Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

21 December 2016*

(Reference for a preliminary ruling — Directive 98/59/EC — Approximation of the laws of the Member States relating to collective redundancies — Article 49 TFEU — Freedom of establishment — Charter of Fundamental Rights of the European Union — Article 16 — Freedom to conduct a business — National legislation conferring upon an administrative authority the power to oppose collective redundancies after assessing the conditions in the labour market, the situation of the undertaking and the interests of the national economy — Acute economic crisis — Particularly high national unemployment rate)

In Case C-201/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Symvoulio tis Epikrateias (Council of State, Greece), made by decision of 7 April 2015, received at the Court on 29 April 2015, in the proceedings

Anonymi Geniki Etairia Tsimenton Iraklis (AGET Iraklis)

v

Ypourgos Ergasias, Koinonikis Asfalisis kai Koinonikis Allilengyis,

intervener:

Enosi Ergazomenon Tsimenton Chalkidas,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, T. von Danwitz, J.L. da Cruz Vilaça, E. Juhász, M. Berger, A. Prechal (Rapporteur) and M. Vilaras, Presidents of Chambers, A. Rosas, A. Borg Barthet, D. Šváby and E. Jarašiūnas, Judges,

Advocate General: N. Wahl,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 25 April 2016,

after considering the observations submitted on behalf of:

— Anonymi Geniki Etairia Tsimenton Iraklis (AGET Iraklis), by C. Theodorou, A. Vagias, C. Synodinos, S. Staes Polet and A. Papastavrou, dikigoroi, F. Montag, Rechtsanwalt, and F. Hoseinian, avocat,

* * Language of the case: Greek.

— Enosi Ergazomenon Tsimenton Chalkidas, by E. Tzovla, dikigoros,

— the Greek Government, by K. Georgiadis and A. Dimitrakopoulou, acting as Agents,

— the European Commission, by M. Kellerbauer and H. Tserepa-Lacombe, acting as Agents,

— The EFTA Surveillance Authority, by C. Zatschler and M. Moustakali, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 9 June 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 225, p. 16, and corrigendum at OJ 2007 L 59, p. 84) and of Articles 49 and 63 TFEU.

2 The request has been made in proceedings between Anonymi Geniki Etairia Tsimenton Iraklis (AGET Iraklis) and the Ypourgos Ergasias, Koinonikis Asfalisis kai Koinonikis Allilengyis (Minister for Labour, Social Security and Social Solidarity; 'the minister') concerning a decision by which the minister decided not to authorise AGET Iraklis to make a number of workers collectively redundant.

Legal context

Directive 98/59

3 Recitals 1 to 4 and 7 of Directive 98/59 are worded as follows:

'(1) … for reasons of clarity and rationality Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies [OJ 1975 L 48, p. 29] should be consolidated;

(2) … it is important that greater protection should be afforded to workers in the event of collective redundancies while taking into account the need for balanced economic and social development within the Community;

(3) … despite increasing convergence, differences still remain between the provisions in force in the Member States concerning the practical arrangements and procedures for such redundancies and the measures designed to alleviate the consequences of redundancy for workers;

(4) … these differences can have a direct effect on the functioning of the internal market;

…

(7) … this approximation must therefore be promoted while the improvement is being maintained within the meaning of Article 117 of the Treaty'.

4 Headed ‘Information and consultation’, Section II of Directive 98/59 consists of Article 2, a provision which states:

‘1. Where an employer is contemplating collective redundancies, he shall begin consultations with the workers’ representatives in good time with a view to reaching an agreement.

2. These consultations shall, at least, cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining workers made redundant.

…

3. To enable workers’ representatives to make constructive proposals, the employers shall in good time during the course of the consultations:

(a) supply them with all relevant information and

(b) in any event notify them in writing of:

(i) the reasons for the projected redundancies;

(ii) the number and categories of workers to be made redundant;

(iii) the number and categories of workers normally employed;

(iv) the period over which the projected redundancies are to be effected;

(v) the criteria proposed for the selection of the workers to be made redundant in so far as national legislation and/or practice confers the power therefor upon the employer;

(vi) the method for calculating any redundancy payments other than those arising out of national legislation and/or practice.

The employer shall forward to the competent public authority a copy of, at least, the elements of the written communication which are provided for in the first subparagraph, point (b), subpoints (i) to (v).

…’

5 Headed ‘Procedure for collective redundancies’, Section III of Directive 98/59 consists of Articles 3 and 4.

6 Article 3 of Directive 98/59 provides:

‘1. Employers shall notify the competent public authority in writing of any projected collective redundancies.

…

This notification shall contain all relevant information concerning the projected collective redundancies and the consultations with workers’ representatives provided for in Article 2, and particularly the reasons for the redundancies, the number of workers to be made redundant, the number of workers normally employed and the period over which the redundancies are to be effected.

2. Employers shall forward to the workers' representatives a copy of the notification provided for in paragraph 1.

The workers' representatives may send any comments they may have to the competent public authority.'

7 Article 4(1) to (3) of Directive 98/59 provides:

'1. Projected collective redundancies notified to the competent public authority shall take effect not earlier than 30 days after the notification referred to in Article 3(1) without prejudice to any provisions governing individual rights with regard to notice of dismissal.

Member States may grant the competent public authority the power to reduce the period provided for in the preceding subparagraph.

2. The period provided for in paragraph 1 shall be used by the competent public authority to seek solutions to the problems raised by the projected collective redundancies.

3. Where the initial period provided for in paragraph 1 is shorter than 60 days, Member States may grant the competent public authority the power to extend the initial period to 60 days following notification where the problems raised by the projected collective redundancies are not likely to be solved within the initial period.

Member States may grant the competent public authority wider powers of extension.

The employer must be informed of the extension and the grounds for it before expiry of the initial period provided for in paragraph 1.'

8 In Section IV of Directive 98/59, headed 'Final provisions', Article 5 states:

'This Directive shall not affect the right of Member States to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers or to promote or to allow the application of collective agreements more favourable to workers.'

Greek law

9 Headed 'Information and consultation obligations of the employer', Article 3 of Nomos No 1387/1983 Elenchos omadikon apolyseon kai alles diataxeis (Law No 1387/1983 on the review of collective redundancies and other provisions), in the version applicable at the material time ('Law No 1387/1983'), provides:

'1. Prior to collective redundancies, the employer must enter into consultations with the workers' representatives with the objective of investigating the possibility of avoiding or decreasing the redundancies and their adverse consequences.

