JUDGMENT OF THE COURT (First Chamber)
7 December 1995 *

In Case C-449/93,

REFERENCE to the Court under Article 177 of the EC Treaty by the Østre Landsret (Denmark) for a preliminary ruling in the proceedings pending before that court between

Rockfon A/S

and

Specialarbejderforbundet i Danmark, acting on behalf of Søren Nielsen and others,

on the interpretation of Article 1 of 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),

THE COURT (First Chamber),

composed of: D. A. O. Edward (Rapporteur), President of the Chamber, P. Jann and L. Sevón, Judges,

* Language of the case: Danish.

Advocate General: G. Cosmas,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— the Specialarbejderforbundet i Danmark, acting on behalf of Søren Nielsen and others, by Jens B. Bjørst, advocate,

— the Belgian Government, by Patrick Duray, Assistant Adviser at the Legal Service of the Ministry of Foreign Affairs, acting as Agent,

— the United Kingdom, by John Collins, Assistant Treasury Solicitor, acting as Agent,

— the Commission of the European Communities, by Anders Christian Jessen, a member of its Legal Service, and José Juste Ruiz, a national civil servant seconded to that service, both acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Specialarbejderforbundet i Danmark and the Commission at the hearing on 11 May 1995,

after hearing the Opinion of the Advocate General at the sitting on 13 July 1995,

gives the following

Judgment

1 By order of 16 November 1993, received at the Court on 23 November 1993, the Østre Landsret (Eastern Regional Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 1 of 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, hereinafter 'the Directive').

2 The question arose in proceedings between the company Rockfon A/S and the Specialarbejderforbundet i Danmark (the Danish trade union for semi-skilled workers, hereinafter 'the SID') concerning the dismissal of a number of employees alleged to have been carried out without observance of the consultation and notification procedures laid down by the Directive.

3 The purpose of the Directive is to afford workers greater protection in the event of collective redundancies. It thus imposes on employers various obligations so as to avoid or limit collective redundancies by having consultations held with workers and their representatives in good time or in certain cases by having the competent public authorities intervene.

4 Article 1(1)(a) of the Directive 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:

— either, over a period of 30 days:

(1) at least 10 in establishments normally employing more than 20 and less than 100 workers;

(2) at least 10% of the number of workers in establishments normally employing at least 100 but less than 300 workers;

(3) at least 30 in establishments normally employing 300 workers or more;

— or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question.'

5 The Directive was implemented in Denmark by Law No 38 of 26 January 1977 amending the Lov om Arbejdsformidling og Arbejdsløshedsforsikring (Law

on Provision of Employment and Unemployment Insurance, hereinafter 'the 1977 Law'), which has been repeatedly amended. The provisions of Article 1(1)(a) of the directive were transposed into Danish law in Chapter 5a of the 1977 Law by Article 23a, which, Denmark having chosen the first option, is worded as follows:

— Article 23a(1):

'This Chapter applies to dismissals effected by an employer for one or more reasons not related to the individual workers concerned where the number of planned dismissals over a period of 30 days is:

(1) at least 10 in establishments normally employing more than 20 and less than 100 workers;

(2) at least 10% of the number of workers in establishments normally employing at least 100 but less than 300 workers;

(3) at least 30 in establishments normally employing 300 workers or more.'

— Article 23a(3):

'The Ministry of Labour may, after consultations with the National Employment Board, lay down specific rules for the calculation of the number of workers pursuant to Article 23a(1) and define the criteria to be applied for the purpose of determining what constitutes an establishment for the purposes of this Chapter.'

6 The provisions transposing Article 1(1) of the Directive into Danish law have remained unchanged in the various successive versions.

7 Under Paragraph 102 of the 1977 Law, infringements of the notification and consultation provisions are to be penalized by a fine and employers must grant the employees concerned compensation corresponding to payment of salary during a period of 30 days from the date of the termination of their employment.

8 Under Paragraph 23a(3) of the 1977 Law, the Minister of Labour adopted Order No 74 of 4 March 1977 on the definition of 'establishment' and the calculation of the number of employees in large-scale dismissals.

9 Paragraphs 2 to 4 of that order define 'establishment'. Paragraph 2(1) provides that:

'An "establishment" within the meaning of Chapter 5a of the Law shall be a unit which produces, buys or sells goods or services (for example, a workshop, factory, shipyard, shop, office or store) and which has a management which can independently effect large-scale dismissals, within the meaning of Paragraph 23a(1) of the Law.'

