



Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

6 July 2023 *

(Reference for a preliminary ruling – Information and consultation of workers – Directive 2002/14/EC – Scope – Meaning of ‘undertaking carrying out an economic activity’ – Private-law entity operating in the public sector – Removal of workers appointed to managerial positions – No prior information or consultation of employee representatives)

In Case C-404/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Dioikitiko Protodikeio Athinon (Administrative Court of First Instance, Athens, Greece), made by decision of 3 May 2022, received at the Court on 16 June 2022, in the proceedings

Ethnikos Organismos Pistopoiisis Prosonton & Epangelmatikou Prosanatolismou (Eoppep)

v

Elliniko Dimosio,

THE COURT (Seventh Chamber),

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

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Ethnikos Organismos Pistopoiisis Prosonton & Epangelmatikou Prosanatolismou (Eoppep), by K. Ithakisios and S. Papasaranti, dikigoroi,
- the Greek Government, by A. Dimitrakopoulou, K. Georgiadis and M. Tassopoulou, acting as Agents,
- the European Commission, by A. Katsimerou and B.-R. Killmann, acting as Agents,

* Language of the case: Greek.

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

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(a) and Article 4(2)(b) of Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ 2002 L 80, p. 29).
- 2 The request has been made in proceedings between the Ethnikos Organismos Pistoipoiisis Prosonton & Epangelmatikou Prosanatolismou (National Organisation for the Certification of Qualifications and Vocational Guidance (Eoppep), Greece) and the Elliniko Dimosio (Greek State) concerning a fine imposed on that body for failure to provide the competent authority with documents demonstrating that the representatives of that organisation's employees had been informed and consulted prior to the removal of two workers from their posts.

Legal context

European Union law

- 3 Recitals 7 to 10 of Directive 2002/14 state:
 - '(7) There is a need to strengthen dialogue and promote mutual trust within undertakings in order to improve risk anticipation, make work organisation more flexible and facilitate employee access to training within the undertaking while maintaining security, make employees aware of adaptation needs, increase employees' availability to undertake measures and activities to increase their employability, promote employee involvement in the operation and future of the undertaking and increase its competitiveness.
 - (8) There is a need, in particular, to promote and enhance information and consultation on the situation and likely development of employment within the undertaking and, where the employer's evaluation suggests that employment within the undertaking may be under threat, the possible anticipatory measures envisaged, in particular in terms of employee training and skill development, with a view to offsetting the negative developments or their consequences and increasing the employability and adaptability of the employees likely to be affected.
 - (9) Timely information and consultation is a prerequisite for the success of the restructuring and adaptation of undertakings to the new conditions created by globalisation of the economy, particularly through the development of new forms of organisation of work.

(10) The [European] Community has drawn up and implemented an employment strategy based on the concepts of “anticipation”, “prevention” and “employability”, which are to be incorporated as key elements into all public policies likely to benefit employment, including the policies of individual undertakings, by strengthening the social dialogue with a view to promoting change compatible with preserving the priority objective of employment.’

4 Article 1(1) of that directive provides:

‘The purpose of this Directive is to establish a general framework setting out minimum requirements for the right to information and consultation of employees in undertakings or establishments within the Community.’

5 Under Article 2 of that directive:

‘For the purposes of this Directive:

(a) “undertaking” means a public or private undertaking carrying out an economic activity, whether or not operating for gain, which is located within the territory of the Member States;

...

(f) “information” means transmission by the employer to the employees’ representatives of data in order to enable them to acquaint themselves with the subject matter and to examine it;

(g) “consultation” means the exchange of views and establishment of dialogue between the employees’ representatives and the employer.’

6 Article 4 of Directive 2002/14, headed ‘Practical arrangements for information and consultation’, provides in paragraph 2 thereof:

‘Information and consultation shall cover:

(a) information on the recent and probable development of the undertaking’s or the establishment’s activities and economic situation;

(b) information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment;

(c) information and consultation on decisions likely to lead to substantial changes in work organisation or in contractual relations, including those covered by the Community provisions referred to in Article 9(1).’

