Provisional text

JUDGMENT OF THE COURT (First Chamber)

19 October 2023 (*)

(Reference for a preliminary ruling – Social policy – Part-time work – Directive 97/81/EC – Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC – Clause 4.1 – Principle of non-discrimination of part-time workers – Principle pro rata temporis – Pilots – Remuneration for additional flying duty hours – Identical trigger thresholds for full-time and part-time pilots – Difference in treatment)

In Case C-660/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesarbeitsgericht (Federal Labour Court, Germany), made by decision of 11 November 2020, received at the Court on 4 December 2020, in the proceedings

MK

v

Lufthansa CityLine GmbH,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, T. von Danwitz, P.G. Xuereb, A. Kumin (Rapporteur) and I. Ziemele, Judges,

Advocate General: N. Emiliou,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 21 September 2022,

after considering the observations submitted on behalf of:

– MK, by M. Mensching, Rechtsanwalt,

– Lufthansa CityLine GmbH, by C. Schalast, Rechtsanwalt,

– the German Government, by J. Möller, S. Heimerl and P.-L. Krüger, acting as Agents,

– the Danish Government, by J.F. Kronborg, acting as Agent,

– the Polish Government, by J. Lachowicz and A. Siwek-Ślusarek, acting as Agents,

– the Norwegian Government, by I. Thue and T. Hostvedt Aarthun, acting as Agents,

– the European Commission, by T.S. Bohr and D. Recchia, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 1 December 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Clauses 4.1 and 4.2 of the Framework Agreement on part-time work, concluded on 6 June 1997 (‘the Framework Agreement’), which is 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 (OJ 1998 L 14, p. 9).

2 The request has been made in proceedings between MK, a pilot, and his employer, Lufthansa CityLine GmbH (‘CLH’), an air carrier that operates short-haul and long-haul flights, concerning MK’s right to payment of remuneration for additional flying duty hours.

Legal context

European Union law

3 Clause 2.1 of the Framework Agreement, entitled 'Scope', provides:

'This Agreement applies to part-time workers who have an employment contract or employment relationship as defined by the law, collective agreement or practice in force in each Member State.'

4 Clause 3 of the Framework Agreement, entitled 'Definitions', provides:

'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.'

5 Clause 4 of that Framework Agreement, entitled 'Principle of non-discrimination', provides in paragraphs 1 to 3:

'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.'

German law

The TzBfG

6 Directive 97/81 was transposed into German law by the Gesetz über Teilzeitarbeit und befristete Arbeitsverträge (Teilzeit- und Befristungsgesetz) (Law on part-time work and fixed-term employment contracts) of 21 December 2000 (BGBl. 2000 I, p. 1966).

7 According to the third sentence of Paragraph 2(1) of the Law on part-time work and fixed-term employment contracts, in the version applicable to the dispute in the main proceedings ('the TzBfG'), a 'comparable full-time worker' within the meaning of that provision is defined as 'a full-time worker in the establishment concerned having the same type of employment relationship and the same or a similar activity' as a part-time worker in that establishment.

8 According to Paragraph 4(1) of the TzBfG:

‘A part-time worker shall not be treated in a less favourable manner than a comparable full-time worker on account of working on a part-time basis, unless different treatment is justified on objective grounds. The part-time worker shall receive remuneration or another *pro rata* benefit, the extent of which shall at least correspond to the proportion of his or her work as compared with that of a comparable full-time worker.’

9 Paragraph 22(1) of the TzBfG provides that the abovementioned provisions of that law, inter alia, may not be derogated from to the detriment of the worker concerned.

