Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

13 May 2015 *

(Reference for a preliminary ruling — Social policy — Collective redundancies — Directive 98/59/EC — Meaning of 'establishment' — Method of calculating the number of workers made redundant)

In Case C-392/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Social No 33 de Barcelona (Spain), made by decision of 9 July 2013, received at the Court on 9 July 2013, in the proceedings

Andrés Rabal Cañas

v

Nexea Gestión Documental SA,

Fondo de Garantía Salarial,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Vajda, A. Rosas, E. Juhász (Rapporteur) and D. Šváby, Judges,

Advocate General: N. Wahl,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 20 November 2014,

after considering the observations submitted on behalf of:

— the Spanish Government, by M. J. García-Valdecasas Dorrego, acting as Agent,

— the Hungarian Government, by M. Fehér and K. Szíjjártó, acting as Agents,

— the European Commission, by J. Enegren, R. Vidal Puig and J. Samnadda, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 February 2015,

gives the following

* Language of the case: Spanish.

Judgment

1 This request for a preliminary ruling concerns the interpretation of the provisions of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 225, p. 16).

2 The request has been made in proceedings between Mr Rabal Cañas and Nexea Gestión Documental SA ('Nexea') and the Fondo de Garantía Salarial concerning the dismissal of Mr Rabal Cañas, which he submits is contrary to the provisions of that directive.

Legal context

EU law

3 According to recital 1 in the preamble to Directive 98/59, that directive consolidated Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1975 L 48, p. 29).

4 Under recital 2 of Directive 98/59, 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 European Union.

5 Recitals 3 and 4 of that directive state:

'(3) Whereas, despite increasing convergence, differences still remain between the provisions in force in the Member States concerning the practical arrangements and procedures for such redundancies and the measures designed to alleviate the consequences of redundancy for workers;

(4) Whereas these differences can have a direct effect on the functioning of the internal market'.

6 Recital 7 of the directive emphasises the need to promote the approximation of the laws of the Member States relating to collective redundancies.

7 Article 1 of the directive, entitled 'Definitions and scope', provides:

'1. For the purposes of this Directive:

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

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

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

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

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

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

…

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.

2. This Directive shall not apply to:

(a) collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks except where such redundancies take place prior to the date of expiry or the completion of such contracts;

…'

8 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.

…

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 and 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).

…’

9 Article 3(1) of the directive provides:

‘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.’

10 Article 4(1) and (2) of the directive is worded as follows:

‘1. Projected collective redundancies notified to the competent public authority shall take effect not earlier than 30 days after the notification referred to in Article 3(1) without prejudice to any provisions governing individual rights with regard to notice of dismissal.

Member States may grant the competent public authority the power to reduce the period provided for in the preceding subparagraph.

2. The period provided for in paragraph 1 shall be used by the competent public authority to seek solutions to the problems raised by the projected collective redundancies.’

11 Article 5 of the directive provides:

‘This Directive shall not affect the right of Member States to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers or to promote or to allow the application of collective agreements more favourable to workers.’

Spanish law

12 Under Article 49(1)(c) of the Law on the Workers’ Statute (Ley del Estatuto de los Trabajadores, (‘ET’)), in the version applicable at the date of the facts in the main proceedings, a contract of employment terminates on the expiry of the agreed term or completion of the task or service that is the subject matter of the contract.

13 Article 51 of the ET provides:

‘1. For the purposes of the present law, “collective redundancy” shall mean the termination of employment contracts on economic, technical, organisational or production grounds, where, over a period of 90 days, the termination affects at least:

(a) 10 workers in undertakings employing fewer than 100 workers;

(b) 10% of the number of workers in undertakings employing between 100 and 300 workers;

(c) 30 workers in undertakings employing more than 300 workers.

Economic grounds shall be deemed to have been established where a negative economic situation is apparent from the financial performance of the undertaking, in cases where losses are actually sustained or forecast or where there is a persistent reduction in the level of ordinary revenue or sales. In any event, a reduction shall be deemed to be persistent if, for three consecutive quarters, the level of ordinary revenue or sales in each quarter is lower than that recorded in the same quarter of the preceding year.

