JUDGMENT OF THE COURT (Fourth Chamber)

10 September 2009 (*)

(Preliminary ruling procedure – Directive 98/59/EC – Approximation of the laws of the Member States relating to collective redundancies – Article 2 – Protection of workers – Informing and consulting with workers – Group of undertakings – Parent company – Subsidiary)

In Case C-44/08,

REFERENCE for a preliminary ruling under Article 234 EC from the Korkein oikeus (Finland), made by decision of 6 February 2008, received at the Court on 8 February 2008, in the proceedings

Akavan Erityisalojen Keskusliitto AEK ry and Others

v

Fujitsu Siemens Computers Oy,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, R. Silva de Lapuerta, E. Juhász (Rapporteur), G. Arestis and J. Malenovský, Judges,

Advocate General: P. Mengozzi,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 14 January 2009,

after considering the observations submitted on behalf of:

– Akavan Erityisalojen Keskusliitto AEK ry and Others, by H. Laitinen, asianajaja,

– Fujitsu Siemens Computers Oy, by P. Uoti, asianajaja,

– the Finnish Government, by A. Guimaraes-Purokoski, acting as Agent,

– the United Kingdom Government, by L. Seeboruth, acting as Agent,

– the Commission of the European Communities, by M. Huttunen, P. Aalto and J. Enegren, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 April 2009,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 2 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 reference was made by the Korkein oikeus (Supreme Court) in the course of

proceedings between Akavan Erityisalojen Keskusliitto AEK ry and Others and Fujitsu Siemens Computers Oy ('FSC') concerning the obligation to hold consultations with workers' representatives in the event of collective redundancies.

Legal context

Community law

3 On 17 February 1975 the Council of the European Communities adopted Directive 75/129/EEC on the approximation of the laws of the Member States relating to collective redundancies (OJ 1975 L 48, p. 29), which was amended by Council Directive 92/56/EEC of 24 June 1992 (OJ 1992 L 245, p. 3).

4 Directive 75/129 was repealed by Directive 98/59. Recitals 2, 9 and 11 of the preamble to the latter directive state as follows:

'… 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 Community;

…

… it should be stipulated that this Directive applies in principle also to collective redundancies resulting where the establishment's activities are terminated as a result of a judicial decision;

…

… it is necessary to ensure that employers' obligations as regards information, consultation and notification apply independently of whether the decision on collective redundancies emanates from the employer or from an undertaking which controls that employer.'

5 Article 2(1) of that directive provides:

'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.'

6 The first subparagraph of Article 2(2) of that directive provides:

'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.'

7 The first subparagraph of Article 2(3) of Directive 98/59 states that, to enable workers' representatives to make constructive proposals, an employer is bound, in good time during the course of the consultations, to supply them with all relevant information and to notify them in writing of the matters specified in that subparagraph.

8 Under Article 2(4) of Directive 98/59:

'The obligations laid down in paragraphs 1, 2 and 3 shall apply irrespective of whether the decision regarding collective redundancies is being taken by the employer or by an undertaking controlling the employer.

In considering alleged breaches of the information, consultation and notification requirements laid down by this Directive, account shall not be taken of any defence on the part of the employer on the ground that the necessary information has not been provided to the employer by the undertaking which took the decision leading to collective redundancies.'

9 Article 3(1) of that directive is worded as follows:

‘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 that directive provide:

‘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.’

National law

11 Paragraph 1 of Law 725/1978 on cooperation within undertakings [yhteistoiminnasta yrityksissä annettu laki (725/1978)], as amended by Laws 51/1993 and 906/1996 (the ‘Law on cooperation’), provides that, in order to develop the activity and working conditions of undertakings and to strengthen cooperation between the employer and the workforce and mutual cooperation within the workforce, employees are given increased opportunities to influence the handling of matters concerning their work and workplace.

12 Under Paragraph 6(3) and (3b) of the Law on cooperation, the scope of the cooperation procedure covers the closure or transfer to another location of an undertaking or part of it or a substantial expansion or reduction of its activity and also, inter alia, the introduction of part-time working, laying off and redundancies for production or economic reasons.

13 Paragraph 7(1) of that law provides that, before the employer takes a decision referred to in Paragraph 6, he must consult the employees and the agents or representatives of the workforce concerned on the grounds for, effects of and alternatives to the measure. Under Paragraph 7(2), the employer must, before starting the cooperation procedure, give the necessary information on the measure in question to the relevant employees and the representatives of the workforce concerned. That information – such as information on the reasons for the planned redundancies, an estimate of the number of employees in different categories who are to be made redundant, an estimate of the period within which the planned redundancies are scheduled to be made, and information on the principles on the basis of which the employees to be made redundant are determined – must be supplied in writing where the employer contemplates redundancies, lay-offs for a period of over 90 days or part-time working for at least 10 employees.

