Can Governments Control Mass Layoffs by Employers? Economic Freedoms vs Labour Rights in Case C-201/15 *AGET Iraklis*

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INTRODUCTION

The *AGET Iraklis* case is both interesting intellectually and significant politically.[1] It concerns the ability of governments to control collective redundancies by means of prior authorisation and the compatibility of such a protective regime for workers with primary and secondary EU law. The judgment addresses a combination of traditional concerns and new challenges, notably freedom of establishment, the freedom to conduct a business, and the protection of workers in the event of collective dismissal.

The analysis will proceed as follows. The discussion begins with a summary of the key points from the European Court of Justice's reasoning. References to the opinion of Advocate General Wahl will be made where appropriate.[2] The focus then shifts to the sometimes strained relationship between fundamental economic freedoms and labour rights. The penultimate section of the article considers Article 16 of the EU Charter (freedom to conduct a business) and its complex relationship with the rights of employees as reflected in *AGET Iraklis*. The final section of the article reflects on the type of mechanism for controlling mass layoffs by employers that would be compatible with EU law, bringing an element of *Realpolitik* to the debate as this mechanism will be devised by the Greek authorities in cooperation with representatives of the country's creditors.

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[1] ECJ 21 December 2016, Case C-201/15, *Anonymi Geniki Etairia Tsimenton Iraklis (AGET Iraklis)* v *Ypourgos Ergasias, Koinonikis Asfalisis kai Koinonikis Allilengyis*.

[2] Opinion of AG Wahl in ECJ 9 June 2016, Case C-201/15, *AGET Iraklis*.

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Background to the case

AGET Iraklis is in the business of cement production and has three plants in Greece. The company sought to reorganise its business and shut down one of its three plants. It further sought ministerial authorisation to carry out collective redundancies, as required by Greek law. More specifically, Greek Law No 1387/1983 provides that the Minister of Labour may refuse to authorise some or all the projected redundancies. The impugned law further provides that applications to carry out collective redundancies are to be considered on the basis of the following criteria: 'the conditions in the labour market'; 'the situation of the undertaking'; and 'the interests of the national economy'. Authorisation is a condition for the validity of the redundancy measures. When it is not forthcoming, the company concerned may only lay off its employees at a rate below the threshold for collective redundancies (5% of the company's workforce).[3] In the case of AGET, the Minister of Labour refused to provide the requisite authorisation.

The company sought to argue that the impugned national rule was not compatible with Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies.[4] This issue was raised 'with some insistence' in the past (albeit by a different company) but was left unanswered by the Court.[5] The Directive lays down a number of information, consultation and notification requirements which must be met by employers before they can carry out collective redundancies.[6] The company further sought to argue that the impugned national rule was not in conformity with Articles 49 (freedom of establishment) and 63 (free movement of capital) of the TFEU. The Greek Council of State stayed proceedings and asked the European Court of Justice whether the contested rule contravened the aforementioned primary and secondary EU rules. Further, in case the answer to the preceding question was in the affirmative, the Greek Council of State sought guidance from the European Court of Justice as to whether the impugned rule could perhaps be justified if there were serious social reasons, such as an acute economic crisis and very high unemployment.[7]

[3] There are discussions between Greece and its creditors as to whether this threshold should be raised from 5% to 10%.

[4] Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies [1998] OJ L225/16.

[5] ECJ 15 February 2007, Case C-270/05, *Athinaiki Chartopoïia AE* v *L. Panagiotidis*, para. 37.

[6] *See generally* W. Njoya, 'The EU Framework of Information and Consultation: Implications for Trade Unions and Industrial Democracy', in A. Bogg *et al.* (eds.), *Research Handbook on EU Labour Law* (Edward Elgar 2016) p. 363.

[7] Greek Council of State (Fourth Chamber) Decision No 1254/2015.

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The Court's Decision: The compatibility of the impugned national law with Council Directive 98/59/EC

The Court ruled that 'Directive 98/59 [could not], in principle, be interpreted as precluding a national regime which [conferred] upon a public authority the power to prevent collective redundancies by a reasoned decision adopted after the documents in the file [had] been examined and predetermined substantive criteria [had] been taken into account'.[8] The Directive merely set out the process to be followed before such dismissals were carried out and explicitly authorised the Member States to apply or to introduce laws, regulations or administrative provisions which were more favourable to workers.[9] 'However, the position would, exceptionally, be different if, in the light of its more detailed rules or of the particular way in which it [was] implemented by the competent public authority, such a national regime were to result in Articles 2 to 4 of Directive 98/59 being deprived of their practical effect'.[10] In essence, these provisions lay down an obligation to consult with the workers' representatives prior to carrying out collective redundancies for the purpose of mitigating the consequences of those dismissals for the affected workers. These rules would be deprived of their practical effect 'in the case of national legislation under which collective redundancies require[d] the prior consent of a public authority if, on account, for example, of the criteria in the light of which that authority [was] called upon to take a decision or of the specific way in which it interpret[ed] and applie[d] those criteria, any actual possibility for the employer to effect such collective redundancies were, in practice, ruled out'.[11] The Court of Justice left it to the referring court to decide whether, on account of the three assessment criteria and of the specific way in which the competent public authority had applied those criteria, the Directive was deprived of its practical effect.[12] Admittedly, both in the case at hand as well as in other cases, there might have been little incentive for the workers affected by the projected measures to come to the negotiation table, as they could instead seek to persuade the Minister of Labour to block the planned redundancies.

The Court's decision: Freedom of establishment and Article 16 of the Charter

The Court went on to examine the compatibility of the impugned national measure with Article 49 TFEU (freedom of establishment). It noted that such a national measure 'constitute[d] a significant interference in certain freedoms

[8] *AGET Iraklis*, *supra* n. 1, para. 34.
[9] Ibid., paras. 27-33.
[10] Ibid., para. 35.
[11] Ibid., para. 38.
[12] Ibid., para. 43.

