Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

9 July 2015 *

(Reference for a preliminary ruling — Directive 98/59/EC — Article 1(1)(a) — Collective redundancies — Concept of 'worker' — Member of the board of directors of a limited liability company — Person working under a scheme for training and reintegration into the labour market and benefitting from a public training grant but not receiving remuneration from the employer)

In Case C-229/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Arbeitsgericht Verden (Germany), made by decision of 6 May 2014, received at the Court on 12 May 2014, in the proceedings

Ender Balkaya

v

Kiesel Abbruch- und Recycling Technik GmbH,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, S. Rodin (Rapporteur), A. Borg Barthet, E. Levits and M. Berger, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— E. Balkaya, by M. Barton, Rechtsanwalt,

— Kiesel Abbruch- und Recycling Technik GmbH, by P. Wallenstein, Rechtsanwalt,

— the Estonian Government, by N. Grünberg, acting as Agent,

— the Polish Government, by B. Majczyna, acting as Agent,

— the European Commission, by M. Kellerbauer and J. Enegren, acting as Agents,

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

* Language of the case: German.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1(1)(a) 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).

2 The request has been made in proceedings between Mr Balkaya and Kiesel Abbruch- und Recycling Technik GmbH ('Kiesel Abbruch') concerning the lawfulness of a dismissal on economic grounds announced by the latter, upon the closure of an establishment, no notification of the projected collective redundancies having being given to the Bundesagentur für Arbeit (German Federal Employment Agency) before that dismissal.

Legal context

EU legislation

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

'1. For the purposes of this Directive:

(a) "collective redundancies" means dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, according to the choice of the Member States, the number of redundancies is:

(i) either, over a period of 30 days:

— at least 10 in establishments normally employing more than 20 and less than 100 workers,

— at least 10% of the number of workers in establishments normally employing at least 100 but less than 300 workers,

— at least 30 in establishments normally employing 300 workers or more,

(ii) or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question;

(b) "workers' representatives" means the workers' representatives provided for by the laws or practices of the Member States.

For the purpose of calculating the number of redundancies provided for in the first subparagraph of point (a), terminations of an employment contract which occur on the employer's initiative for one or more reasons not related to the individual workers concerned shall be assimilated to redundancies, provided that there are at least five redundancies.'

4 Article 3 of Directive 98/59 provides:

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

…

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.'

5 Article 4(1) and (2) of the directive 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.'

6 According to Article 5 of the directive:

'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.'

German law

7 Paragraph 17 of the Law on protection against unfair dismissal (Kündigungsschutzgesetz, 'KSchG'), which lays down the requirement to give a collective redundancies notice, is worded as follows:

'(1) The employer is under an obligation to notify the Employment Agency before it makes redundant:

1. more than 5 workers in establishments normally employing more than 20 and less than 60 workers;

…

over a period of 30 calendar days. Any other termination of an employment relationship brought about by the employer shall be assimilated to redundancy.

(2) If the employer contemplates making redundancies that are subject to the obligation to issue a notification under subparagraph 1 it shall promptly provide the works council with the appropriate information and notify it in writing, in particular, of:

1. the reasons for the projected redundancies;

2. the number and professional categories of workers to be made redundant;

3. the number and professional categories of workers normally employed;

4. the period over which the redundancies are expected to take place;

5. the proposed criteria for selecting the workers to be made redundant;

6. the proposed criteria for calculating any redundancy payments.

…

(3) The employer must simultaneously forward to the Employment Agency a copy of the notice given to the works council; this must contain at least the details stated in points 1 to 5 of the first sentence of subparagraph 2.

…

(5) The following shall not be regarded as workers for the purposes of this paragraph:

1. in establishments of one legal person, the members of the body that is responsible for the legal representation of that person;

2. in unincorporated associations without a legal personality, the persons entitled under the law, the statutes or by the articles of association to represent that association;

3. company directors, managers of the establishment and other persons holding analogous managerial posts, in so far as they are themselves authorised to take decisions relating to the recruitment and dismissal of workers.'