Technical grounds shall be deemed to have been established where changes occur in, inter alia, the field of the means or tools of production; organisational grounds shall be deemed to have been established where changes occur, inter alia, in the field of staff working systems and methods or in the method of organising production; and production grounds shall be deemed to have been established where changes occur, inter alia, in the demand for the goods or services that the undertaking intends to place on the market.

The termination of the contracts of employment of an undertaking's entire workforce shall also be considered to be "collective redundancy", where the termination occurs as a result of the total cessation of the business activity of the undertaking on the same grounds as those referred to above, provided that the number of workers affected is greater than five.

In order to calculate the number of terminations of contracts for the purposes of the first subparagraph of this paragraph, account shall also be taken of any other terminations which occurred within the reference period on the employer's initiative for other reasons not related to the individual workers concerned and different from the grounds provided for in Article 49(1)(c) of the present law, provided that the number of workers concerned is at least five.

When, in successive periods of 90 days and in order to circumvent the requirements of this article, an undertaking terminates contracts under Article 52(c) of the present law, their number being lower than the thresholds indicated, and when there are no new grounds justifying such action, those new terminations shall be deemed to be effected in circumvention of the law and shall be declared null and void.

2. Collective redundancy must be preceded by a period of consultation with the workers' legal representatives for a maximum period of 30 calendar days or 15 days in the case of undertakings with fewer than 50 workers. The consultation with the workers' legal representatives must deal, at the very least, with the possibility of avoiding or reducing the collective redundancies and of alleviating their effects through accompanying social measures, such as outplacement and vocational training or retraining to improve employability.

Notification of the commencement of the consultation period shall be given by letter sent by the employer to the workers' legal representatives, and a copy of the letter shall be forwarded to the employment authority. That letter shall set out the following particulars:

(a) an indication of the reasons for the collective redundancies in accordance with paragraph 1;

The notification in question shall be accompanied by a statement explaining the reasons for the collective redundancies and the other matters referred to in the previous subparagraph …

…

Once the consultation period has ended, the employer shall inform the employment authority of the outcome. If an agreement has been reached, the employer shall forward a complete copy [of the agreement to the authority]. If no agreement has been reached, the employer shall provide the workers' representatives and the employment authority with the final decision on collective redundancy adopted by it, and the conditions of those redundancies.

…’

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

14 From 14 January 2008, Mr Rabal Cañas worked as a skilled employee for Nexea, a company that formed part of the Correos commercial group, the entire share capital of which belonged to the Sociedad Estatal de Participaciones Industriales (SEPI). SEPI is a public law commercial company attached to the Ministerio de Hacienda y Administraciones Públicas (Ministry of Finance and Public Administration), whose object is to manage and render profitable the commercial shareholdings assigned to it by the Spanish Government.

15 In July 2012, Nexea had two establishments, situated in Madrid and in Barcelona (Spain), employing 164 and 20 persons, respectively. On 20 July 2012, that undertaking dismissed 14 employees at the establishment in Madrid, on the basis of a reduction in turnover for three consecutive quarters, losses sustained in 2011 and those forecast for 2012. The legal actions contesting those dismissals were dismissed.

16 In August 2012, two employees at the establishment in Barcelona had their employment contracts terminated and, in September 2012, one employee at the establishment in Madrid had his contract terminated.

17 In October and November 2012, five more employment contracts were terminated, three at the establishment in Madrid and two in Barcelona, because of the expiry of fixed-term contracts of employment, which had been concluded in order to deal with increased production.

18 On 20 December 2012, Mr Rabal Cañas and 12 other employees at the establishment in Barcelona were informed of their dismissal on economic grounds relating to production and organisation, which made it necessary for Nexea to close that establishment and transfer the remaining staff concerned to Madrid. The grounds relied on were, in essence, the same as those invoked at the time of the dismissals in July 2012.

19 Mr Rabal Cañas contested his dismissal before the referring court, claiming that it was void on the ground that Nexea had fraudulently circumvented the application of the procedure relating to collective redundancies, which is mandatory under Directive 98/59.

