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Provisional text

JUDGMENT OF THE COURT (Tenth Chamber)

8 May 2025 (*)

(References for a preliminary ruling – Social policy – Fixed-term work – Directive 1999/70/EC – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Clause 4(1) – Principle of non-discrimination against fixed-term workers – Scope – Concept of an ‘employment condition’ – Fixed-term agricultural labourers – Social security contributions calculated on the basis of remuneration – Remuneration of fixed-term agricultural workers established on the basis of daily working hours completed – Remuneration of permanent agricultural workers established on the basis of a fixed daily working time)

In Joined Cases C212/24, C226/24 and C227/24,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Corte d’appello di Firenze (Court of Appeal, Florence, Italy), made by decisions of 8 January 2024, received at the Court on 19 and 26 March 2024, in the proceedings

L.T. s.s. (C212/24)**,**

A.M. (C226/24),

XXX (C227/24)

v

Istituto nazionale della previdenza sociale (INPS),

with the participation of:

Agenzia delle Entrate – Riscossione,

THE COURT (Tenth Chamber),

composed of D. Gratsias, President of the Chamber, E. Regan and B. Smulders (Rapporteur), Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– L.T. s.s., A.M. and XXX, by L. Giraldi and I. Pagni, avvocati,

– the Istituto nazionale della previdenza sociale (INPS), by C. D'Aloisio, E. De Rose, E.A. Sciplino and A. Sgroi, avvocati,

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

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999 ('the framework agreement'), which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

2 The requests have been made in three sets of proceedings between L.T. s.s., A.M. and XXX ('the applicants at first instance'), on the one hand, and the Istituto nazionale della previdenza sociale (INPS) (National Institute for Social Security, Italy) ('the INPS')) on the other, concerning social security contributions to be paid by undertakings employing fixed-term agricultural workers.

Legal context

European Union law

3 Article 1 of Directive 1999/70 provides:

'The purpose of the Directive is to put into effect the framework agreement on fixed-term contracts concluded on 18 March 1999 between the general cross-industry organisations (ETUC, UNICE and CEEP) annexed hereto.'

4 The third paragraph of the preamble to the framework agreement reads as follows:

'This agreement sets out the general principles and minimum requirements relating to fixed-term work, recognising that their detailed application needs to take account of the realities of specific national, sectoral and seasonal situations. It illustrates the willingness of the Social Partners to establish a general framework for ensuring equal treatment for fixed-term workers by protecting them against discrimination and for using fixed-term employment contracts on a basis acceptable to employers and workers.'

5 Clause 1 of the framework agreement, entitled 'Purpose', provides:

'The purpose of this framework agreement is to:

(a) improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination;

(b) establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.'

6 Clause 2 of the framework agreement, entitled 'Scope', provides, in paragraph 1 thereof:

‘This agreement applies to fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State.’

7 Clause 3 of the framework agreement, entitled ‘Definitions’, provides:

‘1. For the purpose of this agreement the term “fixed-term worker” means a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.

2. For the purpose of this agreement, the term “comparable permanent worker” means a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills. Where there is no comparable permanent 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.’

8 Under Clause 4 of the framework agreement, entitled ‘Principle of non-discrimination’:

‘1. In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation 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 after consultation with the social partners and/or the social partners, having regard to Community law and national law, collective agreements and practice.

…’

Italian law

9 Article 1(1) of decreto-legge n. 338 – Disposizioni urgenti in materia di evasione contributiva, di fiscalizzazione degli oneri sociali, di sgravi contributivi nel Mezzogiorno e di finanziamento dei patronati (Decree-Law No 338 laying down urgent provisions on evasion of social security contributions, taxation of social security contributions, reductions of social security contributions in the South and financing of employers’ associations) of 9 October 1989 (GURI No 237 of 10 October 1989), in the version applicable to the disputes in the main proceedings (‘Decree-Law No 338/1989’), provides:

‘The remuneration to be taken as the basis for calculating social security contributions may not be lower than the remuneration amounts set by laws, regulations or collective agreements concluded by the most representative trade union organisations at national level, or by other collective agreements or individual contracts where this results in higher remuneration than that provided for in the [relevant] collective agreement.’