2. The employer shall:

(a) provide the workers' representatives with all relevant information and

(b) notify them in writing of:

(aa) the reasons for the projected redundancies;

(bb) the number and categories of workers to be made redundant;

(cc) the number and categories of workers normally employed;

(dd) the period over which redundancies are to take place;

(ee) the criteria for the selection of the workers to be made redundant.

…

3. Copies of those documents shall be submitted by the employer to the prefect and to the labour inspector. If the undertaking or operating unit has branches in more than one prefecture, the above documents shall be submitted to the [minister] and the Labour Inspectorate (Soma Epitheorisis Ergasias) responsible for the area in which the operating unit or branch where all or most of the redundancies are scheduled to take place is located.'

10 Headed 'Procedure for collective redundancies', Article 5 of Law No 1387/1983 provides:

'1. The period of consultation between workers and the employer shall be 20 days starting from the date of the employer's invitation for consultation addressed to the workers' representatives … The outcome of the consultations shall be set out in minutes signed by both parties and submitted by the employer to the prefect or the [minister], in accordance with the provisions of Article 3(3).

2. If there is agreement between the parties, the collective redundancies shall be carried out in accordance with the content of the agreement …

3. If there is no agreement between the parties, the prefect or the [minister] may, by reasoned decision issued within 10 days from the date on which the foregoing minutes are submitted and after taking account of the documents in the file and assessing the conditions in the labour market, the situation of the undertaking and the interests of the national economy, either extend the consultations for 20 additional days following a request by one of the interested parties or not authorise some or all of the projected redundancies. Before issuing the foregoing decision, the prefect or the [minister] may request an opinion from the Epitropi Ipourgiou Ergasias (Committee of the Ministry of Labour), which is established in each prefecture, or from the Anotato Symvoulio Ergasias (Supreme Labour Council), respectively. These advisory bodies, the prefect or the [minister] may call before them and hear the workers' representatives within the meaning of Article 4 and the interested employer, as well as persons who have specialised knowledge on individual technical issues.

4. The employer may effect collective redundancies to the extent specified in the decision of the prefect or of the [minister]. If no such decision is issued within the prescribed time limits, the collective redundancies shall be effected to the extent agreed by the employer during the consultations.'

11 Article 6(1) of Law No 1387/1983 provides that 'collective redundancies which take place in breach of the provisions of this Law shall be invalid'.

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

12 AGET Iraklis, whose principal shareholder is the French multinational group Lafarge, produces cement at three plants located, respectively, in Agria Volou, Aliveri and Chalkida (Greece).

13 On various occasions between November 2011 and December 2012, AGET Iraklis invited the workers at its plant in Chalkida to meetings with a view to considering alterations to the activities at the plant in the light of a fall in demand for cement, while avoiding collective redundancies.

14 Invoking, in particular, a contraction in construction activity in the region of Attica (Greece) and the existence of surplus production capacity, as well as the need to safeguard the undertaking's viability and the conditions necessary for developing the group's business both on the Greek market and abroad, by a decision of 25 March 2013 the board of directors of AGET Iraklis approved a restructuring plan providing for the permanent closure of the Chalkida plant, at which 236 workers were then employed, and for the relocation of production to the other two plants conditional on an increase in their productivity.

15 By letters of 26 March and 1 April 2013, AGET Iraklis invited the Enosi Ergazomenon Tsimenton Chalkidas (Union of Cement Workers of Chalkida; 'the union') to meetings that were to be held on 29 March and 4 April 2013 respectively, for the purpose of providing information on the grounds that had led to the adoption of the restructuring plan and on the manner in which the projected redundancies were to be effected, and of consulting as to the possibilities for avoiding or reducing those redundancies and their harmful consequences.

16 As the union did not take up either of those invitations, on 16 April 2013 AGET Iraklis submitted to the minister a request for approval of the projected collective redundancies.

17 The employment directorate of the Ministry of Labour drew up a report taking into account the conditions in the labour market, the situation of the undertaking and the interests of the national economy and recommending that that request be refused because there was no plan for relocating the workers concerned to other plants belonging to AGET Iraklis and because the statistics of the Organismos Apascholisis Ergatikou Dynamikou (Greek Manpower Employment Organisation) indicated an ever higher unemployment rate.

18 In its opinion given at the minister's request, the Supreme Labour Council, after hearing AGET Iraklis and the union, came out against authorising the projected collective redundancies at issue, taking the view that the statement of reasons for the proposal was insufficient since, in particular, the need for the projected redundancies had not been substantiated by concrete and detailed evidence and the arguments relied on by AGET Iraklis appeared too vague.

19 Acting on the basis of that opinion, the minister decided, on 26 April 2013, not to authorise the projected collective redundancies.

20 In support of the action brought by it before the Symvoulio tis Epikrateias (Council of State, Greece) for annulment of that decision, AGET Iraklis contends, in particular, that Article 5(3) of Law No 1387/1983, on the basis of which the decision was adopted, infringes both Directive 98/59 and Articles 49 and 63 TFEU read in conjunction with Article 16 of the Charter of Fundamental Rights of the European Union ('the Charter').

21 That court takes the view that, although an administrative authorisation regime such as that established by that national provision is not provided for by Directive 98/59, such a measure could, as it is more favourable to workers than the measures provided for by the directive, be based on Article 5 thereof.

22 Assuming this to be the case, that court entertains doubts, however, as to whether it is compatible with the objectives and effectiveness of Directive 98/59 to make the issue of such authorisation dependent on criteria such as the conditions in the labour market and the interests of the national economy since, even though such criteria are linked to the legitimate public interest objectives of combating unemployment and of fostering national economic development, they are liable to lead at the same

time to divergences between Member States, to the replacement of the information and consultation procedures provided for by the directive by an authorisation procedure and to a disproportionate restriction of the employer's freedom to conduct a business.

23 Furthermore, the referring court takes the view that, given that the situation at issue in the main proceedings has a cross-border element since AGET Iraklis forms part of a French multinational group, Articles 49 and 63 TFEU are also applicable here. A national provision such as that at issue in the main proceedings is, on account of the extent of the restriction that it entails for the freedom to run businesses, liable to discourage, potentially considerably, the exercise by economic operators established in other Member States of the freedoms guaranteed by those articles. The referring court also observes that the provisions of the Charter, including Article 16 which enshrines the freedom to conduct a business, are applicable in all situations governed by EU law.

