that Article 3(1)(c) of Directive 2000/78 must be interpreted as meaning that pay conditions for civil servants fall within the scope of that directive.

Questions 2 and 3

38 By its second and third questions, which should be examined together, the referring court asks, in essence, whether EU law — and, in particular, Articles 2 and 6(1) of Directive 2000/78 — must be interpreted as precluding a provision of national law under which, within each service grade, the step determining basic pay is to be allocated, at the time of recruitment, on the basis of the civil servant's age.

39 It is first necessary to consider whether the old version of the BbesG inherently engenders a difference in treatment on grounds of age, for the purposes of Article 2(1) of Directive 2000/78. In that regard, it should 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 the directive. Article 2(2)(a) of Directive 2000/78 specifies that, for the purposes of applying Article 2(1), direct discrimination is to be regarded as occurring where one person is treated less favorably than another in a comparable situation, on the basis of any of the grounds referred to in Article 1 of that directive.

40 In the present cases, it emerges from the documents before the Court that, under Paragraphs 27 and 28 of the old version of the BbesG, 'seniority' — which is determined according to actual age — is the reference criterion for the initial allocation of a step in the basic pay scale for civil servants. Seniority is calculated from the first day of the month in which the civil servant reached the age of 21. That starting point differs by the effect of taking account of a period calculated according to the length of time, after reaching the age of 31, during which the person concerned had no claim to remuneration as a civil servant, that is to say, it is deferred by one quarter of that length of time until the person reaches the age of 35 and by one half thereafter. The civil servant receives at least the initial basic pay for the grade allocated to him. Subsequent step progression depends on length of service and on performance. Basic pay rises at intervals of two years up to the fifth pay step, then at intervals of three years up to the ninth step and at intervals of four years thereafter. Civil servants who stand out because of consistent and sustainable exceptional performance may be allocated in advance the basic pay corresponding to the next step.

41 As noted by the referring court, application of the step progression system laid down in Paragraph 27 of the old version of the BbesG, in conjunction with the method for calculating seniority laid down in Paragraph 28 of that law, has the effect, for example, that a person appointed at the age of 21 as a permanent civil servant in the service of the Federal State or Land Berlin would have started on step 1 of grade A11, whereas a person who did not join the civil service until the age of 23 would have been allocated step 2 of that grade.

42 In such cases, as the Court found in paragraph 58 of *Hennigs and Mai* (C-297/10 and C-298/10, EU:C:2011:560), the basic pay awarded to two civil servants appointed on the same day in the same grade, whose professional experience is the same or equivalent but whose ages are different, will differ according to their age at the time of appointment. It follows that those two civil servants are in a comparable situation, but that one of them receives less by way of basic pay than the other.

43 This means that the remuneration system established by Paragraphs 27 and 28 of the old version of the BbesG gives rise to a difference in treatment that is directly based on age, for the purposes of Article 2(1) and (2)(a) of Directive 2000/78.

44 Secondly, it is necessary to consider whether that difference in treatment may be justified under Article 6(1) of Directive 2000/78.

45 The first subparagraph of Article 6(1) states that Member States may provide that a difference of treatment on grounds of age is not to constitute discrimination, if, within the context of national law, it is objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means used to achieve that aim are appropriate and necessary.

46 The Court has consistently held that Member States may provide for measures entailing differences of treatment on grounds of age, in accordance with the first subparagraph of Article 6(1) of Directive 2000/78. They enjoy broad discretion in their choice, not only to pursue a particular aim in the field

of social and employment policy, but also in the definition of measures capable of achieving it (see *Palacios de la Villa*, C-411/05, EU:C:2007:604, paragraph 68, and *Rosenbladt*, C-45/09, EU:C:2010:601, paragraph 41).

47 According to the German Government, the difference in treatment found in paragraph 43 above is justified by the aim of rewarding previous professional experience in a standard manner, whilst guaranteeing a uniform administrative practice.

48 In that regard, the Court has held that, as a general rule, the aim of rewarding experience that enables a worker to perform his duties better is a legitimate aim of wages policy (*Hennigs and Mai*, EU:C:2011:560, paragraph 72 and the case-law cited).

49 It is still necessary to determine, in the light of the wording of Article 6(1) of Directive 2000/78, whether, in the context of the broad discretion enjoyed by Member States and referred to in paragraph 46 above, the means used to achieve that aim are appropriate and necessary.

