JUDGMENT OF THE COURT (Second Chamber)

10 June 2010 *

In Joined Cases C-395/08 and C-396/08,

REFERENCES for preliminary rulings under Article 234 EC from the Corte d'appello di Roma (Italy), made by decisions of 11 April 2008, received at the Court on 12 September 2008, in the proceedings

Istituto nazionale della previdenza sociale (INPS)

v

Tiziana Bruno,

Massimo Pettini (C-395/08)**,**

and

Istituto nazionale della previdenza sociale (INPS)

* Language of the case: Italian.

v

Daniela Lotti,

Clara Matteucci (C-396/08)**,**

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, P. Lindh (Rapporteur), A. Rosas, A. Ó Caoimh and A. Arabadjiev, Judges,

Advocate General: E. Sharpston,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 29 October 2009,

after considering the observations submitted on behalf of:

— the Istituto nazionale della previdenza sociale (INPS), by A. Sgroi, avvocato,

— Mrs Bruno, Mr Pettini, Mrs Lotti and Mrs Matteucci, by R. Carlino, avvocato,

— the Italian Government, by I. Bruni, acting as Agent, and M. Russo, avvocato dello Stato,

— the Commission of the European Communities, by C. Cattabriga and M. van Beek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 January 2010,

gives the following

Judgment

1 These references for a preliminary ruling relate to the interpretation of 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).

2 The references were made in proceedings between the Istituto nazionale della previdenza sociale (National institution for social welfare) ('the INPS') and, first, Ms Bruno and Mr Pettini and, second, Ms Lotti and Ms Matteucci, concerning the determination of the period of service acquired for the purpose of calculating retirement pension rights.

Legal background

European Union law

3 Article 1 of Directive 97/81 states that the purpose of the directive is to implement the Framework Agreement on part-time work concluded on 6 June 1997 between the general cross-industry organisations, namely the Union of Industrial and Employers' Confederations (UNICE), the European Centre of Enterprises with Public Participation (CEEP) and the European Trades Union Confederation (ETUC), annexed to the directive ('the Framework Agreement').

4 Recital 3 in the preamble to Directive 97/81 is worded as follows:

'[w]hereas point 7 of the Community Charter of the Fundamental Social Rights of Workers provides, inter alia, that "the completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community. This process must result from an approximation of these conditions while the improvement is being maintained, as regards in particular … forms of employment other than open-ended contracts, such as fixed-term contracts, part-time working, temporary work and seasonal work"'.

5 Recital 5 in the preamble to Directive 97/81 provides as follows:

'[w]hereas the conclusions of the Essen European Council stressed the need to take measures to promote employment and equal opportunities for women and men, and called for measures with a view to increasing the employment-intensiveness of growth, in particular by a more flexible organisation of work in a way which fulfils both the wishes of employees and the requirements of competition'.

6 Recital 23 in the preamble to Directive 97/81 is worded as follows:

'[w]hereas the Community Charter of the Fundamental Social Rights of Workers recognizes the importance of the fight against all forms of discrimination, especially based on sex, colour, race, opinion and creed'.

7 The first two paragraphs of the preamble to the Framework Agreement provide as follows:

'This Framework Agreement is a contribution to the overall European strategy on employment. Part-time work has had an important impact on employment in recent years. For this reason, the parties to this agreement have given priority attention to this form of work. It is the intention of the parties to consider the need for similar agreements relating to other forms of flexible work.

Recognising the diversity of situations in Member States and acknowledging that part-time work is a feature of employment in certain sectors and activities, this Agreement sets out the general principles and minimum requirements relating to part-time work. It illustrates the willingness of the social partners to establish a general framework for the elimination of discrimination against part-time workers and to assist the development of opportunities for part-time working on a basis acceptable to employers and workers.'

8 The provisions of the Framework Agreement which are relevant to the disputes in the main proceedings are the following:

'General considerations

…

5. Whereas the parties to this agreement attach importance to measures which would facilitate access to part-time work for men and women in order to prepare for retirement, reconcile professional and family life, and take up education and training opportunities to improve their skills and career opportunities for the mutual benefit of employers and workers and in a manner which would assist the development of enterprises;

…

Clause 1: Purpose:

The purpose of this Framework Agreement is:

(a) to provide for the removal of discrimination against part-time workers and to improve the quality of part-time work;

(b) to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organisation of working time in a manner which takes into account the needs of employers and workers.

…

Clause 3: Definitions

For the purpose of this agreement:

(1) The term "part-time worker" refers to an employee whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year, are less than the normal hours of work of a comparable full-time worker.

(2) The term "comparable full-time worker" means a full-time worker in the same establishment having the same type of employment contract or relationship, who is engaged in the same or a similar work/occupation, due regard being given to other considerations which may include seniority and qualification/skills.

Where there is no comparable full-time worker in the same establishment, the comparison shall be made by reference to the applicable collective agreement or, where there is no applicable collective agreement, in accordance with national law, collective agreements or practice.