8 Paragraph 6 of the Law on limited liability companies (Gesetz betreffend die Gesellschaft mit beschränkter Haftung, 'GmbHG'), concerning the status of director, provides:

'(1) The company shall have one or more directors.

(2) Only a natural person with full legal capacity may be a director.

…

(3) Shareholders or any other persons may be appointed as directors. The appointment shall be made either in the company's articles of association or in accordance with the provisions of the third chapter of this law.

…'

9 Paragraph 35 of the GmbHG provides:

'(1) The company shall be represented in legal proceedings and in other matters by its directors.

(2) Where several directors have been appointed, they are only authorised to represent the company jointly, unless the articles of association provide otherwise …

…'

10 Paragraph 37 of the GmbHG, headed 'Limitation on the power of representation', provides:

'(1) The directors are required to respect, as regards the company, the limitations imposed on their power of representation by the articles of association or, unless otherwise stated in the articles of association, by the decisions of the shareholders.

(2) The limitations on the directors' power of representation may not be relied on against third parties. That shall be the case, in particular, when the representation is limited to certain legal acts or categories of legal act, or to certain circumstances, or to a certain period, or to certain named places or, furthermore, when the consent of the shareholders or of a body of the company is required for certain acts.'

11 Paragraph 38 of the GmbHG, concerning the removal of directors, provides:

'(1) The directors may be removed at any time, without prejudice to any claim for damages that may arise under existing contracts.

(2) The articles of association may limit the power to remove a director to cases in which there are serious reasons justifying that decision. Such reasons include, inter alia, serious breach of duty or lack of fitness to conduct the business of the company properly.'

12 Paragraph 43 of the GmbHG on directors' liability provides:

'(1) The directors must conduct the company's business using the care due of a prudent businessman.

(2) Directors who breach their obligations shall be jointly and severally liable to the company for the damage that they have caused.

...'

13 Paragraph 46 of the GmbHG, headed 'Powers of the shareholders', is worded as follows:

'The following shall be subject to the decision of the shareholders:

1. the adoption of the annual accounts and the distribution of the profits;

1a. decisions concerning the publication of the financial statements in accordance with international accounting standards … and concerning the approval of the annual accounts drawn up by the directors;

1b. approval of the consolidated accounts prepared by the directors;

2. the calling in of contributions;

3. the repayment of additional contributions;

4. the division, consolidation or redemption of shares;

5. the appointment, removal or discharge of directors;

6. the measures for the review and supervision of management;

7. the appointment of persons having power of attorney and representatives authorised to carry out generally business operations on behalf of the company;

8. the conduct of the company's claims for damages against the directors or the shareholders, as a result of the formation of the company or its management, and the representation of the company in proceedings brought against its directors.'

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

14 Kiesel Abbruch, a limited liability company incorporated under German law, employed Mr Balkaya, with effect from 1 April 2011, as a technician. Mr Balkaya was appointed to work within the company and with its clients.

15 Kiesel Abbruch terminated, with effect from 15 February 2013, all of the contracts of employment of its employees, including Mr Balkaya, and ceased all its business, which had become loss-making, on the site at Achim (Germany). Mr Balkaya was given notice of dismissal by letter of 7 January 2013.

16 It is not disputed that Kiesel Abbruch did not give notification of the projected collective redundancies to the Bundesagentur für Arbeit before giving notice of Mr Balkaya's dismissal.

17 Mr Balkaya relies on that omission to challenge, before the referring court, the validity of his dismissal. He submits that, as the number of workers normally employed by Kiesel Abbruch in its establishment in Achim was above the threshold of 20 persons provided for in Paragraph 17(1)(1) of the KSchG, the employer was required, under that provision, to give such notification before giving notice of dismissal.

18 As is apparent from the order for reference, it is not disputed that 18 people, including Mr Balkaya, were amongst the workers normally employed by Kiesel Abbruch in that establishment at the date on which notice of the dismissal was given.

