Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

30 April 2015 *

(Reference for a preliminary ruling — Social policy — Collective redundancies — Directive 98/59/EC — Article 1(1)(a) — Meaning of 'establishment' — Method of calculating the number of workers made redundant)

In Case C-80/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Court of Appeal of England and Wales (Civil Division) (United Kingdom), made by decision of 5 February 2014, received at the Court on 14 February 2014, in the proceedings

Union of Shop, Distributive and Allied Workers (USDAW),

B. Wilson

v

WW Realisation 1 Ltd, in liquidation,

Ethel Austin Ltd,

Secretary of State for Business, Innovation and Skills,

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 Union of Shop, Distributive and Allied Workers (USDAW) and Mrs Wilson, by D. Rose QC and I. Steele, Barrister, instructed by M. Cain, Solicitor,

— the United Kingdom Government, by L. Christie, acting as Agent, T. Ward QC and J. Holmes, Barrister,

* Language of the case: English.

— the Spanish Government, by L. Banciella Rodríguez-Miñón and M.J. García-Valdecasas Dorrego, acting as Agents,

— the Hungarian Government, by M. Fehér, G. Koós and A. Pálfy, 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

Judgment

1 This request for a preliminary ruling concerns the interpretation of 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 (OJ 1998 L 225, p. 16).

2 The request has been made in proceedings between the Union of Shop, Distributive and Allied Workers (USDAW) and Mrs Wilson, on the one hand, and WW Realisation 1 Ltd, in liquidation ('Woolworths'), on the other, and between USDAW, on the one hand, and Ethel Austin Ltd ('Ethel Austin') and the Secretary of State for Business, Innovation and Skills ('the Secretary of State for Business'), on the other, concerning the lawfulness of the dismissals made by Woolworths and Ethel Austin. The Secretary of State for Business was joined as a party to the main proceedings on the basis that, if a 'protective award' is made against Woolworths or Ethel Austin but they are unable to satisfy that award, he will be required to pay to those employees who make an application the amount to which, in his opinion, the employee is entitled in respect of that debt, up to a statutory maximum.

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 As set out in 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 Under Article 2 of the directive:

‘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.'

United Kingdom law

12 The Trade Union and Labour Relations (Consolidation) Act 1992 ('TULRCA') is intended to implement the United Kingdom's obligations under Directive 98/59.

13 Section 188(1) of the TULRCA is worded as follows:

'Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals.'

14 Under section 189(1) of the TULRCA, where an employer fails to comply inter alia with one of the requirements relating to that consultation, a complaint may be presented to an employment tribunal on that ground by the relevant trade union in the case of failure relating to representatives of a trade union, or, in any other case, by any of the affected employees or by any of the employees who have been dismissed as redundant. If the complaint is well founded, the payment of an amount by way of compensation, a 'protective award', may be ordered under section 189(2) of the TULRCA.

15 Section 189(3) of the TULRCA states that a protective award is an award in respect of employees who have been dismissed as redundant or whom it is proposed to dismiss as redundant and in respect of whose dismissal or proposed dismissal, the employer has failed to comply, inter alia, with one of the requirements relating to consultation.

16 Under section 190(1) of the TULRCA, where a protective award is made, every employee of a description to which the award relates is, in principle, entitled to be paid remuneration by his employer for the protected period.

17 Section 192(1) of the TULRCA provides that an employee of a description to which a protective award relates may present a complaint to an employment tribunal on the ground that his employer has failed, wholly or in part, to pay him remuneration under the award. Where the complaint is well founded, the tribunal is to order the employer to pay him the amount of remuneration due, in accordance with section 192(3) of the TULRCA.

18 Part XII of the Employment Rights Act 1996 ('ERA') is intended to implement the United Kingdom's obligations under Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (OJ 2008 L 283, p. 36).

19 Section 182 of the ERA provides:

'If, on an application made to him in writing by an employee, the Secretary of State is satisfied that

(a) the employee's employer has become insolvent,

(b) the employee's employment has been terminated, and

(c) on the appropriate date the employee was entitled to be paid the whole or part of any debt to which [Part XII of the ERA] applies,

the Secretary of State shall, subject to section 186, pay the employee out of the National Insurance Fund the amount to which, in the opinion of the Secretary of State, the employee is entitled in respect of the debt.'

