ECLI:EU:C:2023:741

Provisional text

JUDGMENT OF THE COURT (Seventh Chamber)

5 October 2023 (*)

(Reference for a preliminary ruling – Social policy – Approximation of the laws of the Member States relating to collective redundancies – Directive 98/59/EC – The first subparagraph of Article 1(1)(b) and Article 6 – Procedure for informing and consulting workers in the event of projected collective redundancies – No workers' representatives appointed – National legislation allowing an employer not to inform and consult the workers concerned individually)

In Case C-496/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel București (Court of Appeal, Bucharest, Romania), made by decision of 22 June 2022, received at the Court on 22 July 2022, in the proceedings

EI

v

SC Brink's Cash Solutions SRL,

THE COURT (Seventh Chamber),

composed of M.L. Arastey Sahún, President of the Chamber, F. Biltgen (Rapporteur) and J. Passer, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure and further to the hearing on 24 May 2023,

after considering the observations submitted on behalf of:

– EI, by V. Stănilă, avocat,

– SC Brink's Cash Solutions SRL, by S. Şusnea and R. Zahanagiu, avocaţi,

– the Romanian Government, by M. Chicu, E. Gane and O.-C. Ichim, acting as Agents,

– the German Government, by J. Möller and A. Hoesch, acting as Agents,

– the Greek Government, by V. Baroutas and M. Tassopoulou, acting as Agents,

– the European Commission, by C. Gheorghiu, C. Hödlmayr and B.-R. Killmann, 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 the first subparagraph of Article 1(1)(b) and Article 6 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), as amended by Directive (EU) 2015/1794 of the European Parliament and of the Council of 6 October 2015 (OJ 2015 L 263, p. 1) ('Directive 98/59').

2 The request has been made in proceedings between EI and his former employer, SC Brink's Cash Solutions SRL, concerning his dismissal.

Legal context

Directive 98/59

3 According to recitals 2, 6 and 12 of Directive 98/59:

'(2) Whereas 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;

…

(6) Whereas the Community Charter of the fundamental social rights of workers, adopted at the European Council meeting held in Strasbourg on 9 December 1989 by the Heads of State or Government of 11 Member States, states, inter alia, in point 7, first paragraph, first sentence, and second paragraph; in point 17, first paragraph; and in point 18, third indent:

"7. The completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community (…).

The improvement must cover, where necessary, the development of certain aspects of employment regulations such as procedures for collective redundancies and those regarding bankruptcies.

(…)

17. Information, consultation and participation for workers must be developed along appropriate lines, taking account of the practices in force in the various Member States.

(…)

18. Such information, consultation and participation must be implemented in due time, particularly in the following cases:

(–…)

(–…)

- in cases of collective redundancy procedures;

(–…)”

…

(12) Whereas Member States should ensure that workers’ representatives and/or workers have at their disposal administrative and/or judicial procedures in order to ensure that the obligations laid down in this Directive are fulfilled’.

4 The first subparagraph of Article 1(1)(b) of that directive provides:

‘For the purposes of this Directive:

…

(b) “workers’ representatives” means the workers’ representatives provided for by the laws or practices of the Member States.’

5 Article 2 of that directive, which forms part of Section II thereof, entitled ‘Information and consultation’, provides:

‘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.

…'

6 Article 3(1) of that directive, which is in Section III thereof, entitled 'Procedure for collective redundancies', provides:

'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.'

7 Article 6 of Directive 98/59 provides as follows:

'Member States shall ensure that judicial and/or administrative procedures for the enforcement of obligations under this Directive are available to the workers' representatives and/or workers.'

Romanian law

8 Directive 98/59 was transposed into Romanian law by Legea nr. 53/2003 privind Codul muncii (Law No 53/2003 establishing the Labour Code) of 24 January 2003 (*Monitorul Oficial al României*, Part I, No 72 of 5 February 2003), in its republished version which is applicable to the dispute in the main proceedings (*Monitorul Oficial al României*, Part I, No 345 of 18 May 2011) ('the Labour Code').