50 In that connection, the Court has accepted that, as a general rule, recourse to the criterion of length of service is an appropriate means of achieving that aim, since length of service goes hand in hand with professional experience. Although the measure at issue in the main proceedings enables a civil servant to move up the steps of his grade as his age advances and his length of service accordingly increases, it is clear that, at the time of appointment, the sole criterion on the basis of which a particular step in a particular grade is initially allocated to a person with no professional experience is age (see, to that effect, *Hennigs and Mai*, EU:C:2011:560, paragraphs 74 and 75).

51 In such cases, as the Court observed in paragraph 77 of *Hennigs and Mai* (EU:C:2011:560), it follows that the allocation, on the basis of age, of a basic pay step to a civil servant upon his appointment goes beyond what is necessary for achieving the legitimate aim, relied on by the German Government, of taking account of the professional experience acquired by that civil servant before he is appointed.

52 In the light of the foregoing considerations, the answer to Questions 2 and 3 is that Articles 2 and 6(1) of Directive 2000/78 must be interpreted as precluding a national measure, such as that at issue in the main proceedings, under which, within each service grade, the step determining basic pay is to be allocated, at the time of recruitment, on the basis of the civil servant's age.

Questions 6 and 7

53 By its sixth and seventh questions, which should be examined together, the referring court asks, in essence, whether Articles 2 and 6(1) of Directive 2000/78 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, laying down the detailed rules governing the reclassification within a new remuneration system of civil servants who were established before that legislation entered into force, under which the pay step that they are now allocated is to be determined solely on the basis of the amount received by way of basic pay under the old system, notwithstanding the fact that that amount depended on discrimination based on the civil servant's age, and advancement to the next step is now to depend exclusively on the experience acquired after that legislation entered into force. The referring court seeks to ascertain whether the effect of such legislation is to perpetuate discrimination on grounds of age and, if so, whether that may be justified by the aim of protecting the acquired rights and the legitimate expectations of civil servants as to the future progression of their remuneration.

54 It should be borne in mind that, as is clear from the orders for reference, the old version of the BbesG was superseded in Land Berlin by the new Law on the remuneration of Land Berlin civil servants and the Law establishing the Land Berlin transitional system.

55 The remuneration system established by the new Law on the remuneration of Land Berlin civil servants no longer lays down age bands or seniority but provides for new civil servants to be initially allocated an 'experience step' and for subsequent advancement, step by step on the relevant pay scale, to be determined according to periods of service completed in accordance with requirements.

56 Under the Law establishing the Land Berlin transitional system, each established civil servant is to be allocated a step, or a transitional step, on the basis of the post held on 31 July 2011 and the basic pay that would accrue to him on 1 August 2011. He is to be allocated the step or transitional step that corresponds to the amount received by way of basic pay, rounded up to the next unit.

57 As regards the question whether the Law establishing the Land Berlin transitional system establishes a difference in treatment on grounds of age for the purposes of Article 2(1) and (2) of Directive 2000/78, it can be seen from the orders for reference that the allocation of a transitional step to established civil servants ensured that they received a reference pay in an amount equivalent to that received under the old version of the BbesG. The pay received under that earlier legislation was principally made up of the basic pay that had been calculated, at the time of appointment, solely on the basis of the civil servant's age. As stated in paragraph 43 above, the method of calculating basic pay gave rise to a difference in treatment directly based on age, for the purposes of Article 2(1) and (2)(a) of Directive 2000/78.

58 Accordingly, by determining the basic pay on the basis of the pay previously received by established civil servants, which depended on seniority, the scheme put in place by the Law establishing the Land Berlin transitional system perpetuated a discriminatory situation whereby some civil servants receive lower pay than other civil servants, even though they are in comparable situations, solely on account of their age at the time of appointment (see, by analogy, *Hennigs and Mai*, EU:C:2011:560, paragraph 84).

59 That difference in treatment is liable to be perpetuated by the new Law on the remuneration of Land Berlin civil servants, since the definitive reclassification of established civil servants took place on the basis of the step or of the transitional step allocated to each civil servant (see, by analogy, *Hennigs and Mai*, EU:C:2011:560, paragraph 85).