14 Paragraph 7a(1) provides that in cases referred to in Paragraph 6(1) to (5), a consultation proposal must be made in writing at least five days before the start of consultations, if the measure to be consulted on will evidently lead to the part-time working, redundancy or laying off of one or more employees.

15 Under Paragraph 7b of the Law on cooperation, if a consultation proposal concerns

measures relating to reducing the workforce, the proposal or the information contained in it must be notified in writing to the labour authorities when the consultation begins, unless corresponding information has been sent previously in another context. If relevant material gathered during the consultation differs substantially from the information sent previously, the employer must also supply that material to the labour authorities.

16 Under Paragraph 8 of that law, unless another procedure has been agreed between the employer and the representatives of the workforce, the employer is deemed to have fulfilled the obligation to hold consultations where the intended measure has been dealt with in the manner laid down in Paragraph 7. However, if that measure will evidently lead to at least 10 employees being put on part-time working, made redundant or laid off for more than 90 days, the employer is deemed not to have fulfilled his obligation to hold consultations until at least six weeks have passed from the start of the consultations. In addition, the consideration of alternatives to the intended measure may start at the earliest seven days after consideration of the grounds and effects, unless agreed otherwise.

17 Under Paragraph 15a of the Law on cooperation, if a matter has intentionally or through manifest negligence been decided on without complying with the provisions of Paragraph 7(1) to (3) or Paragraph 7a or Paragraph 8 of that law, and if an employee has for reasons connected with that decision been placed on part-time working, laid off or made redundant, the employee is entitled to receive compensation of a maximum of 20 months' pay from the employer.

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

18 Following the merger of certain IT businesses of Fujitsu Ltd and Siemens AG into a joint undertaking, the Fujitsu Siemens Computers group started trading on 1 October 1999.

19 FSC is a subsidiary of Fujitsu Siemens Computers (Holding) BV (the 'parent company'), a company established in the Netherlands. At that time, the group had production plants in Espoo (Kilo) (Finland) and in Augsburg, Paderborn and Sömmerda (Germany).

20 At a meeting held on 7 December 1999, the executive council of the parent company, which consists of the executive members of its board of directors, decided to make a proposal to the board of directors for the divestiture of the Kilo factory.

21 At a meeting of 14 December 1999, that board of directors decided to support the proposal, but no specific decision was taken in relation to that factory.

22 On the same day, FSC proposed consultations, which took place between 20 December 1999 and 31 January 2000.

23 On 1 February 2000 FSC's board of directors, mainly consisting of directors of the group and chaired by the deputy chairman of the parent company's board of directors, took a decision to terminate FSC's operations in Finland with the exception of computer sales. On 8 February 2000 FSC began making employees redundant. In total, some 450 of the 490 employees of the company were made redundant.

24 Some employees claimed that FSC had infringed the Law on cooperation in the course of the decisions taken at the end of 1999 and the beginning of 2000 with regard to the closure of the Kilo factory. Those employees assigned their claims for compensation under that law to the appellants in the main proceedings, who are trade unions, so that they could seek recovery. The appellants brought an action before the Espoon käräjäoikeus (Court of first instance in Espoo) for that purpose.

25 During the proceedings before that court, the appellants in the main proceedings claimed that

a final decision to run down the activity of the Kilo factory and to separate it from the group's activity before transferring it to Germany, so that that production plant would no longer be part of the group, had in fact been taken by the parent company's board of directors by 14 December 1999 at the latest. According to the appellants in the main proceedings, the real decision had been taken on 14 December 1999, before the consultations with the workforce required by the Law on cooperation had taken place. The respondent in the main proceedings had therefore, intentionally or through manifest negligence, failed to comply with that law.

26 FSC for its part asserted, first, that no decision on the production plant had been taken at the meeting of the parent company's board of directors on 14 December 1999 and, second, that possible alternatives still existed, such as the continuation of the activity, as it was or in a reduced form, its sale or its continuation in partnership with another undertaking. FSC further contended that the concept of a decision by the employer implies action by the competent body of the company concerned, namely, in this case, its board of directors, and that the decision on termination had been taken by the board of directors on 1 February 2000, in other words after conclusion of consultations.

