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HOF VAN JUSTITIE VAN DE EUROPESE UNIE
TRYBUNAŁ SPRAWIEDLIWOŚCI UNII EUROPEJSKIEJ
TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA
CURTEA DE JUSTIȚIE A UNIUNII EUROPENE
SÚDNY DVOR EURÓPSKEJ ÚNIE
SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN TUOMIOISTUIN
EUROPEISKA UNIONENS DOMSTOL

JUDGMENT OF THE COURT (Sixth Chamber)

22 January 2026 *

(Reference for a preliminary ruling – Social security – Migrant workers – Regulation (EC) No 883/2004 – Equal treatment – Aggregation of periods – Article 58 – Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons – Invalidity benefits – Supplement in order to guarantee receipt of the statutory minimum invalidity benefit – Stricter conditions relating to the contribution period for workers who have exercised their right to freedom of movement)

In Case C-633/24 [Sovisso [i]],

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Supreme Court of Cassation, Italy), made by decision of 17 September 2024, received at the Court on 27 September 2024, in the proceedings

F.F.

v

Istituto nazionale della previdenza sociale (INPS),

THE COURT (Sixth Chamber),

composed of I. Ziemele, President of the Chamber, A. Kumin and S. Gervasoni (Rapporteur), Judges,

Advocate General: D. Spielmann,

Registrar: A. Calot Escobar,

* Language of the case: Italian.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

EN

having regard to the written procedure,

after considering the observations submitted on behalf of:

– F.F., by A. Andreoni and A. Serreti, avvocati,

– the Istituto nazionale della previdenza sociale (INPS), by A. Patteri and S. Preden, avvocati,

– the Czech Government, by J. Benešová, M. Smolek and J. Vláčil, acting as Agents,

– the European Commission, by B.-R. Killmann 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 This request for a preliminary ruling concerns the interpretation of Article 58 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1).

2 The request has been made in proceedings between F.F. and the Istituto Nazionale della Previdenza Sociale (INPS) (National Social Security Institute, Italy) concerning the payment of a supplement aimed at guaranteeing receipt of the statutory minimum invalidity allowance established by national law.

Legal context

International law

3 On 21 June 1999, the European Community and the Swiss Confederation concluded seven agreements, including the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (OJ 2002 L 114, p. 6), which was in particular modified by Decision No 1/2012 of the Joint Committee established under the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons of 31 March 2012 (OJ 2012 L 103, p. 51) (‘the AFMP’).

4 Article 8 of the AFMP, headed ‘Coordination of social security systems’, is worded as follows:

‘The Contracting Parties shall make provision, in accordance with Annex II, for the coordination of social security systems with the aim in particular of:

…

(b) determining the legislation applicable;

…’

5 Annex II to the AFMP, entitled ‘Coordination of social security schemes’, provides as follows in Article 1:

‘1. The contracting parties agree, with regard to the coordination of social security schemes, to apply among themselves the legal acts of the European Union to which reference is made in, and as amended by, section A of this Annex, or rules equivalent to such acts.

2. The term “Member State(s)” contained in the legal acts referred to in section A of this Annex shall be understood to include Switzerland in addition to the States covered by the relevant legal acts of the European Union.’

6 Section A of Annex II to the AFMP, headed ‘Legal acts referred to’, includes in particular Regulation No 883/2004, which replaced Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community (OJ, English Special Edition: Series I Volume 1971(II), p. 416).

European Union law

7 Article 1 of Regulation No 883/2004, entitled ‘Definitions’ provides:

‘For the purposes of this Regulation:

…

(t) “period of insurance” means periods of contribution, employment or self-employment as defined or recognised as periods of insurance by the legislation under which they were completed or considered as completed, and all periods treated as such, where they are regarded by the said legislation as equivalent to periods of insurance;

…’

8 Article 2 of that regulation, entitled ‘Persons covered’, provides, in paragraph 1:

‘This Regulation shall apply to nationals of a Member State, stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors.’

9 According to Article 3 of that regulation, entitled ‘Matters covered’:

‘1. This Regulation shall apply to all legislation concerning the following branches of social security:

…

(c) invalidity benefits;

…’

10 Article 4 of Regulation No 883/2004, entitled ‘Equality of treatment’, is worded as follows:

‘Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.’

11 According to Article 6 of that regulation, entitled ‘Aggregation of periods’:

‘Unless otherwise provided for by this Regulation, the competent institution of a Member State whose legislation makes:

– the acquisition … of the right to benefits,

…

conditional upon the completion of periods of insurance, employment, self-employment or residence shall, to the extent necessary, take into account periods of insurance, employment, self-employment or residence completed under the legislation of any other Member State as though they were periods completed under the legislation which it applies.’