60 It is apparent from those considerations that, both in the context of the Law establishing the Land Berlin transitional system and of the new Law on the remuneration of Land Berlin civil servants, some established civil servants receive lower pay than others, even though they are in comparable situations, solely on account of their age at the time of appointment, which constitutes direct discrimination on grounds of age for the purposes of Article 2 of Directive 2000/78.

61 It must therefore be considered whether that difference in treatment on grounds of age may be justified under Article 6(1) of Directive 2000/78.

62 To that end, it must be determined, in the light of the principles set out in paragraphs 45 and 46 above, whether the difference in treatment on grounds of age inherent in the Law establishing the Land Berlin transitional system and, as a consequence, in the new Law on the remuneration of Land Berlin civil servants, is a measure that pursues a legitimate aim and whether it is appropriate and necessary for achieving that aim.

63 According to the orders for reference and the observations of the German Government, the Law establishing the Land Berlin transitional system pursues the aim of protecting the acquired rights and the legitimate expectations of civil servants as to the future progression of their remuneration. The German Government argues in particular that, as part of the participation procedure related to the adoption of the Law reforming the remuneration of Land Berlin civil servants, the unions insisted on the preservation of acquired rights and demanded supplementary provisions to guarantee this.

According to the German Government, a draft law that would not have ensured the preservation of those rights would have met with opposition from unions, which would have seriously compromised its prospects of adoption.

64 First of all, it should be noted that protection of the acquired rights of a category of persons constitutes an overriding reason in the public interest (*Commission* v *Germany*, C-456/05, EU:C:2007:755, paragraph 63 and *Hennigs and Mai*, EU:C:2011:560, paragraph 90).

65 As regards, next, the appropriateness of the Law establishing the Land Berlin transitional system, it should be observed that the German Government has argued that the old version of the BbesG was, for most established civil servants, given the typical career paths of that time, more favourable than the new Law on the remuneration of Land Berlin civil servants. Accordingly, the placement of established civil servants directly within the scheme under that new law would have caused many of them to incur a loss in salary, estimated to be equivalent to at least one step, that is to say, depending on the grade, in an amount approximately equivalent to EUR 80 to EUR 150.

66 Secondly, as is apparent from Paragraph 2(2) of the Law establishing the Land Berlin transitional system, established civil servants were allocated a step corresponding to their previous basic pay rounded up to the next unit.

67 In those circumstances, it must be found that the preservation of previous remuneration and, as a consequence, the preservation of a scheme establishing a difference in treatment based on age made it possible to prevent loss of remuneration and, as is apparent inter alia from paragraph 63 above, were a crucial factor in enabling the domestic legislature to arrange the transition from the system under the old version of the BbesG to the system under the new Law on the remuneration of Land Berlin civil servants.

68 A law such as the Law establishing the Land Berlin transitional system thus appears suited to achieving the aim pursued, that is to say, to ensure the preservation of acquired rights.

69 Lastly, it remains necessary to determine whether or not such a law goes beyond what is necessary to achieve that aim.

70 The referring court notes in this respect that it would have been preferable either to apply the new scheme retroactively to all established civil servants or to apply a transitional system guaranteeing an established civil servant and in a favoured position the same level of pay as he received previously until he has gained the experience required to qualify for higher pay under the new scheme.

71 In order to determine whether a law such as the Law establishing the Land Berlin transitional system goes beyond what is necessary to achieve the aim pursued, that law must be placed in its context and the damage that it is liable to cause for the persons concerned must be considered (*HK Danmark*, C-335/11 and C-337/11, EU:C:2013:222, point 89).

72 As regards, in the first place, the context in which the Law establishing the Land Berlin transitional system was adopted, it should be noted that, according to the requests for a preliminary ruling, even before the judgment in *Hennigs and Mai* (EU:C:2011:560) was delivered, the competent national legislative authorities repealed the old version of the BbesG and, in order to eliminate the discrimination on grounds of age which flawed that legislation, reformed the system for the remuneration of federal civil servants and those of Land Berlin.

73 It was against that background that the Law establishing the Land Berlin transitional system was adopted, which provides — as its title suggests — for a transitional derogation for established civil servants. The allocation of steps or transitional steps to those civil servants was immediate and,

following their definitive reclassification under the new Law on the remuneration of Land Berlin civil servants, their pay progression depends exclusively on the criteria specified in that law, that is to say, on professional experience and on performance, which means that age is no longer a factor.