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which economic operators generally enjoy[ed]'.[13] It further ruled that '[n]ational legislation such as that at issue in the main proceedings [was] thus such as to render access to the Greek market less attractive and, following access to that market, to reduce considerably, or even eliminate, the ability of economic operators from other Member States who [had] chosen to set up in a new market to adjust subsequently their activity in that market or to give it up, by parting, to that end, with the workers previously taken on'.[14] As such, it was 'liable to constitute a serious obstacle to the exercise of freedom of establishment in Greece'.[15] As the Member State concerned derogated from a fundamental economic freedom, Article 16 of the Charter (freedom to conduct a business) was also engaged.[16] Maybe the national law could have also been regarded as implementing Directive 98/59 in a broad, *Åkerberg Fransson* sense.[17] The most recent case law is fairly liberal in this respect.[18]

The Court ruled that such a restriction might be justified by overriding requirements in the public interest, such as 'the protection of workers' or 'the encouragement of employment and recruitment'.[19] It is noteworthy and indeed commendable that the Court digressed to the social policy objectives pursued by the EU Treaties, thereby discussing Articles 3(3) TEU, 151 TFEU, 147 TFEU and 9 TFEU at some length.[20] It further noted that the Member States had 'a broad discretion when choosing the measures capable of achieving the aims of their social policy'.[21]

Next, the Court held that 'the mere fact that a Member State provide[d], in its national legislation, that projected collective redundancies [should], prior to any implementation, be notified to a national authority, which [was] endowed with powers of review enabling it, in certain circumstances, to oppose the projected redundancies on grounds relating to the protection of workers and of employment, [could not] be considered contrary to freedom of establishment as guaranteed by Article 49 TFEU or the freedom to conduct a business enshrined in Article 16 of the Charter'.[22] The freedom to conduct a business was not absolute

[13] Ibid., para. 55.
[14] Ibid., para. 56.
[15] Ibid., para. 57.
[16] Ibid., paras. 62-69.
[17] ECJ 26 February 2013, Case C-617/10, *Åklagaren* v *Hans Åkerberg Fransson*, paras. 23-33.
[18] ECJ 13 June 2017, Case C-258/14, *Eugenia Florescu* v *Casa Judeţeană de Pensii Sibiu*, paras. 43-48 (concerning a Romanian law whose adoption was not required by the relevant Memorandum of Understanding but nevertheless pursued the objectives set out in the Memorandum of Understanding and relevant EU secondary law).
[19] *AGET Iraklis*, *supra* n. 1, paras. 73-75.
[20] Ibid., paras. 76-78.
[21] Ibid., para. 81.
[22] Ibid., para. 83.

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and should be viewed in relation to its social function.[23] The wording of Article 16 of the Charter resembled, said the Court, that of certain provisions found in Title IV of the Charter (Solidarity), and the freedom to conduct a business might be subject to a broad range of interventions on the part of public authorities that might limit the exercise of economic activity in the public interest.[24] *Alemo-Herron*[25] (in which the Court ruled against the UK's application of the Directive on workers' acquired rights, as interpreted in the light of Article 16 of the Charter[26]) was quickly discussed and brushed aside.[27] A regime which '[did] not have, in any way, the consequence of entirely excluding, by its very nature, the ability of undertakings to effect collective redundancies, since it [was] designed solely to impose a framework on that ability' did not affect, held the Court, the essence of the freedom to conduct a business.[28]

The Court further noted that 'a national regime imposing a framework … [should] seek, in this sensitive area, to reconcile and to strike a fair balance between the interests connected with the protection of workers and of employment, in particular protection against unjustified dismissal and against the consequences of collective dismissals for workers, and those relating to freedom of establishment and the freedom of economic operators to conduct a business enshrined in Articles 49 TFEU and Article 16 of the Charter'.[29] Such a mechanism '[might] – in the absence, especially, of any rules of EU law that [were] intended to prevent such redundancies and [went] beyond the fields of information and consultation covered by Directive 98/59 – prove to be a mechanism of the sort that [could] contribute to enhancing the level of actual protection of workers and of their employment, by laying down substantive rules governing the adoption of such economic and commercial decisions by undertakings'.[30] 'Such a mechanism [was] thus appropriate for ensuring the attainment of the objectives in the public interest thereby pursued'.[31] 'Furthermore, in the light of the discretion available to the Member States when pursuing their social policy, they [were], in principle, justified in considering the existence of a mechanism imposing such a framework to be necessary in order to ensure an enhanced level of protection of workers and

[23] Ibid., para. 85.
[24] Ibid., para. 86.
[25] ECJ 18 July 2013, Case C-426/11, *Mark Alemo-Herron and Others* v *Parkwood Leisure Ltd.*
[26] Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses [2001] OJ L82/16.
[27] *AGET Iraklis*, *supra* n. 1, para. 87.
[28] Ibid., para. 88.
[29] Ibid., para. 90.
[30] Ibid., para. 92.
[31] Ibid., para. 92.

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of their employment'.[32] 'In particular, it [was] not apparent that measures of a less restrictive kind would ensure attainment of the objectives thereby pursued as effectively as the establishment of such a framework'.[33] As such, the Court concluded that such a regime was *in principle* capable of satisfying the requirements stemming from the principle of proportionality and was therefore compatible with Articles 49 TFEU and 16 ECFR.[34]

However, as regards *the specific characteristics* of the impugned national measure, the criteria applied by the competent national authority when deciding whether to oppose the projected redundancies were found lacking. On the one hand, 'the interests of the national economy' constituted purely economic grounds which were swiftly rejected by the Court in line with its well-established case law.[35] On the other hand, the remaining two criteria (viz., 'the conditions in the labour market' and 'the situation of the undertaking') were 'formulated in very general and imprecise terms'.[36] '… [I]n the absence of details of the particular circumstances in which the power in question [might] be exercised, the employers concerned [did] not know in what specific objective circumstances that power [might] be applied, as the situations allowing its exercise [were] potentially numerous, undetermined and indeterminable and [left] the authority concerned a broad discretion that [was] difficult to review'.[37] 'Such criteria which [were] not precise and [were] not therefore founded on objective, verifiable conditions [went] beyond what [was] necessary in order to attain the objectives stated and [could not] therefore satisfy the requirements of the principle of proportionality'.[38] The prospect of review by national courts did not 'suffice on its own to make good the incompatibility with those rules of the two aforementioned assessment criteria'.[39] What is more, 'the legislation concerned also fail[ed] to provide the national courts with criteria that [were] sufficiently precise to enable them to review the way in which the administrative authority exercise[d] its discretion'.[40] Consequently, the impugned regime was incompatible, because of its 'particular detailed rules', with the requirements flowing from Articles 49 TFEU and 16 ECFR.[41]

The impugned measure could not be saved, said the Court, if there were serious social reasons, such as an acute economic crisis and very high unemployment.