20 Section 183 of the ERA sets out the circumstances in which an employer has become insolvent.

21 Under section 184(1) of the ERA, the debts to which Part XII applies include any arrears of pay in respect of one or more weeks, up to a maximum of eight.

22 Section 184(2) of the ERA specifies that remuneration under a protective award under section 189 of the TULRCA is to be treated as arrears of pay.

23 Section 188 of the ERA provides that a person who has applied for a payment under section 182 of the ERA may present a complaint to an employment tribunal in the event that the Secretary of State for Business fails to make any such payment, or that the payment made is less than the amount which should have been paid. Where the tribunal finds that the Secretary of State for Business ought to make a payment under section 182, it is to make a declaration to that effect and determine the amount of the payment to be made.

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

24 Woolworths and Ethel Austin were companies active in the high street retail sector throughout the United Kingdom, operating chains of stores under the trade names 'Woolworths' and 'Ethel Austin' respectively. They became insolvent and went into administration, which resulted in the dismissal on grounds of redundancy of thousands of employees across the United Kingdom.

25 Against that background, USDAW, in its capacity as a trade union organisation, brought claims before the Liverpool Employment Tribunal and the London Central Employment Tribunal against those two companies on behalf of several thousand of its members, former employees of those companies, who had been dismissed on grounds of redundancy.

26 USDAW has over 430 000 members across the United Kingdom, who work in a wide variety of occupations.

27 Mrs Wilson was employed at one of the stores in the 'Woolworths' chain in Saint Ives (United Kingdom), and was the USDAW representative on the national employee forum (known as the 'Colleague Circle') created by Woolworths to deal with various issues, including consultations prior to collective redundancies.

28 USDAW and Mrs Wilson sought protective awards against the employers in favour of the dismissed employees on the ground that, prior to the adoption of the redundancy programmes, the consultation procedure provided for in the TULRCA had not been followed.

29 Under the relevant provisions of the ERA, if protective awards were made against Woolworths or Ethel Austin but they were not in a position to satisfy them, an employee could require the Secretary of State for Business to pay, and he would be required to pay that award, up to the statutory maximum, as arrears of pay. If the Secretary of State were to fail to pay the amount due, the employment tribunal would judicially compel him to do so, on application by the employee concerned.

30 By decisions of 2 November 2011 and 18 January 2012 respectively, the Liverpool Employment Tribunal and the London Central Employment Tribunal made protective awards in favour of a number of employees dismissed by Woolworths and Ethel Austin. However, approximately 4 500 former employees were denied a protective award on the ground that they had worked at stores with fewer than 20 employees, and that each store was to be regarded as a separate establishment.

31 USDAW and Mrs Wilson appealed against those decisions to the Employment Appeal Tribunal, which held, in a judgment of 30 May 2013, that a reading of section 188(1) of the TULRCA compatible with Directive 98/59 required the deletion of the words 'at one establishment', pursuant to the obligation placed on the national court by the judgment in *Marleasing* (C-106/89, EC:C:1990:395) to interpret its national law in the light of the wording and the purpose of the directive concerned. The Employment Appeal Tribunal also held that USDAW and Mrs Wilson could rely on the direct effect of rights under Directive 98/59 on the ground that the Secretary of State for Business was a party to the case, and that he was responsible for payment of the protective awards to all of the employees. It is further apparent from that judgment that the prior consultation obligation applies whenever an employer is proposing to dismiss as redundant 20 or more employees within a period of 90 days or less, regardless of the particular establishments at which they work.

32 It is in that context that the Secretary of State for Business applied for permission to appeal to the referring court, which permission was granted by the Employment Appeal Tribunal by order of 26 September 2013.

33 The referring court states that it is common ground between the parties to the main proceedings that when transposing Directive 98/59 the United Kingdom chose the option set out in Article 1(1)(a)(ii) of that directive.

34 That court states that USDAW and Mrs Wilson have submitted before it that the concept of 'collective redundancy' in Article 1(1)(a)(ii) of Directive 98/59 is not limited to a situation in which at least 20 employees in each establishment are made redundant over a period of 90 days, but encompasses a situation in which at least 20 employees of the same employer are made redundant over a period of 90 days, whatever the number of workers at the establishments in question, that is to say, the establishments at which the redundancies are made.