74 The German Government notes that that reform, adopted in the context of Land Berlin's high indebtedness, and at national level, in the context of a general attempt at budgetary consolidation, had to be made at neutral cost. Moreover, owing to the high number of civil servants to be reclassified, the transition to the new system had to take place without excessive use of administrative resources, that is to say, as far as possible, without requiring case-by-case consideration.

75 The German Government submits in that regard that it would have had to examine over 65 000 individual cases in order to determine the appropriate 'experience step' under Paragraphs 27 and 28 of the new Law on the remuneration of Land Berlin civil servants, before calculating whether or not that reclassification was more favourable than allocation on the basis of the Law establishing the Land Berlin transitional system. That examination would have taken approximately 360 000 hours to complete.

76 The German Government adds that it was no longer possible, for a relatively high number of civil servants who had to be reclassified, to determine — *a posteriori* and individually — the periods of activity preceding their establishment as civil servants that they could validly claim. It would therefore have been necessary, depending on the circumstances, either wholly to discount such periods or to recognise them without proof, which, depending on the case, would have either penalised the civil servants outright or afforded them an outright advantage. That would have led in turn to an outcome that was arbitrary and, as such, unacceptable.

77 It should be borne in mind that, as a rule, justifications based on an increase in financial burdens and possible administrative difficulties cannot justify failure to comply with the obligations arising out of the prohibition of discrimination on grounds of age laid down in Article 2 of Directive 2000/78 (see, by analogy, *Erny*, C-172/11, EU:C:2012:399, paragraph 48).

78 However, an individual examination of each particular case cannot be insisted on in order to establish, *a posteriori* and individually, previous periods of activity, since the management of the scheme concerned must remain technically and economically viable (see, by analogy, *Dansk Jurist- og Økonomforbund*, C-546/11, EU:C:2013:603, paragraph 70).

79 That finding is necessary in view of the particularly high number of civil servants, the length of the period concerned, the diversity of their respective backgrounds and the difficulties that may have arisen in connection with the determination of earlier periods of activity that those civil servants could validly have claimed. It can therefore be accepted that the method entailing examination of the individual case of each established civil servant would have been excessively complex and would have involved a high risk of error.

80 In those circumstances, it must be held that the domestic legislature did not exceed the limits of its discretion by taking the view that it was neither realistic nor desirable to apply the new classification system retroactively to all established civil servants or to apply a transitional system guaranteeing an established civil servant and in a favoured position the same level of pay as he received previously until he has gained the experience required to qualify for higher pay under the new scheme.

81 As regards, in the second place, the damage that a law such as the Law establishing the Land Berlin transitional system could cause to the persons that it concerns, it is clear that, in the light of paragraphs 75 and 76 above and the lack of a valid point of reference — making it possible to compare the situation of civil servants who would benefit with the situation of those who would not — that damage is particularly difficult to determine.

82 It has also been argued before the Court that the difference in remuneration is contained owing to the limits, specific to German civil service law, placed on the age at which civil servants can be appointed. It accordingly emerges from the observations of the German Government that, in the cases before the referring court, an age limit of 35 years applied and that, accordingly, any disparities in pay would not be as wide as the difference between the first and the last step in a grade.

83 Moreover, although it can be seen from the orders for reference that the effect of the Law establishing the Land Berlin transitional system is that the difference in remuneration is maintained at almost the same level until the established civil servants reach the highest step in their respective grades, those orders for reference nevertheless do not contain more precise or specific information in that regard. The German Government has relied, for its part, on the existence of two mechanisms which — it contends — mitigate, or even eliminate, the difference in treatment brought about by allocating two civil servants different steps because of their age. According to the German Government, reducing the number of steps and reallocating civil servants a step corresponding to the previous basic salary, rounded up to the next unit, would have the effect that the difference in pay would diminish, and, in some cases, fade away after a few years.

84 In view of the information provided in the orders for reference and in the documents produced before the Court, such a possibility cannot be discounted.

85 In those circumstances, it does not appear that, by adopting the transitional derogation measures put in place by the Law establishing the Land Berlin transitional system, the domestic legislature went beyond what was necessary to achieve the aim pursued.

86 The answer to Questions 6 and 7, therefore, is that Articles 2 and 6(1) of Directive 2000/78 must be interpreted as not precluding domestic legislation, such as that at issue in the main proceedings, laying down the detailed rules governing the reclassification within a new remuneration system of civil servants who were established before that legislation entered into force, under which the pay step that they are now allocated is to be determined solely on the basis of the amount received by way of basic pay under the old system, notwithstanding the fact that that amount depended on discrimination based on the civil servant's age, and advancement to the next step is now to depend exclusively on the experience acquired after that legislation entered into force.