20 The applicant in the main proceedings submits, first, that Nexea ought to have had recourse to that procedure, since the closure of the establishment in Barcelona, which had resulted in 16 terminations of employment relationships in December 2012, could be regarded as constituting a collective redundancy since that closure and the dismissal of the entire workforce were to be assimilated to the closure of the undertaking or the cessation of its business activity.

21 Mr Rabal Cañas submits, secondly, that, in the light of the fact that all the terminations of employment contracts are to be taken into account, including those of fixed-term contracts of employment, the threshold set out in the national legislation transposing Directive 98/59, and above which the procedure relating to collective redundancy is mandatory, had been reached.

22 First, the referring court raises the question whether the concept of ‘collective redundancies’, defined in Article 1(1)(a) of Directive 98/59, given that it includes all dismissals effected by an employer for one or more reasons not related to the individual workers concerned, must be interpreted as precluding national legislation that restricts, as the national legislation at issue in the main proceedings does, the ambit of that concept to terminations based on economic, technical, organisational or production grounds.

23 Secondly, that court asks whether Article 1 of Directive 98/59 must be interpreted as meaning that, for the purposes of calculating the number of dismissals required in order for there to be 'collective redundancies', terminations of employment relationships consequent on the expiry of individual contracts of employment are to be taken into account.

24 Thirdly, the referring court raises the question whether Article 1(2)(a) of Directive 98/59, which excludes from the scope of that directive collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks, must be interpreted as meaning that that exception must be defined exclusively by [reference to] the strictly quantitative criterion in Article 1(1)(a) of that directive or whether it requires that the cause of the collective termination of the employment relationship derive from the same collective contractual framework for the same duration or the same task.

25 That court states, so far as those three questions are concerned, that, depending on the answers given, the five terminations of employment contracts that took place in October and November 2012, because of the temporary nature of those contracts, might be added to the 13 dismissals effected in December 2012, amongst which is that of Mr Rabal Cañas. If so, the total number of employment contract terminations would be 18 over a period of 90 days, which number represents more than 10% of the personnel, and, therefore, those dismissals would be considered to be 'collective redundancies'.

26 Fourthly, the referring court seeks clarification of the concept of 'establishment' in Article 1(1)(a) of Directive 98/59. In point of fact, if the threshold of 10 workers was applied to the establishment in Barcelona, the dismissals of the applicant in the main proceedings and of the other 12 employees concerned, which took place on the same date, ought to have been considered to be 'collective redundancies'.

27 In this connection, that court adds that, under the national legislation at issue in the main proceedings, 'collective redundancy' also arises where the contracts of employment of an undertaking's entire workforce are terminated as a result of the total cessation of the undertaking's business activity, provided that the number of workers affected is greater than five. On the other hand, according to that court, that national legislation reserves different treatment for dismissals consequent on the closure of an establishment of an undertaking.

28 Consequently, the referring court wishes to ascertain whether Article 1(1) and Article 5 of Directive 98/59 are to be interpreted as precluding national legislation that relates the numerical threshold laid down exclusively to the undertaking as a whole, thereby excluding situations in which that threshold would have been exceeded had the establishment been taken as the reference unit.

29 In those circumstances the Juzgado de lo Social No 33 de Barcelona (Social Court No 33 of Barcelona) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Given that it includes within its ambit all "dismissals effected by an employer for one or more reasons not related to the individual workers concerned", according to the numerical threshold provided for, must the concept of "collective redundancies" in Article 1(1)(a) of Directive 98/59 be interpreted — in view of its Community scope — as prohibiting or precluding a national implementing or transposing provision that restricts the ambit of that concept solely to particular types of termination, namely those based on "economic, technical, organisational or production" grounds, as Article 51(1) of the [ET] does?