The applicable collective agreements

10 The collective agreements applicable to the employment relationship in question (‘the applicable collective agreements’) are as follows:

– *General Collective Agreement No 4*

11 Paragraphs 6 to 8 of General Collective Agreement No 4 concerning members of the CLH cockpit crew stipulate that:

‘Paragraph 6 Working hours

(1) “Working hours” means the time during which members of staff provide a service under the instructions of CLH. Working hours shall include:

(a) flight duty period (Paragraph 8),

(b) administrative tasks,

(c) the time dedicated to onboarding new colleagues, training and retraining,

(d) invoicing of in-flight sales,

(e) medical examinations and vaccinations in line with aviation medicine,

(f) standby duty outside flight duty periods,

(g) passenger assistance (such as children or sick people),

(h) business travel outside flight duty periods,

(i) operations carried out after boarding has been completed and time spent on the ground during stopovers,

(j) necessary activities for the purpose of Paragraph 37 of the Betriebsverfassungsgesetz (Law on industrial relations) of 15 January 1972 (BGBl. 1972 I, p. 13) (in so far as that paragraph applies to CLH cockpit crew) to the extent required.

…

(2)

(a) The daily working hours (excluding breaks) that may be required of a member of staff may not exceed 14 hours on short-haul flights, unless agreed to by the member of staff concerned. Standby duties shall be valued at 50% in that regard, in so far as they do not have to be carried out in an airport; transport times after the end of flight duty to reach the official domicile shall not be taken into account.

(b) When a member of staff is tasked with ground service for more than two consecutive days, the standard working time shall be set on the basis of 38.5 hours of work per week. Any additional work shall be compensated by additional free time until the end of the following month.

(3) Members of staff shall work on the basis of duty rosters. These shall generally cover periods of four weeks and must be published well in advance. …

(4) When establishing the schedules and assignments of staff members, the provisions of applicable collective agreements must be complied with and, within the scope of what is reasonably possible at company level, a uniform workload must be ensured for all members of staff at their respective place of employment, both among staff members in their respective occupational groups (flight crew and ground crew) and with regard to the CLH schedule and the circumstances specific to each particular case beyond a 12-month period.

…

Paragraph 7 Flight time

(1) Flight time, within the meaning of the present general collective agreement, covers the entire period from the moment when an aircraft begins to move under its own power or by external means in preparation for take-off until the moment when it comes to a standstill at the end of the flight (block time).

(2) The overall flight time (= block time) of each member of staff may not exceed 1 000 hours per calendar year.

Paragraph 8 Flight duty period

(1) Paid flight duty periods shall include:

(a) the periods of preparatory tasks from the required entry into flight duty until the start of block time, as defined in the operational manual (OM) or, temporarily, on individual instructions,

(b) block time,

(c) the periods of closing tasks following the end of block time, as defined in the OM or, temporarily, on individual instructions, for a duration of at least 15 minutes, on long-haul flights of at least 30 minutes,

(d) the time spent on instruction in the flight simulator, including the periods referred to in subparagraphs (a) and (c), and

(e) all other periods between the preparatory tasks referred to in subparagraph (a) and the closing tasks referred to in subparagraph (c),

(f) periods of operation within a response chain shall be valued at 50%. The periods between the end of the operation concerned and the start of the duty or between the end of the duty and the start of the operation shall be excluded. In that regard, a single non-working day does not constitute an interruption in the response chain.

(2) …

(3) (a) The uninterrupted flight duty period of a member of staff between two rest periods shall amount to 10 hours. Over a period of seven consecutive days, four successive extensions of the flight duty period referred to in the first sentence for a duration of up to two hours each or two successive extensions for a duration of up to four hours each shall be permitted. In no case shall the added number of extensions during a period of seven consecutive days exceed eight hours.

(b) The seven-day periods shall each start at 00.00 UTC on the first day and end at 24.00 UTC on the last day.

(4) …

(5) Flight duty periods may not exceed 210 hours, in a period of 30 consecutive days, and 1 800 hours, in a calendar year.'

– *Collective Agreement No 6*

12 Collective Agreement No 6 regarding remuneration for members of the CLH cockpit crew, provides, in Paragraph 4:

'Remuneration for additional flying duty hours

(1) From the 106th monthly flying duty hour (in accordance with Paragraph 8(1) of the General Collective Agreement concerning members of the cockpit crew No 1 ("MTV cockpit No 1")), remuneration shall be paid for additional flying duty hours in the amount of 1/100 of the individual total monthly salary (in accordance with Paragraph 3) per flying duty hour.