Question 4

87 By its fourth question, the referring court asks the Court about the legal implications in the event that the old version of the BbesG is in breach of the principle of non-discrimination on grounds of age. The referring court seeks to ascertain whether those implications flow from Directive 2000/78 or from the case-law devolving from *Francovich and Others* (C-6/90 and C-9/90, EU:C:1991:428) and whether, in the latter case, the conditions for liability to be incurred by the Federal Republic of Germany are met. The referring court asks in particular whether, in circumstances such as those of the cases before it, EU law — and, in particular, Article 17 of Directive 2000/78 — requires civil servants who have been discriminated against to be retrospectively granted an amount equal to the difference between the pay actually received and that corresponding to the highest step in their grade.

88 At the outset, it is important to recall the obligation that national law must be interpreted in conformity with EU law, which requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by it, with a view to ensuring that Directive 2000/78 is fully effective and to achieving an outcome consistent with the objective pursued by it (see, to that effect, *Lopes Da Silva Jorge*, C-42/11, EU:C:2012:517, paragraph 56).

89 If it is not possible to construe and apply the national legislation in conformity with the requirements of Directive 2000/78, it should also be borne in mind that, by reason of the principle of the primacy of EU law, which extends also to the principle of non-discrimination on grounds of age, conflicting national legislation which falls within the scope of EU law must be disapplied (see *Kücükdeveci*, C-555/07, EU:C:2010:21, paragraph 54 and the case-law cited).

90 However, in its orders for reference, the referring court states that, in its view, it is impossible to interpret Paragraphs 27 and 28 of the old version of the BbesG in conformity with EU law.

91 The referring court also notes that, by applying the interpretative methods recognised under German law, it is unable to close the gap created by the non-application of national provisions that are contrary to the principle of non-discrimination. That court also notes that, unlike the situation in the case that gave rise to the judgment in *Hennigs and Mai* (EU:C:2011:560), the German law applicable in the cases before it does not permit it to grant civil servants who have been discriminated against a right to payment of the difference between their pay and that of civil servants who, because of their age, were allocated a higher step.

92 In addition, it is not possible for the referring court to allocate a lower step retroactively to the oldest civil servants because of considerations relating to the protection of legitimate expectations and acquired rights.

93 Referring to *Terhoeve* (C-18/95, EU:C:1999:22, paragraph 57) and *Landtová* (C-399/09, EU:C:2011:415, paragraph 51), the referring court wonders, however, whether, given that discrimination contrary to EU law has been found, the only way of ensuring observance of the principle of equal treatment is, pending the adoption of measures reinstating equal treatment, to grant persons within the disadvantaged category the same advantages as those enjoyed by persons within the favoured category.

94 In the first place, it should be noted that it is for the national court to determine the legal implications of the finding that legislation such as that at issue before it does not comply with Directive 2000/78.

95 In the second place, as regards *Terhoeve* (EU:C:1999:22) and *Landtová* (EU:C:2011:415), the Court essentially held that, where national law, in infringement of EU law, provides for different treatment as between groups of people and for as long as measures reinstating equal treatment have not yet been adopted, observance of the principle of equality can be ensured only by granting to the persons within the disadvantaged category the same advantages as those enjoyed by the persons within the favoured category. The Court also stated, in the context of those cases, that the arrangements applicable to members of the favoured group remained, for want of the correct application of EU law, the only valid point of reference.

96 It should be noted that that approach is intended to apply only if there is such a valid point of reference. However, it should be noted that there is no such valid point of reference in the context of legislation such as that at issue in the main proceedings, under which it is not possible to identify a category of favoured civil servants. Paragraphs 27 and 28 of the old version of the BbesG apply to all civil servants upon their appointment and, as is apparent from paragraph 42 above, the discriminatory aspects arising from those provisions potentially affect all civil servants.

97 It follows that the case-law referred to in paragraphs 93 and 95 above is not applicable to the cases before the referring court.