Greek law

Presidential Decree 240/2006

- 7 Proedriko diatagma 240/2006, Peri thespiseos geknikou plaisiou enimeroseos kai diavouleuseos ton ergazomenon simfona me tin odigia 2002/14/EK tis 11.3.2002 tou Europaikou Koinovouliou kai tou Symvouliou (Presidential Decree 240/2006, establishing a general framework for informing and consulting employees in accordance with Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002), of 9 November 2006 (FEK A' 252/16.11.2006; 'Presidential Decree 240/2006'), transposed Directive 2002/14 into the Greek legal order.
- 8 Article 2 of that presidential decree reproduces the definitions set out in Article 2 of Directive 2002/14.
- 9 Article 4 of that presidential decree, headed 'Practical details on information and consultation' reproduces, in paragraphs 2 to 4 thereof, the provisions of Article 4(2) to (4) of Directive 2002/14, respectively.

Law 4115/2013

- 10 Nomos 4115/2013, Organosi kai leitourgia Idrimatos Neolaias kai Dia Viou Mathisis kai Ethnikou Organismou Pistopoiisis Prosonton & Epangelmatikou Prosanatolismou kai alles diatakseis (Law 4115/2013 on the organisation and operation of a youth and lifelong learning foundation and a national organisation for the certification of qualifications and vocational guidance and other provisions), of 29 January 2013 (FEK A' 24/30.1.2013; 'Law 4115/2013'), determines, inter alia, the powers and areas of competence of Eoppep.
- 11 Article 13 of that law provides:

'1. By joint decision 119959/H/20.10.2011 ... [of the Minister for Finance and of the Minister] for Education, Professional Development and Religious Affairs ..., the private-law legal entity registered as "Ethniko Kentro Pistopoiisis Domon Dia Viou Mathisis" [(Ekepis)] (National Centre for the Certification of Lifelong Learning Structures) ... and the private-law legal entity registered as "Ethniko Kentro Epangelmatikou Prosanatolismou" [(EKEP)] (National Centre for Vocational Guidance) ... have been merged with the private-law legal entity registered as Ethnikos Organismos Pistopoiisis Prosonton [(EOPP)] (National Organisation for the Certification of Qualifications) ... and have ceased to exist as independent legal entities. By way of the same joint ministerial decision, the private-law legal entity registered as "Ethnikos Organismos Pistopoiisis Prosonton" (EOPP) has been renamed "Ethnikos Organismos Pistopoiisis Prosonton & Epangelmatikou Prosanatolismou" (Eoppep) (National Organisation for the Certification of Qualifications and Vocational Guidance).

2. Eoppep is a private-law legal entity within the broader public sector; it is administratively and financially independent, has charitable status and is non-profit, operates in the public interest and reports to the Minister for Education, Religious Affairs, Culture and Sports. ...'

12 Article 14 of that law provides:

‘1. Eoppep is the national certification body for individuals entering or leaving non-formal education and training; it acts as a national structure in European networks managing qualifications and European tools of transparency and mobility, such as the national coordination point for the European Qualifications Framework, the national Europass centre, [and] the Greek national vocational guidance information centre, a member of the Euroguidance network, the national reference point for the European Quality Assurance Reference Framework for Vocational Education and Training (EQAVET) and the European Credit System for Vocational Education and Training (ECVET).