(2) From the 121st monthly flying duty hour (in accordance with Paragraph 8(1) of MTV cockpit No 1), remuneration shall be paid for additional flying duty hours in the amount of 1/85 of the individual total monthly salary (in accordance with Paragraph 3) per flying duty hour.

(3) From the 136th monthly flying duty hour (in accordance with Paragraph 8(1) of MTV cockpit No 1), remuneration shall be paid for additional flying duty hours in the amount of 1/73 of the individual total monthly salary (in accordance with Paragraph 3) per flying duty hour.

(4) …

(5) The calculation of the right to remuneration for additional flying duty hours, referred to in subparagraphs 1 to 3, shall include, for each full calendar day which is not worked in a month due to leave or training required by CLH, 3.5 additional flying duty hours in favour of the member of staff, but not to exceed 98 flying duty hours per month.'

– *The ‘Jump’ guidance document*

13 Another collective agreement, concluded between the social partners on 29 November 2014 and entitled ‘“Jump” Guidance Document’ (‘*Eckpunktepapier “Jump”*’), provides in subpoint 6 of point III:

‘Remuneration for additional flying duty hours

For the remuneration of additional flying duty hours in the context of intercontinental flights on Airbus A 340 aircraft as part of the “Jump” project, the trigger thresholds are set as follows:

First level: 93 hours

Second level: 106 hours

Third level: 120 hours

The allowance referred to in Paragraph 4(5) of Collective Agreement No 6 shall amount to 3.1 flying duty hours for each full calendar day, without, however, exceeding 87 flying duty hours per month.’

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

14 The applicant in the main proceedings has been employed by CLH since 2001 as a pilot and first co-pilot. The applicant has been working part time since 2010, his working hours reduced to 90% of full-time working hours in accordance with a company-wide agreement concluded between CLH and its works council. His basic remuneration, including service increments, is reduced by 10% and the applicant in the main proceedings receives an additional 37 days of leave per year. However, there is no reduction in the number of his flying duty hours during his workdays.

15 In accordance with the applicable collective agreements, one component of the working time that is remunerated by means of the basic remuneration is the flight duty period. A worker receives remuneration for additional flying duty hours on top of the basic remuneration (‘additional remuneration’) when he or she has worked a certain number of flying duty hours in a month and has thereby exceeded the trigger thresholds for additional remuneration. For that purpose, the provisions of the collective agreements establish ‘three hourly rates, incrementally increasing in amount’, which are higher than the hourly rate determined on the basis of the basic remuneration.

16 More specifically, those three hourly rates are applicable for the calculation of remuneration, with regard to short-haul flights, when the worker concerned has carried out, respectively, 106, 121 and 136 flying duty hours per month (‘the trigger thresholds’). Lower trigger thresholds of 93, 106 and 120 flying duty hours per month apply to long-haul flights.

17 However, the applicable collective agreements make no provision, in the case of part-time workers, for those trigger thresholds to be reduced according to their part-time percentage, those trigger thresholds therefore being identical for full-time and part-time pilots.

18 With regard to the applicant in the main proceedings, in order to be able to determine the additional remuneration, CLH calculates an individual trigger threshold which takes into account the person’s part-time work. For flying duty hours which the applicant in the main proceedings works in excess of his individual trigger threshold, he receives the hourly pay determined on the

basis of the basic remuneration. It is only when his flight duty period exceeds the trigger thresholds applicable to full-time workers that he receives the additional remuneration.

19 The applicant in the main proceedings considers that he is entitled to additional remuneration since he would exceed the trigger thresholds if those were reduced according to his part-time percentage and seeks payment from CLH of the difference between the remuneration already paid and the increased remuneration as a result of the reduced trigger thresholds for the additional flight duty periods he has completed. More specifically, he requests the payment of that difference in remuneration for the months from December 2014 to November 2018. In that respect, he submits that he is treated in a manner less favourable than a full-time worker, that there is a failure to observe the principle *pro rata temporis* and that there are no objective grounds justifying that difference in treatment. In addition, in his view, the aim of the social partners in providing for additional remuneration was not to compensate for a particular workload, but merely to protect workers' free time.