[32] Ibid., para. 93.
[33] Ibid., para. 93.
[34] Ibid., para. 94.
[35] Ibid., para. 72.
[36] Ibid., para. 99.
[37] Ibid., para. 100.
[38] Ibid., para. 100.
[39] Ibid., para. 101.
[40] Ibid., para. 101.
[41] Ibid., paras. 102-104.

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As regards Council Directive 98/59/EC, the Member State concerned was not allowed to deprive the provisions of the Directive of their practical effect, 'as the directive [did] not contain a safeguard clause for the purpose of authorising by way of exception a derogation, in the event of such a national context, from the harmonising provisions which it [laid] down'.[42] Nor did the EU Treaties and related case law provide for a derogation in such cases.[43] Nor does Article 114(4)-(5) TFEU seem appropriate for addressing these concerns, for that matter. As such, the peculiar context of the Greek crisis did not have a bearing, said the Court, on the finding of incompatibility of the impugned national law with Articles 49 TFEU and 16 ECFR.[44]

Analysis

Economic freedoms versus labour rights: striving for a better balance between the economic and the social

The *AGET Iraklis* case naturally prompts inquiry as to the balance between the economic and the social in the post-Lisbon world.[45] It is the sometimes uneasy relationship between economic freedoms and labour rights which is the focal point of the voluminous bibliography on *Viking* and *Laval*.[46] This is

[42] Ibid., para. 106.

[43] Ibid., para. 107.

[44] Ibid., para. 108.

[45] *See* most recently in this journal, S. Garben, 'The Constitutional (Im)balance between "the Market" and "the Social" in the European Union', 13 *EuConst* (2017) p. 23; D. Schiek, 'Towards More Resilience for Social Europe – the Constitutionally Conditioned Internal Market', 13 *EuConst* (2017).

[46] Amongst the copious literature, *see particularly* L. Azoulai, 'The Court of Justice and the Social Market Economy: The Emergence of an Ideal and the Conditions for its Realisation', 45 *CMLR* (2008) p. 1335; C. Barnard, *EU Employment Law*, 4th edn (Oxford University Press 2012) p. 200-250; A. Davies, 'One Step Forward, Two Steps Back? The Viking and Laval Cases in the ECJ', 37 *Industrial Law Journal* (2008) p. 126; C. Joerges and F. Rödl, 'Informal Politics, Formalised Law and the "Social Deficit" of European Integration: Reflections after the Judgments of the ECJ in Viking and Laval', 15 *ELJ* (2009) p. 1; C. Kilpatrick, 'Laval's Regulatory Conundrum: Collective Standard-setting and the Court's New Approach to Posted Workers', 34 *ELRev* (2009) p. 844; J. Malmberg and T. Sigeman, 'Industrial Actions and EU Economic Freedoms: The Autonomous Collective Bargaining Model Curtailed by the European Court of Justice', 45 *CMLR* (2008) p. 1115; N. Nic Shuibhne, 'Settling Dust? Reflections on the Judgments in *Viking and Laval*', 21 *European Business Law Review* (2010) p. 681; S. Prechal and S. de Vries, 'Seamless Web of Judicial Protection in the Internal Market', 34 *ELRev* (2009) p. 5; N. Reich, 'Free Movement v. Social Rights in an Enlarged Union', 9 *German Law Journal* (2008) p. 125; P. Syrpis and T. Novitz, 'Economic and Social Rights in Conflict: Political and Judicial Approaches to their Reconciliation', 33 *ELRev* (2008) p. 411.

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no place to survey the relevant literature, not least because it is done brilliantly elsewhere.[47]

Mark Freedland and Jeremias Prassl distinguish between three different models (or ideal types) for the intersection between European labour law and EU internal market law. Under the first model, 'EU internal market law is excluded from functioning in the sphere of the collective and individual relations between employers and workers, leaving that as the exclusive domain of European and/or domestic labour law ("the exclusion type").'[48] According to the second model, 'EU internal market law functions in tandem, and in some kind of state of reconciliation, with European and/or domestic labour law, in the sphere of collective and individual relations between employers and workers ("the reconciliation type").'[49] Under the third model, 'EU internal market law is so extensively superimposed upon the sphere of collective and individual relations between employers and workers in the Union and each of its Member States, that it has to be regarded as having over-ridden or superseded labour law's regulation of those spheres ("the supersession type").'[50]

Mark Freedland and Jeremias Prassl argue that the pre-*Viking* and *Laval* model of intersection between European labour law and EU internal market law was a combination of the 'exclusion type' with the 'reconciliation type'.[51] However, the Court's decisions in *Viking* and *Laval* correspond, in their opinion, to a model which 'purports to be one of "reconciliation" between EU internal market law and European labour law but is actually one of supersession of European labour law (and, to a varying extent, of domestic labour law) by EU internal market law.'[52]

From the perspective of EU free movement law, the rulings in *Viking* and *Laval* are regarded as being 'out of line with the expectations of internal market lawyers too'.[53] Steve Weatherill argues that 'the reason they are not orthodox applications of internal market law but rather misapplications – is that they are barren of adequate nuance and, in particular, miss out the wide margin of discretion properly accorded to the regulator most prominently in *Schmidberger*.'[54] In this

[47] C. Barnard, 'The Calm after the Storm: Time to Reflect on EU (Labour) Law Scholarship Following the Decisions in Viking and Laval', in Bogg *et al.* (eds.), *supra* n. 6, p. 337.

[48] M. Freedland and J. Prassl, '*Viking*, Laval and Beyond: An Introduction', in M. Freedland and J. Prassl (eds.), *Viking, Laval and Beyond* (Hart Publishing 2014) p. 1 at p. 15.

[49] Ibid., p. 15.

[50] Ibid., p. 15.

[51] Ibid., p. 15-17.

[52] Ibid., p. 17-19.

[53] S. Weatherill '*Viking and Laval*: The EU Internal Market Perspective', in Freedland and Prassl (eds.), *supra* n. 48, p. 23 at p. 23.

[54] Ibid., p. 35.