24 According to the referring court, the question arises however, whether, despite that impact on the aforesaid freedoms and on the freedom to conduct a business, such an obstacle might, especially when there is an acute economic crisis accompanied by an unusually high unemployment rate, of nearly 27% in the case of Greece, be justified by overriding reasons in the public interest, in particular in relation to employment policy in respect of which Member States retain a broad discretion.

25 In those circumstances the Symvoulio tis Epikrateias (Council of State) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is a national provision, such as Article 5(3) of Law No 1387/1983, which lays down as a condition in order for collective redundancies to be effected in a specific undertaking that the administrative authorities must authorise the redundancies in question on the basis of criteria as to (a) the conditions in the labour market, (b) the situation of the undertaking and (c) the interests of the national economy, compatible with Directive 98/59 in particular and, more generally, Articles 49 and 63 TFEU?

2. If the answer to the first question is in the negative, is a national provision with the aforementioned content compatible with Directive 98/59 in particular and, more generally, Articles 49 and 63 TFEU if there are serious social reasons, such as an acute economic crisis and very high unemployment?'

Consideration of the questions referred

The first question

26 By its first question, the referring court seeks, in essence, to ascertain whether Directive 98/59 and/or Articles 49 and 63 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which, if there is no agreement with the workers' representatives on projected collective redundancies, an employer can effect such redundancies only if the competent national public authority which must be notified of the projected collective redundancies does not adopt, within the period prescribed by that legislation and after examining the documents in the file and assessing the conditions in the labour market, the situation of the undertaking and the interests of the national economy, a reasoned decision not to authorise some or all of the projected redundancies.

Directive 98/59

27 It is clear from recital 2 of Directive 98/59 that that directive is designed to strengthen the protection of workers in the event of collective redundancies. According to recitals 3 and 7 of the directive, the differences still remaining between the provisions in force in the Member States concerning measures apt to alleviate the consequences of collective redundancies are among the matters to be covered by a harmonisation of laws (see, in particular, judgment of 12 October 2004, *Commission* v *Portugal*, C-55/02, EU:C:2004:605, paragraph 52).

28 As regards the main objective of Directive 98/59, namely to make collective redundancies subject to prior consultation with the workers' representatives and prior notification of the competent public authority, it should be noted, first, that under Article 2(2) of the directive the consultations are to cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining workers made redundant. Secondly, according to Article 2(3) and Article 3(1) of the directive, employers are to notify the public authority of any projected collective redundancies and to forward to them the material and information mentioned in those provisions (see, to that effect, judgment of 10 December 2009, *Rodríguez Mayor and Others* , C-323/08, EU:C:2009:770, paragraphs 43 and 44).

29 Directive 98/59, like the earlier Directive 75/129 which it replaced, therefore provides for only a partial harmonisation of the rules for the protection of workers in the event of collective redundancies, that is to say, harmonisation of the procedure to be followed when such redundancies are to be effected (see, to that effect, judgment of 10 December 2009, *Rodríguez Mayor and Others* , C-323/08, EU:C:2009:770, paragraph 51 and the case-law cited).

30 Thus, neither Directive 98/59 nor the earlier Directive 75/129 impinges upon the employer's freedom to effect or refrain from effecting collective redundancies (see, in respect of Directive 75/129, judgments of 12 February 1985, *Dansk Metalarbejderforbund and Specialarbejderforbundet i Danmark*, 284/83, EU:C:1985:61, paragraph 10, and of 7 September 2006, *Agorastoudis and Others*, C-187/05 to C-190/05, EU:C:2006:535, paragraph 35).

31 Those directives do not specify, inter alia, the circumstances in which the employer must contemplate collective redundancies and in no way affect his freedom to decide whether and when he must formulate plans for collective redundancies (see, in respect of Directive 75/129, judgment of 12 February 1985, *Dansk Metalarbejderforbund and Specialarbejderforbundet i Danmark*, 284/83, EU:C:1985:61, paragraph 15).

32 Whilst, by harmonising the rules applicable to collective redundancies in this way, the EU legislature sought both to ensure comparable protection for workers' rights in the various Member States and to harmonise the costs which such protective rules entail for EU undertakings (see, in particular, judgment of 9 July 2015, *Balkaya* , C-229/14, EU:C:2015:455, paragraph 32 and the case-law cited), it is nevertheless clear from Article 1(1) and Article 5 of Directive 98/59 that that directive is intended, in that context, to provide minimum protection with regard to informing and consulting workers in the event of collective redundancies and that the Member States remain free to adopt national measures that are more favourable to those workers (see, in particular, judgment of 18 January 2007, *Confédération générale du travail and Others* , C-385/05, EU:C:2007:37, paragraph 44).

33 It follows from all of the foregoing that, as the Advocate General has observed in point 30 of his Opinion, the substantive conditions to which the ability of the employer to effect or refrain from effecting collective redundancies might be subject are not covered, in principle, by the provisions of Directive 98/59 and consequently remain a matter for the Member States.

34 It likewise follows that Directive 98/59 cannot, in principle, be interpreted as precluding a national regime which confers upon a public authority the power to prevent collective redundancies by a reasoned decision adopted after the documents in the file have been examined and predetermined substantive criteria have been taken into account.

35 However, the position would, exceptionally, be different if, in the light of its more detailed rules or of the particular way in which it is implemented by the competent public authority, such a national regime were to result in Articles 2 to 4 of Directive 98/59 being deprived of their practical effect.

36 As the Court has repeatedly held, whilst it is true that Directive 98/59 harmonises only partially the rules for the protection of workers in the event of collective redundancies, the fact remains that the limited character of such harmonisation cannot have the consequence of depriving the provisions of the directive of practical effect (see, to that effect, in respect of Directive 75/129, judgment of 8 June 1994, *Commission* v *United Kingdom* , C-383/92, EU:C:1994:234, paragraph 25, and, in respect of Directive 98/59, judgment of 16 July 2009, *Mono Car Styling* , C-12/08, EU:C:2009:466, paragraph 35).

37 Therefore, a Member State cannot, in particular, adopt a national measure which, although ensuring an enhanced level of protection of workers' rights against collective redundancies, would, however, have the consequence of depriving Articles 2 to 4 of Directive 98/59 of their practical effect.

38 That would be so in the case of national legislation under which collective redundancies require the prior consent of a public authority if, on account, for example, of the criteria in the light of which that authority is called upon to take a decision or of the specific way in which it interprets and applies those criteria, any actual possibility for the employer to effect such collective redundancies were, in practice, ruled out.