35 USDAW and Mrs Wilson submit, in the alternative, that even if that provision of Directive 98/59 is to be read as referring to at least 20 workers being made redundant at each establishment, the term 'establishment' is to be construed as consisting of the whole of the retail business operated by Woolworths and Ethel Austin, respectively. They submit that it is the retail business as a whole that is an economic business unit.

36 According to USDAW and Mrs Wilson, to regard each store as constituting an establishment for the purposes of the provision would lead to unjust and arbitrary results where, as in the present case, a large retailer closes down almost all of its business, making redundant a large number of employees at several sales outlets, some employing 20 employees or more, some employing fewer. They submit that in such a situation it does not make sense for the employees of the largest stores to be entitled to a consultation procedure before their collective redundancy, while those who work at smaller stores are denied such consultation.

37 USDAW and Mrs Wilson further submit that since, regardless of the store at which they work, the employees are part of the same redundancy exercise, and the objective of Directive 98/59 is to afford greater protection to workers, such an interpretation of Directive 98/59 would encourage employers to divide up their activities so as avoid the obligations laid down in that directive.

38 USDAW and Mrs Wilson submit that, since the Secretary of State for Business is liable for payment of the protective awards pursuant to Directive 2008/94, they are entitled to rely on the effects of Directive 98/59 under the principle of vertical direct effect, which applies to that directive.

39 Before the referring court, the Secretary of State for Business, referring to the judgments in *Rockfon* (C-449/93, EU:C:1995:420) and *Athinaïki Chartopoiïa* (C-270/05, EU:C:2007:101), contends that the term 'establishment', for the purposes of Article 1(1)(a)(ii) of Directive 98/59, means the unit to which

the workers are assigned to carry out their duties, and that the same meaning should be conferred on that term as that given to it for the purposes of Article 1(1)(a)(i) of Directive 75/129 and Article 1(1)(a)(i) of Directive 98/59.

40 The Secretary of State for Business adds that, if the EU legislature had intended Article 1(1)(a)(ii) to refer to all the workers employed by an employer, it would have used a term other than 'establishment', for example 'undertaking' or 'employer'.

41 It follows, in his view, that if 19 employees of an establishment are made redundant, there is no 'collective redundancy' within the meaning of Directive 98/59, whereas if 20 employees are made redundant, the rights guaranteed by that directive are applicable.

42 In those circumstances, the Court of Appeal of England and Wales (Civil Division) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) (a) In Article 1(1)(a)(ii) of [Directive 98/59], does the phrase "at least 20" refer to the number of dismissals across all of the employer's establishments in which dismissals are effected within a 90 day period, or does it refer to the number of dismissals in each individual establishment?

(b) If Article 1(1)(a)(ii) [of that directive] refers to the number of dismissals in each individual establishment, what is the meaning of "establishment"? In particular, should "establishment" be construed to mean the whole of the relevant retail business, being a single economic business unit, or such part of that business as is contemplating making redundancies, rather than a unit to which a worker is assigned their duties, such as each individual store?

(2) In circumstances where an employee claims a protective award against a private employer, can the Member State [concerned] rely on or plead the fact that [Directive 98/59] does not give rise to directly effective rights against the employer in circumstances where:

(a) the private employer would, but for the failure by the Member State properly to implement the directive, have been liable to pay a protective award to the employee, because of the failure of that employer to consult in accordance with the directive; and

(b) that employer being insolvent, in the event that a protective award is made against the private employer and is not satisfied by that employer, and an application is made to the Member State, that Member State would itself be liable to pay any such protective award to the employee under domestic legislation that implements [Directive 2008/94], subject to any limitation of liability imposed on the Member State's guarantee institution pursuant to Article 4 of that directive?'

Consideration of the questions referred

43 By its first question, the referring court asks, in essence, first, whether the term 'establishment' in Article 1(1)(a)(ii) of Directive 98/59 is to be interpreted in the same way as the term 'establishment' in Article 1(1)(a)(i) of that directive and, secondly, whether Article 1(1)(a)(ii) of Directive 98/59 is to be interpreted as precluding national legislation that lays down an obligation to inform and consult workers in the event of the dismissal, within a period of 90 days, of at least 20 workers from a particular establishment of an undertaking, and not where the aggregate number of dismissals across all of the establishments or across some of the establishments of an undertaking over the same period reaches or exceeds the threshold of 20 workers.