(2) For the purposes of calculating the number of dismissals to be taken into account in order to determine whether it is a case of "collective redundancies", as defined in Article 1(1) of Directive 98/59, in the form of either "dismissals effected by an employer" ([Article 1(1)(a)]) or "terminations of an employment contract which occur on the employer's initiative for one or

more reasons not related to the individual workers concerned ... provided that there are at least five redundancies" [(second subparagraph of Article 1(1))], must account be taken of individual terminations by reason of the expiry of fixed-term contracts (on the basis of an agreed date, task or service), such as those referred to in Article 49(1)(c) of the [ET]?

(3) For the purposes of the rule on the non-application of Directive 98/59 laid down in Article [1(2)(a)] thereof, is the concept of "collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks" defined exclusively by the strictly quantitative criterion in Article [1(1)(a)] or does it require the cause of the collective termination also to be derived from the same collective contractual framework for the same duration, service or task?

(4) Does the concept of "establishment", as an essential Community law concept for the purposes of defining "collective redundancies" in the context of Article 1(1) of Directive 98/59, and, in view of the nature of the directive of a minimum standard as provided in Article 5 thereof, lend itself to an interpretation that allows the national provision implementing or transposing that text into the national legal order — Article 51(1) of the [ET] in the case of the Kingdom of Spain — to relate the ambit of the calculation of the numerical threshold exclusively to the "undertaking" as a whole, thereby excluding situations in which, had the "establishment" been taken as the reference unit, the numerical threshold laid down in that article would have been exceeded?'

Procedure before the Court

30 The referring court requested, in its order for reference, that the Court apply an expedited procedure to the case, pursuant to Article 105(1) of the Rules of Procedure of the Court of Justice. That request was rejected by the order of the President of the Court in *Rabal Cañas* (C-392/13, EU:C:2013:877).

31 By a letter of 10 February 2015, the referring court sent to the Court its observations on the Opinion of the Advocate General delivered on 5 February 2015. The referring court considered that the Advocate General had omitted to propose an answer to the fourth question and requested that the Court invite the Advocate General to supplement his Opinion or, in the alternative, accept its observations as clarifications pursuant to Article 101 of the Rules of Procedure.

32 It should be stated in this connection that neither the Statute of the Court of Justice of the European Union nor the Rules of Procedure make provision for the parties or the referring court to submit observations in response to the Advocate General's Opinion. Furthermore, under Article 101 of the Rules of Procedure, only the Court of Justice is afforded the possibility of requesting clarifications from the referring court.

Consideration of the questions referred

The fourth question

33 The Court considers that it is necessary to examine the fourth question first.

34 The Spanish Government submits that that fourth question is inadmissible, since Directive 98/59 is not applicable in the circumstances of the present case.

35 The Spanish Government submits that the criteria laid down in that directive do not support a finding that there is, in the main proceedings, a case of collective redundancy. It states that Directive 98/59 defines its scope in Article 1, mentioning, in Article 1(1)(a)(i), only establishments normally employing

more than 20 workers or, in Article 1(1)(a)(ii), cases in which the redundancies concern at least 20 workers. According to the Spanish Government, since the establishment in Barcelona reaches neither of those thresholds, that question is hypothetical.

36 Questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling from a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, judgment in *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraph 30 and the case-law cited).

37 The Spanish Government submits that it made use of the right granted in Article 5 of Directive 98/59 by introducing legislative provisions intended to be more favourable to workers. Amongst other things, it specified as the reference unit not the establishment, but the undertaking. Since calculating the thresholds at the level of the undertaking may preclude the application of the information and consultation procedure provided for in that directive to the dismissals at issue in the main proceedings, the referring court raises the question whether the national legislation in question is compatible with that directive.

38 In those circumstances, the question referred cannot be regarded as hypothetical.

39 The fourth question must therefore be found admissible.

40 By that question, the referring courts asks, in essence, whether Article 1(1) of Directive 98/59 must be interpreted as precluding national legislation which defines the concept of 'collective redundancies' using the undertaking, and not the establishment, as the sole reference unit.