Clause 4: Principle of non-discrimination

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

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

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

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

Clause 5: Opportunities for part-time work

1. In the context of Clause 1 of this Agreement and of the principle of non-discrimination between part-time and full-time workers:

   (a) Member States, following consultations with the social partners in accordance with national law or practice, should identify and review obstacles of a legal or administrative nature which may limit the opportunities for part-time work and, where appropriate, eliminate them;

   (b) the social partners, acting within their sphere of competence and through the procedures set out in collective agreements, should identify and review obstacles which may limit opportunities for part-time work and, where appropriate, eliminate them.

...'

National law

Legislative Decree No 61/2000

9 Directive 97/81 was transposed into Italian law by Legislative Decree No 61 of 25 February 2000 implementing Directive 97/81/EC concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (GURI No 66 of 20 March 2000). Article 1 of the Legislative Decree, in the version applicable to the disputes in the main proceedings ('Legislative Decree No 61/2000'), sets out the following definitions:

'(a) "full time" refers to normal working hours as provided for in Article 3(1) of Legislative Decree No 66 of 8 April 2003 or, where appropriate, the shorter normal working hours determined by applicable collective agreements;

(b) "part-time" refers to working hours determined in the individual contract, which the employee must observe and which are shorter than the working hours referred to under point (a);

(c) "horizontal part-time employment relationship" means one in which the reduction in working hours, in comparison to full-time work, is fixed in relation to normal daily working hours;

(d) "vertical part-time employment relationship" means one in which it is stipulated that the work is performed on a full-time basis but limited to predetermined periods in the course of each week, month or year;

(d-bis) "mixed part-time employment relationship" means one which combines both types provided for under points (c) and (d) above;

(e) "supplementary work" means work performed beyond the working hours agreed between the parties within the meaning of the second paragraph of Article 2 and within the limits of full-time work.'

10 Article 9(1) and (4) of Legislative Decree No 61/2000 is worded as follows:

'1. The minimum hourly wage, to be taken into account as the basis for the calculation of social contributions due for part-time workers, is determined by multiplying the number of days worked in a week on normal working hours by the daily minimum provided for by Article 7 of Legislative Decree No 463 of 12 September 1983, converted, with amendments, into Law No 638 of 11 November 1983, and dividing the amount thus obtained by the number of hours worked each week on normal working hours, as provided for by the national sectoral collective agreement for full-time workers.

...

4. For the purpose of calculating the amount of retirement pension if a full-time employment contract is transformed into a part-time employment contract or vice versa, periods of full-time work shall be taken into account in their entirety and periods of part-time work in proportion to the hours actually worked.'

Decree Law No 463 of 12 September 1983

11 Article 7 of Decree Law No 463 of 12 September 1983 laying down urgent measures for social security and health and the control of public expenditure, provisions applicable to various public administration sectors, and extending certain time periods (GURI No 250 of 12 September 1983), as amended by Law No 638 of 11 November 1983, provides as follows:

'1. For each calendar year subsequent to 1983, the number of weekly contributions to be credited to employed workers during the course of the year for the purposes of calculating the retirement pension paid by the INPS shall equal the number of weeks of that year for which a salary was paid or which are recognised as equivalent in accordance with the rules on notional credit, provided that, for each such week, the remuneration paid, due or notionally credited is not less than 30% of the minimum monthly pension paid by the Fund for employed workers' pensions on 1 January of the relevant year. With effect from the payment period covering 1 January 1984, the lower limit for daily remuneration, including the daily minimum mean wage provided for under a collective agreement, for all contributions due with regard to social insurance and social assistance, may not be less than 7.5% of the minimum monthly pension payable by the Fund for employed persons' pensions on 1 January of the relevant year.

2. If that is not the case, a number of weekly contributions shall be credited, equal to the result (rounded upwards) obtained by dividing the total remuneration paid, due or notionally credited during the calendar year by the remuneration mentioned in the previous paragraph. Irrespective of the actual length of the insurance period, contributions determined in this manner shall be attributed to a period comprising the same number of weeks for which remuneration was paid or notionally credited as there are contributions paid, counting back from the last week worked or notionally credited in the year.

3. The provisions in the preceding paragraph shall apply to periods after 31 December 1983 with respect to the right to benefits other than pensions, for which there is a contribution requirement on the part of the INPS.

4. For the year in which the pension takes effect, the number of weekly contributions to be credited to workers for the period between the first day of the year and the date of retirement shall be determined by applying the rules in the preceding paragraph only for the weeks included in the relevant period which were actually worked or which have given rise to a notional credit. The same criterion shall apply to other social and assistance benefits.