39 As the Court has already pointed out, Article 2 of Directive 98/59 imposes an obligation to negotiate (judgment of 27 January 2005, *Junk* , C-188/03, EU:C:2005:59, paragraph 43). It is apparent from the wording of that provision that the consultations to be carried out must take place with a view to reaching an agreement, must at least cover ways and means of avoiding the projected collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures, and must enable workers' representatives to make constructive proposals on the basis of a range of information that the employer is required to make available to them.

40 Articles 3 and 4 of Directive 98/59 provide that the competent public authority must be notified of projected collective redundancies and that such redundancies cannot take effect until the end of a period which that authority must use to seek solutions to the problems raised by them.

41 Those provisions, which, as pointed out in paragraphs 27 and 32 of this judgment, are designed, in particular, to strengthen the protection of workers while harmonising the costs which those protective rules entail for undertakings, are clearly based on the premiss that collective redundancies must — once the procedures established by those provisions have been exhausted, including where the consultations have not led to an agreement — at least remain conceivable, albeit subject to the fulfilment of certain objective requirements laid down by the applicable national legislation, if such requirmements exist.

42 In that connection, AGET Iraklis has contended, in particular, before the Court that the competent public authority has systematically opposed projected collective redundancies of which it has been notified, which has had the consequence, in particular, that the workers' representatives — as was the case in the context of the main proceedings — generally refrain from taking part in consultations with a view to attempting to find an agreement on ways and means of avoiding the projected redundancies or reducing the number of workers affected, and of mitigating the consequences.

43 It is, however, the referring court — which alone has the information relevant in that regard — that will have the task, if need be, of determining whether, on account of the three assessment criteria noted in paragraph 26 of this judgment, in whose light the competent public authority is required to take a decision on the projected collective redundancies of which it has been notified, and of the specific way in which it applies those criteria, the consequence of the legislation at issue in the main proceedings is that any actual possibility for the employer to effect collective redundancies is, in practice, ruled out, with the result that the provisions of Directive 98/59 would be deprived of practical effect.

44 In the light of the foregoing, the answer to the first part of the first question is that Directive 98/59 must be interpreted as not precluding, in principle, national legislation, such as that at issue in the main proceedings, under which, if there is no agreement with the workers' representatives on projected collective redundancies, an employer can effect such redundancies only if the competent national public authority which must be notified of the projected collective redundancies does not adopt, within the period prescribed by that legislation and after examining the documents in the file and assessing the conditions in the labour market, the situation of the undertaking and the interests of the national economy, a reasoned decision not to authorise some or all of the projected redundancies. The position is different, however, if — a matter which is, as the case may be, for the referring court to ascertain — in the light of the three assessment criteria to which that legislation refers and of the specific application of them by the public authority, subject to review by the courts having jurisdiction, that legislation proves to have the consequence of depriving the provisions of that directive of their practical effect.

Articles 49 and 63 TFEU

– Applicability of Article 49 TFEU, on freedom of establishment, and/or Article 63 TFEU, on the free movement of capital, and the existence of a restriction on one or both of those freedoms

45 Freedom of establishment, which Article 49 TFEU grants to nationals of the Member States and which includes the right for them to take up and pursue activities as self-employed persons and to set up and manage undertakings, under the conditions laid down for its own nationals by the law of the Member State where such establishment is effected, entails, in accordance with Article 54 TFEU, for companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the European Union, the right to exercise their activity in the Member State concerned through a subsidiary, a branch or an agency (see, in particular, judgment of 13 December 2005, *Marks & Spencer*, C-446/03, EU:C:2005:763, paragraph 30 and the case-law cited).

46 Freedom of establishment thus covers, in particular, the situation where a company established in a Member State creates a subsidiary in another Member State. The same is true, in accordance with settled case-law, where such a company or a national of a Member State acquires a holding in the capital of a company established in another Member State allowing it or him to exert a definite influence on the company's decisions and to determine its activities (see, to that effect, judgments of 21 October 2010, *Idryma Typou* , C-81/09, EU:C:2010:622, paragraph 47 and the case-law cited, and of 8 November 2012, *Commission* v *Greece* , C-244/11, EU:C:2012:694, paragraph 21 and the case-law cited).

47 That is the case in the main proceedings since, as is apparent from the order for reference, the multinational group Lafarge, whose seat is in France, has holdings in AGET Iraklis which make it the latter's principal shareholder and AGET Iraklis explained in this context at the hearing, in reply to a question from the Court, that at the time when the redundancy plan at issue was drawn up those holdings amounted to 89% of its capital.

48 It is settled case-law that the concept of a 'restriction' within the meaning of Article 49 TFEU covers, in particular, measures which, even though they are applicable without discrimination on grounds of nationality, are liable to impede the exercise of freedom of establishment or render it less attractive (see, in particular, judgments of 21 April 2005, *Commission* v *Greece* , C-140/03, EU:C:2005:242, paragraph 27, and of 21 October 2010, *Idryma Typou* , C-81/09, EU:C:2010:622, paragraph 54).

49 That concept thus covers, in particular, measures taken by a Member State which, although applicable without distinction, affect access to the market for undertakings from other Member States and thereby hinder intra-Community trade (see, in particular, judgment of 28 April 2009, *Commission* v *Italy* , C-518/06, EU:C:2009:270, paragraph 64 and the case-law cited)

50 As regards the access to the market of a Member State which should thus be guaranteed, it should be remembered that, in accordance with settled case-law, the objective of the freedom of establishment guaranteed by Article 49 TFEU is to allow nationals of a Member State or legal persons established in that Member State to set up a secondary establishment in another Member State in order to carry on their business there and thus to promote economic and social interpenetration within the European Union in the sphere of economic activity other than as an employee. To that end, freedom of establishment is intended to allow such nationals or legal persons of the European Union to participate, on a stable and continuing basis, in the economic life of a Member State other than their State of origin and to profit therefrom by actually pursuing, in the host Member State, an economic activity through a fixed establishment for an indefinite period (see, in particular, judgment of 23 February 2016, *Commission* v *Hungary* , C-179/14, EU:C:2016:108, paragraph 148 and the case-law cited).

51 The concept of establishment consequently presupposes actual establishment of the company concerned in that State and the pursuit of genuine economic activity there (see, in particular, judgment of 12 July 2012, *VALE* , C-378/10, EU:C:2012:440, paragraph 34 and the case-law cited).