9 Article 69 of the Labour Code states:

'(1) Where the employer is contemplating collective redundancies, that employer shall begin consultations, in good time and with a view to reaching an agreement, under the conditions laid

down by law, with the trade union or, as the case may be, the employees' representatives, on at least the following matters:

(a) the methods and means of avoiding collective redundancies or reducing the number of employees to be made redundant;

(b) mitigation of the consequences of dismissal by recourse to social measures aimed, in particular, at aid for the vocational retraining of dismissed employees.

(2) In the course of the consultations referred to in paragraph 1, in order to enable the trade union or employees' representatives to make proposals in good time, the employer shall provide them with all relevant information and notify them in writing of the following:

(a) the total number and categories of employees;

(b) the reasons for the projected redundancies;

(c) the number and categories of employees to be affected by the redundancies;

(d) the criteria taken into account, in accordance with the law and/or collective labour agreements, to determine the order of priority in the context of dismissal;

(e) the measures envisaged to limit the number of redundancies;

(f) measures to mitigate the consequences of dismissal and the compensation to be granted to dismissed employees in accordance with the applicable law and/or collective labour agreement;

(g) the date from which or the period during which the redundancies will take place;

(h) the period within which the trade union or, as the case may be, employees' representatives may make proposals to avoid redundancies or to reduce the number of employees made redundant.

(3) The criteria laid down in paragraph 2(d) shall apply for the purposes of deciding between employees once the achievement of performance targets has been assessed.

…'

10 Article 70 of that code provides:

'The employer shall forward a copy of the notification referred to in Article 69(2) to the regional labour inspectorate and to the regional employment agency on the same date as that on which that employer communicated it to the trade union or, as the case may be, to the employees' representatives.'

11 According to Article 71(1) of that code:

'The trade union or, where appropriate, the employees' representatives may propose to the employer measures to avoid redundancies or to reduce the number of employees made redundant within 10 calendar days of the date of receipt of the notification.'

12 Article 221 of that code is worded as follows:

‘(1) In the case of employers with more than 20 employees who do not have representative trade union organisations established in accordance with the law, the interests of employees may be promoted and protected by their representatives, elected and specifically mandated for that purpose.

(2) Employees’ representatives shall be elected at a general meeting of employees, with a vote of at least half of the total number of employees.

(3) Employees’ representatives may not carry out activities which, according to the law, fall exclusively within the remit of trade unions.’

13 Article 222 of the Labour Code states:

‘(1) Employees’ representatives shall be elected from among employees who are fully entitled to exercise their functions.

(2) The number of elected representatives of the employees shall be determined by mutual agreement with the employer, depending on the number of employees the latter employs.

(3) The term of office of the employees’ representatives may not exceed two years.’

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

14 On 14 August 2014, the appellant in the main proceedings concluded an employment contract with the respondent in the main proceedings as a cash-in-transit agent.

15 In the context of the pandemic caused by the coronavirus SARS-CoV-2 and the introduction of a state of emergency in Romania between 16 March and 15 May 2020, the respondent in the main proceedings experienced a significant decrease in its activity nationally, which had an impact on its profits. In that specific context, it decided to restructure its undertaking and initiated a collective redundancy procedure aimed at eliminating 128 posts nationally. On 12, 13 and 15 May 2020, it notified the authorities concerned, namely the Agenția Municipală pentru Ocuparea Forței de Muncă București (Regional Employment Agency for the Municipality of Bucharest, Romania), the Inspecția Muncii (Labour Inspectorate, Romania) and the Inspectoratul Teritorial de Muncă al Municipiului București (Regional Labour Inspectorate for the Municipality of Bucharest, Romania), of its intention to initiate that redundancy procedure. That notification expressly stated that the redundancies of the workers concerned would take place between 19 May and 2 July 2020. Since the term of office of the previously appointed workers’ representatives had expired on 23 April 2020 without new representatives having been elected, that notification was not forwarded to those representatives. Nor was that notification communicated individually to each worker affected by that redundancy procedure.