5. The provisions set out in paragraphs 1, 2, 3 and 4 of Article 7 shall not apply to workers engaged in domestic work in private households, farm workers, apprentices or to periods of military service or similar. …'

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

12 The defendants in the main proceedings are cabin crew members employed by the airline Alitalia. They work part-time in accordance with what are known as 'vertical-cyclical part-time' arrangements. That system consists in a method of organisation under which the employee works only during certain weeks or certain months of the year, on full or reduced hours. They submit that, due to the nature of work as a cabin crew member, vertical-cyclical part-time arrangements are the only arrangements for part-time work provided for in their collective agreement.

13 Those workers criticise the INPS for taking into account, as qualifying periods of contributions for the purpose of acquiring pension rights, only the periods worked, to the exclusion of periods not worked, corresponding to the reduction in their working hours by reference to the hours worked by comparable full-time workers. They therefore brought proceedings before the Tribunale di Roma challenging the individual statements of the qualifying periods of contributions which the INPS had provided to them. In those actions, the respondents in the main proceedings argued, in essence, that, by disregarding periods not worked, a difference in treatment between 'vertical'

part-time workers and workers who had chosen 'horizontal' part-time working arrangements had effectively been established, since the latter group was in a more advantageous position for an equal period of time worked. That court having granted the applications, the INPS appealed to the Corte d'appello di Roma. In support of its appeals, the INPS submitted, in essence, that the relevant contributions periods for calculating pensions are those during which the respondents in the main proceedings actually worked and for which remuneration and contributions were payable, calculated pro rata temporis.

14 It is on that basis that the Corte d'appello di Roma decided to stay proceedings and to refer the following questions to the Court, which are identical in each case:

'1. Is the Italian State legislation (Article 7(1) of Law No 638 [of 11 November 1983]) which results in periods not worked under "vertical" part-time arrangements not being taken into account as periods of qualifying contributions for the purpose of acquiring pension rights compatible with Directive [97/81], in particular Clause 4 [of the Framework Agreement annexed thereto] concerning the principle of non-discrimination?

2. Are those national provisions compatible with Directive [97/81] and, in particular, Clause 1 [of the Framework Agreement annexed thereto], which provides that national legislation must facilitate the development of part-time work, and Clauses 4 and 5, which provide that the Member States are to eliminate obstacles of a legal or administrative nature which may limit the opportunities for part-time work, since it is unquestionable that the failure to take into account for pension purposes the weeks not worked constitutes a significant disincentive to choosing "vertical" part-time working arrangements?

3. Can Clause 4 [of the Framework Agreement] on the principle of non-discrimination also be extended to various kinds of part-time contracts, in view of the fact that, in the case of "horizontal" part-time work, for an equal number of hours worked and for which remuneration is paid in the calendar year, all the weeks of the calendar year are taken into account under national legislation, whereas they are not in the case of "vertical" part-time work?'

15 By order of the President of the Court of 3 December 2008, Cases C-395/08 and C-396/08 were joined for the purposes of the written and oral procedure and judgment.

The questions referred

Admissibility

16 The INPS takes the view that the references for a preliminary ruling are inadmissible, since the Framework Agreement was not applicable to the facts in the main proceedings either substantively or temporally.

17 The Commission of the European Communities submits that the orders for reference are imprecise as regards both the legal and factual circumstances of the disputes in the main proceedings and therefore entertains some doubt as to whether the references are admissible.

18 First, it should be recalled that, in proceedings under Article 267 TFEU, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of European Union law, the Court is in principle bound to give a ruling (see, inter alia, Case C-119/05 *Lucchini* [2007] ECR I-6199, paragraph 43, and Case C-414/07 *Magoora* [2008] ECR I-10921, paragraph 22).

19 According to settled case-law, questions on the interpretation of European Union law referred by a national court in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling from a national court only where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, to that effect, Joined Cases C-222/05 to C-225/05 *van der Weerd and Others* [2007] ECR I-4233, paragraph 22 and the case-law cited).

20 In the present case, the disputes in the main proceedings concern whether the methods of calculating the period of service required to qualify for retirement pension rights for workers who have opted for a certain type of part-time work, namely vertical-cyclical part-time work, discriminates against such workers. The Corte d'appello di Roma is unsure whether those methods of calculation are compatible with Directive 97/81. In its orders for reference, that court set out the reasons for which it considers that the questions submitted to the Court are relevant and will assist it in resolving the disputes before it. Although those orders do not set out in detail the relevant provisions of the national legislation applicable, they are sufficiently precise to enable the Court to give a useful answer to the questions submitted to it. The question whether Directive 97/81 and the Framework Agreement are applicable to the

main proceedings will be considered at the stage at which the questions referred are analysed substantively.

21 The references for a preliminary ruling must therefore be declared admissible.

Substance

22 By its three questions, the Corte d'appello di Roma asks, in essence, whether Clauses 1, 4 and 5 of the Framework Agreement preclude legislation, such as that at issue in the main proceedings, in so far as it effectively disregards, in respect of vertical-cyclical part-time workers, periods not worked in calculating the period of service required to qualify for retirement pension rights, whereas horizontal part-time workers and those working full time are not subject to such a rule.