10 The contratto collettivo nazionale di lavoro per gli operai agricoli e florovivaisti (National collective labour agreement for agricultural and floricultural workers) of 6 July 2006 (‘the CCNL’) defines, in Article 18(a) thereof, fixed-term agricultural workers as ‘workers employed under an individual fixed-term employment relationship, such as, for example, those who are employed to perform short-term, seasonal or casual work, or who are employed for phases of work or to replace absent workers who have the right to retain their position’.

11 The first paragraph of Article 30 of the CCNL states that 'working time shall be set at 39 hours per week, that is to say, [six and a half hours] per day' and the first paragraph of Article 40 of the CCNL provides that 'fixed-term workers shall be entitled to payment for the hours actually worked during the day'.

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

12 In December 2013, the INPS, inter alia, ordered the applicants at first instance to pay it social security contributions in addition to those already paid in respect of the fixed-term agricultural workers that they had employed in 2006 and 2007. According to the INPS, those applicants had incorrectly calculated their social security contributions payable in respect of those workers inasmuch as the former had taken account, in that calculation, of the hours actually worked by the latter instead of the daily working time of six and a half hours, as set out in the first paragraph of Article 30 of the CCNL.

13 The applicants at first instance brought an action against the INPS's order before the Tribunale di Grosseto (District Court, Grosseto, Italy), which upheld that action.

14 The INPS brought an appeal against that court's judgment before the Corte d'appello di Firenze (Court of Appeal, Florence, Italy), which held that the INPS's claims for payment were well founded. It did so on the ground that, having regard to the principle of non-discrimination between permanent workers and fixed-term workers and to the first paragraph of Article 30 of the CCNL, the amount of social security contributions payable by the employers of fixed-term workers had to be calculated on the basis of remuneration established for a working time of six and a half hours and not on the basis of the working hours actually completed.

15 The applicants at first instance brought appeals before the Corte suprema di cassazione (Supreme Court of Cassation, Italy), which found, first, that, pursuant to Article 1(1) of Decree-Law No 338/1989, read in conjunction with the first paragraph of Article 40 of the CCNL, social security contributions payable by employers in the agricultural sector in respect of remuneration paid to fixed-term agricultural workers must be calculated only on the basis of the working hours actually completed, unless those employers decide that, in the event of interruptions to activity which are due to *force majeure*, those workers must remain on the premises at the employers' disposal.

16 In that regard, the Corte suprema di cassazione (Supreme Court of Cassation) recalled that the first paragraph of Article 30 of the CCNL, which provides that working time is to be set at 39 hours per week, that is to say, at six and a half hours per day, merely states the maximum weekly and daily working time, without, however, specifying the minimum working time. The first paragraph of Article 40 of the CCNL, by providing that fixed-term workers are to be entitled to payment for the hours actually worked during the day, lays down a rule which is logically incompatible with the concepts of weekly and daily working time, as it means that the remuneration payable would not be tied to the reference to a pre-established working time that may be identifiable in general and abstract terms. That provision, which is based on the specific features of fixed-term agricultural work, is consistent with the rule laid down in Article 16(1)(g) of decreto legislativo n. 66 – Attuazione delle direttive 93/104/CE e 2000/34/CE concernenti taluni aspetti dell'organizzazione dell'orario di lavoro (Legislative Decree No 66 implementing Directives 93/104/EC and 2000/34/EC concerning certain aspects of the organisation of working time) of 8 April 2003 (GURI No 87 of 14 April 2003, Ordinary Supplement No 61), which, by transposing Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18), as amended by Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000 (OJ 2000 L 195, p. 41), provides that fixed-term agricultural workers are excluded from the scope of the legislation relating to normal weekly working time.