10 That order was then repealed with effect from 1 December 1990 and replaced by Bekendtgørelse No 755 of 12 November 1990 (Order No 755 of 12 November 1990) on the definition of 'establishment' and the calculation of the number of

employees in the event of large-scale dismissals. That latter order contains, in Paragraph 2(1), the following provision concerning the term 'establishment':

'Definition of establishment

Article 2

1. An "establishment" within the meaning of Chapter 5a of the Law shall be a unit which produces, buys or sells goods or services (for example, a workshop, factory, shipyard, shop, office or store) and which has a management which can independently effect large-scale dismissals, within the meaning of Paragraph 23a(1) of the Law. A unit which is structured as a subsidiary company within the meaning of Paragraph 2 of the Law on Public Limited Companies and Paragraph 2 of the Law on Private Limited Companies and any other unit with similar links to a parent company is to be regarded as an establishment under Chapter 5a even if the management of the subsidiary company cannot independently effect large-scale dismissals.'

11 The company Rockfon A/S (hereinafter 'Rockfon') is a company which produces and markets insulating materials made from mineral wool. It is part of the Rockwool multinational group which, in 1989, had a total of 5 300 workers, 1 435 of them in Denmark.

12 Rockfon and three other production companies in the group, also based in Hedehusene (Denmark), namely Rockment A/S, Conrock A/S and Rockwool A/S, share a joint personnel department responsible for recruitment and dismissals which forms part of Rockwool A/S. Under internal instructions dating from January 1985 on dismissals and voluntary redundancy, applicable to the four production companies, any dismissal decision must be taken in consultation with the

personnel department of Rockwool A/S. With the agreement of that department, the heads of unit decide which employees are to be dismissed and which are to be transferred to another department. Where it is envisaged to dismiss a number of employees owing to a shortage of work, the head of unit must inform the staff representative of the department concerned and at the same time make sure with the personnel department that the Community quotas are not exceeded.

13 Between 10 and 28 November 1989 Rockfon dismissed 24 or 25 employees belonging to its workforce of 162. Rockfon did not consult the employees concerned nor did it inform in writing the authority with responsibility in the matter of redundancies. It is undisputed that, if Rockfon by itself constitutes an 'establishment', the dismissals were carried out in breach of the consultation requirements laid down in Chapter 5a of the 1977 Law which implements the Directive.

14 Following those dismissals, the SID, on behalf of 14 of the employees dismissed began proceedings against Rockfon for payment of compensation for breach of the national provisions relating to large-scale dismissals.

15 The matter was first brought before the Arbejdsmarkedsnævnet (Labour Council), which, by an opinion delivered on 19 December 1989, held that Rockfon was part of a larger undertaking, the Rockwell group, so that the dismissals carried out by Rockfon had to be regarded as having been made by an undertaking having more than 300 employees. It therefore concluded that Rockfon had not infringed the law since it required the procedures for providing information and conducting consultations to be observed in undertakings having more than 300 employees only where at least 30 employees were made redundant over a period of 30 days.

16 The SID then appealed against that decision to the Arbejdsmarkedsstyrelsen (Board of Employment), which upheld the opinion of the Labour Council. It then brought an action against Rockfon A/S in the Byret (District Court), Tåstrup.

17 Before the District Court, Rockfon accepted that it was an independent production undertaking but contended that it did not constitute an 'establishment' within the meaning of the 1977 Law and Order No 74 since the power to recruit and dismiss staff lay with another company in the group. The District Court considered, however, that the joint personnel department set up within the Rockwool group had only a consultative role and that Rockfon did have power to carry out dismissals by itself. Since, in its view, Rockfon constituted an 'establishment' within the meaning of the 1977 Law, it was ordered, by a judgment of 1 October 1992, pursuant to Paragraph 102a(2) of that Law, to pay compensation to the employees concerned for breach of the provisions concerning notification and consultation.

18 Rockfon appealed against that judgment to the Østre Landsret, claiming that the judgment should be reversed in its favour. As in the proceedings at first instance, it maintained that it had no management able to effect independently large-scale dismissals and that it did not therefore constitute an 'establishment' within the meaning of the 1977 Law. The parties asked the Østre Landsret to refer the case to the Court of Justice.

19 The 1977 Law having implemented the directive, the Østre Landsret is in substance inquiring about the term 'establishment' appearing in Article 1(1)(a) of the Directive in a case such as that now before it. Consequently, it has stayed proceedings and referred the following question to the Court for a preliminary ruling:

'Is Article 1 of Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies to be

interpreted as meaning that it precludes two or more interrelated undertakings in a group, neither or none of which has decisive influence over the other or others, from establishing a joint recruitment and dismissal department so that, for example, dismissals in one of the companies can only be effected with the approval of that department and so that the total number of employees in the companies is accordingly to be taken into account in determining the number of employees under Article 1(1) of that directive?'

20 By its preliminary question the national court is asking two separate questions: first, whether Article 1(1)(a) of the Directive precludes two or more undertakings in a group from establishing a joint recruitment and dismissal department so that dismissals in one of the undertakings may take place only with the approval of that department; and, secondly, whether, in such circumstances, the term 'establishment' in Article 1(1)(a) of the Directive is to be taken to mean all the undertakings using that recruitment and dismissal department, or whether each undertaking in which the employees made redundant normally work must be counted as an 'establishment'.

