Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

4 September 2025*

(Reference for a preliminary ruling – Social policy – Collective redundancies – Directive 98/59/EC – Article 1(1) – Scope – Concept of 'redundancy' – Collective internal mobility agreement – Redundancies for economic reasons based on the refusal to apply that agreement – Termination of the employment contract on the employer's initiative for one or more reasons not related to the individual workers concerned – Article 2 – Procedures for information and consultation with workers' representatives)

In Case C-249/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, France), made by decision of 3 April 2024, received at the Court on 4 April 2024, in the proceedings

RT,

ED

v

Ineo Infracom,

THE COURT (Fifth Chamber),

composed of M.L. Arastey Sahún (Rapporteur), President of the Chamber, D. Gratsias, E. Regan, J. Passer and B. Smulders, Judges,

Advocate General: R. Norkus,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– RT, by F. Pinet, avocat,

– Ineo Infracom, by D. Célice, avocat,

* Language of the case: French.

– the French Government, by R. Bénard and M. Guiresse, acting as Agents,

– the European Commission, by S. Delaude and D. Recchia, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 March 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the second subparagraph of Article 1(1) and of Article 2(2) to (4) 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 RT and ED, on the one hand, and Ineo Infracom, on the other, concerning the termination of the employment contracts of RT and ED on account of their refusal to accept changes to those contracts following the conclusion of a collective agreement relating to internal mobility.

Legal context

European Union law

3 Recitals 2 and 8 of Directive 98/59 state:

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

…

(8) Whereas, in order to calculate the number of redundancies provided for in the definition of collective redundancies within the meaning of this Directive, other forms of termination of employment contracts on the initiative of the employer should be equated to redundancies, provided that there are at least five redundancies’.

4 Article 1(1) of that Directive provides:

‘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.'

5 Article 2 of Directive 98/59 provides:

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

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

Member States may provide that the workers' representatives may call on the services of experts in accordance with national legislation and/or practice.

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

(a) supply them with all relevant information and

(b) in any event notify them in writing of:
(i) the reasons for the projected redundancies;
(ii) the number of categories of workers to be made redundant;
(iii) the number and categories of workers normally employed;
(iv) the period over which the projected redundancies are to be effected;
(v) the criteria proposed for the selection of the workers to be made redundant in so far as national legislation and/or practice confers the power therefor upon the employer;
(vi) the method for calculating any redundancy payments other than those arising out of national legislation and/or practice.

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

4. The obligations laid down in paragraphs 1, 2 and 3 shall apply irrespective of whether the decision regarding collective redundancies is being taken by the employer or by an undertaking controlling the employer.

In considering alleged breaches of the information, consultation and notification requirements laid down by this Directive, account shall not be taken of any defence on the part of the employer on the ground that the necessary information has not been provided to the employer by the undertaking which took the decision leading to collective redundancies.'

6 The first and third subparagraphs of Article 3(1) of that directive provide that:

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

…

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

French law

7 Article 1233-61 of the code du travail, in the version applicable to the dispute in the main proceedings ('the Labour Code'), is worded as follows:

'In undertakings with at least 50 employees, where the projected redundancies concern at least 10 employees within the same 30-day period, the employer shall draw up and implement a plan to safeguard employment in order to avoid redundancies or to limit their number.

That plan includes a reclassification plan designed to facilitate the reclassification within the national territory of employees whose dismissal could not be avoided, in particular that of employees who are older or have social or qualification characteristics making it particularly difficult for them to find new employment.

…'

8 In accordance with the first paragraph of Article L. 2242-21 of the Labour Code, the employer may enter into negotiations on the conditions of occupational or geographical mobility within the undertaking as part of current collective organisational measures without any plan to reduce staff numbers.

9 Article L. 2242-22 of the Labour Code provides:

'The agreement arising from the negotiations provided for in Article L. 2242-21 must include, inter alia:

1° The limits imposed on that mobility beyond the employee's geographical area of employment, itself specified by the agreement, while respecting the employee's personal and family life in accordance with Article L. 1121-1;

2° The measures seeking to reconcile work life and personal and family life and to take into account situations related to disability and health constraints;

3° Accompanying measures for mobility, in particular training activities as well as assistance with geographical mobility, which includes inter alia employer contributions to compensation for any loss of purchasing power and transport costs.