17 Second, regarding the calculation of social security contributions, the Corte suprema di cassazione (Supreme Court of Cassation) stated that, under Article 1(1) of Decree-Law No 338/1989, the remuneration

which must be used as a basis for that calculation may not be lower than the amount of remuneration established by laws, regulations and collective agreements. In addition, it stated that, as regards fixed-term agricultural workers for whom social security contributions are calculated on the basis of the hours actually worked, the Court's case-law on the prohibition of discrimination against fixed-term workers, which is set out in Clause 4(1) of the framework agreement, cannot serve as a basis for the payment of higher social security contributions for fixed-term agricultural workers, in so far as the relationship between the INPS and employers as regards social security contributions does not fall within the scope of EU law.

18 Consequently, the Corte suprema di cassazione (Supreme Court of Cassation) set aside the judgment of the Corte d'appello di Firenze (Court of Appeal, Florence) and referred the case back to that court.

19 The Corte d'appello di Firenze (Court of Appeal, Florence), which is the referring court, is uncertain as to the compatibility with Clause 4(1) of the framework agreement of the finding made by the Corte suprema di cassazione (Supreme Court of Cassation), as referred to in paragraph 15 of the present judgment, according to which the social security contributions payable by employers in the agricultural sector in respect of remuneration paid to fixed-term agricultural workers must be calculated solely on the basis of the working hours actually completed.

20 In that regard, the referring court considers, first of all, that that clause applies to the cases in the main proceedings. The agricultural sector is not excluded from the scope of Directive 1999/70 and the employment conditions referred to in that clause include remuneration. The social security contributions at issue in the main proceedings are linked to the remuneration payable to fixed-term agricultural workers, given that, first, under national law, those contributions are payable on the entirety of the remuneration which is to be paid to those workers and, second, those contributions form part of the payment of the social security benefits provided by occupational social security schemes. As regards that latter aspect, the referring court states that the amount of those benefits is proportionate to the duration of the employment relationship and is linked to the amount of the remuneration, as the amount of those contributions depends on that latter amount. It infers from this that a fixed-term agricultural worker, whose remuneration is calculated solely on the basis of the working hours actually completed, will undoubtedly receive benefits of a lower amount than a permanent agricultural worker who is always guaranteed to receive a minimum wage established by the CCNL, irrespective of the hours actually worked.

21 Next, the referring court considers that the finding made by the Corte suprema di cassazione (Supreme Court of Cassation), as referred to in paragraph 15 of the present judgment, is liable to infringe Clause 4(1) of the framework agreement inasmuch as it leads to less favourable treatment of fixed-term agricultural workers than that accorded to permanent agricultural workers, which is not justified on objective grounds.

22 In particular, the referring court considers that fixed-term agricultural workers and permanent agricultural workers are in a comparable situation because they carry out the same tasks. The finding by the Corte suprema di cassazione (Supreme Court of Cassation) leads to fixed-term agricultural workers being treated less favourably than permanent agricultural workers who nevertheless perform comparable work. In the case of fixed-term agricultural workers, the employer is free to determine their working time and their remuneration and, consequently, the amount of social security contributions and the amount of social security benefits to which they may be entitled. By contrast, permanent agricultural workers are guaranteed a minimum daily remuneration, based on a daily working time of six and a half hours, irrespective of the hours actually worked. Therefore, the social security contributions paid by their employers and the social security benefits which they may enjoy on the basis of those contributions are guaranteed, as they are based on that minimum daily remuneration.

23 Lastly, the referring court considers that, in this instance, there are no objective reasons linked to the performance of the work concerned or any precise, concrete evidence justifying the need for different

treatment of fixed-term workers as compared to permanent workers. Risks specific to agricultural activity which depend on unforeseeable weather conditions affect all agricultural workers, whether they are employed for a fixed term or on a permanent basis.