23 It is necessary to determine at the outset whether and, if so, to what extent, situations such as those in the main proceedings fall within the scope of Directive 97/81 and the Framework Agreement from both a temporal and substantive viewpoint.

The substantive scope of the Framework Agreement

24 The objective of Directive 97/81 and the Framework Agreement is, first, to promote part-time work and, second, to eliminate discrimination between part-time workers and full-time workers (see Joined Cases C-55/07 and C-56/07 *Michaeler and Others* [2008] ECR I-3135, paragraph 21).

25 In accordance with the objective of eliminating discrimination between part-time workers and full-time workers, Clause 4 of the Framework Agreement provides that, in respect of employment conditions, part-time workers are not to 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.

26 It is therefore necessary to ascertain whether the provisions governing the pension rights of Alitalia cabin crew constitute employment conditions within the meaning of Clause 4 of the Framework Agreement.

27 In adopting Directive 97/81 to implement the Framework Agreement, the Council of the European Union based its decision on the Agreement on social policy concluded between the Member States of the European Community with the exception of the United Kingdom of Great Britain and Northern Ireland (OJ 1992 C 191, p. 91), annexed to Protocol (No 14) on social policy, annexed to the Treaty establishing the European Community ('the agreement on social policy'), in particular Article 4(2)

thereof, which provides that agreements concluded at European Union level are to be implemented in matters covered by Article 2. Those provisions of the agreement on social policy were reproduced in Articles 139(2) EC and 137 EC, respectively.

28 The matters thus covered include, in the second indent of Article 2(1) of the agreement on social policy, 'working conditions', a provision which is reproduced in Article 137(1)(b) EC, as amended by the Treaty of Nice. Clearly, it is not possible on the basis of the wording of that provision of the agreement on social policy or that of Clause 4 of the Framework Agreement alone to determine whether the working conditions or employment conditions, referred to in those two provisions respectively, encompass conditions relating to factors such as the remuneration and pensions at issue in the main proceedings. In order to interpret those provisions, it is therefore necessary, in accordance with settled case-law, to take into consideration the context and the objectives pursued by the rules of which that clause is part (see, by analogy, Case C-268/06 *Impact* [2008] ECR I-2483, paragraph 110).

29 It is apparent from the wording of Clause 1(a) of the Framework Agreement that one of the objectives of the agreement is 'to provide for the removal of discrimination against part-time workers and to improve the quality of part-time work'. Similarly, the second paragraph of the preamble to the Framework Agreement states that the agreement 'illustrates the willingness of the social partners to establish a general framework for the elimination of discrimination against part-time workers and to assist the development of opportunities for part-time working on a basis acceptable to employers and workers'. That objective is also stated in recital 11 in the preamble to Directive 97/81.

30 The Framework Agreement, in particular Clause 4, thus pursues an aim which is in line with fundamental objectives enshrined in Article 1 of the agreement on social policy, which are set out in the first paragraph of Article 136 EC, the third recital in the preamble to the TFEU and paragraph 7 and the first subparagraph of paragraph 10 of the Community Charter of the Fundamental Social Rights of Workers,

adopted at the meeting of the European Council in Strasbourg on 9 December 1989, to which the abovementioned provision of the EC Treaty refers. Those fundamental objectives are associated with the improvement in living and working conditions and with the existence of proper social protection for workers. In particular, they are directed at improving working conditions for part-time workers and ensuring that they are protected from discrimination, as evidenced by recitals 3 and 23 in the preamble to Directive 97/81.

31 Moreover, the first paragraph of Article 136 EC, which defines the objectives with a view to which the Council may, in respect of the matters covered by Article 137 EC, implement, in accordance with Article 139(2) EC, agreements concluded between social partners at European Union level, refers to the European Social Charter signed in Turin on 18 October 1961, which includes at point 4 of Part I the right for all workers to a 'fair remuneration sufficient for a decent standard of living for themselves and their families' among the objectives which the contracting parties have undertaken to achieve, in accordance with Article 20 in Part III of the Charter (*Impact*, paragraph 113).

32 In the light of those objectives, Clause 4 of the Framework Agreement must be interpreted as articulating a principle of European Union social law which cannot be interpreted restrictively (see, by analogy, Case C-307/05 *Del Cerro Alonso* [2007] ECR I-7109, paragraph 38, and *Impact*, paragraph 114).

33 To interpret Clause 4 of the Framework Agreement as excluding from the term 'employment conditions', within the meaning of that clause, financial conditions, such as those relating to remuneration and pensions, would effectively reduce – contrary to the objective attributed to that clause – the scope of the protection against discrimination for the workers concerned by introducing a distinction based on the nature of their employment conditions, which is not in any way implicit in the wording of that clause.

34 Moreover, such an interpretation would deprive the reference in Clause 4(2) of the framework agreement to the principle of pro rata temporis of all useful effect, that principle being intended by definition only to apply to divisible performance, such as that deriving from financial employment conditions linked, for example, to remuneration and pensions (see, by analogy, *Impact*, paragraph 116).