The terms of the collective agreement concluded under Article L. 2242-21 and the present article cannot have the effect of causing a decrease in the level of remuneration or the grade of the employee and must ensure the maintenance or improvement of his or her professional qualifications.'

10 Article L. 2242-23 of the Labour Code provides:

'The collective agreement arising from the negotiations provided for in Article L. 2242-21 shall be brought to the attention of each of the employees concerned.

The terms of the agreement concluded under Articles L. 2242-21 and L. 2242-22 are applicable to the employment contract. The terms of the employment contract that are contrary to the agreement shall be suspended.

Where, following a consultation phase enabling the employer to take into account the personal and family constraints of each of the employees potentially concerned, the employer wishes to implement an individual mobility measure provided for by the agreement concluded under the present article, it shall obtain the employee's agreement in accordance with the procedure provided for in Article L. 1222-6.

Where one or more employees refuse to apply to their employment contract the terms of the internal mobility agreement referred to in the first paragraph of Article L. 2242-21, their redundancy shall be based on economic grounds, shall be declared in accordance with the procedure for an individual redundancy for economic reasons and gives the right to support and redeployment measures which must be envisaged by the agreement, which shall adapt the scope and the implementation arrangements for the internal redeployment provided for in Articles L. 1233-4 and L. 1233-4-1.'

11 Under Article L. 2323-6 of the Labour Code:

'The works council shall be informed and consulted before any decision is taken by the employer on questions on matters concerning the organisation, management and general running of the undertaking and, in particular, on the measures likely to affect the volume or structure of staff, working hours, employment conditions, working conditions and professional training.'

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

12 Ineo Infracom is a public works company specialising in telecommunications infrastructures and digital development.

13 On 26 April 2013, that company was informed by France Télécom of its decision not to renew the contract covering the departments of Gard (France) and Lozère (France).

14 Following that decision, Ineo Infracom offered to the 82 employees attached to the agency concerned by that decision, including RT and ED, to be temporarily assigned to other regions of France with effect from 1 July 2013, under the long-distance regime provided for by the national collective agreement for public works employees of 15 December 1992.

15 On 28 June 2013, RT and ED, refused the proposals of temporary assignment, to the Ivry-sur-Seine agency (France) and to the Vitrolles agency (France) respectively, for the period from 1 July to 28 September 2013.

16 RT and ED, together with nine other employees, instituted proceedings before the conseil de prud'hommes de Nîmes (Labour Tribunal, Nîmes, France), seeking judicial termination of their employment contract on the ground of fault on the part of their employer together with damages.

17 On 29 July 2013, taking the view that its current activity regularly involved the geographical redeployment of site staff as a result of losing contracts or of the winning of new contracts, and that no reduction in staff was planned, Ineo Infracom and several representative trade unions concluded a collective agreement on internal mobility within the undertaking ('the collective internal mobility agreement').

18 Pursuant to that agreement, job offers were sent to RT and to ED, who refused them, respectively, on 30 September and 30 December 2013 in the case of RT, and on 27 November 2013 and 20 January 2014 in the case of ED.

19 On 10 June 2014, following those refusals, RT and ED were made redundant on economic grounds, pursuant to Article L. 2242-23 of the Labour Code, which they challenged before the conseil de prud'hommes de Nîmes (Labour Tribunal, Nîmes), in the alternative to their claim for judicial termination of their employment contract which was still pending before that court.

20 By judgment of 3 April 2017, that court ordered the judicial termination of RT's employment contract on the grounds of fault of the employer and ordered the employer to pay him damages. By another judgment of the same date, that court dismissed ED's claims.

21 Ineo Infracom lodged an appeal against those judgments.

22 By two judgments of 1 February 2022, the cour d'appel de Nîmes (Court of Appeal, Nîmes, France) respectively set aside the judgment of the conseil de prud'hommes de Nîmes (Labour Tribunal, Nîmes) concerning RT and upheld the judgment of that court concerning ED.

23 The Cour d'appel de Nîmes (Court of Appeal, Nîmes) noted that the collective internal mobility agreement expressly mentioned that it had been negotiated outside the context of any plan to reduce staff numbers. That court inferred from this that Ineo Infracom had not infringed Articles 1 and 2 of Directive 98/59, as those provisions did not apply in the absence of collective redundancy.