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connection, Steve Weatherill further argues that '[t]his is a classic instance where the Court – as in *Dynamic Medien*, as in *Bosman*, as in *Schmidberger*, and so on – *should* have used the safety valve of justification and, in particular, the safety valve of the margin of appreciation to restrain the deregulatory potential of free movement law, thereby granting space both to local assessment of the virtue of justification in the particular circumstances and to the possibility of political contestation and legislative re-appraisal at EU level.'[55] 'In this sense, in the law of the internal market, labour law is special. Labour law is special in the absence of deference accorded to assessment of its particularities.'[56]

On the other side of the spectrum, Vassilios Skouris, former President of the European Court of Justice, argues that the methodology employed by the Court in *Viking* and *Laval* was not novel in any way. The same methodology was used, in his opinion, by the Court in *Schmidberger*, a case concerning a restriction on free movement of goods for the purposes of protecting freedom of expression and freedom of assembly.[57] Skouris argues that the Court in *Laval* 'consistently walked on the same line drawn with the *Schmidberger* ruling, balancing the competing interests and examining, taking into account all the circumstances of the case, whether a fair balance was struck between these interests'.[58] On the facts of the case, the Court decided that the impugned restriction could not be justified.[59] In Skouris' opinion, the Court's judgment was 'to a large extent' the result of the existence of Directive 96/71 concerning the posting of workers in the framework of the provision of services.[60] The outcome of the balance is not predetermined and neither set of rights (economic freedoms or fundamental rights) should in principle weigh more heavily than the other in the balance.[61] Citing *Schmidberger* and *Omega*, Skouris notes that the Court has indeed in other cases ruled in favour of the protection of fundamental

[55] Ibid., p. 37.

[56] Ibid., p. 39.

[57] V. Skouris, 'Οι οικονομικές ελευθερίες και τα κοινωνικά δικαιώματα κατά τη νομολογία του Δικαστηρίου των Ευρωπαϊκών Κοινοτήτων', in Ελληνική Εταιρεία Δικαίου της Εργασίας και της Κοινωνικής Ασφαλίσεως, *Οικονομικές ελευθερίες, κοινωνικά δικαιώματα & η απαγόρευση των διακρίσεων στο δίκαιο της Ε.Ε.* [*Economic Freedoms, Social Rights and the Prohibition of Discrimination in the Law of the EU*] (Εκδόσεις Σάκκουλα Αθήνα-Θεσσαλονίκη 2010) p. 3 at p. 9. German-speaking lawyers may also read V. Skouris, 'Das Verhältnis der Grundfreiheiten zu den Gemeinschaftsgrundrechten', *Recht der Arbeit-Beil* (2009) p. 25.

[58] Skouris (2010), *supra* n. 57, p. 11.

[59] Ibid., p. 14.

[60] Ibid., p. 15; Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services [1997] OJ L18/1.

[61] Skouris (2010), *supra* n. 57, p. 15-17. *Cf.* A.C.L. Davies, A. Bogg and C. Costello, 'The Role of the Court of Justice in Labour Law', in Bogg *et al.* (eds.), *supra* n. 6, p. 114 at p. 128-133.

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human rights.[62] In his opinion, the critique against the Court risks being regarded as 'one-sided' if it is limited to the rulings in *Viking* and *Laval*, as well as the decisions in *Rüffert*[63] and *Commission* v *Luxembourg*[64] which were, he argues, the 'natural follow-up' to these cases. This is because, in his opinion, examples abound in the Court's case law where the Court accorded 'broad protection to social rights'. As such, he argues that the relationship between economic freedoms and social rights should best be viewed not as one of conflict but as one of 'mutual interaction', as these two sets of rights 'complement' and are 'reconciled' with each other.[65]

The common thread running through the case law in this area is the Court's embrace of the *Säger* 'market access' (or 'restrictions') approach.[66] As neatly summarised by Barnard, 'the market access/restrictions approach considers the perspective of the out-of-state actor only' and 'asks whether the national rule hinders/restricts the ability of the out-of-state actor to gain access to the market or to exercise freedom of movement'.[67] As such, collective action or indeed national labour laws could constitute a restriction on free movement and would then be presumptively unlawful unless they could be justified (normally by reference to an overriding reason of the public interest, such as the protection of workers) and the requirements of the principle of proportionality were met on the facts of the case.

This approach is exemplified in the relevant case law, with the Court clearly seeking to prevent a shutdown of market access. In *Viking*, the eponymous ferry operator was unable to exercise its freedom of establishment by reflagging its vessel and was forced to run Rosella at a loss. Even if it wished to carry on with its reflagging plans, the trade union's demands would have rendered Viking's exercise of freedom of establishment 'less attractive'. In *Laval*, the undertaking concerned was not able to carry out its operations in Sweden, and its Swedish subsidiary was declared bankrupt. *AGET Iraklis* is not an outlier in this respect: there is no doubt

[62] Skouris (2010), *supra* n. 57, p. 16; ECJ 12 June 2003, Case C-112/00, *Eugen Schmidberger, Internationale Transporte und Planzüge* v *Republik Österreich*; ECJ 14 October 2004, Case C-36/02, *Omega Spielhallen- und Automatenaufstellungs-GmbH* v *Oberbürgermeisterin der Bundesstadt Bonn*.

[63] ECJ 3 April 2008, Case C-346/06, *Dirk Rüffert* v *Land Niedersachsen*.

[64] ECJ 19 June 2008, Case C-319/06, *Commission of the European Communities* v *Grand Duchy of Luxemburg*.

[65] Skouris (2010), *supra* n. 57, p. 16.

[66] ECJ 25 July 1991, Case C-76/90, *Manfred Säger* v *Dennemeyer & Co. Ltd*, para. 12.

[67] Barnard, *supra* n. 46, p. 201. *See further* J. Snell, 'The Notion of Market Access: A Concept or a Slogan?', 47 *CMLR* (2010) p. 437; C. Barnard and S. Deakin, 'Market Access and Regulatory Competition', in C. Barnard and J. Scott (eds.), *The Legal Foundations of the Single Market: Unpacking the Premises* (Hart Publishing 2002); G. Davies, 'Understanding Market Access: Exploring the Economic Rationality of Different Conceptions of Free Movement Law', 11 *German Law Journal* (2010) p. 673; E. Spaventa, 'From Gebhard to Carpenter: Towards a (Non-)Economic European Constitution', 41 *CMLR* (2004) p. 743.

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that the impugned national rule hindered or rendered less attractive the exercise of the freedom of establishment. The eponymous company was further unable to downsize its business or leave the country.