35 According to Article 2(6) of the agreement on social policy, which is reproduced in Article 137(5) EC, as amended by the Treaty of Nice, the provisions of that article 'shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs'. However, as the Court has already held in relation to Article 137(5) EC, since that provision derogates from paragraphs 1 to 4 of that article, the matters reserved by paragraph 5 must be interpreted strictly so as not to affect unduly the scope of paragraphs 1 to 4, nor to call into question the aims pursued by Article 136 EC (see *Del Cerro Alonso*, paragraph 39, and *Impact*, paragraph 122).

36 More particularly, it has already been held that the exception relating to 'pay' set out in Article 137(5) EC is explained by the fact that fixing the level of pay falls within the contractual freedom of the social partners at a national level and within the relevant competence of Member States. In those circumstances, as European Union law stood, it was decided to exclude determination of the level of wages from harmonisation under Article 136 EC et seq. (see *Del Cerro Alonso*, paragraphs 40 and 46, and *Impact*, paragraph 123).

37 That exception must therefore be interpreted 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 – which amount to direct interference by European Union law in the determination of pay within the Union. It cannot, however, be extended to any question involving any sort of link with

pay; otherwise some of the areas referred to in Article 137(1) EC would be deprived of much of their substance (see, by analogy, *Impact*, paragraph 125).

38 It follows that the derogation in Article 2(6) of the agreement on social policy, which is reproduced in Article 137(5) EC, does not preclude an interpretation of Clause 4 of the Framework Agreement to the effect that the Member States are under an obligation to ensure that the principle of non-discrimination is applied to part-time workers also in relation to pay, while at the same time taking account, where appropriate, of the principle of pro rata temporis.

39 While it is true that the establishment of the level of the various constituent parts of the pay of a worker falls outside the competence of the European Union legislature and is unquestionably still a matter for the competent bodies in the various Member States, those bodies must nevertheless exercise their competence consistently with European Union law – particularly Clause 4 of the framework agreement – in the areas in which the European Union does not have competence (see, to that effect, *Impact*, paragraph 129).

40 It follows that, in establishing both the constituent parts of pay and the level of those constituent parts, the competent national bodies must apply to part-time workers the principle of non-discrimination as laid down in Clause 4 of the Framework Agreement.

41 With regard to pensions, it must be noted that, according to the settled case-law of the Court in relation to Article 119 of the EC Treaty, or, with effect from 1 May 1999, in relation to Article 141 EC, which concern the principle of equal treatment of men and women in relation to pay, the term 'pay' within the meaning of Article 141(2) EC

covers pensions which depend on the employment relationship between worker and employer, excluding those deriving from a statutory scheme, to the financing of which workers, employers and possibly the public authorities contribute in a measure determined less by the employment relationship than by considerations of social policy (see, in particular, Case 80/70 *Defrenne* [1971] ECR 445, paragraphs 7 and 8; Case 170/84 *Bilka-Kaufhaus* [1986] ECR 1607, paragraphs 16 to 22; Case C-262/88 *Barber* [1990] ECR I-1889, paragraphs 22 to 28; and Joined Cases C-4/02 and C-5/02 *Schönheit and Becker* [2003] ECR I-12575, paragraphs 56 to 64).

42 Taking that case-law into account, it must be held that the term 'employment conditions' within the meaning of Clause 4(1) of the framework agreement covers pensions which depend on an employment relationship between worker and employer, excluding statutory social security pensions, which are determined less by that relationship than by considerations of social policy (see, by analogy, *Impact*, paragraph 132).

43 That interpretation is supported by the information in the third paragraph of the preamble to the Framework Agreement, according to which the parties to the agreement 'recognis[e] that matters relating to statutory social security are for decision by the Member States' and consider that effect should be given to the Employment Declaration adopted by the European Council in Dublin in December 1996, which emphasised, inter alia, the need to adapt social security systems to new patterns of work in order to provide appropriate social protection to those engaged in such work.

44 That interpretation is also supported by the fact that, as it was concluded by management and labour represented by joint trade bodies, the Framework Agreement is not intended to regulate social security matters or impose obligations on national social security organisations, since they were not party to that agreement (see,

by analogy, Case C-537/07 *Gómez-Limón Sánchez-Camacho* [2009] ECR I-6525, paragraphs 48 to 50).

45 Since Clause 4(1) of the Framework Agreement is applicable to pensions which depend on an employment relationship between worker and employer, excluding statutory social security pensions, it remains to be ascertained whether the pension scheme at issue in the main proceedings falls within one of those categories or the other. In order to do so, it is necessary to apply, by analogy, the criteria identified by case-law so as to determine whether a retirement pension falls within the scope of Article 141 EC.