19 However, the parties in the main proceedings disagree as to the question whether, in addition, three other persons who were also employed by Kiesel Abbruch must be counted in that category, in order to determine whether the threshold of 20 persons, laid down in Paragraph 17(1)(1) of the KSchG, was attained.

20 First, that question relates to Mr S, who was employed as a draftsman and had terminated his own contract of employment with effect from 7 December 2012.

21 Second, Kiesel Abbruch employed, at the date of the dismissals of which notice was given, Mr L. as a director. Mr L. did not hold any shares in Kiesel Abbruch and it was only jointly with another director that he was entitled to act on behalf of the company.

22 Third, at that same date, Kiesel Abbruch employed Ms S., who was undergoing training within the company to re-qualify as an office assistant, funded by the Jobcenter im Landkreis Diepholz (the public employment office for the district of Diepholz). A grant, which was equivalent to the whole of the remuneration due to Ms S for her work done in the context of her training, was paid to her directly by the Bundesagentur für Arbeit.

23 It is clear from the order for reference that the referring court considers it to be proven that Mr S. falls within the category of workers normally employed that must be taken into account in accordance with Paragraph 17(1)(1) of KSchG, which transposed Article 1(1)(a) of Directive 98/59 into German law. Thus, the number of 19 workers within that category is reached.

24 Therefore, the question arises as to whether it is appropriate also to include in that category of employed workers, within the meaning of those provisions, a director, such as Mr L., and a person undergoing requalification training, such as Ms S., with the result that, in the main proceedings, more than 20 workers were normally employed by Kiesel Abbruch within its establishment at the date of the dismissal in question.

25 In that regard, the referring court specifies, in the first place, as regards Mr L., that, under Paragraph 17(5)(1) of the KSchG, members of the body of a legal person which is responsible for the legal representation of that person are deemed not to be workers or employees for the purposes of that provision. The numerically most significant group of those members is that of directors of limited liability companies ('Gesellschaften mit beschränkter Haftung').

26 Furthermore, the referring court notes, as regards the relationship between the director and such a company, that German law clearly distinguishes the status of director as an officer, on the one hand, from the rights and obligations of the director vis-à-vis the company, on the other hand. While that status is acquired upon the appointment of the director by a general meeting of the shareholders, the most powerful body in the company, the rights and obligations of the director as regards that company are governed by the director's service contract. That contract is a contract for services in the form of a business management contract and does not constitute, according to German case-law, an employment contract.

27 In that context, the referring court raises a question, in particular, as to the interpretation of the criterion — established by the judgment in *Danosa* (C-232/09, EU:C:2010:674) for determining whether a member of a board of a company has the status of worker within the meaning of EU law — of carrying out an activity under the direction or supervision of another body of such a company.

28 In the second place, as regards a person such as Ms S., who has the status of 'trainee', performing real work within a company in order to acquire or improve skills or following vocational training, the referring court observes that, whereas, normally, recognised vocational training leads to the conclusion of a contract for that purpose between the company providing the training and the trainee and to the payment of remuneration by that company, the training provided to Ms S. was not the subject of such a contract and Kiesel Abbruch did not pay her a salary.

29 Therefore, the referring court is unsure as to the relevant criteria to be used to assess whether persons who are undergoing such vocational training or internships are workers, for the purposes of Article 1(1)(a) of Directive 98/59, and, in particular, as to the relevance in that regard of remuneration paid directly by the employer.

30 In those circumstances the Arbeitsgericht Verden decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is applicable EU law, in particular Article 1(1)(a) of Directive 98/59, to be interpreted as precluding national legislative provisions or practices which do not take into account a member of the board of directors of a limited liability company in the calculation provided for by that provision of the number of workers employed, even where he performs his duties under the direction and subject to the supervision of another body of that company, receives remuneration in return for the performance of his duties and does not himself own any shares in the company?

(2) Is applicable EU law, in particular Article 1(1)(a) of Directive 98/59, to be interpreted as making it mandatory also to regard as workers, in the calculation provided for by that provision of the number of workers employed, persons who, while not receiving remuneration from the employer, perform real work within the undertaking, with financial support from, and the recognition of, the public authority responsible for the promotion of employment, in order to acquire or improve skills or to complete vocational training ('trainees'), or are Member States permitted to lay down national legislative provisions or practices in that regard?'