44 It is apparent from the order for reference and the observations submitted to the Court that, when transposing Directive 98/59, the United Kingdom opted for the threshold for its application set out in Article 1(1)(a)(ii) of that directive. Under the applicable national law, where an employer is proposing to shed at least 20 jobs at an establishment within a period of 90 days, he is required to comply with a procedure for informing and consulting workers in connection with that proposal.

45 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 in an autonomous and uniform manner in the EU legal order (see, to that effect, judgment in *Athinaïki Chartopoiïa*, C-270/05, EU:C:2007:101, paragraph 23).

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

47 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 is endowed with a management that can independently effect collective redundancies.

48 It is apparent from paragraph 5 of the judgment in *Rockfon* (C-449/93, EU:C:1995:420) that the Kingdom of Denmark — the Member State of the court which made the request for a preliminary ruling in that case — had opted for the approach set out in Article 1(1)(a)(i) of the directive.

49 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.

50 By the use of the words 'distinct entity' and 'in the context of an undertaking', the Court clarified 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.

51 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'.

52 Consequently, according to the case-law of the Court, where an 'undertaking' comprises several entities meeting the criteria set out in paragraphs 47, 49 and 51 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.

53 That case-law is applicable to the present case.

54 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.

55 The fact, noted during the hearing before the Court, that the term ‘establishment’ is used in the plural inter alia in the English, French, Italian and Spanish versions of that provision is of no account. In those language versions, the term ‘establishments’ is used in the plural in both Article 1(1)(a)(i) and (a)(ii). In addition, as the Advocate General observed in point 53 of his Opinion, a number of other language versions of Article 1(1)(a)(ii) of Directive 98/59 use that term in the singular, which precludes the interpretation that the threshold provided for in the latter provision refers to all the ‘establishments’ of an ‘undertaking’.

56 The option in Article 1(1)(a)(ii) of Directive 98/59, with the exception of the difference in the periods over which the redundancies are made, is a substantially equivalent alternative to the option in Article 1(1)(a)(i).

57 There is nothing in the wording of Article 1(1)(a) of Directive 98/59 to suggest that a different meaning is to be given to the terms ‘establishment’ or ‘establishments’ in the same subparagraph of that provision.

58 In the judgment in *Athinaïki Chartopoiïa* (C-270/05, EU:C:2007:101) the Court did not examine whether the Hellenic Republic had opted for the approach set out in Article 1(1)(a)(i) or (a)(ii) of Directive 98/59. The operative part of that judgment refers to Article 1(1)(a) without drawing a distinction between the options set out in points (a)(i) or (a)(ii) of that provision.

59 The fact that the legislature offers Member States a choice between the options set out in Article 1(1)(a)(i) and (a)(ii) of Directive 98/59 indicates that the term ‘establishment’ cannot have a completely different meaning depending on which of the two alternatives proposed the Member State concerned chooses.

60 Furthermore, such a major difference would be contrary to the need to promote the approximation of the laws of the Member States relating to collective redundancies, a need that is emphasised in recital 7 of Directive 98/59.

61 As regards the question raised by the referring court as to whether Article 1(1)(a)(ii) of Directive 98/59 requires that account be taken of the dismissals effected in each establishment considered separately, interpreting that provision so as to require account to be taken of the total number of redundancies across all the establishments of an undertaking would, admittedly, significantly increase the number of workers eligible for protection under Directive 98/59, which would correspond to one of the objectives of that directive.

62 However, it should be recalled that the objective of that directive is not only to afford greater protection to workers in the event of collective redundancies, but also to ensure comparable protection for workers’ rights in the different Member States and to harmonise the costs which such protective rules entail for EU undertakings (see, to that effect, judgments in *Commission* v *United Kingdom*, C-383/92, EU:C:1994:234, paragraph 16; *Commission* v *Portugal*, C-55/02, EU:C:2004:605, paragraph 48; and *Confédération générale du travail and Others*, C-385/05, EU:C:2007:37, paragraph 43).