2. The objectives pursued by Eoppep are, inter alia, the following:

- (a) the certification of individuals entering non-formal education and, in particular:
 - (aa) certification of professional structures and courses, as well as programmes run by institutions offering initial and continuing vocational training and education and non-formal education more generally, including general adult education;
 - (bb) certification of institutions offering support services and institutions providing vocational guidance and counselling; and
 - (cc) where applicable, the grant of operating licences to such institutions;
- (b) guaranteeing conditions and pursuing objectives – in matters relating to the certification of individuals entering and leaving non-formal education – referred to in national, European or co-financed vocational training programmes;
- (c) the establishment and development of the National Qualifications Framework and the alignment thereof with the European Qualifications Framework, the alignment of qualifications obtained through formal and non-formal education and non-formal training with the levels within the National Qualifications Framework, the alignment of the latter with international sectoral qualifications and the development of descriptive sectoral indicators in terms of knowledge, skills and aptitudes, which shall correspond to the levels within the National Qualifications Framework;
- (d) the certification of individuals leaving non-formal education and training and, in particular:
 - (aa) the introduction of a system for recognising and validating qualifications obtained through non-formal education and training, the certification of those qualifications and the alignment thereof with the levels within the National Qualifications Framework;
 - (bb) the certification of adult educators, support service professionals and professionals providing vocational guidance and counselling services; and
 - (cc) the granting of licences, the control and supervision of the operation of institutions certifying qualifications obtained through non-formal education and training;
- (e) the development and implementation of a system for transferring credits obtained through vocational teaching and vocational training;
- (f) quality assurance of lifelong learning and vocational guidance and counselling, in cooperation with other public stakeholders;
- (g) proposals setting the labour rights of holders of qualifications obtained in the context of lifelong learning, with the exception of higher education;

- (h) recognition of the equivalence of diplomas, issued by Greek vocational education and training organisations which have since been abolished, and recognition of the equivalence of foreign vocational education and training diplomas, with the exception of higher education diplomas;
- (i) provision of scientific and technical support to the relevant agencies of the Ministry of Education, Religious Affairs, Culture and Sports and of the Ministry of Labour, Social Security and Welfare, in the context of the planning and implementation of national policy on vocational guidance and counselling;
- (j) developing communication and coordinating actions between public and private operators providing “vocational guidance and counselling” in order to improve services already provided, by means of continuous information and exchanges of information;
- (i) the creation of a national network intended to inform and educate any interested entities or persons on matters relating to education, training and exchanges with the Member States of the European Union;
- (l) the provision of all types and forms of vocational guidance for the benefit of the relevant agencies of the Ministry of Education, Religious Affairs, Culture and Sports and of the Ministry of Labour, Social Security and Welfare, as well as vocational education and training centres and organisations, businesses, and employers’ or employees’ associations;
- (m) the education, training and continuing training of employees in the “vocational guidance and counselling” sector, in cooperation with and/or in a complementary manner to existing agencies (structures) within the Ministry of Education, Religious Affairs, Culture and Sports and of the Ministry of Labour, Social Security and Welfare;
- (n) the setting of, first, operating conditions and rules for vocational guidance organisations and, second, minimum qualifications to be held by employees providing those services, and the corresponding record-keeping;
- (o) the setting of the requisite conditions for the provision of vocational guidance services by natural or legal persons, certification specifications, the sufficient qualification of employees providing vocational guidance and counselling services, procedures to be followed in order to ensure quality of the services provided and the corresponding record-keeping.

...

6. Eoppep shall act as the administrative agency for lifelong education and training.’

13 Article 20 of that law provides:

‘1. [Eoppep] shall receive fees in respect of the evaluation and registration on the registers referred to in Article 21, the approval of private centres and offices offering vocational guidance and counselling, the approval and certification of lifelong learning providers, the approval of qualification certification bodies, the certification of qualifications held by natural persons, the certification of vocational curricula and programmes, and the equivalence of diplomas, in accordance with the provisions of the present law. The nature and amount of such fees, the correspondence thereof with the costs of the services specifically provided pursuant to the first subparagraph of the present paragraph, together with the arrangement for levying such fees shall

be determined by joint decision [of the Minister for Finance and the Minister] for Education, Religious Affairs, Culture and Sports, on proposal of the board of directors of [Eoppep].

2. Fees shall seek to recover the costs of review, evaluation, certification, special record-keeping, promotion and encouragement of the use of certified qualifications by virtue of the competences of [Eoppep], as well as campaigns to inform citizens of those services.

3. Supervision fees shall be levied on entities places under the supervision of [Eoppep] in accordance with Article 19 of the present law. Such fees shall be fixed by joint decision [of the Minister for Finance and the Minister] for Education, Religious Affairs, Culture and Sports, on proposal of the board of directors of [Eoppep].

4. Fees and supervision fees shall be paid into the bank accounts held by [Eoppep] and shall be used to cover all costs referred to in paragraph 2.'