The questions referred

The first question

31 By its first question, the referring court asks, in essence, whether Article 1(1)(a) of Directive 98/59 must be interpreted as meaning that it precludes a national law or practice that does not take into account, in the calculation provided for by that provision of the number of workers employed, a member of the board of directors of a capital company, such as the director in question in the main proceedings, who performs his duties under the direction and subject to the supervision of another body of that company, receives remuneration in return for the performance of his duties and does not himself own any shares in the company.

32 In order to reply to this question, it must be recalled, first of all, that by harmonising the rules applicable to collective redundancies, the EU legislature intended both to ensure comparable protection for workers' rights in the different Member States and to harmonise the costs which such protective rules entail for European Union undertakings (see, inter alia, judgments in *Commission* v *Portugal*, C-55/02, EU:C:2004:605, paragraph 48, and *Commission* v *Italy*, C-596/12, EU:C:2014:77, paragraph 16).

33 Therefore, contrary to the submission of Kiesel Abbruch, the concept of 'worker', referred to in Article 1(1)(a) of Directive 98/59, cannot be defined by reference to the legislation of the Member States but must be given an autonomous and independent meaning in the EU legal order (see, by analogy, judgment in *Commission* v *Portugal*, C-55/02, EU:C:2004:605, paragraph 49). Otherwise, the methods for calculation of the thresholds laid down in that provision, and therefore the thresholds themselves, would be within the discretion of the Member States, which would allow the latter to alter the scope of that directive and thus to deprive it of its full effect (see, to that effect, judgment in *Confédération générale du travail and Others*, C-385/05, EU:C:2007:37, paragraph 47).

34 It is apparent, next, from the settled case-law of the Court that that concept of 'worker' must be defined in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. In that regard, the essential feature of an employment relationship is that, for a certain period of time, a person performs services for and under the direction of another person, in return for which he receives remuneration (see judgment in *Commission* v *Italy*, C-596/12, EU:C:2014:77, paragraph 17, citing, by analogy, the judgment in *Danosa*, C-232/09, EU:C:2010:674, paragraph 39).

35 It that regard, in so far as the referring court emphasises the fact that the employment relationship of a director such as the one in question in the main proceedings is governed, inter alia, by a service contract to act as director, which is not, according to German case-law, a contract of employment, it must be observed, first, that it is clear from the settled case-law of the Court that the nature of the employment relationship under national law is of no consequence as regards whether or not a person is a worker for the purposes of EU law (see, to that effect, judgment in *Kiiski*, C-116/06, EU:C:2007:536, paragraph 26 and case-law cited).

36 It follows that, provided that a person meets the conditions specified in paragraph 34 above, the nature of that person's legal relationship with the other party to the employment relationship has no bearing on the application of Directive 98/59 (see, by analogy, judgment in *Danosa*, C-232/09, EU:C:2010:674, paragraph 40).

37 In the second place, in so far as the referring court is unsure, in particular, as to the existence, in the main proceedings, of a relationship of subordination, in accordance with the case-law of the Court regarding the concept of 'worker', because the degree of dependency or subordination of a director, such as the one in question in the main proceedings, in the exercise of his functions is of a lesser

intensity than that of a worker within the usual meaning under German law, it must be observed that whether such a relationship of subordination exists must, in each particular case, be assessed on the basis of all the factors and circumstances characterising the relationship between the parties (see, to that effect, judgment in *Danosa* C-232/09, EU:C:2010:674, paragraph 46).

38 In that regard, it is apparent from the case-law of the Court, which is applicable in connection with Directive 98/59, the fact that a person is a member of the board of directors of a capital company is not enough in itself to rule out the possibility that that person is in a relationship of subordination to that company (see, to that effect, judgments in *Danosa* C-232/09, EU:C:2010:674, paragraph 47, and *Commission* v *Italy*, C-596/12, EU:C:2014:77, paragraphs 14, 17 and 18). It is necessary to consider the circumstances in which the board member was recruited; the nature of the duties entrusted to that person; the context in which those duties were performed; the scope of the person's powers and the extent to which he or she was supervised within the company; and the circumstances under which the person could be removed (see judgment in *Danosa* C-232/09, EU:C:2010:674, paragraph 47).