24 RT and ED, who have appealed on a point of law before the Cour de cassation (Court of Cassation, France), which is the referring court, submit, in essence, that, according to Articles 1 and 2 of Directive 98/59, where an employer is contemplating redundancies for one or more reasons not related to the individual workers concerned, it is to begin consultations with the workers' representatives in good time with a view to reaching an agreement, and that those consultations must at least cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining the workers made redundant.

25 RT and ED consider that the cour d'appel de Nîmes (Court of Appeal, Nîmes) infringed the relevant provisions of national law, as interpreted in the light of Articles 1 and 2 of Directive 98/59 and Article 27 of the Charter of Fundamental Rights of the European Union, and Article 21 of the European Social Charter, signed in Turin on 18 October 1961 at the Council of Europe and revised in Strasbourg on 3 May 1996. They submit that, if the redundancies announced by the employer, irrespective of whether they are classified as an individual redundancy for economic reasons, within the meaning of Article L. 2242-23 of the Labour Code, concerned at least 10 employees in the same 30-day period, the employer is obliged to establish an employment protection plan guaranteeing that its employees are informed and consulted in good time, within the meaning of Article L. 1233-61 of the Labour Code, as well as appropriate support and redeployment measures.

26 Moreover, RT and ED requested, in the alternative, that the referring court make a reference to the Court of Justice for a preliminary ruling.

27 In that regard, the referring court notes that the Court held, in its judgment of 21 September 2017, *Socha and Others* (C-149/16, EU:C:2017:708, paragraph 35), that Article 1(1) and Article 2 of Directive 98/59 must be interpreted as meaning that an employer is required to engage in the consultations provided for in Article 2 when it intends, to the detriment of the employees, to make a unilateral amendment to the terms of remuneration which, if refused by the employees, will result in termination of the employment relationship, to the extent that the conditions laid down in Article 1(1) of that directive are fulfilled.

28 The Court also ruled, in its judgment of 10 September 2009, *Akavan Erityisalojen Keskusliitto AEK and Others* (C-44/08, EU:C:2009:533, paragraph 46) that 'the raison d'être and effectiveness of consultations with the workers' representatives presuppose that the factors to be taken into account in the course of those consultations have been determined, given that it is impossible to undertake consultations in a manner which is appropriate and consistent with their objectives when there has been no definition of the factors which are of relevance with regard to the collective redundancies contemplated' and that 'where a decision deemed likely to lead to collective redundancies is merely contemplated and where, accordingly, such collective redundancies are only a probability and the relevant factors for the consultations are not known, those objectives cannot be achieved.'

29 The referring court adds that the Court held, in that judgment, that whether the obligation has arisen for the employer to start consultations on the collective redundancies contemplated does not depend on whether the employer is already able to supply to the workers' representatives all the information required by Article 2(3)(b) of Directive 98/59.

30 In that context, the referring court recalls that the fourth paragraph of Article L. 2242-23 of the Labour Code, which provides that redundancy based on the employee's refusal to consent to the terms of the negotiated collective mobility agreement being applied to his or her employment contract is to be declared in accordance with the procedure for an individual redundancy for economic reasons, excludes the application of the provisions of Articles L. 1233-28 to L. 1233-33 of that code relating to the procedure for informing and consulting the works council or staff representatives where the employer is considering collective redundancy for economic reasons for at least 10 employees over the same 30-day period.

31 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is the second subparagraph of Article 1(1) of [Directive 98/59] to be interpreted as meaning that dismissals for economic reasons based on the refusal by employees to consent to the terms of a collective mobility agreement being applied to their employment contract must be regarded as constituting a termination of the employment contract which occurs on the employer’s initiative for one or more reasons not related to the individual workers concerned, with the result that they must be taken into account for the purpose of calculating the total number of redundancies?

(2) If the first question is answered in the affirmative, where the number of redundancies contemplated exceeds the number of redundancies specified in [point (a) of the first subparagraph of Article 1(1)] of … [Directive 98/59], is Article 2(2) to 2(4) of [that directive] to be interpreted as meaning that the informing and consultation of the works council before the conclusion of an internal mobility agreement with representative trade union organisations, pursuant to Article L. 2242-21 et seq. of the code du travail (French Labour Code), relieve the employer of its obligation to inform and consult the staff representatives?’

