



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

15 October 2015*

(Reference for a preliminary ruling — Articles 107 TFEU and 108 TFEU — Financial crisis — Aid to the financial sector — Compatibility of aid with the internal market — Decision of the European Commission — Financial entity undergoing restructuring — Dismissal of an employee — National rules concerning the levels of redundancy payments)

In Joined Cases C-352/14 and C-353/14,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Social No 2 de Terrassa (Social Court No 2, Terrassa, Spain), made by decisions of 8 July 2014, received at the Court on 22 July 2014, in the proceedings

Juan Miguel Iglesias Gutiérrez (C-352/14),

Elisabet Rion Bea (C-353/14)

v

Bankia SA,

Sección Sindical UGT,

Sección Sindical CCOO,

Sección Sindical ACCAM,

Sección Sindical CSICA,

Sección Sindical SATE,

Fondo de Garantía Salarial,

THE COURT (Sixth Chamber),

composed of E. Levits, acting as President of the Chamber, M. Berger (Rapporteur) and S. Rodin, Judges,

Advocate General: M. Wathelet,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Spanish.

after considering the observations submitted on behalf of:

- Bankia SA, by H. Monzón Pérez, abogada,
- the Spanish Government, by M. Sampol Pucurull, acting as Agent,
- the European Commission, by L. Flynn and É. Gippini Fournier, acting as Agents,

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

Judgment

- 1 These requests for a preliminary ruling concern the interpretation of Articles 107 TFEU and 108 TFEU.
- 2 The requests have been made in two sets of proceedings brought by Mr Iglesias Gutiérrez and Ms Rion Bea, respectively, against Bankia SA ('Bankia'), various trade union branches and the Fondo de Garantía Salarial (Wages Guarantee Fund), concerning their dismissal by Bankia.

Legal context

EU Law

Regulation (EC) No 659/1999

- 3 Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] (OJ 1999 L 83, p. 1), makes the following provision in Article 7(1) to (5), which forms part of Chapter II, entitled 'Procedure regarding notified aid':

'1. Without prejudice to Article 8, the formal investigation procedure shall be closed by means of a decision as provided for in paragraphs 2 to 5 of this Article.

2. Where the Commission finds that, where appropriate following modification by the Member State concerned, the notified measure does not constitute aid, it shall record that finding by way of a decision.

3. Where the Commission finds that, where appropriate following modification by the Member State concerned, the doubts as to the compatibility of the notified measure with the common market have been removed, it shall decide that the aid is compatible with the common market (hereinafter referred to as a "positive decision"). The decision shall specify which exception under the [FEU] Treaty has been applied.

4. The Commission may attach to a positive decision conditions subject to which an aid may be considered compatible with the common market and may lay down obligations to enable compliance with the decision to be monitored (hereinafter referred to as a "conditional decision").

5. Where the Commission finds that the notified aid is not compatible with the common market, it shall decide that the aid shall not be put into effect (hereinafter referred to as a "negative decision").'

4 Under Article 25 of Regulation No 659/1999:

‘Decisions taken pursuant to Chapters II, III, IV, V and VII shall be addressed to the Member State concerned. ...’

The Decision on the restructuring of the BFA Group

- 5 In connection with the financial crisis that began in 2008, the Spanish authorities notified the Commission, on 9 November 2012, about a restructuring plan for Banco Financiero y de Ahorro SA and its subsidiary Bankia (referred to together as the ‘BFA Group’).
- 6 On 28 November 2012, the Commission adopted Decision C(2012) 8764 final, concerning the aid granted by the Spanish authorities for the restructuring and recapitalisation of the BFA Group (‘the Decision on the BFA Group restructuring’). In points 217 and 218 of that decision, the Commission found that the notified measures constituted aid within the meaning of Article 107(1) TFEU but that, in view of the commitments made by the Kingdom of Spain, those measures were to be considered compatible with the internal market on the basis of Article 107(3)(b) TFEU.
- 7 In the course of its assessment of the compatibility of the notified measures, the Commission referred to certain commitments made by the Kingdom of Spain. At point 215 of the Decision on the BFA Group restructuring, it stated, *inter alia*:

‘In addition to those far-reaching structural measures, [the Kingdom of] Spain also committed to several additional behavioural constraints up to December 2017, which is the end of the restructuring period ..., namely, that the BFA Group will:

- (i) ... [meet] the applicable legislation in all salary and compensation matters, especially regulation related to remuneration limits applicable to credit institutions, as well as those restrictions that may arise from being an entity and/or group controlled by the government ...