39 Thus, the Court has already held that a member of a board of directors of a capital company who, in return for remuneration, provides services to the company which has appointed him and of which he is an integral part, who carries out his activities under the direction or supervision of another body of that company and who can, at any time, be removed from his duties without such removal being subject to any restriction, satisfies, prima facie, the criteria for being treated as a 'worker' within the meaning of EU law (see, to that effect, judgment in *Danosa*, C-232/09, EU:C:2010:674, paragraphs 51 and 56).

40 In the present case, it must be held that it is apparent from the order for reference that a director of a capital company, such as the director in question in the main proceedings, is appointed by the general meeting of shareholders of that company, which may revoke his mandate at any time against the will of the director. Furthermore, that director is, in the exercise of his functions, subject to the direction and supervision of that body, and, in particular, to the requirements and restrictions that are imposed on him in that regard. Moreover, although it is not by itself a decisive factor in that context, it must be observed that a director, such as the one in the main proceedings, does not hold any shares in the company for which he carries out his functions.

41 In those circumstances, it must be found that, even if such a board member of a capital company enjoys a degree of latitude in the performance of his duties that exceeds, in particular, that of a worker within the meaning of German law, who may be directed by the employer, as the national court has observed, as to the specific tasks that he must complete and the manner in which they must be carried out, the fact remains that the board member is in a relationship of subordination vis-à-vis that company within the meaning of the case-law cited at paragraphs 38 and 39 above (see, to that effect, the judgment in *Danosa*, C-232/09, EU:C:2010:674, paragraph 49 to 51).

42 Furthermore, it is common ground that a director, such as the one in the main proceedings, receives remuneration in return for the services he provides.

43 Having regard to the foregoing considerations, it must, therefore, be held that a member of the board of directors of a capital company, such as the director in question in the main proceedings, must be regarded as a 'worker' within the meaning of Article 1(1)(a) of Directive 98/59 and, consequently, be taken into account in the calculation of the thresholds laid down in that article.

44 That interpretation is also borne out by the objective of that directive which is, as is apparent from recital 2 in the preamble thereto, inter alia, to afford greater protection to workers in the event of collective redundancies. In accordance with that objective, a narrow definition cannot be given to the concepts that define the scope of that directive, including the concept of 'worker' in Article 1(1)(a) of

the directive (see, to that effect, judgments in *Athinaïki Chartopoïïa*, C-270/05, EU:C:2007:101, paragraphs 25 and 26, and, by analogy, *Union syndicale Solidaires Isère*, C-428/09, EU:C:2010:612, paragraph 22).

45 Finally, the Court rejects the submission made by Keisel Abbruch and the Estonian government that a director such as the one in question in the main proceedings does not need the protection afforded by Directive 98/59 in the event of collective redundancies.

46 In that regard, it must be held, first, that there is nothing to suggest that an employee who is a board member of a capital company, in particular, a small or medium sized company such as that at issue in the main proceedings, is necessarily in a different situation from that of other persons employed by that company as regards the need to mitigate the consequences of his dismissal, and, inter alia, to alert, for that purpose, the competent public authority so that it is able to seek solutions to the problems raised by all the projected collective redundancies (see, to that effect, judgment in *Junk*, C-188/03, EU:C:2005:59, paragraph 48, and in *Claes and Others*, C-235/10 to C-239/10, EU:C:2011:119, paragraph 56).

47 Second, it must be observed that a national law or practice, such as that at issue in the main proceedings, which does not take into account the board members of a capital company in the calculation provided for in Article 1(1)(a) of Directive 98/59 of the number of workers employed, is liable not only to affect the protection afforded by that directive to those members, but, above all, to deprive all the workers employed by certain establishments, normally employing more than 20 workers, of the rights which they derive from that directive and thus undermines its effectiveness (see, to that effect, judgment in *Confédération générale du travail and Others*, C-385/05, EU:C:2007:37, paragraph 48).