24 In those circumstances, the Corte d'appello di Firenze (Court of Appeal, Florence) decided to stay the proceedings and to refer the following questions, worded identically in Joined Cases C212/24, C226/24 and C227/24, to the Court of Justice for a preliminary ruling:

'(1) Must Clause 4(1) of the framework agreement be interpreted as precluding [a provision of] a national collective agreement, such as that contained in Article 40 of [the CCNL] as interpreted by [the Corte suprema di cassazione (Supreme Court of Cassation, Italy)] in a manner that is binding on the referring court, which recognises, with regard to fixed-term agricultural workers, the right to be paid for the hours actually worked during the day, in contrast to Article 30 of the CCNL, which precedes it, which, in respect of permanent agricultural workers, recognises the right to pay on the basis of a working day of [six and a half] hours?

(2) If the answer to the previous question is in the affirmative, must Clause 4(1) of the framework agreement be interpreted as meaning that the determination of the amount of the compulsory social security contribution payable in respect of fixed-term agricultural workers under an occupational social security scheme also falls within the definition of employment conditions, with the result that it must be determined on the basis of the same criterion as that laid down for permanent agricultural workers and therefore on the basis of the daily working time established in [the CCNL], and not on the basis of the [working] hours actually [completed]?'

Consideration of the questions referred

Admissibility

25 In the first place, the applicants at first instance argue that the questions referred for a preliminary ruling are inadmissible on the ground that the INPS, as an emanation of the State, cannot rely on a provision of a directive which has direct effect in their regard.

26 In that regard, it must be noted, first of all, that, in the context of the cooperation between the Court of Justice and the national courts provided for in Article 267 TFEU, it is, in principle, solely for the national court before which a 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 of Justice. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle bound to give a ruling (see, to that effect, judgment of 17 October 2024, *FA.RO. di YK & C.*, C16/23, EU:C:2024:886, paragraph 33 and the case-law cited).

27 It follows that questions concerning EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of a rule of EU law 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 (judgment of 17 October 2024, *FA.RO. di YK & C.*, C16/23, EU:C:2024:886, EU:C:2024:886, paragraph 34 and the case-law cited).

28 Next, it follows from the third paragraph of Article 288 TFEU that the binding nature of a directive, which constitutes the basis for the possibility of relying on it, exists only in relation to 'each Member State to which it is addressed'. It follows, according to settled case-law, that a directive cannot of itself impose obligations on an individual and cannot therefore be relied upon as such against such a person before a

national court (judgment of 22 December 2022, *Sambre & Biesme and Commune de Farciennes*, C383/21 and C384/21, EU:C:2022:1022, paragraph 36 and the case-law cited).

29 However, the Court has also repeatedly held that Member States' obligation arising from a directive to achieve the result envisaged by that directive and their duty to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation are binding on all the authorities of the Member States, including, for matters within their jurisdiction, the courts. In applying national law, national courts called upon to interpret that law are thus inter alia required to consider the whole body of rules of national law and to apply methods of interpretation that are recognised by those rules in order to interpret it, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive and, consequently, to comply with the third paragraph of Article 288 TFEU (judgment of 1 October 2020, *A (Advertising and sale of medicinal products online)*, C649/18, EU:C:2020:764, paragraphs 38 and 39 and the case-law cited). The requirement to interpret national law in conformity with EU law entails, in particular, the obligation for national courts to change established case-law, where necessary, if it is based on an interpretation of national law that is incompatible with the objectives of a directive. Consequently, a national court cannot validly claim that it is impossible for it to interpret a provision of national law in a manner that is consistent with EU law merely because that provision has consistently been interpreted in a manner that is incompatible with EU law (judgment of 15 October 2024, *KUBERA*, C144/23, EU:C:2024:881, paragraph 52 and the case-law cited).

30 Thus, the Court has jurisdiction to give preliminary rulings concerning the interpretation of provisions of EU law irrespective of whether or not they have direct effect between the parties to the underlying dispute (judgment of 14 October 2020, *KG (Successive assignments in the context of temporary agency work)*, C681/18, EU:C:2020:823, paragraph 36 and the case-law cited).