46 It is appropriate to bear in mind that the only possible decisive criterion is whether the retirement pension is paid to the worker by reason of the employment relationship between him and his former employer, that is to say, the criterion of employment, which is based on the wording of Article 141 EC itself. However, that criterion cannot be regarded as exclusive, since pensions paid under statutory social security schemes may reflect, wholly or in part, pay in respect of work. Such pensions do not constitute 'pay' for the purposes of Article 141 EC (see *Schönheit and Becker*, paragraphs 56 and 57 and the case-law cited).

47 However, considerations of social policy, of State organisation, of ethics, or even the budgetary concerns which influenced or may have influenced the establishment by the national legislature of a scheme cannot prevail if the pension concerns only a particular category of workers, if it is directly related to the period of service completed or if its amount is calculated by reference to the last salary (see *Schönheit and Becker*, paragraph 58 and the case-law cited).

48 In order to determine whether a retirement pension paid under a scheme such as that which is applicable to Alitalia cabin crew falls within the scope of the Framework Agreement, it is therefore necessary to consider whether such a pension satisfies the three conditions set out in paragraph 47. It is for the national court, which alone has jurisdiction to assess the facts in the cases before it and to interpret the national legislation applicable, to determine whether those conditions are met.

49 However, when giving a preliminary ruling, the Court may, where appropriate, provide clarification designed to give the national court guidance in its interpretation (see, inter alia, Case C-238/05 *Asnef-Equifax and Administración del Estado* [2006] ECR I-11125, paragraph 40 and the case-law cited).

50 The fact that the pension scheme for Alitalia cabin crew is administered by a public body such as the INPS, which, moreover, under provisions laid down by law, manages the Italian social security system, is not decisive for the purpose of determining whether that pension scheme forms part of the statutory social security scheme or, on the contrary, is covered by conditions of pay (see, inter alia, to that effect, Case C-267/06 *Maruko* [2008] ECR I-1757, paragraph 57).

51 Similarly, whether the shareholding in Alitalia is public or private is not a decisive factor, since it has already been recognised by case-law that, if the three conditions set out at paragraph 47 above are met, the pension paid by a public employer to an official is in that case entirely comparable to that paid by a private employer to his former employees (see *Schönheit and Becker*, paragraph 58).

The temporal scope of the Framework Agreement

52 The INPS submits, in essence, that the Framework Agreement may be applied only to periods of employment after the entry into force of the national measure implementing Directive 97/81, namely Legislative Decree No 61/2000. As regards Ms Bruno, Ms Lotti and Ms Matteucci, the calculation of the period of service required to qualify for a retirement pension relates, wholly or in part, to periods before the expiry of the deadline for transposing Directive 97/81, which do not therefore fall within the scope of the Framework Agreement.

53 According to settled case-law, new rules apply, unless otherwise specifically provided, immediately to the future effects of a situation which arose under the old rule (see, to that effect, inter alia, Case 68/69 *Brock* [1970] ECR 171, paragraph 7; Case 270/84 *Licata* v *ESC* [1986] ECR 2305, paragraph 31; Case C-290/00 *Duchon* [2002] ECR I-3567, paragraph 21; Case C-334/07 P *Commission* v *Freistaat Sachsen* [2008] ECR I-9465, paragraph 43; and Case C-443/07 P *Centeno Mediavilla and Others* v *Commission* [2008] ECR I-10945, paragraph 61).

54 As the Advocate General pointed out at point 39 of her Opinion, neither Directive 97/81 nor the Framework Agreement derogates from the general principle referred to in the preceding paragraph.

55 Accordingly, the calculation of the period of service required to qualify for a retirement pension such as the pensions at issue in the main proceedings is governed by Directive 97/81, including periods of employment before the directive entered into force.

– Question 1

56 By its first question, the Corte d'appello di Roma asks, in essence, whether Clause 4 of the Framework Agreement concerning the principle of non-discrimination is to be interpreted as precluding the legislation of a Member State, such as that at issue in the main proceedings, where the effect of that legislation, as regards vertical-cyclical part-time working arrangements, is to disregard periods not worked in calculating the period of service required to qualify for a retirement pension.

57 Clause 4(1) of the Framework Agreement provides, with regard to employment conditions, that part-time workers are not to 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.

58 The prohibition on discrimination laid down in that provision is simply a specific expression of one of the fundamental principles of European Union law, namely the general principle of equality (see Case C-313/02 *Wippel* [2004] ECR I-9483, paragraphs 54 and 56).

59 It is therefore necessary to consider whether the fact that periods not worked by vertical-cyclical part-time workers are disregarded in calculating the period of service required to qualify for a retirement pension solely because they work part time results in them being treated in a less favourable manner than full-time workers in a comparable position.

60 In that connection, Clause 3 of the Framework Agreement provides guidelines for determining what is a 'comparable full-time worker'. Such a person is defined in the first paragraph of Clause 3(2) as 'a full-time worker in the same establishment having the same type of employment contract or relationship, who is engaged in the same or a similar work/occupation, due regard being given to other considerations which may include seniority and qualification/skills'. The second paragraph of Clause 3(2) provides that, where there is no comparable full-time worker in the same establishment, 'the comparison shall be made by reference to the applicable collective agreement or, where there is no applicable collective agreement, in accordance with national law, collective agreements or practice'.