12 Article 52 of that regulation, entitled ‘Award of benefits’, provides:

‘1. The competent institution shall calculate the amount of the benefit that would be due:

(a) under the legislation it applies, only where the conditions for entitlement to benefits have been satisfied exclusively under national law (independent benefit);

(b) by calculating a theoretical amount and subsequently an actual amount (pro rata benefit), as follows:

(i) the theoretical amount of the benefit is equal to the benefit which the person concerned could claim if all the periods of insurance and/or of residence which have been completed under the legislations of the other Member States had been completed under the legislation it applies on the date of the award of the benefit. If, under this legislation, the amount does not depend on the duration of the periods completed, that amount shall be regarded as being the theoretical amount;

(ii) the competent institution shall then establish the actual amount of the pro rata benefit by applying to the theoretical amount the ratio between the duration of the periods completed before materialisation of the risk under the legislation it applies and the total duration of the periods completed before materialisation of the risk under the legislations of all the Member States concerned.

…

3. The person concerned shall be entitled to receive from the competent institution of each Member State the higher of the amounts calculated in accordance with subparagraphs 1(a) and (b).

…’

13 Article 58 of that regulation, entitled ‘Award of a supplement’, is worded as follows:

‘1. A recipient of benefits to whom this chapter applies may not, in the Member State of residence and under whose legislation a benefit is payable to him, be provided with a benefit which is less than the minimum benefit fixed by that legislation for a period of insurance or residence equal to all the periods taken into account for the payment in accordance with this chapter.

2. The competent institution of that Member State shall pay him throughout the period of his residence in its territory a supplement equal to the difference between the total of the benefits due under this chapter and the amount of the minimum benefit.’

Italian law

Law No 153/69

14 Article 8 of legge n. 153 – Revisione degli ordinamenti pensionistici e norma in materia di sicurezza sociale (Law No 153 amending pension regimes and social security rules) of 30 April 1969 (GURI No 111 of 30 April 1969) (‘Law No 153/69’), in the section ‘Improvement of pension conditions’, provides in paragraph 2 that, where insurance and contribution periods are aggregated under

international social insurance agreements or conventions, Italian nationals are to be entitled to have their invalidity pension topped up to a minimum monthly amount, on condition that they provide evidence of having contributed for at least ten years under an employment contract in Italy.

Law No 222/84

15 Article 1(3) of legge n. 222 – Revisione della disciplina della invalidità pensionabile (Law No 222 amending the rules governing invalidity pensions) of 12 June 1984 (GURI No 165 of 16 June 1984) ('Law No 222') provides:

'The invalidity allowance established in this article shall be calculated in accordance with the rules in force in the compulsory general scheme for invalidity, old-age and survivors' insurance for employed persons or in the special management entities for self-employed persons. Where the allowance is below the minimum payment from the relevant management entities, it shall be supplemented, up to a maximum of the minimum payment, by an amount payable from the social fund equal to the social pension referred to in Article 26 of [Law No 153/69], as subsequently amended and supplemented.'

16 Article 4(1) of Law No 222/84 provides that, for the purposes of acquiring entitlement to the invalidity allowance and the incapacity pension referred to in Articles 1 and 2 of that law, the person concerned must provide evidence of a total of five years of insurance contributions, of which three years of contribution must have been in the five years preceding the administrative application.

Law No 335/1995

17 Article 1(16) of legge n. 335 – Riforma del sistema pensionistico obbligatorio e complementare (Law No 335 on reform of the compulsory and supplementary pension system) of 8 August 1995 (GURI No 190 of 16 August 1995, ordinary supplement No 101) ('Law No 335/1995') is worded as follows:

'The provisions relating to the supplement in order to reach the statutory minimum shall not apply to pensions falling exclusively under the contributions system (that is to say, pensions corresponding to contribution periods completed from 1 January 1996).'

Decree No 577/1992

18 Article 3(1) of decreto ministeriale n. 577 – Regolamento recante norme sui trattamenti pensionistici per attività svolte all'estero e per i residenti all'estero (Ministerial Decree No 577 – Regulation laying down provisions governing pension benefits for workers employed abroad and for foreign residents) of 30 December 1992 (GURI No 116 of 20 May 1993) ('Decree No 577/1992') provides:

‘Where a pensioner resident in Italy acquired entitlement as a result of insurance and contribution periods aggregated under European Economic Community regulations or under international social insurance agreements establishing an obligation on the institution in the country of residence to guarantee the amount of the minimum payment set by national legislation, that amount shall be awarded, subject to compliance with the other conditions, even if the requirement [relating to a minimum contribution period in Italy of at least one year] is not satisfied.’