Consideration of the questions referred

The first question

32 It should be observed as a preliminary point that, according to the Court’s settled case-law, in the procedure laid down by Article 267 TFEU, providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it. The fact that a national court has worded a question referred for a preliminary ruling with reference to certain provisions of EU law does not prevent the Court from providing the national court with all the points of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. In that regard, it is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation, having regard to the subject matter of the dispute (judgment of 4 October 2024, *Air Nostrum and Others*, C-314/23, EU:C:2024:842, paragraph 24 and the case-law cited).

33 In the present case, it should be noted that, in its first question, the referring court refers only to the second subparagraph of Article 1(1) of Directive 98/59, starting from the implicit premiss that terminations of employment contracts following the workers’ refusal to consent to the terms of a collective agreement relating to internal mobility being applied to their employment contract cannot be classified as ‘collective redundancies’ within the meaning of the first subparagraph of Article 1(1) of that directive. It is therefore uncertain whether those terminations of contracts of employment are able to be treated as redundancies within the meaning of the second subparagraph of Article 1(1) of that directive.

34 It must be borne in mind, first, that, having regard to the objective pursued by that directive, which consists of making collective redundancies subject to prior consultation with the workers’ representatives and prior notification to the competent public authority (judgment of

17 March 2021, *Consulmarketing*, C-652/19, EU:C:2021:208, paragraph 40 and the case-law cited), and to the context of point (a) of the first subparagraph of Article 1(1) thereof, the concept of 'redundancies' must be regarded as an autonomous concept of EU law, which must be given a uniform interpretation and cannot be defined by reference to the laws of the Member States (see, to that effect, judgment of 11 July 2024, *Plamaro*, C-196/23, EU:C:2024:596, paragraph 25 and the case-law cited).

35 Second, the classification of an act of the employer either as a redundancy, within the meaning of point (a) of the first subparagraph of Article 1(1) of Directive 98/59, or as termination of an employment contract, within the meaning of the second subparagraph of that article, may give rise to legal consequences in so far as it is possible, for the purposes of calculating the number of redundancies, to equate the two concepts, provided that there are at least five redundancies within the meaning of point (a) of the first subparagraph of Article 1(1) of that directive (see, to that effect, judgment of 11 November 2015, *Pujante Rivera*, C-422/14, EU:C:2015:743, paragraph 46).

36 In those circumstances, in order to give an answer which will be of use to the referring court, the Court cannot be bound by an express or implicit finding made by the referring court that the facts at issue in the main proceedings cannot be classified as a redundancy within the meaning of point (a) of the first subparagraph of Article 1(1) of that directive.

37 Accordingly, it must be held that, by its first question, the referring court asks, in essence, whether Article 1(1) of Directive 98/59 is to be interpreted as meaning that terminations of employment contracts based on the refusal, by workers, to consent to the terms of a collective agreement relating to internal mobility being applied to their employment contract must be regarded as falling within the scope of that provision, either as redundancies, within the meaning of point (a) of the first subparagraph thereof, or as terminations of the employment contract, within the meaning of the second subparagraph of that provision, with the result that they must be taken into account in calculating the number of redundancies.

38 For the purposes of applying that directive, point (a) of the first subparagraph of Article 1(1) thereof defines 'collective redundancies' as dismissals effected by an employer for one or more reasons not related to the individual workers concerned, provided that certain conditions concerning numbers and periods of time are satisfied (judgment of 11 July 2024, *Plamaro*, C-196/23, EU:C:2024:596, paragraph 24 and the case-law cited).

39 In that regard, it should be noted that while Directive 98/59 does not give an express definition of the concept of 'redundancy', it is settled case-law that that concept must be interpreted as encompassing any termination of an employment contract not sought by the worker, and therefore without his or her consent (see, to that effect, judgment of 11 July 2024, *Plamaro*, C-196/23, EU:C:2024:596, paragraph 25 and the case-law cited).

40 The Court also ruled that, having regard to the objective of Directive 98/59, which is, as is apparent from recital 2 thereof, to afford greater protection to workers in the event of collective redundancies, a narrow definition cannot be given to the concepts that define the scope of that directive, including the concept of 'redundancy' in point (a) of the first subparagraph of Article 1(1) thereof (judgment of 11 July 2024, *Plamaro*, C-196/23, EU:C:2024:596, paragraph 26 and the case-law cited).