14 Article 23 of Law 4115/2013 provides:

'1. The resources of Eoppep shall be those which the provisions of law have attributed to the bodies now merged and to the body absorbing them; for information purposes, such resources may consist in:

- (a) subsidies from the ordinary budget of the Ministry of Education, Religious Affairs, Culture and Sports;
- (b) subsidies and funding of any kind from the public investment programme, the EU investment programme ... and those of other international organisations, as well as co-financed programmes;
- (c) revenue from the management of its assets, interest from the use of its cash reserves and any other revenue from the use of its assets;
- (d) income from the performance of works and supply of services which may either be entrusted to Eoppep by the Minister for Education, Religious Affairs, Culture and Sports, or be performed or supplied on behalf of third parties such as, in particular, public services, national and international organisations, public- or private-law entities or private individuals, such works being performed further to a decision of the board of directors of the Organisation;

...

- (g) income from the payment of fees and supervision fees paid in respect of the certification of qualifications, the certification of adult educators and support service employees, the equivalence of diplomas, the approval and supervision of structure qualification and certification agencies, the certification and approval of lifelong learning service providers, and the certification of private vocational guidance and counselling offices or centres and of vocational guidance and training professionals.

...'

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

- 15 Eoppep is a legal person governed by private law within the broader public sector, created through the merger and absorption of other entities in 2011, the aim of which is to perform, inter alia, all manner of vocational guidance tasks for the benefit of the Ministry of Education, Religious Affairs, Culture and Sports and the Ministry of Labour, Social Security and Welfare, as well as professional training bodies, businesses and employees' or employers' associations.
- 16 By decision of 16 February 2012 of the board of directors of Eoppep, PM was assigned to the position of acting head of that agency's qualifications certification department, and DM was assigned to the position of acting deputy director of the directorate of administrative and economic services and acting head of the finance department of that agency. By decision of 17 June 2013 of the board of directors of Eoppep, amending the initial decision, DM became acting director of the directorate of administrative and economic services of that organisation.
- 17 On 18 January 2018, following the publication of the Eoppep operating regulations, the board of directors of that agency decided that DM would continue to perform the duties of acting head of the directorate of administrative and economic affairs pending the selection and appointment of a director for that directorate. On 14 February 2018, that board of directors decided to release DM from her duties as acting head of that directorate on the ground that she was not able to perform that role satisfactorily. However, DM remained assigned to the administrative services department.
- 18 By decision of 21 February 2018 of the board of directors of Eoppep, PM was released from her duties as acting head of the qualifications certification department, but continued to work in that unit as an employee. That decision was adopted having regard to the needs of Eoppep, in order to meet the objectives inherent in its constitution. By way of that decision, another employee, KG, was released from his duties as head of the structure licensing department, whilst continuing to work in the knowledge management and e-governance department, while another employee, AA, was named acting head of the finance department of Eoppep.
- 19 DM and PM challenged, respectively, the decisions of 14 February 2018 and of 21 February 2018 of the board of directors of the Eoppep before the Labour Relations Inspectorate. Following an investigation, the latter inspectorate considered that Eoppep had disregarded the presidential decree by failing to inform and consult the representatives of the employees concerned before removing them from their posts. Consequently, the Greek State imposed a fine on Eoppep in the amount of EUR 2 250 for infringement of that presidential decree.
- 20 Eoppep brought an action against that decision before the referring court. In support of its action, it claims, inter alia, that it is not an undertaking carrying on an economic activity, for the purposes of Presidential Decree 240/2006 and Directive 2002/14, and that, accordingly, it does not fall within the scope of either of those pieces of legislation; that DM and PM were aware of the temporary nature of their respective appointments to the post of head of the directorate of administrative and economic affairs and head of the qualifications certification unit; and that the alleged infringement concerns two employees with regard to whom the information and consultation of employee representatives laid down by that presidential decree does not apply, since the decisions concerning those two employees fall solely within the scope of Eoppep's managerial powers.
- 21 Before that court, the Greek State contends that this action should be dismissed as unfounded.