20 CLH disputes the claim that it must make the payment sought by the applicant in the main proceedings, taking the view that there is an objective ground justifying the difference in treatment between part-time and full-time workers. As additional remuneration is intended to compensate for a particular workload, it is only payable when the trigger thresholds are exceeded.

21 At first instance, the Arbeitsgericht München (Labour Court, Munich, Germany) upheld the applicant's action. The Landesarbeitsgericht München (Higher Labour Court, Munich, Germany), ruling on appeal, dismissed that action. By his appeal on a point of law, authorised by the latter court, the applicant in the main proceedings continued to pursue his action.

22 The referring court expresses doubts as to whether the refusal to reduce the trigger thresholds in proportion to the duration of the working time of the applicant in the main proceedings complies with the provisions of the Framework Agreement.

23 That court points out that, in that regard, that in principle, two different approaches can be distinguished in the case-law of the Court. On the one hand, according to the first approach, the Court stated, in the judgment of 15 December 1994, *Helmig and Others* (C-399/92, C-409/92, C-425/92, C-34/93, C-50/93 and C-78/93, EU:C:1994:415, paragraph 26 et seq.), that there is difference in treatment wherever the overall pay of full-time employees is higher than that of part-time employees for the same number of hours worked on the basis of an employment relationship. According to that court, applied to the situation in the main proceedings, that comparison of overall remuneration leads to the finding that there is no 'less favourable' treatment of part-time workers, given that part-time pilots and full-time pilots receive the same remuneration for flight duty periods exceeding the individual trigger thresholds of part-time workers.

24 On the other hand, according to a second approach, in the judgment of 27 May 2004, *Elsner-Lakeberg* (C-285/02, EU:C:2004:320), the Court, as a method to be used to determine whether the principle of equal pay between men and women is being complied with, called for each element of the remuneration to be examined separately in the light of that principle and not solely for a general overall assessment to be carried out. In that judgment, the Court found that part-time workers were treated 'less favourably' because the number of additional hours giving entitlement to additional remuneration was not reduced for part-time workers in a manner proportionate to the length of their working hours.

25 The referring court states that if the second approach were to be adopted in the case in the main proceedings, that would lead to a finding of a difference in treatment resulting from the fact

that pilots working part time benefit from additional remuneration only when they have completed, without increased remuneration, the flying duty hours comprised between the first level of their individual trigger threshold – which is reduced according to their part-time percentage – and the fixed trigger thresholds.

26 A part-time worker therefore receives additional remuneration not from the first hour in which the first level of the individual trigger threshold is exceeded, but only when the threshold applicable to full-time workers is exceeded. This applies, by analogy, to the second and third levels of the trigger thresholds. Given that, for part-time workers, the threshold from which an entitlement arises is not reduced in proportion to the length of their individual working time, this has a negative impact on the relationship between the service provided and the consideration for it and therefore leads to a difference in treatment between part-time and full-time workers.

27 The referring court points out that, since the delivery of its judgment of 19 December 2018, 10 AZR 231/18, it has followed that second approach.

28 Nonetheless, other courts and some national legal writers have expressed reservations about the second approach. Consequently, the referring court is of the opinion that it can no longer consider that there is no reasonable doubt as to that issue.

29 It is in those circumstances that the Bundesarbeitsgericht (Federal Labour Court, Germany) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does a national statutory provision treat part-time workers in a less favourable manner than comparable full-time workers within the meaning of Clause 4.1 of the Framework Agreement … if it permits additional remuneration for part-time and full-time workers to be uniformly contingent on the same number of working hours having been exceeded, and therefore allows account to be taken of the overall remuneration, and not of the component of the remuneration that comprises the additional remuneration?