The dispute in the main proceedings, the question referred for a preliminary ruling and the procedure before the Court of Justice

19 The appellant in the main proceedings, who lives in Italy, paid social contributions in Switzerland from 1991 to 1994, and then in Italy between 1 April 2002 and 31 March 2012. He was also credited, in Italy, with social contributions for 2012 and 2013 in respect of a period of unemployment.

20 The appellant in the main proceedings made a number of applications to the INPS for an invalidity allowance, pro rata on the basis of the social contributions paid in Italy, and for a supplement to that allowance, intended to guarantee receipt of the statutory minimum under national law. Those applications were rejected on the ground, in essence, that he did not satisfy the conditions laid down in Article 4 of Law No 222/84. The INPS found that the appellant in the main proceedings was an insured person who had paid social security contributions from 1996 and fell under Article 1(16) of Law No 335/1995, and who was therefore entitled to the invalidity allowance only under the ‘contributions’ system, in the context of which, pursuant to that provision, the payment of a supplement in order to guarantee receipt of that statutory minimum did not apply. The observations submitted to the Court state that the INPS became aware only at a late stage of the contribution periods that the appellant in the main proceedings had completed in Switzerland before 1996, on the basis of which he would not have been caught by that non-application provision.

21 Following the rejection of his complaints to the INPS, the appellant in the main proceedings brought an action before the Tribunale di Torino (District Court, Turin, Italy), which held that his situation fell under Article 8(2) of Law No 153/69 and found that he did not satisfy the conditions laid down in that provision to be entitled to the supplement sought. According to that provision, where periods of contribution in Italy and abroad are aggregated, the person concerned must provide evidence of a contribution period of at least ten years under an employment contract in Italy. Since the appellant in the main proceedings contributed for only 260 weeks in Italy, corresponding to five years of contribution, the Tribunale di Torino (District Court, Turin) found that the condition in question was not satisfied and that the appellant in the main proceedings was not entitled to be paid a supplement intended to guarantee receipt of the statutory minimum under national law, even taking into account the contributions that he had paid in Switzerland before 1996.

22 The appellant in the main proceedings lodged an appeal against the judgment of the Tribunale di Torino (District Court, Turin) before the Corte d'appello di Torino (Court of Appeal, Turin, Italy), which upheld that judgment. The latter court found that the appellant in the main proceedings was not entitled to the invalidity allowance supplement in order to reach the statutory minimum because his contribution periods in Italy had been completed entirely after 31 December 1995, that is to say, under the contributions system, in which receipt of the supplement in order to reach that statutory minimum is precluded as a result of Article 1(16) of Law No 335/1995. Nor, according to the Corte d'appello di Torino (Court of Appeal, Turin), was the appellant in the main proceedings entitled to that supplement under Article 8(2) of Law No 153/69, which establishes a condition of ten years of contribution in Italy, on the ground that he had provided evidence of only five years of contribution in that Member State. Last, that court found that the person concerned did not qualify, under Article 52(3) of Regulation No 883/2004, for a pro rata benefit on the basis of the contributions that he had paid in Switzerland and in Italy.

23 The appellant in the main proceedings brought an appeal on a point of law against the judgment of the Corte d'appello di Torino (Court of Appeal, Turin) before the Corte suprema di cassazione (Supreme Court of Cassation, Italy), which is the referring court. That court is uncertain whether the Italian legislation is compatible with Article 58 of Regulation No 883/2004 and with the principle of freedom of movement for workers in so far as, for persons who have not completed all their contribution periods in Italy, under Italian law payment of the supplement intended to guarantee receipt of the legal minimum laid down by national law is subject to a condition of ten years of contribution in Italy, whereas persons who have completed all their contribution periods in that country are entitled to that supplement, under Articles 1 and 4 of Law No 222/84, on expiry of only five years of contribution, three of which must have been in the preceding five years.