- 22 The referring court observes, first, that the legislation which establishes the competences of Eoppep does not appear to preclude the latter carrying out an economic activity. It is in fact possible, according to the referring court, that, for some of Eoppep’s competences – and, in particular, the performance of services relating to vocational guidance for the benefit of the relevant agencies of ministries, vocational training organisations, undertakings or employee’s or employers’ organisations – there are markets on which undertakings, which are in competition with Eoppep, carry on their activity. Furthermore, Eoppep’s financial resources also include revenue from the performance of contracts or the supply of services. According to the referring court, the legislature had therefore provided that Eoppep should act, at least in part, as a market operator.
- 23 That court states, second, that PM was removed from her post on grounds relating to the proper functioning of the service, whereas the head of unit post which she occupied was not abolished. The referring court therefore seeks to ascertain whether that removal constitutes a situation in which Directive 2002/14 and Presidential Decree 240/2006 transposing that directive require that employee representatives be informed and consulted prior to such a removal.
- 24 In those circumstances, the Dioikitiko Protodikeio Athinon (Administrative Court of First Instance, Athens) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) (a) What does the term “undertaking carrying out an economic activity” mean for the purposes of Article 2(a) of [Directive 2002/14]?
- (b) Does it include private-law legal entities such as Eoppep which, in the exercise of [their] powers of certification of vocational training bodies, [act as] public-law legal [entities] and [exercise] public powers, inasmuch as
- (i) for certain of its activities, such as the provision of all manner and form of vocational guidance services to the competent ministerial bodies, centres and vocational education and training bodies, undertakings, and employers’ and workers’ associations (Article 14(2)(1) of Law [4115/2013]), it follows from Article 14(2)(o) of that law laying down the requirements for the provision of advisory and vocational guidance services by private individuals and legal entities in Greece that there may be a market in which commercial undertakings are carrying out an activity in competition with the applicant; and
- (ii) according to Article 23(1)(d) of that law, the applicant’s resources include revenue from the performance of work and the provision of services either allocated to it by the Minister [for Education, Religious Affairs, Culture and Sports] or performed on behalf of third parties, including government departments, national and international organisations, public- or private-law legal entities and private individuals; whereas
- (iii) for its other activities, Article 20 of Law 4115/2013 provides for the payment of fees?
- (c) Does the answer to the above question depend on whether, in relation to most of the activities (Article 14(2) of Law 4115/2013) of the private-law legal entity, a few appear to be carried out only in a market environment and, if the answer to that is in the negative, whether it suffices that the legislature provided (Article 14(2)(1) and Article 23(1)(d) of Law 4115/2013) for that legal entity to act, in part at least, as a market operator or whether it is necessary to prove that it does indeed carry out a particular activity in a market environment?

- (2) (a) What do the terms "situation", "structure" and "probable development of employment" in the undertaking, on which workers must be informed and consulted, mean for the purposes of Article 4(2)(b) of [Directive 2002/14]?
- (b) Do the above terms include the removal of employees from positions of responsibility in which they were placed temporarily after the private-law legal entities Ekepis and EKEP had merged with Eoppep and operating regulations had been adopted for that legal entity which did not abolish those positions, and must the workers therefore be informed and consulted prior to their removal?
- (c) Does the answer to the above question depend on
- (i) whether the smooth functioning of the legal entity and its operational needs were cited as the reason for the removal of a worker from a position of responsibility, so that it can achieve the objectives which it was established to pursue, or whether poor performance of the worker's duties as acting head was the reason for the worker's removal;
 - (ii) the fact that the employees removed from positions of responsibility were retained as members of the legal entity's staff; or
 - (iii) the fact that other persons were temporarily placed in positions of responsibility by the decision of the competent body removing employees from positions of responsibility?