98 In the third place, it should be borne in mind that, according to settled case-law, the principle of State liability for loss and damage caused to individuals as a result of infringements of EU law for which the State can be held responsible is inherent in the system of the treaties on which the European Union is

based (see, to that effect, *Francovich and Others*, EU:C:1991:428, paragraph 35; *Brasserie du pêcheur and Factortame*, C-46/93 and C-48/93, EU:C:1996:79, paragraph 31; and *Transportes Urbanos y Servicios Generales*, C-118/08, EU:C:2010:39, paragraph 29).

99 In that connection, the Court has held that the individuals harmed have a right to reparation where three conditions are met: the rule of EU law infringed must be intended to confer rights on them; the breach of that rule must be sufficiently serious; and there must be a direct causal link between the breach and the loss or damage sustained by the individuals (see, to that effect, *Transportes Urbanos y Servicios Generales*, EU:C:2010:39, paragraph 30).

100 In principle, it is for the national courts to apply the conditions for establishing the liability of Member States for damage caused to individuals by infringements of EU law, in accordance with the guidelines laid down by the Court for the application of those conditions (see *Test Claimants in the FII Group Litigation*, C-446/04, EU:C:2006:774, paragraph 210 and the case-law cited).

101 As regards the first condition, suffice it to note that Article 2(1) of Directive 2000/78, read in conjunction with Article 1 of that directive, prohibits, in a general and unambiguous manner, all direct or indirect discrimination, as regards employment and occupation, that is not objectively justified and that is based, inter alia, on the worker's age. Those provisions are intended to confer on individuals rights that are enforceable against Member States.

102 As regards the second condition, the Court has made it clear that a sufficiently serious infringement of EU law is established where it implies that the Member State had a manifest and grave disregard for the limits set on its discretion, the factors to be taken into consideration in that connection being, inter alia, the degree of clarity and precision of the rule infringed and the measure of discretion that the rule leaves to the national authorities (*Synthon*, C-452/06, EU:C:2008:565, paragraph 37 and the case-law cited). The discretion enjoyed by the Member State thus constitutes an important criterion in determining whether there has been a sufficiently serious infringement of EU law (*Robins and Others*, C-278/05, EU:C:2007:56, paragraph 72).

103 In order to determine whether an infringement of Article 2 of Directive 2000/78 on the part of the Member State concerned was sufficiently serious in the cases before it, the national court must take into account the fact that the first subparagraph of Article 6(1) of that directive allows Member States freedom to make provision for measures that involve differences in treatment directly based on age, and broad discretion in their choice, not only to pursue a particular aim in the field of social and employment policy, but also in the definition of measures capable of achieving it.

104 It should be noted that the nature and extent of the obligation on Member States under Articles 2(2) and 6(1) of Directive 2000/78 in respect of national legislation such as the old version of the BbesG have been clarified and defined from the date on which the judgment in *Hennigs and Mai* (EU:C:2011:560) was delivered.

105 In that regard, it must be recalled that, although the interpretation that the Court gives to a rule of EU law, in the context of a request for a preliminary ruling, clarifies and defines, where necessary, the meaning and implications of that rule as it must be, or ought to have been, understood and applied from the time of its entry into force (see, to that effect, inter alia, *RWE Vertrieb*, C-92/11, EU:C:2013:180, paragraph 58), it is up to the national court to decide whether, nevertheless, the nature and extent of the obligations on Member States under Article 2(2) of Directive 2000/78 in respect of legislation such as that at issue in the main proceedings could not be considered to be clear and precise until the date of the judgment in *Hennigs and Mai* EU:C:2011:560, that is to say, not until 8 September 2011 (see, by analogy, *Hogan and Others*, C-398/11, EU:C:2013:272, paragraphs 51 and 52). In some circumstances, it would have to be held that there was no sufficiently serious infringement before that date.

106 As regards the third condition for State liability for an infringement of EU law, it is for the referring court to establish whether — as the documents before the Court appear to suggest — there is a direct causal link between that infringement and the damage that the applicants in the main proceedings may have suffered.

107 Accordingly, it is for the referring court to ascertain whether all the conditions, laid down by the case-law of the Court, are met for the Federal Republic of Germany to have incurred liability under EU law.

108 In the light of the foregoing, the answer to Question 4 is as follows:

— in circumstances such as those of the cases before the referring court, EU law — and, in particular, Article 17 of Directive 2000/78 — does not require civil servants who have been discriminated against to be retrospectively granted an amount equal to the difference between the pay actually received and that corresponding to the highest step in their grade;

— it is for the referring court to ascertain whether all the conditions, laid down by the case-law of the Court, are met for the Federal Republic of Germany to have incurred liability under EU law.