52 Actual exercise of freedom of establishment thus entails, in particular, as a necessary adjunct to that freedom, that the subsidiary, agency or branch set up by a legal person established in another Member State must be able, where relevant, and if the activity which it proposes to carry out in the host Member State so requires, to take on workers in that Member State (see, to that effect, judgment of 10 July 1986, *Segers* , 79/85, EU:C:1986:308, paragraph 15).

53 Such exercise also entails, in principle, the freedom to determine the nature and extent of the economic activity that will be carried out in the host Member State, in particular the size of the fixed establishments and the number of workers required for that purpose, and also, as the Advocate General has observed in point 65 of his Opinion, the freedom subsequently to scale down that activity or even the freedom to give up, should it so decide, its activity and establishment.

54 It must be noted, in connection with those various observations, that under the legislation at issue in the main proceedings it is the very ability of such an establishment to effect collective redundancies that is subject, in this instance, to a requirement that there be no opposition on the part of the competent public authority. The decision to effect collective redundancies is, however, a fundamental decision in the life of an undertaking (see, by analogy, in respect of decisions relating to voluntary winding-up, demerger or merger, judgment of 13 May 2003, *Commission* v *Spain* , C-463/00, EU:C:2003:272, paragraph 79).

55 Such national legislation constitutes a significant interference in certain freedoms which economic operators generally enjoy (see, by analogy, judgment of 28 April 2009, *Commission* v *Italy* , C-518/06, EU:C:2009:270, paragraph 66). That is true of the freedom of economic operators to enter into contracts with workers in order to be able to carry out their activities or the freedom, for their own reasons, to bring the activity of their establishment to an end, and their freedom to decide whether and when they should formulate plans for collective redundancies on the basis, in particular, of

factors such as a cessation or reduction of the activity of the undertaking or a decline in demand for the product which they manufacture, or as a result of new working arrangements within an undertaking unconnected with its level of activity (see, to that effect, judgments of 12 February 1985, *Dansk Metalarbejderforbund and Specialarbejderforbundet i Danmark* , 284/83, EU:C:1985:61, paragraph 15, and of 8 June 1994, *Commission* v *United Kingdom* , C-383/92, EU:C:1994:234, paragraphs 29 and 32).

56 National legislation such as that at issue in the main proceedings is thus such as to render access to the Greek market less attractive and, following access to that market, to reduce considerably, or even eliminate, the ability of economic operators from other Member States who have chosen to set up in a new market to adjust subsequently their activity in that market or to give it up, by parting, to that end, with the workers previously taken on.

57 Accordingly, it must be held that such national legislation is liable to constitute a serious obstacle to the exercise of freedom of establishment in Greece.

58 As to Article 63 TFEU on the free movement of capital, that provision covers direct investments in the form of participation in an undertaking through the holding of shares which confers the possibility of participating effectively in its management and control, and also portfolio investments, that is to say, the acquisition of securities on capital markets solely with the intention of making a financial investment without any intention to influence the management and control of the undertaking (see judgment of 21 October 2010, *Idryma Typou*, C-81/09, EU:C:2010:622, paragraph 48 and the case-law cited).

59 So far as concerns the main proceedings, however, it is not disputed that the company planning collective redundancies in the present instance is a company in whose capital a multinational group of companies which is established in another Member State has a majority holding enabling it to exert a definite influence over the decisions of that company and to determine its activities and that such a situation, as has been pointed out in paragraph 47 of this judgment, falls within freedom of establishment. Accordingly, even if the legislation at issue in the main proceedings were to have restrictive effects on the free movement of capital, those effects would, in such a case, be the unavoidable consequence of any restriction on freedom of establishment and would not warrant independent examination in the light of Article 63 TFEU (see, to that effect, judgments of 26 March 2009, *Commission* v *Italy* , C-326/07, EU:C:2009:193, paragraph 39 and the case-law cited, and of 8 November 2012, *Commission* v *Greece* , C-244/11, EU:C:2012:694, paragraph 30).

60 Therefore, it is not necessary to examine the legislation at issue in the main proceedings separately in the light of the rules of the FEU Treaty on the free movement of capital.

– Possible justification

61 According to settled case-law, a restriction on freedom of establishment is permissible only if it is justified by overriding reasons in the public interest. It is further necessary, in such a case, that the restriction should be appropriate for ensuring the attainment of the objective in question and not go beyond what is necessary to attain that objective (see, in particular, judgments of 29 November 2011, *National Grid Indus* , C-371/10, EU:C:2011:785, paragraph 42 and the case-law cited, and of 23 February 2016, *Commission* v *Hungary* , C-179/14, EU:C:2016:108, paragraph 166).

62 As pointed out, in the context of the present case, by the referring court, it is also settled case-law that the fundamental rights guaranteed by the Charter are applicable in all situations governed by EU law and that they must, therefore, in particular be complied with where national legislation falls within the scope of EU law (see, in particular, judgment of 26 February 2013, *Åkerberg Fransson* , C-617/10, EU:C:2013:105, paragraphs 19 to 21).

63 That is inter alia the case where national legislation is such as to obstruct one or more of the fundamental freedoms guaranteed by the Treaty and the Member State concerned relies on overriding reasons in the public interest in order to justify such an obstacle. In such a situation, the national legislation concerned can fall within the exceptions thereby provided for only if it complies with the fundamental rights the observance of which is ensured by the Court (see judgments of 18 June 1991, *ERT* , C-260/89, EU:C:1991:254, paragraph 43, and of 30 April 2014, *Pfleger and Others* , C-390/12, EU:C:2014:281, paragraph 35).

64 That obligation to comply with fundamental rights falls within the scope of EU law and, consequently, within that of the Charter. The use by a Member State of exceptions provided for by EU law in order to justify an obstruction of a fundamental freedom guaranteed by the Treaty must, therefore, be regarded as 'implementing Union law' within the meaning of Article 51(1) of the Charter (see judgment of 30 April 2014, *Pfleger and Others* , C-390/12, EU:C:2014:281, paragraph 36).

65 As has been pointed out in paragraphs 54 to 57 of this judgment, the legislation at issue in the main proceedings constitutes a restriction on freedom of establishment. Since, according to the information provided by the referring court that is referred to in paragraph 22 of this judgment, overriding reasons in the public interest are relied upon to justify the restriction, that legislation is capable of such justification only if it complies with fundamental rights.

66 In the present instance, as the referring court has pointed out, national legislation such as that at issue in the main proceedings entails a limitation on exercise of the freedom to conduct a business enshrined in Article 16 of the Charter.