41 The answer to that question requires, first of all, the term 'establishment' to be clarified.

42 It should be stated from the outset in this connection that, in accordance with the case-law of the Court, the term 'establishment', which is not defined in Directive 98/59, is a term of EU law and cannot be defined by reference to the laws of the Member States (see, to that effect, judgment in *Rockfon*, C-449/93, EU:C:1995:420, paragraph 25). It must, on that basis, be interpreted autonomously and uniformly in the EU legal order (see, to that effect, judgment in *Athinaïki Chartopoiïa*, C-270/05, EU:C:2007:101, paragraph 23).

43 The Court has already interpreted the term 'establishment' or 'establishments' in Article 1(1)(a) of Directive 98/59.

44 In paragraph 31 of the judgment in *Rockfon* (C-449/93, EU:C:1995:420), the Court observed, referring to paragraph 15 of the judgment in *Botzen and Others* (186/83, EU:C:1985:58), that an employment relationship is essentially characterised by the link existing between the worker and the part of the undertaking or business to which he is assigned to carry out his duties. The Court therefore decided, in paragraph 32 of the judgment in *Rockfon* (C-449/93, EU:C:1995:420), that the term 'establishment' in Article 1(1)(a) of Directive 98/59 must be interpreted as designating, depending on the circumstances, the unit to which the workers made redundant are assigned to carry out their duties. It is not essential in order for there to be an 'establishment' that the unit in question be endowed with a management that can independently effect collective redundancies.

45 In the judgment in *Athinaïki Chartopoiïa* (C-270/05, EU:C:2007:101), the Court further clarified the term 'establishment', inter alia by holding, in paragraph 27 of that judgment, that, for the purposes of the application of Directive 98/59, an 'establishment', in the context of an undertaking, may consist of

a distinct entity, having a certain degree of permanence and stability, which is assigned to perform one or more given tasks and which has a workforce, technical means and a certain organisational structure allowing for the accomplishment of those tasks.

46 By the use of the words 'distinct entity' and 'in the context of an undertaking', the Court specified that the terms 'undertaking' and 'establishment' are different and that an establishment normally constitutes a part of an undertaking. That does not, however, preclude the establishment being the same as the undertaking where the undertaking does not have several distinct units.

47 In paragraph 28 of the judgment in *Athinaïki Chartopoiïa* (C-270/05, EU:C:2007:101), the Court held that since Directive 98/59 concerns the socio-economic effects that collective redundancies may have in a given local context and social environment, the entity in question need not have any legal autonomy, nor need it have economic, financial, administrative or technological autonomy, in order to be regarded as an 'establishment'.

48 Furthermore, the Court held, in the judgments in *Lyttle and Others* (C-182/13, EU:C:2015:0000, paragraph 35) and *USDAW and Wilson* (C-80/14, EU:C:2015:291, paragraph 54), that the meaning of the terms 'establishment' or 'establishments' in Article 1(1)(a)(i) of Directive 98/59 is the same as that of the terms 'establishment' or 'establishments' in Article 1(1)(a)(ii) of that directive.

49 Consequently, where an 'undertaking' comprises several entities meeting the criteria set out in paragraphs 44, 45 and 47 above, it is the entity to which the workers made redundant are assigned to carry out their duties that constitutes the 'establishment' for the purposes of Article 1(1)(a) of Directive 98/59, and the number of dismissals effected at that establishment must be taken into consideration separately from those that take place at the other establishments of that same undertaking (see, to that effect, judgments in *Lyttle and Others*, C-182/13, EU:C:2015:0000, paragraph 33, and *USDAW and Wilson*, C-80/14, EU:C:2015:291, paragraph 52).

50 In the present case, according to the observations submitted by the Spanish Government, and these being matters for the referring court to verify, at the time of the dismissal at issue in the main proceedings, Nexea was engaged in the business of providing hybrid mail services at two establishments situated in Madrid and in Barcelona. Although those two establishments had a single production manager and joint accounting and budgetary management, and carried out substantially identical tasks, namely, printing and processing mail and placing it in envelopes, the establishment in Barcelona had, however, an establishment manager made available to it by the establishment in Madrid and responsible for coordinating tasks in Barcelona. The establishment in Barcelona had been opened in order to increase Nexea's capacity to process its customers' mail and, in particular, with a view to processing orders from local customers of the undertaking.