Further, the Court's critique in *AGET Iraklis* of the assessment criteria to which Greek legislation referred[68] clearly resonates with the Court's reasoning in *Laval*, where the Court took issue with the Swedish industrial relations system's lack of transparency with respect to pay.[69] It will be recalled that in *Laval* the eponymous company had to enter into negotiations 'of unspecified duration' with the trade unions concerned in order to ascertain the minimum wage rates to be paid to its posted workers.[70] As Barnard notes, this insistence on transparency of the relevant arrangements is a more general feature of the related jurisprudence and EU's secondary law.[71]

So where does the judgment in *AGET Iraklis* fit within this spectrum of cases and the ensuing controversy? Opinions will of course reasonably (and perhaps markedly) differ on the fairness of the balance that was struck by the Court in *AGET Iraklis*. Of the different models for the interplay between labour law and EU internal market law, it is argued here that *AGET Iraklis* marks a step towards a reconciliation between labour law and EU internal market law in the sphere of collective relations between employers and workers (i.e. the second model explained above). This is manifested in the judgment in at least six ways.

First, the change in tone from the Court's previous rulings is evident and indeed very welcome. As already mentioned, it is commendable that the Court discussed at some length the social policy objectives pursued by the EU Treaties, thereby avoiding placing an overwhelming emphasis on the economic objectives of the Treaties. This could be said to be precisely what labour lawyers had hoped would be the effect of the entry into force of the Lisbon Treaty and it was, I consider, more than mere 'window dressing'. This is more especially so given the approach taken by the Court with respect to more substantive issues, to which we now turn.

Second, the Court left it to the national court to decide whether the Directive was deprived of its practical effect by reason of the specific criteria used or the way in which they were applied by the competent authorities. This makes good legal sense, given the national court's proximity to 'the situation on the ground'. This further gives space to the national authorities in charge of applying the protective

[68] *AGET Iraklis*, *supra* n. 1, paras. 99-100.

[69] ECJ 18 December 2007, Case C-341/05, *Laval*, paras. 36 and 110.

[70] Ibid., para. 100.

[71] Barnard, *supra* n. 46, p. 226 fn 217, citing Art. 5(4) Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work [2008] OJ L327/9 and EFTA Court 23 January 2012, Case E-2/11, *STX Norway Offshore AS m.fl.* v *Staten v/ Tariffnemnda*, paras. 72-73.

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regime for workers to show that they *bona fide* sought to grant additional protection to workers in the event of collective redundancy and that they did not deprive the Directive of its practical effect.

Third, as regards the freedoms of establishment and to conduct a business, it should be highlighted that the impugned mechanism for the protection of workers was not rejected in the abstract. That would have indeed been a very controversial ruling, as it would have come perilously close to forcing certain economic assumptions on the primary decision-maker. Moreover, the Court very rightly noted the broad discretion enjoyed by Member States in the field of social policy[72] – an aspect which was missing, as we have seen, from *Viking* and *Laval*. As such, the Court granted space to local assessment of the virtue of justification in the particular circumstances of the case.

Fourth, the specific criteria that were employed in the impugned legislation were indeed general and imprecise, therefore the Court should not be blamed for taking issue with them. It is rightly noted by Advocate General Wahl that such criteria are 'to the detriment of the legal certainty of the employers'.[73] The clarity of a norm is a core rule of law value, even if one opts for a formal conception thereof. Rules need to be sufficiently clear so as to enable individuals to plan their lives in cognisance of the legal consequences of their choices.[74]

Fifth, it should not escape our attention that the Court did not follow the lead of the Advocate General who handed down a strongly-worded but well-reasoned opinion. It will be recalled that Advocate General Wahl had opined that the impugned rule also fell on the suitability hurdle and that, in any event, it went beyond what was necessary to achieve the objective pursued.[75] The Court clearly opted for a less strict proportionality test (as regards both steps of the analysis) than the one used by the Advocate General.

Sixth, it is important that, as will be seen below, the Court's ruling (and the Advocate General's opinion) left some scope for a more 'balanced' rule to be devised by the national authorities concerned. Precisely because the impugned protective mechanism for workers was not rejected by the Court in the abstract, the national authorities concerned may devise a new mechanism that would be compatible with EU law by 'fine-tuning' the relevant criteria. As such, EU internal market law is not extensively superimposed upon the national labour law concerned, and the social may 'tame' the economic, albeit to a more limited extent compared to what would have been the case had the impugned law survived scrutiny by the Court.

[72] *AGET Iraklis*, *supra* n. 1, paras. 81 and 93.

[73] Opinion of AG Wahl in *AGET Iraklis*, *supra* n. 2, para. 71.

[74] See generally P. Craig, 'Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework', 12 *Public Law* (1997) p. 467.

[75] Opinion of AG Wahl in *AGET Iraklis*, *supra* n. 2, para. 76.

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Taking a step back from the pressing legal questions that faced the Court in the *AGET Iraklis* case, it is clear that the applicant in the main proceedings was caught between a rock and a hard place. Construction activity had come to a grinding halt, falling to the levels of the 1960s, but AGET Iraklis failed to obtain the requisite ministerial authorisation and therefore could not carry out collective dismissals, which were a vital part of its restructuring plan. It could only lay off its workers at a pace which would not be caught by the national rules on collective dismissals, but the lay-offs in one of its plants were reportedly found by lower courts to be invalid.[76] On the other hand, the workers that would have been affected by the actions of the company would have been left without a job in a country where the unemployment rate was, according to the order of reference, 27.3% in 2013. The rate for 2014 was 26.5%, which was clearly not much better either, not least because back in 2008 the unemployment rate stood at 7.8%.[77]

Workers' rights and Article 16 of the EU Charter

The discussion thus far has focused on the intersection between EU free movement law and European and/or domestic labour law. The focus now shifts to the interplay between Article 16 of the EU Charter (freedom to conduct a business) and workers' rights.

Article 16 ECFR provides that '[t]he freedom to conduct a business in accordance with Community law and national laws and practices is recognised'.[78] In its report on Article 16 ECFR, the EU fundamental rights agency notes that the freedom to conduct a business is 'a relatively new right', elements of which were developed by the Court as early as in the mid-1970s on the basis of rights stemming from the common constitutional traditions of the Member States as well as the EU common market freedoms.[79] Since the EU Charter acquired binding legal force, Article 16 ECFR has been used, argues the fundamental rights agency, 'more forcefully to balance other rights and underpin proportionality tests

[76] <www.protothema.gr/economy/article/466514/sto-louxemvourgo-parapemfthike-gia-lusi-to-zitima-ton-omadikon-apoluseon/>, visited 27 February 2017.