(2) If Question 1 is answered in the affirmative:

Is a national statutory provision which allows an entitlement to additional remuneration to be made conditional on the same number of working hours being exceeded uniformly in the case of both part-time and full-time workers compatible with Clause 4.1 and the principle *pro rata temporis* in Clause 4.2 of [the Framework Agreement] if the purpose of the additional remuneration is to compensate for a particular workload?’

Consideration of the questions referred

The first question

30 By its first question, the referring court asks, in essence, if Clause 4.1 of the Framework Agreement must be interpreted as meaning that national legislation which makes the payment of additional remuneration for part-time workers and for comparable full-time workers uniformly contingent on the same number of working hours being exceeded in a given activity, such as a pilot’s flight duty, must be regarded as ‘less favourable’ treatment of part-time workers within the meaning of that provision.

31 It is necessary to determine, first, whether the dispute in the main proceedings falls within the scope of the Framework Agreement.

32 In that regard, it is clear from the wording of Clause 2.1 of the Framework Agreement, according to which this Framework Agreement applies ‘to part-time workers who have an employment contract or employment relationship as defined by the law, collective agreement or practice in force in each Member State’, that the agreement is intended to be broad in scope (judgment of 7 July 2022, *Zone de secours Hainaut-Centre*, C-377/21, EU:C:2022:530, paragraph 37).

33 In addition, Clause 3.1 of the Framework Agreement defines a part-time worker as ‘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’.

34 Here, the applicant in the main proceedings has an employment contract with CLH to which the collective agreements referred to in paragraph 10 above apply. Even if his weekly working hours are not fixed due to the specific nature of his profession, it is also common ground that, under the terms of his employment contract, he works fewer hours per year than a full-time pilot, since, in return for a 10% reduction in salary, he is granted 37 additional days of annual leave to give effect to the reduction in his working hours. The applicant in the main proceedings must therefore be considered to be a ‘part-time worker’ within the meaning of Clause 3.1 of the Framework Agreement.

35 It is therefore necessary to determine whether the dispute in the main proceedings falls within the scope of the Framework Agreement.

36 Secondly, for the purposes of interpreting Clause 4 of the Framework Agreement, it should be noted that the agreement seeks both to promote part-time work and eliminate discrimination between part-time workers and full-time workers (judgment of 5 May 2022, *Universiteit Antwerpen and Others*, C-265/20, EU:C:2022:361, paragraph 41 and the case-law cited).

37 The prohibition of discrimination laid down in Clause 4.1 of that framework agreement is simply a specific expression of one of the fundamental principles of EU law, namely the general principle of equality (judgment of 5 May 2022, *Universiteit Antwerpen and Others*, C-265/20, EU:C:2022:361, paragraph 42 and the case-law cited).

38 In the light of those objectives, that clause must be interpreted as articulating a principle of EU social law which cannot be interpreted restrictively (judgment of 7 July 2022, *Zone de secours Hainaut-Centre*, C-377/21, EU:C:2022:530, paragraph 43 and the case-law cited).

39 In accordance with the objective of eliminating discrimination between part-time workers and full-time workers, that clause 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 (judgment of 5 May 2022, *Universiteit Antwerpen and Others*, C-265/20, EU:C:2022:361, paragraph 43 and the case-law cited).

40 Furthermore, the Court has held that that provision aims to apply the principle of non-discrimination to part-time workers in order to prevent an employer using an employment relationship of that nature to deny those workers rights which are recognised for full-time workers

(see, to that effect, judgment of 22 January 2020, *Baldonedo Martín*, C-177/18, EU:C:2020:26, paragraph 35 and the case-law cited).

41 On the question of whether, in this case, additional remuneration falls within the concept of 'employment conditions' referred to in Clause 4.1 of the Framework Agreement, the Court has previously held that those conditions encompass conditions relating to remuneration (judgments of 7 April 2022, *Ministero della Giustizia and Others (Status of Italian magistrates)*, C-236/20, EU:C:2022:263, paragraph 36, and of 7 July 2022, *Zone de secours Hainaut-Centre*, C-377/21, EU:C:2022:530, paragraph 52 and the case-law cited).