31 Therefore, the fact that Directive 1999/70 cannot, of itself, impose obligations on the applicants at first instance is not such as to render inadmissible the questions referred for a preliminary ruling.

32 In the second place, the applicants at first instance claim that the questions referred for a preliminary ruling are inadmissible inasmuch as they have become hypothetical as a result of the decision of the Corte suprema di cassazione (Supreme Court of Cassation) referred to in paragraph 18 of the present judgment. Following that decision, the referring court is no longer called upon to rule on the existence of a difference in treatment between fixed-term agricultural workers and permanent agricultural workers, but only has to decide whether additional working hours must be taken into account in calculating the social security contributions payable by fixed-term agricultural workers.

33 It is apparent from the information provided by the referring court, summarised in paragraphs 19 to 23 of the present judgment, that that court considers that it is called upon to rule on the existence of a difference in treatment between fixed-term agricultural workers and permanent agricultural workers and there are therefore grounds to refer the requests for a preliminary ruling to the Court of Justice. In the light of the case-law referred to in paragraphs 26 and 27 above, it is not for the Court of Justice to call into question that assessment, by the referring court, of the subject matter of the disputes which are still to be resolved.

34 It follows that the arguments of the applicants at first instance summarised in paragraph 32 of the present judgment cannot justify a finding that the questions referred for a preliminary ruling are inadmissible.

35 In the third place, the applicants at first instance argue that the first question is hypothetical and therefore inadmissible inasmuch as the disputes in the main proceedings do not concern the remuneration of fixed-term agricultural workers, but the social security contributions payable by the employers of those workers.

36 In that regard, it should be noted that, according to the referring court, the social security contributions at issue in the disputes in the main proceedings are calculated on the basis of that remuneration and, therefore, may form part of the employment conditions referred to in Clause 4(1) of the framework agreement. Consequently, the first question referred for a preliminary ruling is not hypothetical, as the answer to that question is a necessary prerequisite for the answer to the second question, which, according to its wording, is raised only if the first question is answered in the affirmative.

37 Accordingly, the questions referred for a preliminary ruling are admissible.

Substance

38 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Clause 4(1) of the framework agreement is to be interpreted as precluding national legislation, as interpreted by a supreme national court, under which social security contributions payable by employers who employ fixed-term agricultural workers are calculated on the basis of the remuneration paid to those workers for the daily working hours which they have actually completed, whereas social security contributions payable by employers who employ permanent agricultural workers are calculated on the basis of remuneration established for a daily working time comprising a number of hours laid down in national law.

39 In order to answer those questions, it should be borne in mind, in the first place, that, under Clause 1 of the framework agreement, the purpose of that agreement is to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination and to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.

40 The Court has inferred from this that the framework agreement, in particular Clause 4 thereof, aims to apply that principle to fixed-term workers in order to prevent an employer using such an employment relationship to deny those workers rights which are recognised for permanent workers (judgment of 30 November 2023, *Ministero dell'Istruzione and INPS*, C270/22, EU:C:2023:933, paragraph 50 and the case-law cited).

41 Thus, Clause 4(1) of the framework agreement, which has direct effect, prohibits, with regard to employment conditions, less favourable treatment of fixed-term workers as compared with permanent workers, solely because they are employed for a fixed term, unless different treatment is justified on 'objective grounds' (judgment of 30 November 2023, *Ministero dell'Istruzione and INPS*, C270/22, EU:C:2023:933, paragraph 52 and the case-law cited).

42 In the second place, as regards the scope of that clause, first, it is apparent from Clause 2(1) of the framework agreement that that agreement applies to fixed-term workers who have an employment contract or employment relationship as defined in, inter alia, law or collective agreements in each Member State.

43 In this instance, the employment relationship of the fixed-term agricultural workers at issue in the main proceedings is governed by Italian employment legislation and by the CCNL and therefore falls within the scope of the framework agreement.