16 The appellant in the main proceedings, who is one of the 128 workers who was made redundant, brought an action against the decision to dismiss him. That action was dismissed at first instance. He appealed to the referring court, claiming that the respondent in the main proceedings was under a mandatory obligation to inform and consult workers individually (‘the worker consultation and information stage’), even in the absence of a trade union or representatives appointed to protect their interests. According to the appellant in the main proceedings, in a specific situation such as that at issue in the main proceedings, it was for the respondent in the main proceedings to inform the workers concerned of the need to appoint new representatives for the purposes of that redundancy procedure.

17 The respondent in the main proceedings, for its part, submits that, because of the failure to renew the terms of office of workers' representatives, it found itself in an atypical situation of having no social partner. The lack of coordination of the employees made it impossible to appoint duly authorised representatives during the collective redundancy procedure. The information and consultation of workers' representatives could not therefore take place and, in so far as the national legislation concerned provides that that procedure is to be carried out with the trade union and/or the workers' representatives and not with the employees individually, it was exempted from having to inform and consult the workers individually.

18 The referring court notes that other workers challenged the legality of the collective redundancy procedure initiated by the respondent in the main proceedings before the Romanian courts, which found that the redundancy decisions complied with the law. The referring court considers that Article 2(3) of Directive 98/59, read in the light of recitals 2, 6 and 12 thereof, must be interpreted as precluding national legislation which, in the absence of a compulsory national mechanism to appoint workers' representatives, would render meaningless the obligation to inform and consult workers in a situation such as that at issue in the main proceedings. According to the referring court, the interpretation of Article 2(3) of Directive 98/59, read in conjunction with Article 6 of that directive, shows that the worker information and consultation stage, even in the absence of workers' representatives, is mandatory in the context of a collective redundancy procedure, notwithstanding the fact that it would not in any way alter the restructuring plan envisaged by the employer.

19 The referring court notes, however, that other national appeal courts, which had to rule on the interpretation and application of those provisions of Directive 98/59, reached the opposite conclusion on the basis of a literal interpretation of that directive, according to which workers' representatives are the only persons covered by the obligation relating to information and consultation. Thus, according to those courts, in the absence of workers' representatives, an employer is not required to comply with the worker information and consultation stage.

20 In those circumstances, the Curtea de Apel București (Court of Appeal, Bucharest, Romania) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Do [the first subparagraph of] Article 1(1)(b) and Article 6 of [Directive 98/59], read in the light of recitals 2 and 6 of the preamble to that directive, preclude national legislation which allows an employer not to consult the workers affected by a collective redundancy procedure since they have neither appointed representatives nor a legal obligation to appoint them?

(2) Are [the first subparagraph of] Article 1(1)(b) and Article 6 of [Directive 98/59], read in the light of recitals 2 and 6 of the preamble to that directive, to be interpreted as meaning that, in the circumstances described above, the employer is required to inform and consult all the employees affected by the collective redundancy procedure?'

Admissibility of the request for a preliminary ruling

21 The respondent in the main proceedings disputes the admissibility of the request for a preliminary ruling on the ground that the questions put forward by the referring court in fact concern the interpretation and application of national law. It claims, first of all, that the referring court is ruling on the absence, in national law, of a statutory obligation on employers to consult and inform employees in the event that the employees have not appointed representatives and that that court is pointing out the differences of interpretation in the national case-law in that regard. Next,

the referring court seeks a declaration that Directive 98/59 has been incorrectly transposed into Romanian law. According to the respondent in the main proceedings, such a finding cannot be made in the context of preliminary ruling proceedings, but must be the subject of an action for failure to fulfil obligations. Finally, that respondent argues that, in accordance with the case-law of the Court, a directive cannot, by itself, give rise to obligations on the part of an individual and for that reason cannot be relied on as such against that individual.