51 Therefore, the establishment in Barcelona is capable of meeting the criteria set out in the case-law cited in paragraphs 44, 45 and 47 above relating to the term 'establishment' in Article 1(1)(a) of Directive 98/59.

52 Replacing the term 'establishment' by the term 'undertaking' can be regarded as favourable to workers only if that element is additional and does not mean that the protection afforded to workers is lost or reduced where, the concept of establishment being taken into account, the number of dismissals required under Article 1(1)(a) of Directive 98/59 for the purposes of 'collective redundancies' is reached.

53 Thus, more specifically, national legislation can be regarded as compatible with Article 1(1)(a)(i) of Directive 98/59 only if it provides for the application of the information and consultation obligations under Articles 2 to 4 of that directive, at the very least, in the event of the dismissal of 10 workers in

establishments normally employing more than 20 and fewer than 100 workers. That obligation is independent of the additional requirements imposed, under national law, on undertakings normally employing fewer than 100 workers.

54 Consequently, national legislation that introduces the undertaking and not the establishment as the sole reference unit is contrary to Article 1(1) of Directive 98/59 where the effect of the application of that criterion is to preclude the information and consultation procedure provided for in Articles 2 to 4 of that directive, when the dismissals in question would have been considered 'collective redundancies', under the definition in Article 1(1)(a) of that directive, had the establishment been used as the reference unit.

55 In the present case, it is apparent from the documents before the Court that the dismissals at issue in the main proceedings did not reach the threshold set in point (b) of the first subparagraph of Article 51(1) of the ET at the level of the undertaking, encompassing Nexea's two establishments located in Madrid and in Barcelona. Since the latter establishment did not employ more than 20 workers during the period concerned, it is apparent that neither the threshold laid down in the first indent of Article 1(1)(a)(i) of Directive 98/59, nor another threshold laid down in Article 1(1)(a) of that directive, was reached.

56 In circumstances such as those at issue in the main proceedings, Directive 98/59 does not require the application of Article 1(1)(a) of that directive in a situation where all the elements of an application threshold laid down in that provision are not satisfied.

57 It follows from the foregoing considerations that Article 1(1)(a) of Directive 98/59 must be interpreted as precluding national legislation that introduces the undertaking and not the establishment as the sole reference unit, where the effect of the application of that criterion is to preclude the information and consultation procedure provided for in Articles 2 to 4 of that directive, when the dismissals in question would have been considered 'collective redundancies', under the definition in Article 1(1)(a) of that directive, had the establishment been used as the reference unit.

The first question

58 Since the examination of the fourth question has indicated that, in the present case, Directive 98/59 does not apply, it is not necessary to answer the first question.

The second question

59 By its second question, the referring court asks, in essence, whether Article 1(1) of Directive 98/59 must be interpreted as meaning that, for the purposes of establishing whether 'collective redundancies', within the meaning of that provision, have been effected, account has also to be taken of individual terminations of contracts of employment concluded for limited periods of time or for specific tasks, when those terminations take place on the date of expiry of the contract of employment or on the date on which that task was completed.

60 The referring court refers to Article 1(2)(a) of Directive 98/59, which states that that directive does not apply to collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks, except where such redundancies take place before the date of expiry or the completion of such contracts. It suggests that, by using the term 'collective redundancies' in that provision, the EU legislature — conversely — left open the possibility of including, in the concept of 'collective redundancies' in Article 1(1)(a) of that directive, individual terminations of contracts.

61 Although it is true that the exclusion provided for in Article 1(2)(a) of Directive 98/59 concerns only collective redundancies, namely, where the number of dismissals reaches a given threshold, it is not possible conversely to infer from this that individual terminations of contracts of employment concluded for limited periods of time or for specific tasks would likewise not be excluded from the scope of that directive.

62 Nevertheless, it is clear from the wording and scheme of Directive 98/59 that individual terminations of contracts concluded for limited periods of time or for specific tasks are excluded from the scope of that directive.