44 Second, it follows from the Court's settled case-law that the decisive criterion for determining whether a measure falls within the concept of 'employment conditions', within the meaning of Clause 4(1) of the framework agreement, is the criterion of employment, that is to say the employment relationship between a worker and his or her employer (judgment of 20 June 2019, *Ustariz Aróstegui*, C72/18, EU:C:2019:516, paragraph 25 and the case-law cited).

45 According to the case-law, that concept must be interpreted as encompassing conditions relating to remuneration. In particular, the Court has held that, in establishing both the constituent parts of remuneration and the level of those constituent parts, the competent national bodies must apply to fixed-term workers the principle of non-discrimination as laid down in Clause 4 of the framework agreement (see, to that effect, judgment of 15 April 2008, *Impact*, C268/06, EU:C:2008:223, paragraphs 130 and 134).

46 Consequently, the concepts of 'remuneration' and therefore 'employment conditions' within the meaning of Clause 4 of the framework agreement cover pensions which depend on the employment relationship between the worker and the 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 such an employment relationship than by considerations of social policy (see, to that effect, judgments of 15 April 2008, *Impact*, C268/06, EU:C:2008:223, paragraph 131 and the case-law cited, and of 7 April 2022, *Ministero della Giustizia and Others (Status of Italian magistrates)*, C236/20, EU:C:2022:263, paragraph 36). A pension which concerns only a particular category of workers, which is paid by reason of the employment relationship between them and their former employer, which is directly related to the period of service completed, and the amount of which is calculated by reference to the last salary, may therefore fall within the scope of that clause (see, to that effect, judgment of 10 June 2010, *Bruno and Others*, C395/08 and C396/08, EU:C:2010:329, paragraphs 46 and 47).

47 In this instance, it will be for the referring court to determine whether the contributions at issue in the main proceedings form part of the payment of social security benefits provided by an occupational social security scheme or rather by a statutory social security system. The fact that the contributions at issue in the main proceedings must be paid by employers to the INPS and not to the agricultural workers at issue in the main proceedings is not decisive in that regard (see, to that effect, judgment of 10 June 2010, *Bruno and Others*, C395/08 and C396/08, EU:C:2010:329, paragraph 50). If it is established that the social security benefits financed by the contributions at issue in the main proceedings concern only agricultural workers or a category of workers to which they belong, that those benefits depend directly on those contributions and that those contributions are calculated on the basis of the remuneration paid to the agricultural workers at issue in the main proceedings for work done for their employer, it must be held that those contributions may constitute 'employment conditions', within the meaning of that clause.

48 In the third place, as regards the application of Clause 4(1) of the framework agreement to the employment conditions of fixed-term workers, it should be recalled that that clause constitutes a specific expression of the principle of non-discrimination which requires that comparable situations must not be treated differently and that different situations must not be treated in the same way, unless such treatment is objectively justified (see, to that effect, judgment of 20 June 2019, *Ustariz Aróstegui*, C72/18, EU:C:2019:516, paragraph 28 and the case-law cited).

49 Thus, in order for fixed-term workers to be entitled to claim the benefit of Clause 4(1) of the framework agreement as regards their employment conditions, it is necessary, first of all, to assess whether those workers are treated less favourably than permanent workers and whether they are placed in a situation comparable to that of permanent workers. As regards the assessment of the comparability of the situations, Clause 3(2) of the framework agreement defines a 'comparable permanent worker' as a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work (or an occupation which is the same or similar), due regard being given to qualifications (or skills). Moreover, the Court has stated that, in order to assess whether workers are engaged in the same or similar work for the purposes of the framework agreement, it must first be determined, in accordance with Clauses 3(2) and 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 workers can be regarded as being in a comparable situation (order of 9 February 2017, *Rodrigo Sanz*, C443/16, EU:C:2017:109, paragraph 38 and the case-law cited).