22 In that regard, it should be recalled that, in accordance with the Court's settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, 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. Consequently, where the questions referred concern the interpretation of EU law, the Court is in principle required to give a ruling (judgment of 29 June 2023, *International Protection Appeals Tribunal and Others (Attack in Pakistan)*, C-756/21, EU:C:2023:523, paragraph 35 and the case-law cited).

23 Thus, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 29 June 2023, *International Protection Appeals Tribunal and Others (Attack in Pakistan)*, C-756/21, EU:C:2023:523, paragraph 36 and the case-law cited).

24 In the present case, it is not obvious from the documents before the Court that the situation at issue in the main proceedings corresponds to one of those scenarios. It is common ground that the appellant in the main proceedings was dismissed in the context of a collective redundancy procedure and that the national provisions at issue in the main proceedings are intended to transpose into Romanian law the provisions of Directive 98/59 whose interpretation is sought.

25 Furthermore, it must be stated, first, that the referring court has sufficiently identified the provisions of EU law whose interpretation it considers necessary and the provisions of the Labour Code which might be incompatible with those provisions of EU law. Second, the information set out in the request for a preliminary ruling makes it possible to understand the questions put forward by the referring court and the context in which they were raised.

26 The request for a preliminary ruling is therefore consistent with the requirements arising from the case-law of the Court and recalled in paragraph 22 of the present judgment.

27 As regards the argument that a directive cannot, by itself, give rise to obligations on the part of an individual and for that reason cannot be relied on as such against that individual, it must be borne in mind that although it is true that the Court has repeatedly held that even a clear, precise and unconditional provision of a directive seeking to confer rights on or impose obligations on individuals cannot of itself apply in a dispute exclusively between private persons (judgment of 7 August 2018, *Smith*, C-122/17, EU:C:2018:631, paragraph 43 and the case-law cited) and that a directive cannot be relied on in a dispute between individuals for the purpose of setting aside legislation of a Member State that is contrary to that directive (judgment of 7 August 2018, *Smith*,

C-122/17, EU:C:2018:631, paragraph 44), it does not follow that a request for a preliminary ruling concerning the interpretation of a directive raised in a dispute between individuals is inadmissible.

28 The interpretation of a directive in such a dispute may be necessary in order to enable a national court, called upon to apply its national law, to interpret that law, so far as possible, in the light of the wording and the purpose of that directive in order to achieve the result sought by the directive and thereby comply with the third paragraph of Article 288 TFEU (see, inter alia, judgments of 5 October 2004, *Pfeiffer and Others*, C-397/01 to C-403/01, EU:C:2004:584, paragraphs 113 and 114; of 19 April 2016, *DI*, C-441/14, EU:C:2016:278, paragraph 31; and of 7 August 2018, *Smith*, C-122/17, EU:C:2018:631, paragraph 39).

29 It follows that the request for a preliminary ruling is admissible.

Consideration of the questions referred

30 As is apparent from paragraph 18 of the present judgment, the questions put by the referring court are not confined to the interpretation of the first subparagraph of Article 1(1)(b) and Article 6 of Directive 98/59, but also cover the interpretation of Article 2(3) of that directive. The two questions referred for a preliminary ruling, which it is appropriate to examine together, must therefore be understood as seeking, in essence, to ascertain whether the first subparagraph of Article 1(1)(b), Article 2(3) and Article 6 of Directive 98/59 must be interpreted as precluding national legislation which does not require an employer to consult individually the workers affected by projected collective redundancies, where those workers have not appointed workers' representatives, and which does not require those workers to appoint such representatives.

31 In that regard, it should be recalled that it is apparent from the Court's case-law that the main objective of Directive 98/59 is to make collective redundancies subject to prior consultation with the workers' representatives and prior notification to the competent public authority (judgment of 17 March 2021, *Consulmarketing*, C-652/19, EU:C:2021:208, paragraph 40 and the case-law cited).

32 Moreover, the Court has repeatedly held that the right to information and consultation provided for in Directive 98/59 is intended for workers' representatives and not for workers individually (judgment of 16 July 2009, *Mono Car Styling*, C-12/08, EU:C:2009:466, paragraph 38). It has added that Article 2(3) of that directive gives the workers concerned collective, not individual, protection (judgment of 13 July 2023, *G Gmbh*, C-134/22, EU:C:2023:567, paragraph 37).