61 For a full-time worker, the period taken into account in calculating the qualifying period of service is the same as that of the employment relationship. By contrast, for vertical-cyclical part-time workers, the period of service is not calculated on the same basis, since it is calculated only by reference to the duration of the periods actually worked, taking account of the reduction in working hours.

62 Accordingly, for a period of employment covering 12 consecutive months, a full-time worker will be credited with one year's service for the purpose of determining the date on which he will be entitled to a pension. By contrast, a worker in a comparable situation who has opted, in accordance with vertical-cyclical part-time working arrangements, for a 25% reduction in working hours will be credited, for the same period, with a period of service amounting to only 75% of that credited to his colleague who works full time, solely because he works part time. It follows that, even though their employment contracts are in effect of equivalent duration, the part-time worker will be credited with qualifying periods of service for a pension at a slower rate than the full-time worker. That therefore amounts to a difference in treatment based solely on the fact of part-time work.

63 Both the INPS and the Italian Government submit, essentially, that that difference in treatment does not constitute unequal treatment, since full-time workers and vertical-cyclical part-time workers are not in comparable situations. They thus argue that the workers in each of those categories are simply credited with notional periods of service corresponding to the periods actually worked. Accordingly, they point out that employers pay social contributions only in respect of periods worked and that, as regards periods not worked, under Italian law all part-time workers have the right to purchase pension credits on a voluntary basis.

64 However, the principle of non-discrimination as between part-time and full-time workers applies to employment conditions, which cover remuneration, a concept which, as was pointed out at paragraphs 42 to 46 above, also includes pensions, excluding those forming part of the social security scheme. Consequently, the remuneration of part-time workers must be equivalent to that of full-time workers, subject to the application of the principle of pro rata temporis, as provided for in Clause 4(2) of the Framework Agreement.

65 Accordingly, the calculation of the amount of the pension is directly dependent on the amount of time worked by the employee and the corresponding amount of contributions, in accordance with the principle of pro rata temporis. It must be borne in mind, in that regard, that the Court has already held that European Union law does not preclude a retirement pension being calculated pro rata temporis in the case of part-time employment. Taking into account the amount of time actually worked by a part-time worker during his career, as compared with the amount of time actually worked by a person who has worked on a full-time basis throughout his career, is an objective criterion, allowing his pension entitlement to be reduced proportionately (see, to that effect, *Schönheit and Becker*, paragraphs 90 and 91, and *Gómez-Limón Sánchez-Camacho*, paragraph 59).

66 On the other hand, the principle of pro rata temporis is not applicable for the purpose of determining the date required to acquire pensions rights, since that depends solely on the worker's length of service. The length of service is, in fact, the actual duration of the employment relationship and not the amount of time worked during that period. In accordance with the principle of non-discrimination as between full-time and part-time workers, therefore, the length of the period of service taken into account for the purpose of determining the date on which a worker becomes entitled to a pension should be calculated for a part-time worker as if he had held a full-time post, periods not worked being taken into account in their entirety.

67 The difference in treatment established at paragraphs 61 and 62 above is further accentuated by the fact that it is apparent from the proceedings before the Court that vertical-cyclical part-time work is the sole form of part-time work available to Alitalia cabin crew under the collective agreement applicable to them.

68 It follows that legislation such as that at issue in the main proceedings treats vertical-cyclical part-time workers in a less favourable manner than comparable full-time workers solely because they work part time.

69 However, Clause 4(1) of the Framework Agreement provides that such a difference in treatment may be regarded as consistent with the principle of non-discrimination if it is justified on objective grounds.

70 Invited to explain the reasons which might justify such a difference in treatment, the INPS and the Italian Government stated at the hearing that, under Italian law, a vertical-cyclical part-time contract is deemed to be suspended during periods not worked, and no remuneration or contributions are paid during such periods.

71 It should be pointed out, first, that that justification is, prima facie, difficult to reconcile with the fact that the documents submitted to the Court and the proceedings before the Court have shown that, as regards public sector workers, Italian legislation expressly provides in Article 8 of Law No 554 of 29 December 1988 on public employment (GURI No 1 of 2 January 1989) that 'in order to qualify for a pension from the administration concerned …, the total number of years of service spent working reduced hours must be taken into account'. That difference in the applicable rules leaves open to doubt the validity of the justification put forward by the INPS and the Italian Government.