The government also undertakes to ensure the most efficient use of public resources, regarding compensation and salaries issues, as [the] inspiring principle of Royal Decree Law 24/2012. Therefore, it will [ensure] that the restructuring process is very demanding, seeking that severance [payments] approach ... the legal minimum, but with some flexibility to avoid delaying the process; it will also assess, if appropriate, [whether] to propose general and personnel expenses reductions if the evolution of the income statement is unfavourable.

...’

- 8 The commitments proposed by the Kingdom of Spain are set out in a term sheet annexed to the Decision on the BFA Group restructuring. Those commitments include, at points 84 and 85 of the term sheet, in the section relating to behavioural measures and corporate governance, the commitments mentioned at point 215 of the decision.

Spanish law

- 9 Article 51(1) of the Workers’ Statute, approved by Royal Legislative Decree 1/1995 approving the consolidated version of the Law on the Workers’ Statute (Real Decreto Legislativo 1/1995 por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores) of 24 March 1995 (BOE No 75, of 29 March 1995, p. 9654), as amended by Law 3/2012 on urgent measures for labour market reform (Ley 3/2012 de medidas urgentes para la reforma del mercado laboral) of 6 July 2012 (BOE No 162, of 7 July 2012, p. 49113; the ‘Workers Statute’), defines the concept of collective redundancy as ‘the termination of employment contracts on economic, technical, organisational or production

grounds', where, over a period of 90 days, the termination affects at least a certain number of employees, which is set by reference to the total number of employees in the undertaking concerned. That provision specifies that 'it shall be taken to be established that economic grounds exist where a negative economic situation is apparent from the results of the undertaking, for example in cases where there are actual or forecast losses or a persistent reduction in its level of ordinary revenue or sales'.

10 Article 52 of the Workers' Statute provides that an employment contract may be terminated on objective grounds 'where any of the grounds provided for in Article 51(1) [of that statute] are established and where the termination affects fewer employees than the relevant number of employees referred to in that provision'.

11 As regards the form and effects of the termination of a contract on objective grounds, Article 53(1) of the Workers' Statute provides:

'The adoption of a decision terminating an employment contract under the preceding article must meet the following requirements:

- (a) the employee must be notified in writing of the reason for termination;
- (b) the employer must make available to the worker, at the same time as it gives written notification of termination, compensation equal to 20 days' remuneration per year of service, periods shorter than a year being calculated *pro rata* on a monthly basis up to a maximum of 12 monthly payments.

...'

12 Article 56(1) of the Workers' Statute is worded as follows:

'Where a dismissal is declared to be unfair, the employer, within 5 days of notice of the judgment being served, may choose between reinstating the employee or paying compensation equal to 33 days' remuneration per year of service, periods shorter than a year being calculated *pro rata* on a monthly basis up to a maximum of 24 monthly payments. If the employer opts to pay compensation, the employment contract shall be terminated, which will be regarded as having occurred on the date of effective cessation of work.'

13 The Fifth Transitional Provision of Law No 3/2012 provides:

- 1. The compensation provided for in Article 56(1) of the [Workers' Statute] shall apply to contracts entered into from 12 February 2012.
- 2. The compensation for unfair dismissal as regards contracts entered into before 12 February 2012 shall be calculated on the basis of 45 days' remuneration per year of service for the period of service prior to that date, periods shorter than a year being calculated *pro rata* on a monthly basis, and on the basis of 33 days' remuneration per year of service for the subsequent period of service, periods shorter than a year also being calculated *pro rata* on a monthly basis. The resulting amount of compensation cannot be greater than 720 days' remuneration, except where the calculation of the compensation for the period prior to 12 February 2012 results in a number of days greater than 720 days, in which case that shall be the maximum amount of compensation, provided always that the amount in question does not exceed 42 monthly payments in any event..

...'