33 It is also apparent from Article 3 of Directive 98/59, which lays down the obligation to notify the competent public authority of any projected collective redundancies together with all relevant information concerning them and the consultations of the workers' representatives, that only the workers' representatives must receive a copy of the notification in question and that those representatives may send any comments they may have to that public authority, such a possibility not being granted to workers individually.

34 It must therefore be held that the provisions of Directive 98/59 do not require an employer to inform and consult individually the workers affected by projected collective redundancies.

35 That finding is borne out by the legislative history of Directive 98/59, which recast 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). It is apparent from the preparatory work for Directive 98/59 that it was intended to introduce a provision under which, in the absence of

workers' representatives in establishments normally employing fewer than 50 workers, employers were required to provide the workers affected by projected collective redundancies in good time with the same information as that to be provided to the workers' representatives. However, that provision was not adopted.

36 That finding is consistent with the objective referred to in Article 2 of Directive 98/59, namely to require employers contemplating collective redundancies to begin consultations with workers' representatives on ways and means of avoiding such collective redundancies or reducing the scale of such collective redundancies, or of mitigating the consequences of them. Informing each of the workers concerned individually or consulting each of them, is manifestly incapable of ensuring that that objective is achieved, since, first, the interests of the workers individually may not correspond to the interests of the workers taken as a whole and, second, workers individually do not have the legitimacy to intervene on behalf of workers taken as a whole. Therefore, contrary to what the Greek Government argued at the hearing, informing each worker individually cannot be regarded as a minimum obligation provided for by Directive 98/59.

37 Therefore, since the provisions of Directive 98/59 do not impose an obligation on an employer to inform and consult individually the workers concerned by projected collective redundancies, those provisions must be interpreted as not precluding national legislation which, in the absence of workers' representatives, does not require an employer to inform and consult individually each worker affected by such projected collective redundancies.

38 That said, it should also be recalled that national legislation which makes it possible to impede protection unconditionally guaranteed to workers by a directive is contrary to EU law (see, to that effect, judgment of 8 June 1994, *Commission* v *United Kingdom*, C-383/92, EU:C:1994:234, paragraph 21 and the case-law cited).

39 As regards Directive 75/129, replaced by Directive 98/59, which reproduces, in Articles 1, 2 and 3, in essence, Articles 1, 2 and 3 of Directive 75/129, the Court has held that, while it is true that Directive 75/129 does not contain any provision designed to deal with a situation where there are no workers' representatives under national law in an undertaking contemplating collective redundancies, the fact remains that its provisions require Member States to take all measures necessary to ensure that workers are informed, consulted and in a position to intervene through their representatives in the event of collective redundancies (judgment of 8 June 1994, *Commission* v *United Kingdom*, C-383/92, EU:C:1994:234, paragraph 23).

40 The Court has added that the limited nature of the partial harmonisation ensured by Directive 75/129 as regards the rules for the protection of workers in the event of collective redundancies, in particular by the reference in Article 1(1)(b) of that directive to workers' representatives 'provided for by the laws or practices of the Member States', cannot deprive the provisions of that directive of their effectiveness and cannot prevent Member States from being required to take all appropriate measures to ensure that workers' representatives are designated with a view to complying with the obligations laid down in Articles 2 and 3 of that directive (see, to that effect, judgment of 8 June 1994, *Commission* v *United Kingdom*, C-383/92, EU:C:1994:234, paragraph 25).

41 National legislation which would allow an employer to circumvent or frustrate the protection of the rights guaranteed to workers by Directive 98/59, in particular by precluding the existence or recognition of workers' representation in its undertaking, manifestly fails to satisfy those requirements (see, to that effect, judgment of 8 June 1994, *Commission* v *United Kingdom*, C-383/92, EU:C:1994:234, paragraphs 26 and 27).