27 The Espoon käräjäoikeus held that the appellants in the main proceedings had not shown that the parent company's board of directors had decided to close the Kilo factory in such a way that the interaction between the employer and the employees within FSC could not take place in the manner prescribed by the Law on cooperation. In the opinion of that court, the alternatives to closure of that factory were genuine and those alternatives had been examined in the course of the consultations. The court held that the decision on closure had been taken at the meeting of FSC's board on 1 February 2000, after it had proved impossible to find another solution, and that the consultations had been genuine and appropriate, and accordingly dismissed the action.

28 On appeal, the Helsingin hovioikeus (Helsinki Court of Appeal) stated that the final decision referred to by Paragraph 7(1) of the Law on cooperation could only have been taken by the employer, namely the respondent in the main proceedings, and that the proposals made by the parent company were not within the scope of the obligation to hold consultations imposed by that law. It accordingly upheld the decision of the Espoon käräjäoikeus.

29 The Korkein oikeus, before whom an appeal was then brought by the appellants in the main proceedings, held that there were differences both of structure and content between the provisions of Directive 98/59 and of the Law on cooperation and that, consequently, the connection between them was not entirely clear.

30 The Korkein oikeus considered that an interpretation of the provisions of Directive 98/59 was necessary for its decision and therefore decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 2(1) of Directive 98/59/EC to be interpreted as meaning that the obligation under that provision to embark on consultations when "contemplating collective redundancies" of employees and "in good time" requires consultations to be started when it is established from strategic decisions or changes that have been made relating to the activity that a need for collective redundancies of employees follows? Or is the provision in question to be interpreted as meaning that the obligation to start consultations already arises on the basis of the employer contemplating measures or changes affecting the activity, such as a change in production capacity or a concentration of production, as a consequence of which a need for collective redundancies is to be expected?

(2) Having regard to the fact that the first subparagraph of Article 2(3) of Directive 98/59 refers to the supply of information in good time during the course of the consultations, is Article 2(1) of [that] directive to be interpreted as meaning that the obligation under that provision to start consultations when "contemplating" collective redundancies and "in good time" requires consultations to be started already before the employer's intentions

have reached the stage at which the employer is required to identify and supply to the employees the information specified in Article 2(3)(b) [of that directive]?,

(3) Is Article 2(1) in conjunction with Article 2(4) of Directive 98/59 to be interpreted as meaning that, in a situation in which the employer is controlled by another undertaking, the employer's obligation to start consultations with the representatives of the employees originates when either the employer or the parent company controlling the employer contemplates action for collective redundancies of employees in the employer's service?

(4) In the case of consultations to be carried on in a subsidiary belonging to a group, and in assessing in the light of the provisions of Article 2(4) of Directive 98/59 the obligation under Article 2(1) to enter into consultations when "contemplating" collective redundancies and "in good time", does the obligation to start consultations already arise when the management of the group or the parent company contemplates collective redundancies but that intention has not yet taken concrete form as concerning the employees in the service of a particular subsidiary under its control, or does the obligation to embark on consultations within the subsidiary arise only at the stage when the management of the group or the parent company contemplates collective redundancies specifically in that subsidiary company?

(5) If the employer is an undertaking (a subsidiary belonging to a group) controlled within the meaning of Article 2(4) of Directive 98/59 by another undertaking (parent company or group management), is [that] Article 2 … to be interpreted as meaning that the consultation procedure referred to there must be concluded before the decision on collective redundancies to be implemented in the subsidiary company is taken within the parent company or the group management?

(6) If Directive 98/59 is to be interpreted in such a way that the consultation procedure to be carried on within the subsidiary company must be concluded before the decision giving rise to collective redundancies of employees [of that subsidiary] is taken within the parent company or group management, is it only a decision whose direct consequence is the implementation of collective redundancies in the subsidiary company that is relevant in that connection, or must the consultation procedure be brought to a conclusion already before a commercial or strategic decision is taken within the parent company or the group management on the basis of which collective redundancies in the subsidiary company are probable but not yet finally certain?'

The questions referred for a preliminary ruling

Admissibility

31 FSC contends that the first four questions in the reference for a preliminary ruling are inadmissible, because they bear no relation to the dispute in the main proceedings. FSC considers that, since the time when consultations ought to be started with workers' representatives is not at issue in the pleadings submitted by the appellants in the main proceedings, a reply to those questions is not required for the resolution of the dispute in the main proceedings. Moreover, according to FSC, the reference, in that regard, concerns a hypothetical situation.

32 It must be recalled that, in the proceedings established by Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of Community law, the Court is in principle bound to give a ruling (see, inter alia, Case C-119/05 *Lucchini* [2007] ECR I-6199, paragraph 43, and Case C-12/08 *Mono Car Styling* [2009] ECR I-0000, paragraph 27).