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

- 14 Mr Iglesias Gutiérrez and Ms Rion Bea had been employed by Bankia since 1 April 1991 and 2 June 2008, respectively.
- 15 Bankia, in connection with the reduction of its business activities pursuant to the restructuring plan, reached an agreement, on 8 February 2013, with trade unions representing 97.86% of the workforce. That agreement provided for the elimination of 4 500 posts by 31 December 2015, under the financial conditions set out therein. That agreement made provision, inter alia, in the case of redundancy, for payment of compensation equal to, on average, 30 days' remuneration per year of service.
- 16 Ms Rion Bea and Mr Iglesias Gutiérrez were notified, on 25 October 2013 and 21 November 2013, respectively, that their employment contracts would be terminated, in Ms Rion Bea's case, on 12 November 2013 and, in Mr Iglesias Gutiérrez's case, on 10 December 2013, and that they would receive compensation, the amount of which would be calculated in accordance with the rules laid down in the agreement of 8 February 2013.
- 17 Mr Iglesias Gutiérrez and Ms Rion Bea each brought an action before Juzgado de lo Social No 2 de Terrassa, seeking declarations that their dismissals were unfair and claiming that they should be awarded the maximum statutory compensation payable in such a case, namely compensation of between 33 and 45 days' remuneration per year of service.
- 18 In those circumstances the Juzgado de lo Social No 2 de Terrassa decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling, those questions being formulated in the same terms in Case C-352/14 and Case C-353/14:

'In the context of an action brought by an employee of Bankia ... against his participation in a collective redundancy programme governed by an agreement subject to the Decision [on the BFA Group restructuring]:

- (1) Are Article 56 of the Worker's Statute ..., the Fifth transitional provision of Law 3/2012 ... and Articles 123 and 124.13 of Law 36/2011 governing the social courts (Ley reguladora de la Jurisdicción Social), of 10 October 2011, which refers to the other provisions, contrary to Articles 107 TFEU and 108 TFEU, inasmuch as they materially increase the compensation authorised by the Decision [on the BFA Group restructuring]?
 - (2) Is an interpretation of those national provisions that would allow the court, in the event that the dismissal is held to be fair, to adjust the compensation to the legal minimum provided for under national law contrary to the abovementioned provisions of EU law and to the Decision [on the BFA Group restructuring]?
 - (3) Is an interpretation of those national provisions that would allow the court, in the event that the dismissal is held to be unfair, to adjust the compensation to the amounts provided for under the agreement reached in the consultation period, provided that those amounts are greater than the legal minimum but lower than the legal maximum, contrary to the abovementioned provisions of EU law and to the Decision [on the BFA Group restructuring]?
- 19 By decision of the President of the Court of 9 September 2014, Cases C-352/14 and C-353/14 were joined for the purposes of the written and oral procedure and of the judgment.