67 The Court has indeed already held that the protection afforded by that provision covers the freedom to exercise an economic or commercial activity, freedom of contract and free competition (judgment of 22 January 2013, *Sky Österreich* , C-283/11, EU:C:2013:28, paragraph 42).

68 As regards freedom of contract, the Court has thus held, in relation to the negotiation of collective labour agreements, that Article 16 of the Charter means, in particular, that an undertaking must be able to assert its interests effectively in a contractual process to which it is party and to negotiate the aspects determining changes in the working conditions of its employees with a view to its future economic activity (judgment of 18 July 2013, *Alemo-Herron and Others* , C-426/11, EU:C:2013:521, paragraph 33).

69 It cannot therefore be contested that the establishment of a regime imposing a framework for collective redundancies such as the regime at issue in the main proceedings constitutes an interference in the exercise of the freedom to conduct a business and, in particular, the freedom of contract which undertakings in principle have, inter alia in respect of the workers which they employ, since it is not in dispute that under that regime the national authority's opposition to certain plans for collective redundancies may result in the employer being prevented from putting those plans into effect.

70 It must nevertheless be borne in mind that Article 52(1) of the Charter accepts that limitations may be imposed on the exercise of rights enshrined by the Charter as long as the limitations are provided for by law, respect the essence of those rights and freedoms and, in accordance with the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others (see, in particular, judgment of 31 January 2013, *McDonagh* , C-12/11, EU:C:2013:43, paragraph 61).

– Overriding reasons in the public interest

71 The legislation at issue in the main proceedings, which, if there is no agreement between the employer and the workers' representatives on projected collective redundancies, confers upon the competent national authority the power not to authorise those redundancies, sets out three criteria which that authority is required to take into account when examining the documents submitted to it, namely the conditions in the labour market, the situation of the undertaking and the interests of the national economy. It follows, as the national court states in its order for reference, that the public interest objectives that are pursued by that legislation in this instance relate both to protecting workers and combating unemployment and to safeguarding the interests of the national economy.

72 As regards safeguarding the interests of the national economy, it is settled case-law that purely economic grounds, such as, in particular, promotion of the national economy or its proper functioning, cannot serve as justification for obstacles prohibited by the Treaty (see to that effect, in particular, judgments of 5 June 1997, *SETTG* , C-398/95, EU:C:1997:282, paragraphs 22 and 23; of 6 June 2000, *Verkooijen* , C-35/98, EU:C:2000:294, paragraphs 47 and 48; and of 4 June 2002, *Commission* v *Portugal* , C-367/98, EU:C:2002:326, paragraph 52 and the case-law cited).

73 On the other hand, the overriding reasons in the public interest that are recognised by the Court include the protection of workers (see, in particular, judgments of 23 November 1999, *Arblade and Others* , C-369/96 and C-376/96, EU:C:1999:575, paragraph 36; of 13 December 2005, *SEVIC Systems* , C-411/03, EU:C:2005:762, paragraph 28; and of 11 December 2007, *International Transport Workers' Federation and Finnish Seamen's Union* , C-438/05, EU:C:2007:772, paragraph 77).

74 The same is true of the encouragement of employment and recruitment which, being designed in particular to reduce unemployment, constitutes a legitimate aim of social policy (see, to that effect, judgments of 11 January 2007, *ITC* , C-208/05, EU:C:2007:16, paragraphs 38 and 39; of 18 January 2007, *Confédération générale du travail and Others* , C-385/05, EU:C:2007:37, paragraph 28; and of 13 December 2012, *Caves Krier Frères* , C-379/11, EU:C:2012:798, paragraph 51).

75 The Court has thus, in particular, already acknowledged that considerations connected with the maintenance of employment may, under certain circumstances and conditions, be acceptable justifications for national legislation that has the effect of impeding freedom of establishment (see, to that effect, judgment of 25 October 2007, *Geurts and Vogten* , C-464/05, EU:C:2007:631, paragraph 26).

76 It should be added, in respect of the overriding reasons in the public interest noted in paragraphs 73 to 75 of this judgment, that, as is apparent from Article 3(3) TEU, the European Union is not only to establish an internal market but is also to work for the sustainable development of Europe, which is based, in particular, on a highly competitive social market economy aiming at full employment and social progress, and it is to promote, inter alia, social protection (see, in respect of the EC Treaty, judgment of 11 December 2007, *International Transport Workers' Federation and Finnish Seamen's Union* , C-438/05, EU:C:2007:772, paragraph 78).

77 Since the European Union thus has not only an economic but also a social purpose, the rights under the provisions of the Treaty on the free movement of goods, persons, services and capital must be balanced against the objectives pursued by social policy, which include, as is clear from the first paragraph of Article 151 TFEU, the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion (see to that effect, in respect of the corresponding provisions of the EC Treaty, judgment of 11 December 2007, *International Transport Workers' Federation and Finnish Seamen's Union* , C-438/05, EU:C:2007:772, paragraph 79).

78 In the same vein, under Article 147(1) TFEU the European Union is to contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action, while fully respecting the competences of the Member States. Article 147(2) TFEU provides that the objective of a high level of employment is to be taken into consideration in the formulation and implementation of EU policies and activities. Article 9 TFEU, finally, states that, in defining and implementing its policies and activities, the European Union is to take into account, inter alia, requirements linked to the promotion of a high level of employment and to the guarantee of adequate social protection.

– Proportionality

79 It must now be established whether the restrictions on freedom of establishment and the freedom to conduct a business to which national legislation such as that at issue in the main proceedings gives rise are capable of being justified by the reasons in the public interest identified in paragraphs 73 to 75 of this judgment, namely the protection of workers and of employment.

80 As is clear from the case-law recalled in paragraph 61 of this judgment, in order for that to be so, those restrictions must be appropriate for ensuring attainment of the objective in the public interest which they pursue and must not go beyond what is necessary to attain it.

81 In this connection, it should also be borne in mind that whilst, as the Court has repeatedly stated, the Member States have a broad discretion when choosing the measures capable of achieving the aims of their social policy, the fact remains, however, that that discretion may not have the effect of undermining the rights granted to individuals by the Treaty provisions in which their fundamental freedoms are enshrined (see, to that effect, judgments of 11 January 2007, *ITC* , C-208/05, EU:C:2007:16, paragraphs 39 and 40; of 18 January 2007, *Confédération générale du travail and Others* , C-385/05, EU:C:2007:37, paragraphs 28 and 29; and of 13 December 2012, *Caves Krier Frères* , C-379/11, EU:C:2012:798, paragraphs 51 and 52).