50 In this instance, as regards the existence of less favourable treatment, it appears, subject to verification by the referring court, that there is a difference in treatment between permanent agricultural workers and fixed-term agricultural workers to the detriment of the latter.

51 For fixed-term agricultural workers, the social security contributions payable by their employers appear to be calculated, pursuant to Article 1 of Decree-Law No 338/1989, read in conjunction with the first paragraph of Article 40 of the CCNL, on the basis of the remuneration paid for the daily hours which they have actually worked, whereas, for permanent agricultural workers, those contributions appear to be calculated, pursuant to Article 1 of that decree-law, read in conjunction with the first paragraph of Article 30 of the CCNL, on the basis of remuneration established for a daily working time of six and a half hours. Thus, the remuneration and, consequently, the social security contributions for permanent workers appear to be calculated on the basis of a fixed daily working time, that is to say, in a general and abstract manner, and not on the basis of the working hours actually completed by them, as is the case for fixed-term workers. It is thus possible that, for permanent agricultural workers, social security contributions are paid in respect of working hours not completed, whereas for fixed-term agricultural workers that possibility is excluded.

52 That assessment regarding the existence of less favourable treatment of fixed-term agricultural workers is not called into question by the arguments of the applicants at first instance based on the application of the principle of pro rata temporis. Although Clause 4(2) of the framework agreement provides that that principle applies 'where appropriate', the Court has held that that clause simply articulates one of the consequences which may be associated, where appropriate, subject to judicial control, to the application of the principle of non-discrimination in favour of fixed-term workers, without in any way undermining the substance of that principle (judgment of 15 April 2008, *Impact*, C268/06, EU:C:2008:223, paragraph 65).

53 The principle of pro rata temporis cannot justify, in this instance, the application of different methods for accounting for the number of hours to be taken into account for calculating remuneration and contributions to an occupational social security scheme for fixed-term agricultural workers and for permanent agricultural workers based, for the former, on the working hours actually completed and, for the latter, on a fixed number of working hours. Those separate temporal references for calculating remuneration and contributions to an occupational social security scheme are not the consequence of the application of the principle of non-discrimination and place fixed-term agricultural workers at a disadvantage.

54 Furthermore, as regards the comparability of the situations at issue, in the light of the information in the file before the Court, it appears that permanent agricultural workers and fixed-term agricultural workers are in a comparable situation. In particular, the fact that Article 18(a) of the CCNL defines fixed-term agricultural workers as workers who are employed, inter alia, 'to replace absent workers who have the right to retain their position' indicates that fixed-term agricultural workers and permanent agricultural workers are engaged in the same or similar work. It is, however, for the referring court to confirm that assessment, taking into account all the relevant factors as set out in paragraph 49 of the present judgment.

55 In so far as, in this instance, the conditions referred to in paragraph 49 of the present judgment are satisfied, it is necessary, second, to assess whether the less favourable treatment of fixed-term agricultural workers as compared with permanent agricultural workers is justified on 'objective grounds', as stated in Clause 4(1) of the framework agreement.

56 In that regard, it follows from the Court's settled case-law that the concept of an 'objective ground' requires the observed unequal treatment to be justified by the existence 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 unequal treatment in fact

responds to a genuine need, is appropriate for achieving the objective pursued and is necessary for that purpose. Those factors may result, in particular, from the specific nature of the tasks for the performance of which the fixed-term contracts have been concluded and from the inherent characteristics of those tasks or, as the case may be, from pursuit of a legitimate social-policy objective of a Member State (order of 9 February 2017, *Rodrigo Sanz*, C443/16, EU:C:2017:109, paragraph 45 and the case-law cited).

57 The mere fact that that difference in treatment between fixed-term workers and permanent workers is provided for by a general and abstract national measure, such as a law or a collective agreement, does not constitute an 'objective ground', within the meaning of Clause 4(1) of the framework agreement (judgment of 7 April 2022, *Ministero della Giustizia and Others (Status of Italian magistrates)*, C236/20, EU:C:2022:263, paragraph 40, and order of 9 February 2017, *Rodrigo Sanz*, C443/16, EU:C:2017:109, paragraph 42 and the case-law cited).