42 In the present case, first, in the light of the information in the file before the Court, it appears that the national legislation at issue in the main proceedings, in particular the Labour Code, grants workers the right to appoint representatives and that, unlike the situation in the case which gave rise to the judgment of 8 June 1994, *Commission* v *United Kingdom* (C-383/92, EU:C:1994:234), under that legislation an employer cannot preclude the existence of worker representation.

43 Second, as is apparent from the request for a preliminary ruling, the national legislation at issue in the main proceedings does not impose an obligation on workers to appoint representatives. Even though Directive 98/59, which does not have the objective of harmonising the detailed rules and procedures for the appointment of worker representation in the Member States, does not impose such an obligation on workers, it is for the Member States to ensure the effectiveness of the provisions of that directive. Thus, it is for the Member States to adopt all appropriate measures to ensure that workers' representatives are appointed and to ensure that workers are not in a situation in which, for reasons beyond their control, they are prevented from appointing those representatives.

44 It will be for the referring court, which alone has jurisdiction to interpret national law, to assess whether the national provisions at issue in the main proceedings are sufficient in that regard. In the present case, it will have to examine more specifically whether the provisions of Romanian law governing the appointment of workers' representatives and limiting the duration of their term of office to two years are capable of being interpreted as guaranteeing the full effect of the provisions of Articles 2 and 3 of Directive 98/59 if it is impossible in practice, for reasons not attributable to the workers, to appoint new representatives.

45 In that regard, it should be added, first, that, contrary to what the referring court seems to imply, Article 6 of Directive 98/59, under which Member States must ensure that administrative and/or judicial procedures for the enforcement of the obligations laid down by that directive are available to the workers' representatives and/or workers, is irrelevant in the present case. Article 6 does not require Member States to adopt a specific measure in the event of a failure to comply with the obligations laid down in Directive 98/59, but leaves them free to choose between the different solutions suitable for achieving the objective pursued by that directive, depending on the different situations which may arise, it being specified that those measures must, however, ensure real and effective judicial protection under Article 47 of the Charter of Fundamental Rights of the European Union and have a real deterrent effect (see, to that effect, order of 4 June 2020, *Balga*, C-32/20, EU:C:2020:441, paragraph 33, and judgment of 17 March 2021, *Consulmarketing*, C-652/19, EU:C:2021:208, paragraph 43).

46 Second, assuming that the referring court reaches the conclusion that the national legislation at issue in the main proceedings cannot be interpreted in a manner consistent with Directive 98/59 and having regard to the fact that the dispute in the main proceedings is exclusively between individuals, it will be for that court, if appropriate, to take account of the case-law of the Court allowing a party injured as a result of national law not being in conformity with EU law to obtain from the Member State in question compensation for the loss or damage sustained (see, to that effect, judgment of 7 August 2018, *Smith*, C-122/17, EU:C:2018:631, paragraph 56 and the case-law cited).

47 In the light of all the foregoing considerations, the answer to the questions referred for a preliminary ruling is that the first subparagraph of Article 1(1)(b), Article 2(3) and Article 6 of Directive 98/59 must be interpreted as not precluding national legislation which does not require an employer to consult individually the workers affected by projected collective redundancies, where those workers have not appointed workers' representatives, and which does not require those

workers to appoint such representatives, provided that that legislation makes it possible, in circumstances beyond the control of those workers, to guarantee the full effect of those provisions of that directive.

Costs

48 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 (Seventh Chamber) hereby rules:

The first subparagraph of Article 1(1)(b), Article 2(3) and Article 6 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies, as amended by Directive (EU) 2015/1794 of the European Parliament and of the Council of 6 October 2015,

must be interpreted as not precluding national legislation which does not require an employer to consult individually the workers affected by projected collective redundancies, where those workers have not appointed workers' representatives, and which does not require those workers to appoint such representatives, provided that that legislation makes it possible, in circumstances beyond the control of those workers, to guarantee the full effect of those provisions of Directive 98/59, as amended.

[Signatures]

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* Language of the case: Romanian.