42 Furthermore, in establishing both the constituent elements of remuneration and the level of those constituent elements, 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, while at the same time taking account, where appropriate, of the principle *pro rata temporis* (judgment of 7 July 2022, *Zone de secours Hainaut-Centre*, C-377/21, EU:C:2022:530, paragraph 53).

43 It must therefore be held that additional remuneration falls within the scope of 'employment conditions' as defined in Clause 4 of the Framework Agreement.

44 As for the comparability of the situations of full-time and part-time CLH pilots, such as the applicant in the main proceedings, according to settled case-law, in order to assess whether persons are engaged in the same or similar work for the purposes of the Framework Agreement, it must be determined, in accordance with Clause 3.2 and Clause 4.1 of that agreement, whether, in the light of a number of factors, such as the nature of the work, training requirements and working conditions, those persons can be regarded as being in a comparable situation (see, by analogy, judgment of 15 December 2022, *Presidenza del Consiglio dei Ministri and Others (University researchers)*, C-40/20 and C-173/20, EU:C:2022:985, paragraph 101 and the case-law cited).

45 Where it is established that, when they were employed, part-time workers carried out the same duties as workers employed full-time by the same employer or held the same post as them, it is necessary, in principle, to regard the situations of those two categories of workers as being comparable (see, by analogy, judgment of 15 December 2022, *Presidenza del Consiglio dei Ministri and Others (University researchers)*, C-40/20 and C-173/20, EU:C:2022:985, paragraph 102 and the case-law cited).

46 It is apparent from the reference for a preliminary ruling that full-time and part-time CHL pilots perform the same work and, in particular, the same flight duties, such that the situation of the applicant in the main proceedings, as a part-time pilot, is comparable to that of full-time pilots for the purposes of Paragraph 4(1) of the TzBfG, read in conjunction with the third sentence of Paragraph 2(1) of that law, subject to a final review which will be a matter for the referring court.

47 Finally, as regards the question whether there is a difference in treatment between a pilot working part time, such as the applicant in the main proceedings, and pilots working full time, it is apparent from an examination of the elements of the remuneration of the workers concerned, as set out in the reference for a preliminary ruling, that a part-time pilot receives additional remuneration not from the first hour in which the first level of the individual trigger threshold is exceeded, but only when the first level of the trigger threshold applicable to full-time pilots is exceeded. This applies by analogy to the second and third levels of the trigger thresholds. Thus, a part-time pilot must complete the same number of flying duty hours as a full-time pilot to be entitled to that remuneration, without that threshold being lowered in a manner proportionate to the length of his or her individual working time. Under those circumstances, part-time pilots do not reach the trigger

thresholds required to be entitled to additional remuneration, or are much less likely to do so than full-time pilots.

48 Although the remuneration per flying hour for the two categories of pilots appears to be equal up to those trigger thresholds, it should be noted that those identical thresholds represent, for part-time pilots, a longer flight-hour duty than for full-time pilots in relation to their total working time and, consequently, a greater burden than for full-time pilots (see, by analogy, judgment of 27 May 2004, *Elsner-Lakeberg*, C-285/02, EU:C:2004:320, paragraph 17). That situation therefore has a negative impact for part-time pilots in terms of the relationship between the service provided and the consideration for it.

49 Since part-time workers thus satisfy much more rarely the conditions for entitlement to additional remuneration, a part-time pilot, such as the applicant in the main proceedings, must be regarded as subject to a difference in treatment compared with comparable full-time pilots, prohibited by Clause 4.1 of the Framework Agreement, unless it is justified on 'objective grounds' within the meaning of that clause.

50 Having regard to the foregoing, the answer to the first question is that Clause 4.1 of the Framework Agreement must be interpreted as meaning that national legislation which makes the payment of additional remuneration for part-time workers and comparable full-time workers uniformly contingent on the same number of working hours being exceeded in a given activity, such as a pilot's flight duty, must be regarded as a 'less favourable' treatment of part-time workers within the meaning of that provision.