82 Furthermore, as has been noted in paragraph 70 of this judgment, limitations imposed on the free exercise of the rights and fundamental freedoms guaranteed by the Charter, and in the present instance the freedom to conduct a business enshrined in Article 16 thereof, must also respect the essence of those rights and freedoms.

83 In respect of those various points, it must, in the first place, be stated that the mere fact that a Member State provides, in its national legislation, that projected collective redundancies must, prior to any implementation, be notified to a national authority, which is endowed with powers of review enabling it, in certain circumstances, to oppose the projected redundancies on grounds relating to the protection of workers and of employment, cannot be considered contrary to freedom of establishment as guaranteed by Article 49 TFEU or the freedom to conduct a business enshrined in Article 16 of the Charter.

84 First, a mechanism imposing a framework on collective redundancies such as the mechanism described in the preceding paragraph does not seem — in principle — to be such as to affect the essence of the freedom to conduct a business enshrined in Article 16 of the Charter.

85 Whilst, as has been pointed out in paragraph 69 of this judgment, establishment of a regime imposing such a framework constitutes an interference in the exercise of the freedom to conduct a business and, in particular, the freedom of contract which undertakings have, inter alia in respect of the workers which they employ, it should be borne in mind that, according to the Court's settled case-law, the freedom to conduct a business is not absolute, but must be viewed in relation to its social function (see, in particular, judgment of 22 January 2013, *Sky Österreich* , C-283/11, EU:C:2013:28, paragraph 45 and the case-law cited).

86 On the basis of that case-law and in the light of the wording of Article 16 of the Charter, which differs from the wording of the other fundamental freedoms enshrined in Title II thereof, yet is similar to that of certain provisions of Title IV of the Charter, the freedom to conduct a business may be subject to a broad range of interventions on the part of public authorities that may limit the exercise of economic activity in the public interest (judgment of 22 January 2013, *Sky Österreich* , C-283/11, EU:C:2013:28, paragraph 46).

87 It is true that the Court has previously held, in respect of national legislation by virtue of which certain undertakings were unable to participate in the collective bargaining body called upon to decide collective agreements and therefore could not assert their interests effectively in a contractual process or negotiate the aspects determining changes in working conditions for their employees with a view to their future economic activity, that in such a case the contractual freedom of those undertakings is seriously reduced to the point that such a limitation is liable to affect adversely the very essence of their freedom to conduct a business (judgment of 18 July 2013, *Alemo-Herron and Others* , C-426/11, EU:C:2013:521, paragraphs 34 and 35).

88 However, it is sufficient to point out, in the present instance, that a regime such as that described in paragraph 83 of this judgment does not have, in any way, the consequence of entirely excluding, by its very nature, the ability of undertakings to effect collective redundancies, since it is designed solely to impose a framework on that ability. Therefore, such a regime cannot be considered to affect the essence of the freedom to conduct a business.

89 Secondly, it should be recalled that Article 52(1) of the Charter accepts that limitations may be imposed on the exercise of rights enshrined by the Charter as long as, in particular, in accordance with the principle of proportionality, they are necessary and genuinely meet recognised objectives of general interest or the need to protect the rights and freedoms of others. As regards such rights and freedoms, it is to be noted that Article 30 of the Charter states that every worker has the right to protection against unjustified dismissal, in accordance with EU law and national laws and practices.

90 Thus, a national regime imposing a framework, as referred to in paragraph 83 of this judgment, must seek, in this sensitive area, to reconcile and to strike a fair balance between the interests connected with the protection of workers and of employment, in particular protection against unjustified dismissal and against the consequences of collective dismissals for workers, and those relating to freedom of establishment and the freedom of economic operators to conduct a business enshrined in Articles 49 TFEU and Article 16 of the Charter.

91 The decisions at issue in the present instance are economic and commercial decisions which may have repercussions on the employment of a significant number of workers within an undertaking (see, to that effect, judgment of 10 September 2009, *Akavan Erityisalojen Keskusliitto AEK and Others* , C-44/08, EU:C:2009:533, paragraph 37).

92 In the light of the potential extent of those repercussions, a mechanism imposing a framework on collective redundancies such as the mechanism described in paragraphs 83 and 90 of this judgment may — in the absence, especially, of any rules of EU law that are intended to prevent such redundancies and go beyond the fields of information and consultation covered by Directive 98/59 — prove to be a mechanism of the sort that can contribute to enhancing the level of actual protection of workers and of their employment, by laying down substantive rules governing the adoption of such economic and commercial decisions by undertakings. Such a mechanism is thus appropriate for ensuring the attainment of the objectives in the public interest thereby pursued.

93 Furthermore, in the light of the discretion available to the Member States when pursuing their social policy, they are, in principle, justified in considering the existence of a mechanism imposing such a framework to be necessary in order to ensure an enhanced level of protection of workers and of their employment. In particular, it is not apparent that measures of a less restrictive kind would ensure attainment of the objectives thereby pursued as effectively as the establishment of such a framework.

94 When viewed in this light, the establishment of such a framework governing the circumstances in which collective redundancies may be effected can therefore be a valid way of satisfying the requirements stemming from the principle of proportionality and is, therefore, capable of complying, from that perspective, with Article 49 TFEU and Article 16 of the Charter.

95 In the second place, it must be established whether the particular detailed rules which characterise, in the present instance, the regime imposing a framework on collective redundancies that is laid down by the legislation at issue in the main proceedings — and especially the three criteria which the competent public authority is called upon to take into account for the purpose of deciding whether it opposes collective redundancies — are such as to ensure that the requirements recalled in paragraphs 79 to 82 of this judgment are in fact complied with.

96 It must be stated at the outset that the criterion of 'interests of the national economy' to which that legislation refers cannot be accepted.

97 Indeed, a prohibition on effecting collective redundancies which is dictated, in particular, by the wish to prevent an economic sector, and consequently the country's economy, from suffering the adverse effects that they cause must be regarded as pursuing an economic aim, which, as has already been observed in paragraph 72 of this judgment and has been noted by the Advocate General in point 66 of his Opinion, cannot constitute a reason in the public interest that justifies a restriction on a fundamental freedom guaranteed by the Treaty (see, by analogy, judgment of 5 June 1997, *SETTG* , C-398/95, EU:C:1997:282, paragraph 23).

98 On the other hand, the other two assessment criteria to which the legislation at issue in the main proceedings refers, namely the 'situation of the undertaking' and the 'conditions in the labour market', do admittedly appear, prima facie, to be capable of relating to the legitimate objectives in the public interest that are constituted by the protection of workers and of employment.