33 Accordingly, the Court may reject a request for a preliminary ruling submitted by a national court only where it is quite obvious that the interpretation of Community 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, Case C-221/07 *Zablocka-Weyhermüller* [2008] ECR I-0000, paragraph 20, and *Mono Car Styling*, paragraph 28).

34 In this case, it must be stated that, as is clear from the order for reference, the referring court has provided the Court with a detailed explanation of the factual and legal background to the dispute in the main proceedings, together with the reasons why it considered that an answer to the first four questions referred is necessary for its decision.

35 Consequently, the questions referred for a preliminary ruling are admissible.

The first question

36 By its first question, the referring court seeks clarification of the meaning of the expression 'is contemplating collective redundancies', in Article 2(1) of Directive 98/59, in order to determine the time at which the obligation to hold consultations, laid down in Article 2, starts. The court asks, in that regard, whether that obligation arises when it is established that strategic decisions or changes in the business of the undertaking will make collective redundancies of employees necessary, or when the adoption of such decisions or changes, as a result of which it is to be expected that such redundancies will become necessary, are contemplated.

37 First, it is to be noted that the present case relates to economic and commercial decisions which might have repercussions on the employment of a number of workers within an undertaking, and not to decisions which are directly concerned with terminating specific employment relationships.

38 In that regard, it must be recalled that, as is clear from the wording of Articles 2(1) and 3(1) of Directive 98/59, the obligations of consultation and notification imposed on the employer come into being prior to the employer's decision to terminate employment contracts (see, to that effect, Case C-188/03 *Junk* [2005] ECR I-885, paragraphs 36 and 37). In such a case, there is still a possibility of avoiding or at least reducing collective redundancies, or of mitigating the consequences.

39 Under Article 2(1) of Directive 98/59, the employer has the obligation to start consultations with the workers' representatives in good time if he 'is contemplating collective redundancies'. As stated by the Advocate General in points 48 and 49 of his Opinion, it is clear from comparison of various language versions of that provision that the Community legislature envisaged that the obligation at issue to hold consultations would arise in connection with the existence of an intention on the part of the employer to make collective redundancies.

40 The references in Articles 3 and 4 of Directive 98/59 to 'projected' collective redundancies confirm that the existence of such an intention is the factor which triggers the obligations laid down by that directive, in particular by Article 2.

41 It follows that the obligation to hold consultations laid down in Article 2 of Directive 98/59 is deemed to arise where the employer is contemplating collective redundancies or is drawing up a plan for collective redundancies (see, to that effect, Case 284/83 *Dansk Metalarbejderforbund and Specialarbejderforbundet i Danmark* [1985] ECR 553, paragraph 17).

42 It must however be added that, as is clear from the actual wording, the obligations laid down by Directive 98/59, in particular the obligation to hold consultations laid down in Article 2, are also triggered in situations where the prospect of collective redundancies is not directly the choice of the employer.

43 Under Article 2(4) of that directive, the employer is responsible for compliance with the information and consultation requirements stemming from that directive, even if the decision on collective redundancies is made not by the employer, but by the undertaking controlling the employer, and even though the employer may not have been immediately and properly informed of that decision.

44 Against an economic background marked by the increasing presence of groups of undertakings, that provision serves to ensure, where one undertaking is controlled by another, that the purpose of Directive 98/59, which, as is stated in recital 2 of its preamble, seeks to promote greater protection for workers in the event of collective redundancies, is actually achieved (Case C-270/05 *Athinaïki Chartopoiïa* [2007] ECR I-1499, paragraph 25).

45 Moreover, as the United Kingdom Government rightly observes, a premature triggering of the obligation to hold consultations could lead to results contrary to the purpose of Directive 98/59, such as restricting the flexibility available to undertakings when restructuring, creating heavier administrative burdens and causing unnecessary uncertainty for workers about the safety of their jobs.

46 Lastly, the *raison d'être* and effectiveness of consultations with the workers' representatives presuppose that the factors to be taken into account in the course of those consultations have been determined, given that it is impossible to undertake consultations in a manner which is appropriate and consistent with their objectives when there has been no definition of the factors which are of relevance with regard to the collective redundancies contemplated. Those objectives are, under Article 2(2) of Directive 98/59, to avoid termination of employment contracts or to reduce the number of workers affected, and to mitigate the consequences (see *Junk,* paragraph 38). However, where a decision deemed likely to lead to collective redundancies is merely contemplated and where, accordingly, such collective redundancies are only a probability and the relevant factors for the consultations are not known, those objectives cannot be achieved.