Consideration of the questions referred

The first question

- 25 By its first question, the referring court is asking, in essence, whether Article 2(a) of Directive 2002/14 must be interpreted as meaning that that provision refers to a legal person governed by private law which acts as a legal person governed by public law and exercises public powers whilst also providing, for remuneration, services which are in competition with those provided by market operators.
- 26 In that connection, it should be noted that Article 2(a) of Directive 2002/14 defines the term 'undertaking' as a public or private undertaking carrying out an economic activity, whether or not operating for gain.
- 27 It must also be recalled that, in the context of competition law, the Court has, first, defined the term 'undertaking' as encompassing every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed (see, to that effect, judgment of 11 November 2021, *Manpower Lit*, C-948/19, EU:C:2021:906, paragraph 36 and the case-law cited).
- 28 As regards the concept of 'economic activity', which is not defined by Directive 2002/14, it should be recalled that the Court has repeatedly held that the concept, which appears in various directives relating to workers' rights, encompasses any activity consisting in offering goods or services on a given market (see, to that effect, judgments of 20 July 2017, *Piscarreta Ricardo*, C-416/16, EU:C:2017:574, paragraph 34 and the case-law cited, and of 11 November 2021, *Manpower Lit*, C-948/19, EU:C:2021:906, paragraphs 36 and 37 and the case-law cited).

- 29 Activities falling within the exercise of public powers are *prima facie* excluded from classification as economic activities. In contrast, services which, without falling within the exercise of public powers, are carried out in the public interest and without a profit motive, and which are in competition with those offered by operators pursuing a profit motive, have been classified as economic activities. The fact that such services are less competitive than comparable services provided by operators operating for gain cannot prevent the activities concerned from being regarded as economic activities (see, to that effect, judgment of 11 November 2021, *Manpower Lit*, C-948/19, EU:C:2021:906, paragraph 39 and the case-law cited).
- 30 In the light of the aim of Directive 2002/14 and of the wording, in particular, of Article 2(a) of that directive, it must be held that the interpretation of the concept of ‘economic activity’ which is apparent from paragraphs 27 and 29 of the present judgement can be transposed to Directive 2002/14.
- 31 Accordingly, in order to answer the question whether Article 2(a) of Directive 2002/14 covers an entity such as Eoppep, it must also be determined whether such an entity carries on an activity consisting in offering goods or services on a given market.
- 32 In the present case, it should be observed that, in accordance with Article 14(2) of Law 4115/2013, the objectives pursued by Eoppep include not only the certification of education and training establishments or the recognition of the equivalence of qualifications – activities which, according to the referring court, fall within the exercise of public powers – but also, *inter alia*, as follows from points (i), (j), (l) and (m) of Article 14(2), the provision of scientific and technical support to the relevant bodies of the Ministry of Education, Religious Affairs, Culture and Sports and of the Ministry of Labour, Social Security and Welfare, in the context of planning and implementing national policy on vocational guidance and counselling, developing communication and coordinating actions between public and private operators providing ‘vocational guidance and counselling’ services through continuous information and exchanges of information, the provisions of vocational guidance services of all types and in all forms for the benefit of the relevant agencies of those ministries, vocational education and training centres and bodies, businesses and employers’ or employees’ associations, and the education, training and continuous development of employees in the ‘vocational guidance and counselling’ sector, in cooperation with or in addition to existing agencies within those ministries.
- 33 First, it is clear that the latter activities do not *a priori* fall within the exercise of public powers. While it cannot be ruled out that there are markets on which commercial undertakings operate in competition with Eoppep and for gain, it is for the referring court to verify that that is indeed the case.
- 34 Second, Eoppep’s activities are financed not only by the fees and supervision costs provided for in Article 20 of Law 4115/2013, but also by income and revenue such as those referred to in Article 23 of that law, more specifically the revenue from the performance of work and the supply of services which are either entrusted to that agency by the Ministry of Education, Religious Affairs, Culture and Sports, or performed on behalf of third parties such as, in particular, public services, national and international organisations, legal persons governed by public or private law or private individuals, such works being performed further to a decision of the board of directors of that agency.