99 However, such criteria are formulated in very general and imprecise terms. As is apparent from settled case-law, where powers of intervention of a Member State or a public authority, such as the powers of opposition with which the minister is vested in the present instance, are not qualified by any condition, save for a reference to such criteria formulated in general terms, without any indication of the specific objective circumstances in which those powers are to be exercised, this results in serious interference with the freedom concerned which may have the effect — when, as in the present instance, decisions are involved whose fundamental nature in the life of an undertaking has already been pointed out in paragraph 54 of this judgment — of excluding that freedom altogether (see to this effect, in particular, judgments of 4 June 2002, *Commission* v *France* , C-483/99, EU:C:2002:327, paragraphs 50 and 51, and of 26 March 2009, *Commission* v *Italy* , C-326/07, EU:C:2009:193, paragraphs 51 and 52).

100 Even though the national legislation at issue in the main proceedings states that the power not to authorise collective redundancies with which the public authority is vested in the present instance must be exercised by analysing the documents in the file, while taking account of the situation of the undertaking and the conditions in the labour market, and must result in a reasoned decision, it is clear that, in the absence of details of the particular circumstances in which the power in question may be exercised, the employers concerned do not know in what specific objective circumstances that power may be applied, as the situations allowing its exercise are potentially numerous, undetermined and indeterminable and leave the authority concerned a broad discretion that is difficult to review. Such criteria which are not precise and are not therefore founded on objective, verifiable conditions go

beyond what is necessary in order to attain the objectives stated and cannot therefore satisfy the requirements of the principle of proportionality (see, to that effect, judgments of 4 June 2002, *Commission* v *France* , C-483/99, EU:C:2002:327, paragraphs 51 and 53; of 26 March 2009, *Commission* v *Italy* , C-326/07, EU:C:2009:193, paragraphs 66 and 72; and of 8 November 2012, *Commission* v *Greece* , C-244/11, EU:C:2012:694, paragraphs 74 to 77 and 86).

101 Moreover, as also follows from the Court's case-law, whilst the fact that the exercise of such a power of opposition may be reviewed by the national courts is necessary for the protection of undertakings in the light of the application of the rules on freedom of establishment, it cannot, however, suffice on its own to make good the incompatibility with those rules of the two aforementioned assessment criteria (see, to that effect, judgment of 26 March 2009, *Commission* v *Italy* , C-326/07, EU:C:2009:193, paragraphs 54 and 72), since, in particular, the legislation concerned also fails to provide the national courts with criteria that are sufficiently precise to enable them to review the way in which the administrative authority exercises its discretion (see, to that effect, judgment of 13 May 2003, *Commission* v *Spain* , C-463/00, EU:C:2003:272, paragraph 79).

102 It follows that a regime providing for scrutiny and opposition such as the regime established by the legislation at issue in the main proceedings fails, on account of its particular detailed rules, to comply with the requirements recalled in paragraph 61 of this judgment and accordingly infringes Article 49 TFEU.

103 On identical grounds, such legislation also fails to comply with the principle of proportionality laid down in Article 52(1) of the Charter and, therefore, with Article 16 thereof.

104 In the light of all the foregoing, the answer to the second part of the first question is that Article 49 TFEU must be interpreted as precluding, in a situation such as that at issue in the main proceedings, national legislation under which, if there is no agreement with the workers' representatives on projected collective redundancies, an employer can effect such redundancies only if the competent national public authority which must be notified of the projected collective redundancies does not adopt, within the period prescribed by that legislation and after examining the documents in the file and assessing the conditions in the labour market, the situation of the undertaking and the interests of the national economy, a reasoned decision not to authorise some or all of the projected redundancies.

The second question

105 By its second question, the referring court seeks, in essence, to ascertain whether, assuming that the answer to the first question is that Directive 98/59 and/or Article 49 TFEU must be interpreted as precluding national legislation such as that at issue in the main proceedings, such national legislation may nevertheless be compatible with those provisions for serious social reasons, in a context where there is an acute economic crisis and a particularly high unemployment rate.

106 As regards, first, Directive 98/59, assuming that the national court finds, when it carries out the examination referred to in paragraphs 43 and 44 of this judgment, that the legislation at issue in the main proceedings is such as to deprive the provisions of that directive of their practical effect and therefore infringes the directive, the fact that the national context is one of acute economic crisis and a particularly high unemployment rate most certainly likewise does not authorise a Member State to deprive the provisions of the directive of practical effect, as the directive does not contain a safeguard clause for the purpose of authorising by way of exception a derogation, in the event of such a national context, from the harmonising provisions which it lays down.

107 So far as concerns, secondly, Article 49 TFEU, apart from the possibility that certain obstacles to freedom of establishment resulting from national measures may, in accordance with the Court's case-law and in the circumstances recalled in paragraph 61 of this judgment, be justified in the light of certain overriding reasons in the public interest, the Treaties do not, however, provide that that provision of primary law may be derogated from outside those situations or that, as the referring court seems to suggest by its second question, that provision may purely and simply be disregarded, on account of a national context such as that referred to in paragraph 105 of this judgment.

108 In the light of the foregoing, the answer to the second question is that the fact that the context in a Member State may be one of acute economic crisis and a particularly high unemployment rate is not such as to affect the answers given to the first question.

Costs

109 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 (Grand Chamber) hereby rules:

1. **Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as not precluding, in principle, national legislation, such as that at issue in the main proceedings, under which, if there is no agreement with the workers' representatives on projected collective redundancies, an employer can effect such redundancies only if the competent national public authority which must be notified of the projected collective redundancies does not adopt, within the period prescribed by that legislation and after examining the documents in the file and assessing the conditions in the labour market, the situation of the undertaking and the interests of the national economy, a reasoned decision not to authorise some or all of the projected redundancies. The position is different, however, if — a matter which is, as the case may be, for the referring court to ascertain — in the light of the three assessment criteria to which that legislation refers and of the specific application of them by the public authority, subject to review by the courts having jurisdiction, that legislation proves to have the consequence of depriving the provisions of that directive of their practical effect.**

   Article 49 TFEU must be interpreted as precluding, in a situation such as that at issue in the main proceedings, national legislation such as that referred to in the first sentence of the first paragraph of this point.

2. **The fact that the context in a Member State may be one of acute economic crisis and a particularly high unemployment rate is not such as to affect the answers set out in point 1 of this operative part.**

[Signatures]