24 In those circumstances, the Corte suprema di cassazione (Supreme Court of Cassation) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is national legislation that, in the event of a request for the aggregation of contributions accrued in several Member States of the European Union, makes [payment of the supplement in order to reach] the statutory minimum amount of … disability allowance contingent on having accrued [ten] years of contributions in Italy, pursuant to Article 8(2) of Law No 153/69, unlike [a request made by] someone who has accrued all of his or her contributions in Italy, who is awarded the [supplement in order to reach the] statutory minimum amount with only five years of contributions (three of which must be in the last five years), under Articles 1 and 4 of Law No 222/84, contrary to [EU] legislation, in particular the provisions of Article 58 of Regulation … No 883/2004?'

25 On 24 June 2025, the Court sent a request for clarification to the referring court under Article 101(1) of the Rules of Procedure of the Court of Justice, seeking to

ascertain whether, in view of the interpretation of national law submitted by the INPS in its observations, the dispute in the main proceedings had retained its purpose and, if it had, to determine the precise scope of national law, including of the case-law of the Corte suprema di cassazione (Supreme Court of Cassation). In reply to that request, the referring court, by letter lodged at the Registry of the Court on 18 July 2025, indicated that the dispute in the main proceedings had retained its purpose and asserted that the INPS was mistaken as to the scope of Italian law and of the case-law of the referring court.

Consideration of the question referred

Admissibility

26 Although not formally raising a plea of inadmissibility, the INPS claims, in its observations, that the question submitted is devoid of purpose because, according to that body, by virtue of Article 3 of Decree No 577/1992 and of the interpretation of national law that emerges from the case-law of the referring court itself, where an insured person resident in Italy aggregates contribution periods in Italy and contribution periods in a different Member State, that person is not required, in order to be awarded the invalidity allowance supplement in order to reach the statutory minimum, to comply with an additional condition compared with insured persons who have paid contributions exclusively in Italy.

27 In that regard, it should be noted that, in proceedings under Article 267 TFEU, the Court must take account, under the division of jurisdiction between the Courts of the European Union and the national courts, of the factual and legislative context, which the referring court is responsible for defining, in which the questions put to it are set (judgment of 27 November 2025, *Santander Renta Variable España Pensiones, Fondo de Pensiones*, C-525/24, EU:C:2025:922, paragraph 30 and the case-law cited).

28 It should also be noted that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court, which enjoy a presumption of relevance. Accordingly, where the question submitted concerns the interpretation or validity of a rule of EU law, the Court is in principle bound to give a ruling, unless it is quite obvious that the interpretation 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 that question (judgment of 24 June 2025, *GR REAL*, C-351/23, EU:C:2025:474, paragraph 45).

29 In the present case, in response to the request for clarification made by the Court to the referring court, the latter states that the interpretation of national law put

forward by the INPS in its observations before the Court does not correspond to the interpretation advanced by that body up to that point. The referring court states that the dispute in the main proceedings retains its purpose, since F.F.'s application has not been granted. It considers that the interpretation of the national provisions, in particular of Article 3 of Decree No 577/1992 and of the case-law of the Corte suprema di cassazione (Supreme Court of Cassation), put forward by the INPS in its observations before the Court, is incorrect.

30 In the light of that clarification provided by the referring court, it is not obvious that the question submitted is devoid of purpose and is, therefore, hypothetical within the meaning of the case-law summarised in paragraph 28 of the present judgment.

31 It follows that the question submitted is admissible.

Substance

32 It is necessary to recall, at the outset, that the AFMP, specifically Article 8 and Annex II, provides that Regulation No 883/2004 is to apply in situations involving the Member States of the European Union and the Swiss Confederation, and that the latter is to be equated with a Member State for the purposes of the application of that regulation (see, to that effect, judgment of 15 March 2018, *Blanco Marqués*, C-431/16, EU:C:2018:189, paragraph 37 and the case-law cited).

33 It is apparent from the request for a preliminary ruling that the referring court is uncertain whether the conditions laid down by the Italian legislation in order to receive a supplement intended to guarantee receipt of the minimum amount of an invalidity allowance are contrary to EU law in so far as they do not allow periods for which contributions have been paid in a different Member State to be taken into account as if they had been completed in Italy. It follows that the question submitted must be understood as concerning not only Article 58 of Regulation No 883/2004, cited in the question referred, but also Articles 4 and 6 of that regulation, which relate to the principles of equality of treatment and of the aggregation of periods respectively.

34 It should therefore be found that, by its question, the referring court is asking, in essence, whether Article 58 of Regulation No 883/2004, read in conjunction with Articles 4 and 6 of that regulation, must be interpreted as precluding legislation of a Member State under which the payment of a supplement intended to guarantee receipt of the minimum amount of an invalidity allowance is subject, for insured persons who paid contributions in other Member States, to a ten-year contribution period in that Member State whereas, for those who paid contributions exclusively in that Member State, payment of the supplement in question is subject to a contribution period of five years in that country, three of which must have been in the preceding five years.