- 35 According to the information contained in the order for reference, which is for the referring court to verify, that revenue can be regarded as remuneration for Eoppep's activities in so far as it constitutes consideration for the service in question and is normally agreed upon between the provider and the recipient of the service (see, to that effect, judgment of 11 November 2021, *Manpower Lit*, C-948/19, EU:C:2021:906, paragraph 45 and the case-law cited).
- 36 In the light of those elements, and subject to the verification thereof by the referring court, it must be held that Eoppep carries on, in part, an activity consisting in offering services on a given market, and that it therefore falls within the scope of the concept of 'undertaking' within the meaning of Article 2(a) of Directive 2002/14.
- 37 In the light of all of the foregoing considerations, the answer to the first question is that Article 2(a) of Directive 2002/14 must be interpreted as meaning that that provision may refer to a legal person governed by private law which acts as a legal person governed by public law and exercises public powers, where it also provides, for remuneration, services which are in competition with those provided by market operators.

The second question

- 38 By its second question, the referring court is asking, in essence, whether Article 4(2)(b) of Directive 2002/14 must be interpreted as meaning that the information and consultation obligation laid down therein applies in the event of a change of post for a small number of employees appointed on an interim basis to management roles, where that change is not capable of affecting the situation, structure or probable development of employment within the undertaking concerned, or place employment more generally under threat.
- 39 In that connection, it should be recalled that, in accordance with Article 4(2)(b) of Directive 2002/14, the right to information and consultation, within the meaning of that directive, covers 'information and consultation on the situation, structure and probable development of employment within the undertaking or establishment and on any anticipatory measures envisaged, in particular where there is a threat to employment'.
- 40 It is clear that, in referring in generic terms to 'employment', the wording of that provision does not refer to individual employment relationships, a fortiori where posts are not abolished.
- 41 The interpretation according to which Article 4(2)(b) of Directive 2002/14 refers to the situation, structure and development of employment in general within an undertaking or establishment, and not to the situation of certain individual working relationships within an undertaking or establishment is supported by recital 8 of that directive. That recital states that the EU legislature aims, in particular, to promote and enhance 'information and consultation on the situation and likely development of employment within the undertaking and, where the employer's evaluation suggests that employment within the undertaking may be under threat, the possible anticipatory measures envisaged, in particular in terms of employee training and skill development, with a view to offsetting the negative developments or their consequences and increasing the employability and adaptability of the employees likely to be affected'.

- 42 Having regard to those elements, it must be held that Directive 2002/14 aims to establish information and consultation of employees where employment in general is under threat within an undertaking or establishment with a view to counterbalancing the adverse effects of the negative development of the employment situation within that undertaking or establishment for the employees likely to be affected by that development.
- 43 In the present case, it is apparent from the description of the factual context contained in the request for a preliminary ruling that there was no risk or threat to employment within Eoppep and that only a very small number of persons – namely three out of 80 employees – were removed from posts that they occupied on an interim basis. Furthermore, those persons did not lose their jobs and remained in the service of the same unit within Eoppep. Moreover, it appears that, before the referring court, it was not even claimed that the removal and replacement of those persons had or could have had an impact on the situation, structure and probable development of employment per se within Eoppep or placed employment in general under threat.
- 44 In the absence of any indication, in the request for a preliminary ruling, that the removal and replacement of a small number of persons who were appointed on an interim basis to management posts have, in the present case, affected or could have affected the situation, structure and probable development of employment within Eoppep or placed employment in general therein under threat, Article 4(2)(b) of Directive 2002/14 cannot apply to such a situation.
- 45 In the light of the foregoing, the answer to the second question is that Article 4(2)(b) of Directive 2002/14 must be interpreted as meaning that the information and consultation obligation laid down therein does not apply in the event of a change of post for a small number of employees appointed on an interim basis to management roles, where that change is not capable of affecting the situation, structure or probable development of employment within the undertaking concerned, or placing employment more generally under threat.

Costs

- 46 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:

1. Article 2(a) of Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community

must be interpreted as meaning that that provision may refer to a legal person governed by private law which acts as a legal person governed by public law and exercises public powers where it also provides, for remuneration, services which are in competition with those provided by market operators.

2. Article 4(2)(b) of Directive 2002/14

must be interpreted as meaning that the information and consultation obligation laid down therein does not apply in the event of a change of post for a small number of

employees appointed on an interim basis to management roles, where that change is not capable of affecting the situation, structure or probable development of employment within the undertaking concerned, or placing employment more generally under threat.

[Signatures]