48 Having regard to all the foregoing considerations, the answer to the first question is that Article 1(1)(a) of Directive 98/59 must be interpreted as meaning that it precludes a national law or practice that does not take into account, in the calculation provided for by that provision of the number of workers employed, a member of the board of directors of a capital company, such as the director in question in the main proceedings, who performs his duties under the direction and subject to the supervision of another body of that company, receives remuneration in return for the performance of his duties and does not himself own any shares in the company.

The second question

49 By its second question, the referring court asks, in essence, whether Article 1(1)(a) of Directive 98/59 must be interpreted as meaning that it is necessary to regard as a worker for the purposes of that provision a person, such as the one in question in the main proceedings, who, while not receiving remuneration from his employer, performs real work within the undertaking in the context of a traineeship — with financial support from, and the recognition of, the public authority responsible for the promotion of employment — in order to acquire or improve skills or complete vocational training.

50 In that regard, it must be recalled, in the first place, that it is clear from the Court's well-established case-law that the concept of 'worker' in EU law extends to a person who serves a traineeship or periods of apprenticeship in an occupation that may be regarded as practical preparation related to the actual pursuit of the occupation in question, provided that the periods are served under the conditions of genuine and effective activity as an employed person, for and under the direction of an employer. The Court has stated that that conclusion cannot be invalidated by the fact that the productivity of the person concerned is low, that he does not carry out full duties and that, accordingly, he works only a small number of hours per week and thus receives limited remuneration

(see, to that effect, inter alia, judgments in *Lawrie-Blum*, 66/85, EU:C:1986:284, paragraphs 19 to 21; *Bernini*, C-3/90, EU:C:1992:89, paragraphs 15 and 16; *Kurz*, C-188/00, EU:C:2002:694, paragraphs 33 and 34, and *Kranemann*, C-109/04, EU:C:2005:187, paragraph 13).

51 In the second place, it is also clear from the Court's case-law that neither the legal context of the employment relationship under national law, in the framework of which the vocational training or internship is carried out, nor the origin of the funds from which the person concerned is remunerated and, in particular, in the present case, the funding of that remuneration through public grants, can have any consequence in regard to whether or not the person is to be regarded as a worker (see, to that effect, inter alia, judgments in *Bettray*, 344/87, EU:C:1989:226, paragraphs 15 and 16; *Birden*, C-1/97, EU:C:1998:568, paragraph 28, and *Kurz*, C-188/00, EU:C:2002:694, point 34).

52 Accordingly, and in the light of the considerations set out, in particular, in paragraphs 33, 34 and 44 of this judgment, the answer to the second question is that Article 1(1)(a) of Directive 98/59 must be interpreted as meaning that it is necessary to regard as a worker for the purposes of that provision a person, such as the one in question in the main proceedings, who, while not receiving remuneration from his employer, performs real work within the undertaking in the context of a traineeship — with financial support from, and the recognition of, the public authority responsible for the promotion of employment — in order to acquire or improve skills or complete vocational training.

Costs

53 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **Article 1(1)(a) of 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 meaning that it precludes a national law or practice that does not take into account, in the calculation provided for by that provision of the number of workers employed, a member of the board of directors of a capital company, such as the director in question in the main proceedings, who performs his duties under the direction and subject to the supervision of another body of that company, receives remuneration in return for the performance of his duties and does not himself own any shares in the company.**

2. **Article 1(1)(a) of Directive 98/59 must be interpreted as meaning that it is necessary to regard as a worker for the purposes of that provision a person, such as the one in question in the main proceedings, who, while not receiving remuneration from his employer, performs real work within the undertaking in the context of a traineeship — with financial support from, and the recognition of, the public authority responsible for the promotion of employment — in order to acquire or improve skills or complete vocational training.**

[Signatures]