Court of Justice of the European Union
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Judgment in Case C-80/14
Union of Shop, Distributive and Allied Workers (USDAW) and B. Wilson v WW Realisation 1 Ltd (in liquidation), Ethel Austin Ltd and Secretary of State for Business, Innovation and Skills

Press and Information

The Court clarifies the term 'establishment' in connection with collective redundancies

Where an undertaking comprises several entities, the term 'establishment' in the directive on collective redundancies must be interpreted as referring to the entity to which the workers made redundant are assigned to carry out their duties

An EU directive[1] lays down obligations of information and consultation in the event of collective redundancies. Where an employer is contemplating collective redundancies, he is required, inter alia, to begin consultations with the workers' representatives in good time with a view to reaching an agreement. 'Collective redundancies' means, inter alia, dismissals effected by an employer for one or more reasons not related to the individual workers concerned, where the number of redundancies is at least 20 over a period of 90 days, whatever the number of workers normally employed in the establishments in question.

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.

One of the employees made redundant, Mrs Wilson, and USDAW, a trade union with over 430 000 members in the United Kingdom, brought claims against those two companies, seeking 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 UK law [2] had not been followed.

At first instance, protective awards were made in favour of a number of the employees made redundant. On the other hand, about 4 500 former employees were refused 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, so that the thresholds for the consultation procedure had not been reached.

The Court of Appeal of England and Wales (Civil Division), which is hearing the case on appeal, asks the Court of Justice inter alia whether the expression 'at least 20' in the directive refers to the number of dismissals across all of the employer's establishments in which dismissals are effected within a 90-day period, or only the number of dismissals in each individual establishment. The Court of Appeal also asks the Court of Justice to clarify the meaning of 'establishment', and to explain whether it covers the whole of the relevant retail business, regarded as a single economic business unit, rather than the unit to which the workers concerned are assigned to carry out their duties, in other words each individual store.

In today's judgment the Court finds, first, that the term 'establishment', which is not defined in the directive itself, is a term of EU law and cannot be defined by reference to the laws of the Member

[1] 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] Trade Union and Labour Relations (Consolidation) Act 1992.

States. It must, on that basis, be interpreted in an autonomous and uniform manner in the EU legal order. The Court states that, where an undertaking comprises several entities, it is the entity to which the workers made redundant are assigned to carry out their duties that constitutes the 'establishment'.

As regards the Court of Appeal's question whether the directive requires account to be taken of the dismissals in each establishment considered separately, the Court notes that such an interpretation would, admittedly, significantly increase the number of workers eligible for protection under the directive, which would correspond to one of the directive's objectives. On the other hand, the Court notes that that interpretation would be contrary to the directive's other objectives of ensuring comparable protection for workers' rights in the different Member States and of harmonising the costs which such protective rules entail for EU undertakings.

That interpretation would be contrary to the objective of ensuring comparable protection for workers' rights in all Member States, and would entail very different costs for the undertakings that have to satisfy the information and consultation obligations under the directive in accordance with the choice of the Member State concerned, which would also go against the EU legislature's objective of rendering the burden of those costs comparable in all the Member States.

In addition, that interpretation would bring within the scope of the directive 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'.

The Court points out that the directive establishes minimum protection for workers in the event of collective redundancies, and such minimum protection does not prevent the Member States from adopting rules that are more favourable to workers. While the Member States are entitled to lay down such rules, they are nevertheless bound by the autonomous and uniform interpretation given to the term 'establishment' in EU law.

The Court therefore finds that the interpretation of the words 'at least 20' requires account to be taken of the dismissals effected in each establishment considered separately.

As regards the dismissals at issue, the Court observes that, since they 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 first-instance tribunals took the view that the stores to which the employees affected by those dismissals were assigned were separate 'establishments'. It is for the Court of Appeal to establish whether the stores can be classified as separate 'establishments'.

Finally, the Court rules that the directive 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.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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