58 Furthermore, a difference in treatment with regard to employment conditions as between fixed-term workers and permanent workers cannot be justified on the basis of a criterion which, in a general and abstract manner, refers precisely to the term of the employment. If the mere temporary nature of an employment relationship were held to be sufficient to justify such a difference, the objectives of Directive 1999/70 and the framework agreement would be negated. Instead of improving the quality of fixed-term work and promoting the equal treatment to which both Directive 1999/70 and the framework agreement aspire, reliance on such a criterion would amount to perpetuating a situation that is disadvantageous to fixed-term workers (order of 9 February 2017, *Rodrigo Sanz*, C443/16, paragraph 44 and the case-law cited).

59 In this instance, the applicants at first instance have put forward as objective grounds justifying the difference in treatment of fixed-term agricultural workers as compared with permanent agricultural workers, the fact that, as is apparent from Article 18(a) of the CCNL, the former are employed to perform short-term, seasonal or casual work, or to replace absent workers. Thus, the reasons why they are employed on a fixed-term basis and which are linked to the specific characteristics of agricultural work justify the fact that those workers are not necessarily available to the employer for six and a half hours per day or 39 hours per week. That assessment is consistent with the third paragraph of the preamble to the framework agreement, under which the framework agreement sets out the general principles and minimum requirements relating to fixed-term work, recognising that their detailed application needs to take account of the realities of specific national, sectoral and seasonal situations. In Italy, 90% of the agricultural workforce is employed on a fixed-term basis in view of the temporary and discontinuous nature of the tasks to be carried out in the agricultural sector.

60 However, in the light of the case-law cited in paragraphs 57 and 58 of the present judgment, it must be held that those reasons do not constitute objective grounds for treating the agricultural workers in question differently, given that they are based only on the actual duration of the employment. Although the applicants maintain that there are considerations justifying the fact that workers employed on a fixed-term basis are not necessarily at the employer's disposal for six and a half hours per day or 39 hours per week and that, consequently, social security contributions are paid only in respect of the number of working hours which they have actually completed in a day, such arguments do not, however, explain why, for permanent workers, carrying out identical or analogous work to that of a fixed-term worker, the working time must be fixed at 39 hours per week, with the result that social security contributions corresponding to six and a half hours' work per day must be paid irrespective of the number of working hours actually completed in a day.

61 In the absence of objective grounds, it must be held that Clause 4(1) of the framework agreement precludes the difference in treatment with regard to remuneration and contributions to an occupational

social security scheme calculated on the basis of that remuneration between fixed-term agricultural workers and permanent agricultural workers such as those at issue in the main proceedings.

62 In the light of all the foregoing considerations, the answer to the questions referred is that Clause 4(1) of the framework agreement must be interpreted as precluding national legislation, as interpreted by a supreme national court, under which social security contributions payable by employers who employ fixed-term agricultural workers in order to finance benefits under an occupational social security scheme are calculated on the basis of the remuneration paid to those workers for the daily working hours which they have actually completed, whereas the social security contributions payable by employers who employ permanent agricultural workers are calculated on the basis of remuneration established for a fixed daily working time, as established by national law, irrespective of the hours actually completed.

Costs

63 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Tenth Chamber) hereby rules:

Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP,

must be interpreted as precluding national legislation, as interpreted by a supreme national court, under which social security contributions payable by employers who employ fixed-term agricultural workers in order to finance benefits under an occupational social security scheme are calculated on the basis of the remuneration paid to those workers for the daily working hours which they have actually completed, whereas the social security contributions payable by employers who employ permanent agricultural workers are calculated on the basis of remuneration established for a fixed daily working time, as established by national law, irrespective of the hours actually completed.

[Signatures]

* Language of the case: Italian.