The second question

51 By its second question, the referring court asks, in essence, whether Clauses 4.1 and 4.2 of the Framework Agreement must be interpreted as precluding national legislation which makes the payment of additional remuneration for part-time workers and comparable full-time workers uniformly contingent on the same number of working hours being exceeded in a given activity, such as a pilot's flight duty, in order to compensate for a workload particular to that activity.

52 In accordance with the objective of eliminating discrimination between part-time workers and full-time workers, Clause 4.1 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.

53 The remuneration of part-time workers must be equivalent to that of full-time workers, subject to the application of the principle *pro rata temporis*, as provided for in Clause 4.2 of the Framework Agreement (judgment of 10 June 2010, *Bruno and Others*, C-395/08 and C-396/08, EU:C:2010:329, paragraph 64).

54 In the present case, it follows from the considerations set out in paragraphs 47 to 49 above that the applicable collective agreements, which make payment of additional remuneration contingent on identical trigger thresholds for part-time and full-time pilots and which do not apply that principle, constitute a difference in treatment prohibited under that clause, paragraphs 1 and 2, unless it is justified on 'objective grounds'.

55 In the context of Article 267 TFEU, the Court has no jurisdiction to assess the facts and apply the rules of EU law to a particular case. It is, therefore, for the referring court to carry out the legal

classifications necessary for the resolution of the dispute in the main proceedings. By contrast, it is for the Court to provide the referring court with all necessary information with a view to offering guidance in that determination (see, to that effect, judgment of 10 March 2022, *Landkreis Gifhorn*, C-519/20, EU:C:2022:178, paragraph 47 and the case-law cited).

56 In that context, it will be for the referring court to determine, having regard to all the relevant factors, whether the difference in treatment at issue in the main proceedings can be regarded as justified on 'objective grounds'. In making that assessment, the court will be required to take into account the following considerations.

57 In that regard, it should be noted that, according to settled case-law of the Court, the concept of 'objective grounds', within the meaning of Clause 4.1 of the Framework Agreement, must be understood as not permitting a difference in treatment between part-time workers and full-time workers to be justified on the basis that the difference is provided for by a general, abstract norm, such as a law or a collective agreement (judgment of 1 March 2012, *O'Brien*, C-393/10, EU:C:2012:110, paragraph 64 and the case-law cited).

58 On the contrary, that concept requires the difference in treatment found to exist to be justified by the presence of precise and specific factors, characterising the employment condition to which it relates, in the specific context in which it occurs and on the basis of objective and transparent criteria, in order to ensure that that difference in treatment in fact responds to a genuine need, is appropriate for achieving the objective pursued and is necessary for that purpose. Those circumstances may result, in particular, from the specific nature of the tasks for the performance of which such part-time contracts have been concluded and from the inherent characteristics of those tasks or, as the case may be, from the pursuit of a legitimate social policy objective of a Member State (see, to that effect, judgment of 1 March 2012, *O'Brien*, C-393/10, EU:C:2012:110, paragraph 64 and the case-law cited, and order of 15 October 2019, *AEAT (Calculation of the length of service of vertical-cyclical part-time workers)*, C-439/18 and C-472/18, EU:C:2019:858, paragraph 47).

59 In the present case, it is apparent from the file before the Court that, in order to justify the difference in treatment at issue in the main proceedings, CLH and the German Government rely on the objective of compensation for a workload that is particular to flight duty and affects pilots' health and, closely linked to that objective, that of dissuading airlines from mobilising pilots excessively.

60 First, it should be noted that, according to the referring court, the provisions of the applicable collective agreements make no mention of any objective ground capable of justifying the difference in treatment at issue in the main proceedings and that it is on the basis of the general scheme thereof that that court takes the view that the objective pursued by the social partners could be the one relied on by CLH and the German Government, which will be for that court to verify.