35 In order to give a useful answer to the referring court, it must be recalled, as a preliminary point, that Regulation No 883/2004, the aim of which is to coordinate the disparate national systems, allows different national social security schemes to exist and does not set up a common scheme of social security. Thus, according to settled case-law, Member States retain the power to organise their own social security schemes (judgment of 14 March 2019, *Vester*, C-134/18, EU:C:2019:212, paragraph 29 and the case-law cited).

36 Therefore, in the absence of harmonisation at EU level, it is for the legislation of each Member State to determine, in particular, the conditions for entitlement to benefits (judgment of 14 March 2019, *Vester*, C-134/18, EU:C:2019:212, paragraph 30 and the case-law cited).

37 In exercising those powers, Member States must nonetheless comply with EU law and, in particular, with the provisions of the FEU Treaty giving every citizen of the European Union the right to move and reside within the territory of the Member States (judgment of 14 March 2019, *Vester*, C-134/18, EU:C:2019:212, paragraph 31 and the case-law cited).

38 In that respect, it must be held that the FEU Treaty offers no guarantee to a worker that extending his or her activities into more than one Member State or transferring them to another Member State will be neutral as regards social security. Given the disparities in the social security legislation of the Member States, such an extension or transfer may or may not be to the worker's advantage in terms of social security, according to the circumstances. It follows in particular that, even where its application is less favourable, such legislation is still compatible with Articles 45 and 48 TFEU if it does not place the worker at a disadvantage compared with those who pursue all their activities in the Member State where it applies (see, to that effect, judgment of 14 March 2019, *Vester*, C-134/18, EU:C:2019:212, paragraph 32 and the case-law cited).

39 Accordingly, the Court has repeatedly held that the aim of Article 45 TFEU would not be met if, through exercising their right to freedom of movement, migrant workers were to lose social security advantages guaranteed to them by the laws of a Member State. Such a consequence might discourage EU workers from exercising their right to freedom of movement and would therefore constitute an obstacle to that freedom (judgment of 14 March 2019, *Vester*, C-134/18, EU:C:2019:212, paragraph 33 and the case-law cited).

40 The requirements flowing from respect for the principle of freedom of movement for workers are given concrete expression, in the field of social security, by Regulation No 883/2004, Article 4 of which, on the principle of equality of treatment, states that the persons falling within the scope of that regulation must be treated in the same way, under the legislation of a Member State, as nationals of that Member State.

41 That principle of equal treatment prohibits not only overt discrimination based on the nationality of the beneficiaries of social security schemes but also all covert forms of discrimination which, through the application of other distinguishing criteria, lead in fact to the same result (judgment of 5 December 2019, *Bocero Torrico and Bode*, C-398/18 and C-428/18, EU:C:2019:1050, paragraph 40).

42 Accordingly, conditions imposed by national law must be regarded as being indirectly discriminatory where, although applicable irrespective of nationality, they affect essentially migrant workers or the great majority of those affected are migrant workers; where they are applicable without distinction but can more easily be satisfied by national workers than migrant workers; or where there is a risk that they may operate to the particular detriment of the latter (judgment of 5 December 2019, *Bocero Torrico and Bode*, C-398/18 and C-428/18, EU:C:2019:1050, paragraph 41).

43 Article 6 of Regulation No 883/2004, on the principle of the aggregation of periods, establishes for its part that, unless otherwise provided for by that regulation, ‘the competent institution of a Member State whose legislation makes … the acquisition … of the right to benefits … conditional upon the completion of periods of insurance, employment, self-employment or residence shall, to the extent necessary, take into account periods of insurance, employment, self-employment or residence completed under the legislation of any other Member State as though they were periods completed under the legislation which it applies’.

44 Last, under Article 58 of Regulation No 883/2004, the recipient of an invalidity allowance may not be provided with a benefit which is less than the minimum benefit fixed by the Member State of residence. That latter Member State must, if necessary, pay that recipient a supplement equal to the difference between the total of the benefits due and the amount of that minimum benefit.

45 It follows from paragraphs 40 to 44 of the present judgment that Article 58 of Regulation No 883/2004, read in conjunction with Articles 4 and 6 of that regulation, precludes such a supplement from being paid in accordance with arrangements which have the effect that workers who have exercised their freedom of movement within the territory of the European Union are treated less favourably than workers who have not exercised that freedom, by failing to take account of periods in which contributions were paid under the legislation of other Member States in the same way as if those periods had been completed under the legislation of the Member State of the competent institution.