41 In that regard, the Court rules that that directive must be interpreted as meaning that the fact that an employer – unilaterally and to the detriment of the employee – makes significant changes to essential elements of his or her employment contract for reasons not related to the individual employee concerned falls within that concept (judgment of 11 November 2015, *Pujante Rivera*, C-422/14, EU:C:2015:743, paragraph 55).

42 By contrast, if an employer, unilaterally and to the detriment of the employee, makes a non-significant change to an essential element of the contract of employment for reasons not related to the individual employee concerned, or makes a significant change to a non-essential element of that contract for reasons not related to the individual employee, that may not be regarded as a 'redundancy' within the meaning of that directive (judgment of 21 September 2017, *Ciupa and Others*, C-429/16, EU:C:2017:711, paragraph 28 and the case-law cited).

43 In the present case, it is for the referring court, which alone has jurisdiction to assess the facts, to determine, first, whether Ineo Infracom made, within the meaning of the case-law referred to in paragraphs 41 and 42 of the present judgment, unilaterally and to the detriment of RT and ED, the contractual changes at issue in the main proceedings, namely changes to the place of work, for reasons not related to those persons.

44 In that regard, it is apparent from the material in the file before the Court that the proposals for geographical assignment addressed to RT and to ED are based on the collective internal mobility agreement concluded between Ineo Infracom and the workers' representative organisations.

45 To that end, it is for the referring court to examine whether, in the light of that collective agreement and the terms of the employment contract, the workers concerned are required, by the very fact of those provisions, to accept the change of geographical assignment proposed by the employer, in which case their refusal would constitute non-performance of that contract leading to the termination of that contract due to a reason related to the individual workers concerned.

46 If the referring court finds that the workers concerned are not required to accept the change of geographical assignment proposed by the employer, it must then determine whether, in the light of the relevant circumstances of the dispute in the main proceedings, the proposals for a new geographical assignment at issue are capable of being classified as a 'substantial change to an essential element' of the employment contract, within the meaning of the case-law cited in paragraph 41 of the present judgment.

47 In the first place, as regards the question whether the place of work must be regarded as constituting an 'essential element' of the employment contract, within the meaning of the case-law cited in paragraph 41 of the present judgment, it should be pointed out that any change of the place of work may have significant economic and organisational consequences for the worker concerned and may, consequently, constitute such an essential element of the employment contract.

48 In the second place, as regards the question whether a change of geographical assignment, such as that at issue in the main proceedings, must be classified as a 'substantial change' within the meaning of that case-law, it should be noted that the substantial nature of such assignment depends, inter alia, on whether or not the contemplated change to the employment contract is temporary, on the distance between the place of work of origin and the place of the new assignment, and on any other accompanying measures intended to compensate for the proposed assignment.

49 If, at the end of that examination, the referring court finds that that proposed assignment does not constitute a 'substantial change to an essential element' of the employment contract, that court will be required to classify the termination of the employment contract, following the worker's refusal to accept such an assignment, as the termination of that contract on the employer's initiative for one or more reasons not related to the individual workers concerned, within the meaning of the second subparagraph of Article 1(1) of Directive 98/59 (see, to that effect, judgment of 21 September 2017, *Socha and Others*, C-149/16, EU:C:2017:708, paragraphs 27 and 28).

50 Accordingly, in any event, even if the referring court were to consider that those terminations do not fall within the concept of 'redundancy' within the meaning of point (a) of the first subparagraph of Article 1(1) of Directive 98/59, they should, in so far as they are based on a reason not related to the individual workers concerned, be taken into account for calculating the total number of redundancies, provided that there are at least five redundancies (see, to that effect, judgment of 21 September 2017, *Ciupa and Others*, C-429/16, EU:C:2017:711, paragraph 31).