[77] Opinion of AG Wahl in *AGET Iraklis*, *supra* n. 1, fn. 25.

[78] On Art. 16 ECFR, see generally G. Braibant, *La Charte des droits fondamentaux de l'Union européen* (Seuil 2001); M. Everson and R. Correia Gonçalves, 'Freedom to Conduct a Business', in S. Peers, *et al.* (eds.), *The EU Charter of Fundamental Rights: A Commentary* (Hart Publishing 2014) p. 437; P. Oliver, *The Fundamental Rights of Companies* (Hart Publishing 2015); A. Usai, 'The Freedom to Conduct a Business in the EU, Its Limitations and Its Role in the European Legal Order: A New Engine for Deeper and Stronger Economic, Social and Political Integration', 14 *German Law Journal* (2010) p. 1867.

[79] FRA, *Freedom to Conduct a Business: Exploring the Dimensions of a Fundamental Right*, August 2015, <fra.europa.eu/en/publication/2015/freedom-conduct-business-exploring-dimensions-fundamental-right>, visited 5 October 2017, p. 7-9.

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of various intrusive measures'.[80] The freedom to conduct a business, as enshrined in Article 16 ECFR, adds to the free movement provisions 'by providing for an "enhanced" protection for businesses to conduct their affairs'.[81] This is because its scope of application is wider: 'it is not limited to EU citizens, but applies to any individual, as well as companies'.[82] 'The freedom to conduct a business also does not – in contrast to the TFEU-provisions – hinge on a cross-border situation' but instead applies 'in all situations that fall under the scope of application of EU law, whether or not there is a trans-border element'.[83] To be sure, this aspect of Article 16 was not relevant in *AGET Iraklis*, as there was a cross-border dimension to the case.

The fundamental rights agency readily admits that the nature of Article 16 ECFR is 'relatively unexplored' in the European Court of Justice's jurisprudence[84] but warns that '[t]he implications of the freedom to conduct a business should … not be underestimated.'[85] Citing *Alemo-Herron*, the agency argues that '[t]he relationship between the freedom to conduct a business and the rights of employees is complex'.[86] It will be recalled that the Court held in *Alemo-Herron* that Member States were precluded from applying 'dynamic clauses' which referred to collective agreements negotiated and adopted after the date of transfer of the undertaking unless the new employer was able to participate in the negotiation process of such collective agreements.[87] In this connection, Davies, Bogg and Costello argue that '*Alemo-Herron* opens up the prospect of a perfect storm of judicial balancing, whereby the right to take collective action is routinely balanced against the employer's freedom to conduct a business'.[88] They argue that '[t]his is a step beyond even *Viking* and *Laval*', in that the employers' interests are afforded the status of fundamental human rights and then balanced against the fundamental human rights of workers, and add that 'it would be very difficult in these circumstances to maintain the fiction that the outcomes of such a balancing exercise were politically innocent and simply dictated by legal logic'.[89]

[80] Ibid., p. 9.
[81] Ibid., p. 12.
[82] Ibid., p. 12.
[83] Ibid., p. 12 and 21.
[84] Ibid., p. 23.
[85] Ibid., p.11.
[86] Ibid., p. 10.
[87] ECJ 18 July 2013, Case C-426/11, Mark Alemo-Herron v Parkwood Leisure Ltd. See J. Prassl, 'Freedom of Contract as a General Principle of EU Law? Transfers of Undertakings and the Protection of Employer Rights in EU Labour Law', 42 *Industrial Law Journal* (2013) p. 434; S. Weatherill, 'Use and Abuse of the EU's Charter of Fundamental Rights: On the Improper Veneration of "Freedom of Contract"', 10 *European Review of Contract Law* (2014) p. 157.
[88] Davies, Bogg and Costello, *supra* n. 61, p. 133.
[89] Ibid., p. 133.

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Most recently, Article 16 ECFR has featured in a case concerning religious discrimination, where the Court ruled *inter alia* that company's wish to project an image of neutrality to its customers 'relate[d]' to the freedom to conduct a business.[90]

Article 16 of the Charter can be and indeed is used by corporations to challenge various regulatory requirements which are seen to stand in their way, as evidenced by the factual background to the recent *Lidl* judgment (in which the argument was unsuccessful).[91] As such, it carries the risks outlined by the fundamental rights agency (who rightly warned that its implications should not be underestimated) and Davies, Bogg and Costello, among other commentators. However, a different way to look at the challenges in *Viking* and *Laval* is, as argued by Skouris, that the applicant undertaking's fundamental freedom to exercise an economic activity clashed with fundamental social rights.[92] As it is the former President of the European Court of Justice who is making this observation, it is plausible that this aspect of the *Viking* and *Laval* cases was not lost on the judges when they were called upon to decide them. It is further possible to regard the rights of the workers and trade unions concerned as pitted against the rights of workers from the new(er) Member States, the latter being embodied in the EU's internal market provisions.[93] In light of these observations, the 'deregulatory potential' of Article 16 ECFR might be somewhat less significant as it seems to be suggested. Absent situations where the very essence of the right is called into question, the EU judges will hopefully be wise and not grant a carte blanche to undertakings to challenge national rules that are grounded in legitimate claims to national autonomy.

The *social* dimension of Article 16 ECFR should not be disregarded either. It is rightly noted in the fundamental rights agency report on Article 16 ECFR that 'the freedom to conduct a business can help to reduce unemployment, spur entrepreneurship and innovation, and support inclusive growth, as set out in the "Europe 2020" strategy'.[94] The emphasis here is on cutting red tape and removing 'unjustified restrictions' for small and medium-sized enterprises, as well as 'encouraging promotional schemes for underrepresented groups with a potential to contribute to entrepreneurship and innovation (in addition to women or

[90] ECJ 14 March 2017, Case C-157/15, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding* v *G4S Secure Solutions NV*, para. 38.

[91] ECJ 30 June 2016, Case C-134/15, *Lidl GmbH & Co. KG* v *Freistaat Sachsen*.

[92] Skouris (2010), *supra* n. 57, p. 15-16.