Question 8

109 In view of the answer to Questions 6 and 7, it is unnecessary to reply to Question 8.

Question 5

110 By its fifth question, the referring court asks, in essence, whether EU law precludes a national rule, like the rule at issue in the main proceedings, which requires the civil servant to take steps, within relatively narrow time-limits — that is to say, before the end of the financial year then in course — to assert a claim to financial payments that do not arise directly from the law.

111 As noted by the Advocate General in point 111 of his Opinion, Article 9 of Directive 2000/78 provides that Member States are to ensure that judicial and/or administrative procedures for the enforcement of obligations under the directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them and that those obligations of the Member States are without prejudice to national rules relating to time-limits for bringing actions as regards that principle. It follows from the wording of that provision that the question of time-limits for initiating a procedure for the enforcement of obligations under Directive 2000/78 is not governed by EU law.

112 It must be borne in mind that, according to settled case-law of the court, in the absence of relevant EU rules, the detailed procedural rules designed to ensure the protection of the rights that individuals acquire under EU law are a matter for the domestic legal order of each Member State, in accordance with the principle of the procedural autonomy of the Member States, provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not make it in practice impossible or excessively difficult to exercise rights conferred by the EU legal order (principle of effectiveness) (see, inter alia, *Meilicke and Others*, C-262/09, EU:C:2011:438, paragraph 55, and *Pelati*, C-603/10, EU:C:2012:639, paragraph 23).

113 As regards the principle of equivalence, it should be noted that, as regards the cases before the referring court, there is nothing in the information before the Court to suggest that a rule such as that at issue in those cases may not be consistent with that principle.

114 As regards the principle of effectiveness, the Court has held that it is compatible with EU law to lay down reasonable time-limits for bringing proceedings, in the interests of legal certainty, which protects both the taxpayer and the administration concerned. Such time-limits do not make it in practice impossible or excessively difficult to exercise the rights conferred by EU law (*Meilicke and Others*, EU:C:2011:438, paragraph 56 and the case-law cited).

115 It follows from the foregoing that the answer to Question 5 is that EU law does not preclude a national rule, like the rule at issue in the main proceedings, which requires the civil servant to take steps, within relatively narrow time-limits — that is to say, before the end of the financial year then in course — to assert a claim to financial payments that do not arise directly from the law, where that rule does not conflict with the principle of equivalence or the principle of effectiveness. It is for the referring court to determine whether those conditions are satisfied in the main proceedings.

Costs

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

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

1. **Article 3(1)(c) 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 meaning that pay conditions for civil servants fall within the scope of that directive.**

2. **Articles 2 and 6(1) of Directive 2000/78 must be interpreted as precluding a national measure, such as that at issue in the main proceedings, under which, within each service grade, the step determining basic pay is to be allocated, at the time of recruitment, on the basis of the civil servant's age.**

3. **Articles 2 and 6(1) of Directive 2000/78 must be interpreted as not precluding domestic legislation, such as that at issue in the main proceedings, laying down the detailed rules governing the reclassification within a new remuneration system of civil servants who were established before that legislation entered into force, under which the pay step that they are now allocated is to be determined solely on the basis of the amount received by way of basic pay under the old system, notwithstanding the fact that that amount depended on discrimination based on the civil servant's age, and advancement to the next step is now to depend exclusively on the experience acquired after that legislation entered into force.**

4. **In circumstances such as those of the cases before the referring court, EU law — and, in particular, Article 17 of Directive 2000/78 — does not require civil servants who have been discriminated against to be retrospectively granted an amount equal to the difference between the pay actually received and that corresponding to the highest step in their grade;**

   It is for the referring court to ascertain whether all the conditions, laid down by the case-law of the Court of Justice of the European Union, are met for the Federal Republic of Germany to have incurred liability under EU law.

5. **EU law does not preclude a national rule, like the rule at issue in the main proceedings, which requires the civil servant to take steps, within relatively narrow time-limits — that is to say, before the end of the financial year then in course — to assert a claim to financial**

payments that do not arise directly from the law, where that rule does not conflict with the principle of equivalence or the principle of effectiveness. It is for the referring court to determine whether those conditions are satisfied in the main proceedings.

[Signatures]