72 Second, under Clause 3 of the Framework Agreement, a part-time worker is characterised by the simple fact that his normal hours of work are less than the normal hours of work of a comparable full-time worker. Accordingly, part-time work constitutes a particular mode of performing the employment contract, characterised by the simple fact that the normal hours of work are reduced. However, that characteristic cannot be treated in the same manner as it is in situations in which the performance of an employment contract, be it full- or part-time, is suspended on account of an impediment or temporary interruption attributable to the worker, the undertaking or some external cause. Periods not worked, which correspond to the reduction in working hours stipulated in a part-time contract, are the outcome of the normal performance of the contract and not its suspension. Part-time work does not involve a break in service (see, by analogy with job-sharing, Case C-243/95 *Hill and Stapleton* [1988] ECR I-3739, paragraph 32).

73 Consequently, even though the arguments put forward by the INPS and the Italian Government may be understood to mean that the difference in treatment at issue in the main proceedings is justified by the fact that periods corresponding to the reduction in working hours under a part-time employment contract have the effect of suspending performance of the contract, such an argument is at variance with the definition of part-time in Clause 3 of the Framework Agreement and effectively deprives of any effectiveness the principle set out in Clause 4(1) of the Framework Agreement that, as regards employment conditions, part-time workers must not be treated in a less favourable manner than comparable full-time workers solely because they work part time.

74 Even if those arguments were to be understood as intended to demonstrate that the difference in treatment between vertical-cyclical part-time workers and full-time workers is justified on grounds deriving from national law, it should be borne in mind that it is for the referring court, to the full extent of its discretion under national law, to interpret and apply national law in conformity with the requirements of European Union law and, where such an interpretation is not possible, to disapply any provision of domestic law that would be contrary to those requirements (see Case C-357/06 *Frigerio Luigi & C.* [2007] ECR I-12311, paragraph 28).

75 It follows from all the above considerations that the answer to the first question is that, with regard to retirement pensions, Clause 4 of the Framework Agreement must be interpreted as precluding national legislation which, for vertical-cyclical part-time workers, disregards periods not worked in calculating the period of service required to qualify for such a pension, unless such a difference in treatment is justified on objective grounds.

– Question 2

76 By its second question, the Corte d'appello di Roma asks, in essence, whether Clauses 1 and 5(1) of the Framework Agreement must be interpreted as precluding national legislation such as that at issue in the main proceedings in so far as it constitutes for workers a significant disincentive to choosing vertical-cyclical part-time working arrangements.

77 It is apparent from Clause 1 of the Framework Agreement in particular that the agreement pursues a twofold objective, namely, first, to promote part-time work by improving the quality of such work and, second, to eliminate discrimination between part-time workers and full-time workers (see *Michaeler and Others*, paragraph 22).

78 In accordance with that twofold purpose, Clause 5(1)(a) of the Framework Agreement imposes an obligation on Member States to 'identify and review obstacles of a legal or administrative nature which may limit the opportunities for part-time work and, where appropriate, eliminate them'.

79 By disregarding periods not worked in calculating the period of service required to qualify for a pension, the legislation at issue in the main proceedings, in so far as it concerns retirement pensions which depend on the employment relationship, excluding those deriving from a statutory social security scheme, introduces a difference in treatment as between vertical-cyclical part-time workers and full-time workers and thus infringes the principle of non-discrimination laid down in Clause 4 of the Framework Agreement. Moreover, as was pointed out at paragraph 67 above, that difference in treatment is accentuated by the fact that vertical-cyclical part-time work is the sole form of part-time work offered to Alitalia cabin crew.

80 Those factors, taken together, tend to make part-time work less attractive for that category of workers; in other words, they are discouraged from pursuing their occupational activity on such a basis, since the effect of such a choice is to postpone the date on which they acquire the right to a pension by a proportion that is equal to the proportion by which their working hours are reduced by comparison with those of comparable full-time workers. Such effects clearly run counter to the objective of the Framework Agreement, which is to facilitate the development of part-time work.

81 The answer to the second question is, therefore, that if the referring court reached the conclusion that the national legislation at issue in the main proceedings is incompatible with Clause 4 of the Framework Agreement, Clauses 1 and 5(1) of the agreement would have to be interpreted as also precluding such legislation.

– Question 3

82 By its third question, the Corte d'appello di Roma asks, in essence, whether Clause 4 of the Framework Agreement on the principle of non-discrimination must be interpreted as prohibiting, in addition to discrimination between part-time workers and comparable full-time workers, discrimination between different forms of part-time work, such as vertical-cyclical part-time work and horizontal part-time work.

83 In view of the answers given to the two preceding question, there is no need to answer this question.

Costs

84 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. **With regard to retirement pensions, Clause 4 of the Framework Agreement on part-time work annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC must be interpreted as precluding national legislation which, for vertical-cyclical part-time workers, disregards periods not worked in calculating the period of service required to qualify for such a pension, unless such a difference in treatment is justified on objective grounds.**

2. **If the referring court reached the conclusion that the national legislation at issue in the main proceedings is incompatible with Clause 4 of the Framework Agreement, Clauses 1 and 5(1) of the agreement would have to be interpreted as also precluding such legislation.**

[Signatures]