63 Interpreting the term ‘establishment’ in the manner envisaged in paragraph 61 above would, first, be contrary to the objective of ensuring comparable protection for workers’ rights in all Member States and, secondly, entail very different costs for the undertakings that have to satisfy the information and consultation obligations under Articles 2 to 4 of that directive in accordance with the choice of the Member State concerned, which would also go against the EU legislature’s objective of rendering comparable the burden of those costs in all Member States.

64 It should be added that that interpretation would bring within the scope of Directive 98/59 not only a group of workers affected by collective redundancy but also, in some circumstances, a single worker of an establishment — possibly of an establishment located in a town separate and distant from the other establishments of the same undertaking — which would be contrary to the ordinary meaning of the term 'collective redundancy'. In addition, the dismissal of that single worker could trigger the information and consultation procedures referred to in the provisions of Directive 98/59, provisions that are not appropriate in such an individual case.

65 It should be recalled, however, that Directive 98/59 establishes minimum protection with regard to informing and consulting workers in the event of collective redundancies (see judgment in *Confédération générale du travail and Others*, C-385/05, EU:C:2007:37, paragraph 44). Article 5 of that directive gives Member States the right 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.

66 In connection with that right, Article 5 of Directive 98/59 inter alia allows Member States to grant the protection provided for in that directive not only to workers at one establishment, within the meaning of Article 1(1)(a) of the directive, who have been or who will be made redundant, but also to all workers affected by redundancy in an undertaking or in a part of an undertaking of the same employer, the term 'undertaking' being understood as covering all of the separate employment units of that undertaking or of that part of the undertaking.

67 Although the Member States are therefore entitled to lay down more favourable rules for workers on the basis of Article 5 of Directive 98/59, they are nevertheless bound by the autonomous and uniform interpretation given to the EU law term 'establishment' in Article 1(1)(a)(i) and (ii) of that directive, as set out in paragraph 52 above.

68 It follows from the foregoing that the definition in Article 1(1)(a)(i) and (a)(ii) of Directive 98/59 requires that account be taken of the dismissals effected in each establishment considered separately.

69 The interpretation that the Court has given to the term 'establishment', recalled in paragraphs 47, 49 and 51 above, is supported by the provisions of Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ 2002 L 80, p. 29), Article 2(a) and (b) of which also establishes a clear distinction between the term 'undertaking' and the term 'establishment'.

70 In the present case, it is apparent from the observations submitted to the Court that because the dismissals at issue in the main proceedings were effected within two large retail groups carrying out their activities from stores situated in different locations throughout the United Kingdom, employing in most cases fewer than 20 employees, the employment tribunals took the view that the stores to which the employees affected by those dismissals were assigned were separate 'establishments'. It is for the referring court to establish whether that is the case in the light of the specific circumstances of the dispute in the main proceedings, in accordance with the case-law recalled in paragraphs 47, 49 and 51 above.

71 In those circumstances, the answer to the first question is that, first, the term 'establishment' in Article 1(1)(a)(ii) of Directive 98/59 must be interpreted in the same way as the term in Article 1(1)(a)(i) of that directive and, secondly, that Article 1(1)(a)(ii) of Directive 98/59 must be interpreted as not precluding national legislation that lays down an obligation to inform and consult workers in the event of the dismissal, within a period of 90 days, of at least 20 workers from a particular establishment of an undertaking, and not where the aggregate number of dismissals across all of the establishments or across some of the establishments of an undertaking over the same period reaches or exceeds the threshold of 20 workers.

72 Since the Court's examination has not indicated that the law of the United Kingdom at issue in the main proceedings was incompatible with Directive 98/59, there is no need to reply to the second question.

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:

The term 'establishment' in Article 1(1)(a)(ii) 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 in the same way as the term in Article 1(1)(a)(i) of that directive.

Article 1(1)(a)(ii) of Directive 98/59 must be interpreted as not precluding national legislation that lays down an obligation to inform and consult workers in the event of the dismissal, within a period of 90 days, of at least 20 workers from a particular establishment of an undertaking, and not where the aggregate number of dismissals across all of the establishments or across some of the establishments of an undertaking over the same period reaches or exceeds the threshold of 20 workers.

[Signatures]