51 In the light of the foregoing considerations, the answer to the first question is that Article 1(1) of Directive 98/59 must be interpreted as meaning that, in order to assess whether terminations of employment contracts based on the refusal, by workers, to consent to the terms of a collective agreement relating to internal mobility being applied to their employment contract must be regarded as falling within the concept of 'redundancies' within the meaning of point (a) of the first subparagraph of that provision, the referring court must examine whether, having regard to that collective agreement and to the terms of the employment contract, the workers concerned are required to accept the change of geographical assignment proposed by the employer and, if that question is answered in the negative, whether that change constitutes a substantial change to an essential element of the employment contract, with the result that it must be taken into account in calculating the number of redundancies. If that condition were not satisfied, the termination of the employment contract following the worker's refusal to accept such a change would constitute a termination of that contract on the employer's initiative for one or more reasons not related to the individual workers concerned, within the meaning of the second subparagraph of Article 1(1) of that directive, with the result that it must also be taken into account in calculating the number of redundancies.

The second question

52 By its second question, the referring court asks, in essence, whether Article 2 of Directive 98/59 must be interpreted as meaning that the information and consultation of workers' representatives prior to the conclusion of a collective agreement on internal mobility may be considered to constitute consultation within the meaning of that article.

53 In that regard, it must be recalled, first, that the main objective of that directive is, as is apparent from the case-law cited in paragraph 34 of the present judgment, to make collective redundancies subject to prior consultation with the workers' representatives and prior notification to the competent public authority.

54 Second, in accordance with Article 2(1) of that directive, where an employer is contemplating collective redundancies, it is to begin consultations with the workers' representatives in good time with a view to reaching an agreement.

55 Under Article 2(2) of that directive, consultations are to cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining workers made redundant. Under the first subparagraph of Article 2(3) of that directive, in order to enable workers' representatives to make constructive proposals, the employer is required, in good time during the course of the consultations, to supply them with all relevant information and to provide them in writing with the information set out in point (b)(i) to (vi) of that provision. Furthermore, under the second subparagraph of Article 2(3) and Article 3(1) of Directive 98/59, the employer must notify the public authority of any projected collective redundancies and forward to it the elements and information referred to in those provisions.

56 Thus, it is apparent from the wording used by the EU legislature that the obligations to consult laid down by that directive arise prior to a decision by the employer to terminate contracts of employment (judgment of 27 January 2005, *Junk*, C-188/03, EU:C:2005:59, paragraph 37). Therefore, where a decision entailing an amendment of working conditions may enable collective redundancies to be avoided, the consultation procedure provided for in Article 2 must start when the employer contemplates making such amendments (judgment of 21 September 2017, *Ciupa and Others*, C-429/16, EU:C:2017:711, paragraph 37 and the case-law cited).

57 In particular, according to the Court's case-law, the consultation procedure provided for in Article 2 of that directive must be started by the employer once a strategic or commercial decision compelling him or her to contemplate or to plan for collective redundancies has been taken (judgments of 10 September 2009, *Akavan Erityisalojen Keskusliitto AEK and Others*, C-44/08, EU:C:2009:533, paragraph 48, and of 21 September 2017, *Socha and Others*, C-149/16, EU:C:2017:708, paragraph 31). That is the case where the employer decides to propose changes to the contract of employment, which he or she ought to reasonably expect certain number of workers not to accept, consequently leading to the termination of their contract (judgment of 21 September 2017, *Socha and Others*, C-149/16, EU:C:2017:708, paragraph 32).

58 The *raison d'être* and effectiveness of consultations with the workers' representatives provided for under Article 2 of Directive 98/59 presuppose that the factors to be taken into account in the course of those consultations have been determined, given that it is impossible to undertake consultations in a manner which is appropriate and consistent with their objectives, consisting of avoiding termination of employment contracts or to reduce the number of workers affected, and to mitigate the consequences, when there has been no definition of the factors which are of relevance with regard to the collective redundancies contemplated (see, to that effect, judgment of 10 September 2009, *Akavan Erityisalojen Keskusliitto AEK and Others*, C-44/08, EU:C:2009:533, paragraph 46).

59 That said, the Court has also stated that whether the obligation has arisen for the employer to start consultations on the collective redundancies contemplated does not depend on whether the employer is already able to supply to the workers' representatives all the information required in Article 2(3)(b) of Directive 98/59. The wording of that provision states clearly that the information specified must be supplied by the employer 'in good time during the course of the consultations', in order to 'enable workers' representatives to make constructive proposals'. It follows that that information can be provided during the consultations, and not necessarily at the time when they start (judgment of 10 September 2009, *Akavan Erityisalojen Keskusliitto AEK and Others*, C-44/08, EU:C:2009:533, paragraphs 51, 52 and 55).