[93] *See generally* D. Kukovec, 'Whose Social Europe? The Laval/Viking Judgments and the Prosperity Gap', 16 April 2010, <papers.ssrn.com/sol3/papers2.cfm?abstract_id=1800922>, visited 27 February 2017; D. Leczykiewicz, 'Conceptualising Conflict between the Economic and the Social in EU Law after *Viking* and *Laval*', in Freedland and Prassl (eds.), *supra* n. 48, p. 307.

[94] FRA, *supra* n. 79, p. 7.

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immigrants, also youth, the elderly, people with disabilities and Roma)'.[95] Though larger corporations could also rely on Article 16 ECFR, 'it would be reasonable to expect that individuals and smaller businesses would in practice benefit the most, as even small infringements of the right are likely to have a relatively larger impact on them'.[96] Opinions will of course reasonably differ on the latter argument, not least because of the substantial legal costs that are involved in bringing a case before the domestic and EU courts. Overall, the capacity of an actor embedded in the EU institutional framework, such as the fundamental rights agency, to engage in fresh and critical thinking may be questioned, and the fundamental rights agency's arguments are underpinned by certain economic assumptions which documents from the EU institutions, agencies and bodies are casually imbued with. A detailed analysis of these observations would go beyond the scope of this case analysis. For the present, it is sufficient to note that these statements need to be backed by evidence and that the EU's output and social legitimacy are clearly related to the matter at hand.

A further issue concerns the 'added value' of Article 16 ECFR with respect to Article 49 TFEU, over and above its wider scope of application. This is also important when passing judgment on the 'deregulatory potential' of Article 16 ECFR. As regards the *AGET Iraklis* case, it is hard to tell what the 'added value' of Article 16 ECFR was in substantive terms. In what follows, we will distinguish between the finding of an infringement of EU law, and the justification provided for such an infringement.

Infringement-wise, the use of Article 16 ECFR did not seem to make any difference in the outcome of the analysis. The 'essence' of the freedom to conduct a business within the meaning of Article 52(1) ECFR was said by the Court to be affected whenever a measure entirely excluded the ability of undertakings to effect collective redundancies.[97] However, in an *AGET Iraklis* setting, this would invariably lead to a finding of violation of Article 49 TFEU as well, given the Court's embrace of the 'market access' (or 'restrictions') approach.[98] The overall picture emerging from the *AGET Iraklis* ruling is that Article 16 was used first because the claimants in the main proceedings invoked this Charter provision and second in order to buttress the Court's reasoning with respect to freedom of establishment.

It is submitted that Article 16 ECFR is expected to make more of a difference, as regards the finding of an infringement, in an *Alemo-Herron* setting. It will be recalled that Article 16 ECFR was used in that case to interpret EU secondary law

[95] Ibid., p. 7.
[96] Ibid., p. 11.
[97] *AGET Iraklis*, *supra* n. 1, para. 88.
[98] Ibid., paras. 48-57.

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in its light.[99] It is in those cases (secondary law interpreted in the light of Article 16 ECFR) where the freedom to conduct a business is expected to make more of a difference, with the Court reading the relevant secondary law provision in a manner consistent with the Charter right, as it sees it. The *AGET Iraklis* setting (Treaty provisions on free movement plus Article 16 ECFR) is different, and indeed *Alemo-Herron* was of fairly limited impact. Though the case was more heavily relied on by the Advocate General in his opinion,[100] we have seen that the Court quickly discussed and 'brushed aside' the ruling. However, as regards *both* types of case examined here (viz., primary or secondary EU law plus Article 16 ECFR), it is argued that more rulings on the uneasy relationship between the freedom to conduct a business and workers' rights will be needed before we can assess with any degree of certainty the practical impact of the freedom to conduct a business on labour rights.

Furthermore, exception-wise, the proportionality analysis in *AGET Iraklis* was undertaken together for Articles 49 TFEU and 16 ECFR.[101] The Court explicitly stated that the impugned measure failed to comply with Article 16 ECFR '[o]n identical grounds' as those given in its ruling for Article 49 TFEU.[102] There does not seem to be any difference in the proportionality analysis used for the two primary law provisions or indeed in the reasons provided by the Court in its ruling for the finding of a violation of EU primary law.

Labour law and the economic crisis: An Economic and Monetary Union perspective

The *AGET Iraklis* case arose from the Greek crisis and gave rise to the first Article 267 TFEU preliminary reference from the Greek Council of State to the European Court of Justice in this context. Although the impugned rule was not used as a 'vehicle' for indirectly challenging the bailout terms agreed between Greece and its creditors, the case could nevertheless be said to form part of a group of cases brought before the European Court concerning the legality of national economic policy measures that were enacted in response to the economic crisis.[103]

[99] ECJ 18 July 2013, Case C-426/11, *Mark Alemo-Herron* v *Parkwood Leisure Ltd*, paras. 30-37.
[100] Opinion of AG Wahl in *AGET Iraklis*, *supra* n. 2, para. 64.
[101] *AGET Iraklis*, *supra* n. 1, paras. 79-104.
[102] Ibid., para. 103.
[103] On the legality of national economic measures on the economic crisis, *see* e.g. F. Fabbrini, *Economic Governance in Europe: Comparative Paradoxes and Constitutional Challenges* (Oxford University Press 2016) ch. 2; A. Hinarejos, *The Euro Area Crisis in Constitutional Perspective* (Oxford University Press 2015) ch. 8; A. Karatzia, 'An Overview of Litigation in the Context of Financial Assistance to Eurozone Member States', in M. Szabó *et al.* (eds.), *Hungarian Yearbook of International Law and European Law 2016* (Eleven Publishing 2017) ch. 34.

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This judgment was awaited with great interest by the Greek Government and the Troika (now the 'Quadriga'), as the second review of the ongoing financial assistance programme is also focusing on labour market issues. More specifically, the Greek Government has come under pressure to strip the Minister of Labour of its power to control mass layoffs by employers or at the very least relax the relevant requirements for such dismissals. What are then the effects of the preliminary ruling in *AGET Iraklis* in this respect?

We have seen that the European Court of Justice ruled that Council Directive 98/59/EC might not necessarily be deprived of its practical effect by the impugned national measure. The referring court could therefore 'save' this measure by holding that the criteria as set out in the impugned law and applied by the Minister of Labour did not deprive the Directive of its practical effect. This would of course depend on whether it was indeed the case that the Greek authorities systematically opposed collective redundancies (as argued by AGET Iraklis) or not. It remains to be seen whether the Greek Council of State will take the view that the impugned national law is compatible with the Directive. To be sure, this point might be somewhat moot by then, for the reasons explained below.