61 Secondly, while those parties highlighted the pressures inherent in flying, which is nonetheless a pilot's essential activity, they confirmed at the hearing that the thresholds for triggering flying duty hours laid down in the applicable collective agreements were not based on objectively determined values or scientific knowledge, or on general experimental data either, for example relating to the effects of accumulating monthly flying hours. There do not therefore appear to be any objective and transparent criteria for ensuring that the difference in treatment at issue in the main proceedings and the application of uniform thresholds for part-time pilots and comparable full-time pilots respond to a genuine need in accordance with the case-law cited in paragraph 58 of the present judgment, which will be for the referring court to verify.

62 Thirdly, according to that case-law, in addition to the fact that that difference in treatment must respond to a genuine need, it must be such as to make it possible to attain the objective pursued and be necessary in order to do so. Moreover, that objective must be pursued in a consistent and systematic manner, in accordance with the requirements of the case-law (see, to that effect, judgments of 12 January 2010, *Petersen*, C-341/08, EU:C:2010:4, paragraph 53 and the case-law cited, and of 21 January 2021, *INSS*, C-843/19, EU:C:2021:55, paragraph 32).

63 However, as regards the question of whether the difference in treatment established is such as to make it possible to attain the objective pursued and whether it is necessary in order to do so, within the meaning of that case-law, there are doubts, as the referring court observes, as to whether the fixing of uniform trigger thresholds for pilots to qualify for additional remuneration is appropriate and consistent in the light of the objective of protecting pilots' health from excessive workload. In fact, setting uniform trigger thresholds is tantamount to disregarding, as a matter of principle, the repercussions that workload may have on individuals and the particular pressures associated with flying. It is also tantamount to failing to take into account the very reasons behind the introduction of part-time work, such as possible non-work-related burdens borne by the pilot concerned.

64 Furthermore, it cannot be ruled out that, in that context, a system of recovery of working hours or days off, or the fixing of thresholds of flying duty hours per week rather than per month, might constitute a more appropriate and consistent measure than that at issue in the main proceedings with a view to achieving that objective.

65 In addition, setting uniform trigger thresholds for additional remuneration rather than introducing tailored trigger thresholds depending on the employment contract is at odds with the objective of dissuading airlines from making pilots work excessively, in the case of part-time pilots. In fact, those airlines bear that additional remuneration only when the trigger threshold corresponding to the working time of full-time pilots has been exceeded.

66 Finally, in so far as economic considerations were at the root of the adoption of that national legislation and of the refusal to apply the principle *pro rata temporis* in the situation in the main proceedings, it should be borne in mind that it is clear from the case-law that rigorous personnel management is a budgetary consideration and cannot therefore justify discrimination (see, to that effect, judgment of 22 April 2010, *Zentralbetriebsrat der Landeskrankenhäuser Tirols*, C-486/08, EU:C:2010:215, paragraph 46 and the case-law cited).

67 In the light of the foregoing considerations, the answer to the second question is that Clauses 4.1 and 4.2 of the Framework Agreement must be interpreted as precluding national legislation which makes the payment of additional remuneration for part-time workers and comparable full-time workers uniformly contingent on the same number of working hours being exceeded in a given activity, such as a pilot's flight duty, in order to compensate for a workload particular to that activity.

Costs

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

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

1. **Clause 4.1 of the Framework Agreement on part-time work concluded on 6 June 1997 and 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 meaning that national legislation which makes the payment of additional remuneration for part-time workers and comparable full-time workers uniformly contingent on the same number of working hours being exceeded in a given activity, such as a pilot's flight duty, must be regarded as a 'less favourable' treatment of part-time workers within the meaning of that provision.

2. **Clauses 4.1 and 4.2 of the Framework Agreement on part-time work concluded on 6 June 1997 and annexed to Council Directive 97/81**

must be interpreted as precluding national legislation which makes the payment of additional remuneration for part-time workers and comparable full-time workers uniformly contingent on the same number of working hours being exceeded in a given activity, such as a pilot's flight duty, in order to compensate for a workload particular to that activity.

[Signatures]

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* Language of the case: German.