63 Such contracts terminate, not on the initiative of the employer but pursuant to the clauses they contain or to the applicable law, on the date on which they expire or on which the task in respect of which they were concluded was completed. It would, therefore, be pointless to follow the procedures provided for in Articles 2 to 4 of Directive 98/59. In particular, the objective of avoiding redundancies or reducing their number and of seeking to mitigate the consequences could in no way be achieved as regards the dismissals that result from those contract terminations.

64 Moreover, the interpretation suggested in the second sentence of paragraph 60 above would lead to a paradoxical result whereby collective redundancies consequent on terminations of contracts of employment concluded for limited periods of time or for specific tasks, and taking place on the expiry or completion of those contracts, would be excluded from the scope of Directive 98/59, whereas such terminations, considered individually, would not be.

65 None the less, the referring court states that including individual terminations of contracts concluded for limited periods of time or for specific tasks within the scope of that directive would be useful for the purposes of reviewing the justification for those terminations.

66 As the European Commission states, although Directive 98/59 does not cover such review, there is specific legislation for that purpose, such as, inter alia, Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ 2002 L 80, p. 29) and Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

67 It follows from the foregoing considerations that the answer to the second question is that Article 1(1) of Directive 98/59 must be interpreted as meaning that, for the purposes of establishing whether ‘collective redundancies’, within the meaning of that provision, have been effected, there is no need to take into account individual terminations of contracts of employment concluded for limited periods of time or for specific tasks, when those terminations take place on the date of expiry of the contract or on the date on which that task was completed.

The third question

68 By its third question, the referring court asks, in essence, whether Article 1(2)(a) of Directive 98/59 must be interpreted as meaning that, for the purposes of establishing the existence of collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks, it is necessary for the cause of such collective redundancies to derive from the same collective contractual framework for the same duration or the same task.

69 It should be stated that the term 'collective redundancies', as is apparent from the introductory wording of Article 1 of Directive 98/59, is defined for the purposes of the application of that directive in its entirety, including for the purposes of the application of Article 1(2)(a) of that directive. The interpretation of Article 1(2)(a) sought would be liable consequently also to restrict the scope of Directive 98/59.

70 In Article 1(1)(a) of Directive 98/59, the legislature used one qualitative criterion only, namely, that the cause of the dismissal 'not be related to the individual workers concerned'. It did not lay down any other requirements as to either the coming into existence of the employment relationship or as to the termination of that relationship. By restricting the scope of that directive, such requirements would be liable to undermine the objective of that directive, which, as recital 2 of that directive states, is to protect workers in the event of collective redundancies.

71 Accordingly, requirements such as those mentioned in the third question cannot be regarded as warranted for the purposes of the application of Article 1(2)(a) of Directive 98/59.

72 It follows from the foregoing considerations that the answer to the third question is that Article 1(2)(a) of Directive 98/59 must be interpreted as meaning that, for the purposes of establishing the existence of collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks, it is not necessary for the cause of such collective redundancies to derive from the same collective contractual framework for the same duration or the same task.

Costs

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

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

1. **Article 1(1)(a) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as precluding national legislation that introduces the undertaking and not the establishment as the sole reference unit, where the effect of the application of that criterion is to preclude the information and consultation procedure provided for in Articles 2 to 4 of that directive, when the dismissals in question would have been considered 'collective redundancies', under the definition in Article 1(1)(a) of that directive, had the establishment been used as the reference unit.**

2. **Article 1(1) of Directive 98/59 must be interpreted as meaning that, for the purposes of establishing whether 'collective redundancies', within the meaning of that provision, have been effected, there is no need to take into account individual terminations of contracts of employment concluded for limited periods of time or for specific tasks, when those terminations take place on the date of expiry of the contract or on the date on which that task was completed.**

3. **Article 1(2)(a) of Directive 98/59 must be interpreted as meaning that, for the purposes of establishing the existence of collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks, it is not necessary for the cause of such collective redundancies to derive from the same collective contractual framework for the same duration or the same task.**

[Signatures]