As regards the compatibility of the impugned national law with Articles 49 TFEU and 16 ECFR, the situation is far more complicated for the Greek authorities. The Court of Justice is essentially asking the Greek authorities to devise a new mechanism whereby the criteria applied by the national authorities would not be formulated 'in very general and imprecise terms'. These criteria would have to be based on objective conditions the fulfilment of which could be reviewed by the courts. The Court did not offer any more guidance on what the new mechanism should look like, presumably seeking to respect the broad margin of appreciation usually granted to national authorities in this sensitive area. As Advocate General Wahl had argued in his opinion, '[a]n alternative might have consisted in listing the types of dismissals considered to be unjustified, as in the case of the list which appears in paragraph 3 of the section of the Appendix to the Social Charter relating to Article 24 thereof'.[104] That would indeed be an option. However, it would provide scant comfort to workers in an *AGET Iraklis* setting, as this type of case would not have been covered by the revised mechanism.

[104] Opinion of AG Wahl in *AGET Iraklis*, *supra* n. 2, para. 71. More specifically, the Appendix provides that the following shall not constitute valid reasons for the termination of employment: trade union membership or participation in union activities outside working hours, or, with the consent of the employer, within working hours; seeking office as, acting or having acted in the capacity of a workers' representative; the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities; race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; maternity or parental leave; and temporary absence from work due to illness or injury.

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Be that as it may, it should not escape our attention that the new law would be drafted by the Greek authorities in cooperation with the European Commission, the European Central Bank, the International Monetary Fund, and the European Stability Mechanism. As such, the broad margin of appreciation in principle enjoyed by the Greek authorities would *de facto* be diminished. Specifically, the Supplementary Memorandum of Understanding of 16 June 2016 provides that '[a]ny changes to the framework of labour market policies will be done in consultation and agreement with the EU institutions'.[105] This is not a critique of the Court's reasoning and should not be seen in this light. It is rather an attempt to bring a dose of realism to the debate. Absent an authoritative interpretation by the European Court of Justice as to how this new mechanism should look, the Greek authorities are likely to succumb to the pressure exerted by the country's lenders to create a more 'flexible' labour market. This is because the Troika possesses a much more credible 'enforcement mechanism', insofar as the release of further loan instalments was made conditional upon successful completion of the review of the programme.[106]

In light of the above, there are two ways of looking at the judgment in *AGET Iraklis*, depending on one's perspective. The Greek Government would presumably seek to argue in its negotiations with the Troika that the impugned national law is not in principle incompatible with EU law, and that EU law does not require that such a law be disapplied. Fine-tuning the relevant provisions to bring them in line with the EU acquis would do, as Greece should not be treated, in their opinion, any differently from other Member States. A change of the relevant criteria in the law would be required, in line with the Court's ruling in *AGET Iraklis*. For their part, the Troika would probably argue that EU law does not require that such a protective regime for workers exist, and that therefore it could perhaps be abolished. In this connection, the Troika could rely on the Supplementary Memorandum of Understanding, which provides that 'Greece will design and implement a wide range of reforms in labour markets […] that not only ensure full compliance with EU requirements, but which also aim at achieving European best practices'.[107] The legal argument is not conclusive, and the creditors may in any event request changes to a measure that is compatible with EU law. To be sure, those changes would themselves need to be compatible with EU law, but the Court ruled in *AGET Iraklis* that EU law did not require that such a protective mechanism exist. The relevant national regime goes beyond the

[105] <http://ec.europa.eu/info/sites/info/files/ecfin_smou_en.pdf>, visited 5 October 2017, p. 25.

[106] M. Markakis, 'The Implications of the Revised EU Economic Governance Framework for National Economic Policy', 23 October 2015, <ssrn.com/abstract=2883632>, visited 3 February 2017.

[107] *Supra* n. 105, p. 2.

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requirements of the Directive. Given that a state which is seemingly constantly on the brink of insolvency does not have equal bargaining power as its lenders, it would not be surprising if the Greek authorities came under tremendous pressure to relax the requirements for carrying out collective redundancies. This is more so especially because the successful completion of the second review of the programme is linked to measures of debt relief for Greece[108] as well as participation in the European Central Bank's quantitative easing programme.[109]

Concluding remarks

In his towering research on populism, the political scientist Jan-Werner Müller describes democracy as 'a system where you know you can lose, but you also know that you will not always lose'.[110] I have argued in this paper that this is precisely the type of relationship that the Court is striving to build between the economic freedoms and labour rights in the *AGET Iraklis* case. Opinions will most likely markedly differ on the balance struck by the Court in its ruling. On the one side, commentators will probably argue that the similarities between *AGET* and *Viking/Laval* are many, and they might highlight that labour rights are once again lost in the balance. On the other side, commentators might welcome the change in tone in the Court's case law, the references to social policy objectives listed in the EU Treaties, and the less strict approach to proportionality as employed by the Court in *AGET*. As noted above, the Court granted space to domestic assessment of the virtue of justification in the particular circumstances of the case. It further preserved the possibility of political contestation and legislative re-appraisal at the national level, as regards the detailed criteria to be included in the law. In my opinion, this was not a *Viking/Laval* moment for the Court, as it very carefully examined the merits and demerits of the opposing arguments and handed down a very measured judgment. In doing so, the Court is taking its cue from the voluminous literature on *Viking* and *Laval*. Furthermore, the Court surely cannot be expected to broker an agreement between Greece and the institutions, as its proper role is to interpret and rule on the validity of EU law. The ball is now firmly back with the referring court and the negotiating parties, the latter being responsible for coming up with a solution that would unlock much-needed funding for the Greek economy while being respectful of the interests of workers.

[108] 'Eurogroup Statement on Greece', 5 December 2016, <www.consilium.europa.eu/en/press/press-releases/2016/12/05-eurogroup-statement-greece/>, visited 5 October 2017.

[109] Greece's inclusion in QE also depends on the outcome of the European Central Bank's debt sustainability analysis for the country.

[110] J.-W. Müller, *What Is Populism?* (University of Pennsylvania Press 2016) p. 78-79.

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