Consideration of the questions referred

- 20 By those questions, as they are formulated, the referring court asks the Court of Justice to rule on whether certain provisions of national law are compatible with EU law.
- 21 In that connection, it must be recalled that the system of cooperation established by Article 267 TFEU is based on a clear division of responsibilities between the national courts and the Court of Justice. In proceedings brought on the basis of that article, the interpretation of provisions of national law is a matter for the courts of the Member States, not for the Court of Justice, and the Court has no jurisdiction to rule on the compatibility of rules of national law with EU law. However, the Court does have jurisdiction to provide the national court with all the guidance as to the interpretation of EU law necessary to enable that court to determine whether those national rules are compatible with EU law (see, *inter alia*, order in *Debiasi*, C-560/11, EU:C:2012:802, paragraph 19 and the case-law cited).
- 22 Although it is true that, on a literal reading of the referring court's questions, the Court is being asked to rule on the compatibility of a provision of national law with EU law, there is nothing to prevent the Court from giving an answer that will be of use to the national court, by providing the latter with guidance as to the interpretation of EU law which will enable that court to rule itself on the compatibility of the national rules with EU law (see, *inter alia*, order in *Debiasi*, C-560/11, EU:C:2012:802, paragraph 20 and the case-law cited).
- 23 The questions referred must therefore be understood, in essence, as asking whether the Decision on the BFA Group restructuring and Articles 107 TFEU and 108 TFEU, which form the basis for that decision, preclude the application, in proceedings relating to a collective redundancy that falls within the scope of that decision, of national legislation under which the compensation payable to an employee whose dismissal is held to be unfair is set at an amount higher than the legal minimum.
- 24 These questions must be examined together.
- 25 Implementation of the system of State aid control provided for in EU law is based on a prior review of plans to grant aid, the aim of which is to ensure that only plans which are compatible with the internal market are put into effect.
- 26 The implementation of that system of control is a matter for both the Commission and the national courts, their respective roles being complementary but separate. Whilst assessment of the compatibility of aid measures with the internal market falls within the exclusive competence of the Commission, subject to review by the Courts of the European Union, it is for the national courts to ensure that the rights of individuals are safeguarded in the event of a possible breach by State authorities of the prohibition laid down by Article 108(3) TFEU on putting a plan to grant aid into effect before the Commission has given a decision on the compatibility of that plan (see, to that effect, judgment in *Deutsche Lufthansa*, C-284/12, EU:C:2013:755, paragraphs 27 and 28 and the case-law cited).
- 27 When the Commission, on conclusion of its investigation, adopts a positive decision as referred to in Article 7(3) of Regulation No 659/1999, it is then apparent that the objective referred to in paragraph 25 of this judgment has been safeguarded and that the aid concerned may be put into effect (see, to that effect, judgment in *CELF and Ministre de la Culture et de la Communication*, C-199/06, EU:C:2008:79, paragraph 49).
- 28 However, that authorisation to put the aid into effect is valid only to the extent that proper regard is had to all the matters which the Commission has taken into consideration in its assessment of the compatibility of the measure concerned. In particular, where the notified measure incorporates, upon a proposal from the Member State concerned, commitments to which that State has agreed, those

commitments must be held also to form an integral part of the measure that has been authorised. That is the situation in the cases before the referring court, in which the commitments put forward by the Kingdom of Spain have been taken into account by the Commission in its assessment and are reproduced in a term sheet annexed to the decision authorising the aid.

- 29 The Member State concerned (which, under Article 25 of Regulation No 659/1999, is the addressee of the decision) must make sure that it will be able to fulfil the commitments included in the authorisation. In that respect, it is responsible, *inter alia*, for satisfying itself that those commitments are consistent with its national law and for determining, if need be, whether it is appropriate to initiate, in accordance with its constitutional procedures, a process for amending that law.
- 30 In the cases before the referring court, the commitments set out in points 84 and 85 of the term sheet annexed to the Decision on the BFA Group restructuring state that the Kingdom of Spain will take the necessary measures to ensure that the BFA Group complies with ‘the legislation applicable at the time in all salary and compensation matters’ and that it will make sure that the restructuring process is ‘very demanding’, which means that ‘severance [payments] approach ... the legal minimum’, although ‘some flexibility’ is permitted.
- 31 The very terms in which those commitments are cast indicate that the commitments must be implemented within the framework of the national legislation in force and that in the course of implementation a degree of flexibility is permitted.
- 32 The fact that references are made to the applicable legislation implies that the amounts to be paid to employees may, in accordance with the provisions of Spanish labour law, be calculated on the basis of different criteria depending on whether, in the light of the matters of law and of fact specific to each individual case, a dismissal may be considered lawful or must be regarded as unfair.
- 33 The fact that some flexibility is expressly allowed for means, moreover, that, although the amounts which the BFA Group has to pay to its employees in the context of its restructuring plan must approach the minimum rates provided for by the national labour-law rules, they do not necessarily have to correspond exactly to those rates.
- 34 Having regard to all those considerations the answer to the questions referred is that the Decision on the BFA Group restructuring and Articles 107 TFEU and 108 TFEU, which form the basis for that decision, do not preclude the application, in proceedings relating to a collective redundancy that falls within the scope of that decision, of national legislation under which the compensation payable to an employee whose dismissal is held to be unfair is set at an amount higher than the legal minimum.

Costs

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

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

Commission Decision C(2012) 8764 final of 28 November 2012 concerning the aid granted by the Spanish authorities for the restructuring and recapitalisation of the BFA Group, and Articles 107 TFEU and 108 TFEU, which form the basis for that decision, do not preclude the application, in proceedings relating to a collective redundancy that is within the scope of that decision, of national legislation under which the compensation payable to an employee whose dismissal is held to be unfair is set at an amount higher than the legal minimum.

[Signatures]