

vides for a weekly rest period exceeding 35 consecutive hours, the worker must be granted, in addition to that period, the daily rest period as guaranteed by Article 3 of that directive?

3. Must Article 3 of Directive 2003/88, read in the light of Article 31(2) of the Charter, be interpreted as meaning that, where a worker is granted a weekly rest period, he or she is also entitled to a daily rest period preceding that weekly rest period?

### Ruling

1. Article 5 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that the daily rest period provided for in Article 3 of that directive does not form part of the weekly rest period referred to in Article 5 of that directive, but is additional to it.
2. Articles 3 and 5 of Directive 2003/88, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that where national legislation provides for a weekly rest period exceeding 35 consecutive hours, the worker must be granted, in addition to that period, the daily rest as guaranteed by Article 3 of that directive.
3. Article 3 of Directive 2003/88, read in the light of Article 31(2) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that where a worker is granted a weekly rest period, he or she is also entitled to a daily rest period preceding that weekly rest period.

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## ECJ 23 March 2023, case C-574/21 (O2 Czech Republic), Miscellaneous

QT – v – O2 Czech Republic a.s., Czech case

### Summary

Commission which a commercial agent would have received for contracts with new customers or volume increases of contracts with existing customers, if the agency contract would have continued, must be taken into account in determining the indemnity for post-contract benefits. Even if parties used a one-off commission structure, those need to be considered for its calculation.

## Questions

1. Must Article 17(2)(a) of Directive 86/653 be interpreted as meaning that the commission which the commercial agent would have received in the event of a hypothetical continuation of the agency contract, in respect of transactions which would have been concluded after the termination of that agency contract with new customers which he or she transferred to the principal before that termination, or with customers with whom he or she significantly increased the volume of business before that termination, must be taken into account in determining the indemnity provided for in Article 17(2) of that directive?
2. Must Article 17(2)(a) of Directive 86/653 be interpreted as meaning that the payment of one-off commissions excludes from the calculation of the indemnity, provided for in Article 17(2), the commission lost by the commercial agent resulting from transactions carried out by the principal, after the termination of the commercial agency contract, with new customers which that agent brought to the principal before that termination, or with customers with whom he or she significantly increased the volume of business before that termination?

## Ruling

1. Article 17(2)(a) of Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents is to be interpreted as meaning that the commission which the commercial agent would have received in the event of a hypothetical continuation of the agency contract, in respect of transactions which would have been concluded after the termination of that agency contract with new customers which he or she brought to the principal before that termination, or with customers with which he or she significantly increased the volume of business before that termination, must be taken into account in determining the indemnity provided for in Article 17(2) of that directive.
2. Article 17(2)(a) of Directive 86/653 is to be interpreted as meaning that the payment of one-off commissions does not exclude from the calculation of the indemnity, provided for in Article 17(2), the commission lost by the commercial agent resulting from transactions carried out by the principal, after the termination of the commercial agency contract, with new customers which he or she brought to the principal before that termination, or with customers with which he or she significantly increased the volume of business before that termination, where those commissions correspond to flat-rate remuneration under any new contract concluded with those

new customers or with existing customers of the principal, through the commercial agent.

## ECJ 20 April 2023, case C-650/21 (Landespolizeidirektion Niederösterreich and Finanzamt Österreich), Age Discrimination

FW, CE – v – Landespolizeidirektion Niederösterreich and Finanzamt Österreich, Austrian case

### Summary

Refinements of Austrian salary grading system found discriminatory.

### Questions

1. Must Articles 1, 2 and 6 of Directive 2000/78, read in conjunction with Article 21 of the Charter, be interpreted as precluding national legislation under which the grading of a civil servant is fixed on the basis of his or her seniority in the remuneration scale of a previous remuneration system found to be discriminatory in so far as that system, for the purposes of determining that seniority, allowed only creditable periods prior to the recruitment of the civil servant which were completed from the age of 18 to be taken into account, to the exclusion of those completed before that age, where that legislation provides that a correction of the civil servant's creditable periods completed prior to his or her recruitment, as initially calculated, is to be made by determining a comparison reference date, for the purposes of which, in order to determine that seniority, creditable periods prior to recruitment which were completed before that civil servant's 18th birthday are henceforth taken into account where, first, as regards periods completed after the 18th birthday, only 'other periods' of which half must be taken into account are taken into account and, second, those 'other periods' are increased from three to seven years, but are taken into account only in so far as they exceed four years?
2. Must EU law be interpreted as precluding national legislation which provides, as regards civil servants in respect of whom a procedure intended to redefine

their position in the remuneration scale was pending on the date of publication of a legislative amendment to the remuneration system including that scale, that remuneration is to be recalculated in accordance with the new provisions relating to the comparison reference date, those provisions containing new limitations regarding the maximum length of creditable periods, whereas no such calculation is made for civil servants in respect of whom a procedure with the same purpose, initiated previously, has already been closed by a final decision, based on a reference date determined more favourably under the previous remuneration system whose provisions, considered by national courts as being discriminatory, have been disapplied in direct application of the principle of equal treatment laid down by EU law?

3. Must Articles 1, 2 and 6 of Directive 2000/78, read in conjunction with Article 21 of the Charter, be interpreted as precluding national legislation which provides that periods of apprenticeship undertaken with a national local authority are to be taken into account in their entirety, for the purposes of determining the comparison reference date, only where the civil servant concerned was recruited by the State after a certain date, whereas half of periods of apprenticeship are to be taken into account, in being subject to a flat-rate deduction, where the civil servant concerned was recruited by the State before that date?

### Ruling

1. Articles 1, 2 and 6 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, read in conjunction with Article 21 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding national legislation under which the grading of a civil servant is fixed on the basis of his or her seniority in the remuneration scale of a previous remuneration system found to be discriminatory in so far as that system, for the purposes of determining that seniority, allowed only creditable periods prior to the recruitment of the civil servant which were completed from the age of 18 to be taken into account, to the exclusion of those completed before that age, where that legislation provides that a correction of the civil servant's creditable periods completed prior to his or her recruitment, as initially calculated, is to be made by determining a comparison reference date, for the purposes of which, in order to determine that seniority, creditable periods prior to recruitment which were completed before that civil servant's 18th birthday are henceforth taken into account where, first, as regards periods completed after the 18th birthday, only