46 In the present case, it is clear from the information available to the Court that the appellant in the main proceedings, who applied for the invalidity allowance supplement in order to reach the statutory minimum in Italy, paid contributions in the territory of the Swiss Confederation from 1991 to 1994, and then in Italy for 260 weeks between 2002 and 2012, that latter period corresponding to five years

of contribution. He was also credited with contributions, for 2012 and 2013, in respect of periods of unemployment in Italy.

47 It is also apparent from the order for reference that, under the legislation at issue in the main proceedings, persons not falling exclusively under the contributions system, which applies to contribution periods completed from 1 January 1996, are entitled, where they receive an invalidity allowance of an amount below the statutory minimum provided for by that legislation, to be paid a supplement to the allowance in question in order to reach that minimum. Receipt of that invalidity allowance supplement is subject to a condition of five years of contribution, three of which must have been in the preceding five years. However, the referring court states that, under Article 8(2) of Law No 153/69, where insurance and contribution periods are aggregated under international social insurance agreements or conventions, the insured person must provide evidence of ten years of contribution under an employment contract in Italy.

48 Subject to verification by the referring court, Italian law appears in that way to impose stricter conditions as regards the period of contribution in Italy on workers who have exercised their freedom of movement than the conditions applicable to workers who have not exercised that freedom. The legislation at issue appears not to allow contribution periods completed in a Member State other than the Italian Republic to be taken into account, for the purposes of receipt of the invalidity allowance supplement in order to reach the statutory minimum, in the same way as if they had been completed in Italy, contrary to what is required under Article 58 of Regulation No 883/2004, read in conjunction with Articles 4 and 6 of that regulation.

49 It should also be borne in mind, as regards the conclusions to be drawn from the foregoing analysis, that, according to settled case-law of the Court, where national law, in breach of EU law, provides that a number of groups of persons are to be treated differently, the members of the group placed at a disadvantage must be treated in the same way and made subject to the same arrangements as the other persons concerned. The arrangements applicable to members of the group placed at an advantage remain, for want of the correct application of EU law, the only valid point of reference (judgment of 14 March 2019, *Vester*, C-134/18, EU:C:2019:212, paragraph 46 and the case-law cited).

50 As is clear from the order for reference, workers who have not availed themselves of their right to freedom of movement and who complete their insurance periods entirely in Italy are entitled to the invalidity allowance supplement in order to reach the statutory minimum if they provide evidence of five years of contribution in Italy, three of which must be in the preceding five years. It is therefore that legal framework which is the valid point of reference within the meaning of the case-law cited in the preceding paragraph (see, by analogy, judgment of 14 March 2019, *Vester*, C-134/18, EU:C:2019:212, paragraph 47).

51 It is, admittedly, for the competent national authorities of the Member States concerned to determine, under national law, the most appropriate means of achieving equal treatment for migrant and non-migrant workers. However, it should be noted that that objective could, a priori, be achieved by granting migrant workers who are in a situation such as that at issue in the main proceedings the invalidity allowance supplement in order to reach the statutory minimum under the same conditions as those applicable to non-migrant workers (see, by analogy, judgment of 14 March 2019, *Vester*, C-134/18, EU:C:2019:212, paragraph 48).

52 Having regard to all the foregoing, the answer to the question submitted is that Article 58 of Regulation No 883/2004, read in conjunction with Articles 4 and 6 of that regulation, must be interpreted as precluding the legislation of a Member State under which the payment of a supplement intended to guarantee receipt of the minimum amount of an invalidity allowance is subject, for insured persons who paid contributions in other Member States, to a ten-year contribution period in that Member State whereas, for those who paid contributions exclusively in that Member State, payment of that supplement is subject to a contribution period of five years in that country, three of which must have been in the preceding five years.

Costs

53 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 (Sixth Chamber) hereby rules:

Article 58 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, read in conjunction with Articles 4 and 6 of that regulation,

must be interpreted as precluding the legislation of a Member State under which the payment of a supplement intended to guarantee receipt of the minimum amount of an invalidity allowance is subject, for insured persons who paid contributions in other Member States, to a ten-year contribution period in that Member State whereas, for those who paid contributions exclusively in that Member State, payment of that supplement is subject to a contribution period of five years in that country, three of which must have been in the preceding five years.

[Signatures]