60 In the present case, in so far as, as is apparent from the very wording of Article L. 2242-21 of the Labour Code, that article governs negotiations on conditions of professional or geographical mobility 'without having any plan to reduce staff numbers', it does not appear that the negotiations conducted in such a context fall within the scope of that directive, since, by definition, during those negotiations, the employer does not contemplate collective redundancies, within the meaning of Article 2(1) thereof, cannot notify the workers' representatives of the elements set out in Article 2(3)(b)(i), (ii) and (iv) to (vi) of that directive and did not initiate any projected collective redundancies which could be notified to the competent public authority in accordance with the second subparagraph of Article 2(3) and Article 3(1) of that directive.

61 By contrast, the consultation procedure provided for in Article 2 of Directive 98/59 must be initiated by the employer where the conditions described in paragraph 57 of the present judgment are fulfilled. Thus, where a collective agreement relating to internal mobility is negotiated even though the employer is already contemplating collective redundancies, it is for the employer to begin consultations with the workers' representatives in good time with a view to reaching an agreement, within the meaning of Article 2(1) of that directive, since the conditions governing the mobility of workers may be included in the terms of such an agreement.

62 In such a case, the conclusion of a collective agreement on internal mobility between the employer and the workers' representatives must be preceded by consultations provided for in Article 2 of that directive. In particular, it is for the employer to communicate, in good time, to the workers' representatives all the information referred to in point (b) of the first subparagraph of Article 2(3) of that directive, so that they can make constructive proposals. Furthermore, it is for the employer to make the notifications required in the second subparagraph of Article 2(3) and Article 3(1) thereof to the competent public authority.

63 In that regard, it is apparent from the order for reference that, in the present case, Ineo Infracom initially made proposals for geographical assignment without a reduction in staff numbers, taking the view that its current activity regularly involved the geographical redeployment of site staff as a result of losing contracts or the winning of new contracts. However, following those initial proposals for geographical assignment, that company subsequently entered into negotiations with the workers' representatives which led to the conclusion of the collective internal mobility agreement, the application of which enabled the company to make unilateral changes to the employment contracts concerned with regard to the place of work.

64 Ineo Infracom thus had to expect, during the negotiation of that agreement, that a certain number of workers would not accept such unilateral changes to their contracts of employment on the basis of that agreement and that, consequently, their respective contracts would be terminated.

65 In those circumstances, it is for the referring court to examine whether the information obligations laid down in Article 2(3) of Directive 98/59 have been complied with.

66 In the light of all the foregoing considerations, the answer to the second question is that Article 2 of Directive 98/59 must be interpreted as meaning that the information and consultation of workers' representatives prior to the conclusion of a collective agreement relating to internal mobility are able to be considered to constitute consultation within the meaning of that article, provided that the information obligations laid down in paragraph 3 thereof are complied with.

Costs

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

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

1. **Article 1(1) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies**

   must be interpreted as meaning that in order to assess whether terminations of employment contracts based on the refusal, by workers, to consent to the terms of a collective agreement relating to internal mobility being applied to their employment contract must be regarded as falling within the concept of 'redundancies' within the meaning of point (a) of the first subparagraph of that provision, the referring court must examine whether, having regard to that collective agreement and to the terms of the employment contract, the workers concerned are required to accept the change of geographical assignment proposed by the employer and, if that question is answered in the negative, whether that change constitutes a substantial change to an essential element of the employment contract, with the result that it must be taken into account in calculating the number of redundancies. If that condition were not satisfied, the termination of the employment contract following the worker's refusal to accept such a change would constitute a termination of that contract on the employer's initiative for one or more reasons not related to the individual workers concerned, within the meaning of the second subparagraph of Article 1(1) of that directive, with the result that it must also be taken into account in calculating the number of redundancies.

2. **Article 2 of Directive 98/59**

   must be interpreted as meaning that the information and consultation of workers' representatives prior to the conclusion of a collective agreement relating to internal mobility are able to be considered to constitute consultation within the meaning of that article, provided that the information obligations laid down in paragraph 3 thereof are complied with.

[Signatures]