21 As regards the first part of the question, it is sufficient to state that the sole purpose of the Directive is the partial harmonization of collective redundancy procedures and that its aim is not to restrict the freedom of undertakings to organize their activities and arrange their personnel departments in the way which they think best suits their needs. Article 1(1)(a) in particular defines 'collective redundancies', thus determining the scope of the Directive, but lays down no rules relating to the internal organization of undertakings or the management of their personnel.

22 Consequently, the answer to be given on this point must be that Article 1(1)(a) of the Directive is to be interpreted as meaning that it does not preclude two or more interrelated undertakings in a group, neither or none of which has decisive influence over the other or others, from establishing a joint recruitment and dismissal department so that, in particular, dismissals on grounds of redundancy in one of the undertakings can take place only with that department's approval.

23 As regards the second part of the question, it must be noted first of all that the term 'establishment' is not defined in the Directive.

24 Rockfon maintains that it is not an 'establishment' for the purposes of the directive since it has no management which can independently effect large-scale dismissals and it does not therefore fulfil the condition, laid down by Order No 74, for constituting an 'establishment'. In its view, in counting the number of workers for the purposes of Article 1(1)(a) of the Directive, all the workers of the four companies must be taken into account, not only the number of its own workers.

25 The Court observes in this regard that the term 'establishment', as used in the Directive, is a term of Community law and cannot be defined by reference to the laws of the Member States.

26 The various language versions of the Directive use somewhat different terms to convey the concept in question: the Danish version has 'virksomhed', the Dutch version 'plaatselijke eenheid', the English version 'establishment', the Finnish version 'yritys', the French version 'établissement', the German version 'Betrieb', the

Greek version 'επιχείρηση', the Italian version 'stabilimento', the Portuguese version 'estabelecimento', the Spanish version 'centro de trabajo' and the Swedish version 'arbetsplats'.

27 A comparison of the terms used shows that they have different connotations signifying, according to the version in question, establishment, undertaking, work centre, local unit or place of work.

28 As was held in the judgment in Case 30/77 *Regina* v *Bouchereau* [1977] ECR 1999, paragraph 14, the different language versions of a Community text must be given a uniform interpretation and in the case of divergence between the versions the provision in question must therefore be interpreted by reference to the purpose and general scheme of the rules of which it forms part.

29 The Directive was adopted on the basis of Articles 100 and 117 of the EEC Treaty, the latter provision concerning the need for the Member States to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained. It is apparent from the first recital in its preamble that the Directive is indeed intended to afford greater protection to workers in the event of collective redundancies.

30 Two observations may be made in that respect. First, an interpretation of the term 'establishment' like that proposed by Rockfon would allow companies belonging to the same group to try to make it more difficult for the Directive to apply to them by conferring on a separate decision-making body the power to take decisions concerning redundancies. By this means, they would be able to escape the obligation to follow certain procedures for the protection of workers and large groups of workers could be denied the right to be informed and consulted which they have as a matter of course under the directive. Such an interpretation therefore appears to be incompatible with the aim of the Directive.

31 Secondly, the Court has held that an employment relationship is essentially characterized by the link existing between the employee and the part of the undertaking or business to which he is assigned to carry out his duties (judgment in Case 186/83 *Botzen and Others* v *Rotterdamsche Droogdok Maatschappij* [1985] ECR 519, paragraph 15).

32 The term 'establishment' appearing in Article 1(1)(a) of the Directive must therefore 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', for the unit in question to be endowed with a management which can independently effect collective redundancies.

33 That interpretation is supported by the fact that the Commission's initial proposal for a directive used the term 'undertaking' and that that term was defined in the last subparagraph of Article 1(1) of the proposal as 'local employment unit'. It appears, however, that the Council decided to replace the term 'undertaking' by the term 'establishment', which meant that the definition originally contained in the proposal and considered to be superfluous was deleted.

34 The answer to the second part of the preliminary question must therefore be that the term 'establishment' appearing in Article 1(1)(a) of the Directive must be understood as meaning, 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', for the unit in question to be endowed with a management which can independently effect collective redundancies.

Costs

35 The costs incurred by the Belgian Government, the United Kingdom and the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Østre Landsret, by order of 16 November 1993, hereby rules:

1. **Article 1(1)(a) of Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies is to be interpreted as meaning that it does not preclude two or more interrelated undertakings in a group, neither or none of which has decisive influence over the other or others, from establishing a joint recruitment and dismissal department so that, in particular, dismissals on grounds of redundancy in one of the undertakings can take place only with that department's approval.**

2. **The term 'establishment' appearing in Article 1(1)(a) of the aforesaid directive must be understood as meaning, 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', for the unit in question to be endowed with a management which can independently effect collective redundancies.

Edward Jann Sevón

Delivered in open court in Luxembourg on 7 December 1995.

R. Grass D. A. O. Edward

Registrar President of the First Chamber