47 On the other hand, it is clear that to draw a link between the requirement to hold consultations arising under Article 2 of Directive 98/59 and the adoption of a strategic or commercial decision which makes the collective redundancies of workers necessary may deprive that requirement, in part, of its effectiveness. As is clear from the first subparagraph of that Article 2(2), the consultations must cover, inter alia, the possibility of avoiding or reducing the collective redundancies contemplated. A consultation which began when a decision making such collective redundancies necessary had already been taken could not usefully involve any examination of conceivable alternatives with the aim of avoiding them.

48 It must therefore be held that, in circumstances such as those of the case in the main proceedings, the consultation procedure must be started by the employer once a strategic or commercial decision compelling him to contemplate or to plan for collective redundancies has been taken.

49 In those circumstances, the answer to be given to the first question referred is that Article 2 (1) of Directive 98/59 must be interpreted to mean that the adoption, within a group of undertakings, of strategic decisions or of changes in activities which compel the employer to contemplate or to plan for collective redundancies gives rise to an obligation on that employer to consult with workers' representatives.

The second question

50 By its second question, the referring court asks, in essence, if whether the obligation has arisen for the employer to start consultations on collective redundancies contemplated depends on whether the employer is already able to supply to the workers' representatives all the information required in Article 2(3)(b) of Directive 98/59.

51 The wording of that provision states clearly that the information specified must be supplied by

the employer ‘in good time during the course of the consultations’, in order to ‘enable workers’ representatives to make constructive proposals’.

52 It follows from that provision that that information can be provided during the consultations, and not necessarily at the time when they start.

53 As stated by the Advocate General in points 64 and 65 of his Opinion, the logic of that provision is that the employer is to supply to the workers’ representatives the relevant information throughout the course of the consultations. Flexibility is essential, given, first, that that information may become available only at various stages in the consultation process, which implies that the employer both can and must add to the information supplied in the course of that process. Secondly, the purpose of the employer being under that obligation is to enable the workers’ representatives to participate in the consultation process as fully and effectively as possible, and, to achieve that, any new relevant information must be supplied up to the end of the process.

54 It follows that the time at which consultations are to start cannot be dependent on whether the employer is already able to supply to the workers’ representatives all the necessary information referred to in Article 2(3)(b) of Directive 98/59.

55 The answer to be given to the second question referred is that whether the obligation has arisen for the employer to start consultations on the collective redundancies contemplated does not depend on whether the employer is already able to supply to the workers’ representatives all the information required in Article 2(3)(b) of Directive 98/59.

The third and fourth questions

56 By its third and fourth questions, which can be answered together, the referring court seeks to know, in essence, first, whether Article 2(1) of Directive 98/59, read in conjunction with the first paragraph of Article 2(4) of that directive, should be interpreted to mean that, in the case of a group of undertakings consisting of a parent company and one or more subsidiaries, the obligation to consult with workers’ representatives arises when either the employer or the parent company which controls the employer is contemplating collective redundancies and, secondly, in order for an obligation to start consultations to arise must the subsidiary within which collective redundancies may be made be identified.

57 In that regard, it is clear that, under Article 2(1) and (3) and Article 3(1) and (2) of Directive 98/59, the only party on whom the obligations to inform, consult and notify are imposed is the employer, in other words a natural or legal person who stands in an employment relationship with the workers who may be made redundant.

58 An undertaking which controls the employer, even if it can take decisions which are binding on the latter, does not have the status of employer.

59 As stated by the Commission of the European Communities, first, how the management of a group of undertakings is organised is an internal matter and, secondly, it is not the purpose of Directive 98/59, any more than it was of Directive 75/129, to restrict the freedom of such a group to organise their activities in the way which they think best suits their needs (see, to that effect, as regards Directive 75/129, Case C-449/93 *Rockfon* [1995] ECR I-4291, paragraph 21).

60 Directive 98/59, like Directive 75/129, carries out only a partial harmonisation of the rules for the protection of workers in the event of collective redundancies. It is therefore not designed to bring about full harmonisation of national systems of worker representation in undertakings (see, concerning Directive 75/129, Case C-383/92 *Commission* v *United Kingdom* [1994] ECR I-2479, paragraph 25 and case-law there cited).

61 In the context of that partial harmonisation, as stated by the appellants in the main

proceedings, the Community legislature intended, by adopting Directive 92/56 and then Directive 98/59, to fill a gap in its earlier legislation and to add clarification concerning the obligations of employers who are part of a group of undertakings. Accordingly, Article 2(4) of Directive 98/59 provides that the obligation to hold consultations applies to the employer irrespective of whether the decision regarding collective redundancies is being taken by the employer or by an undertaking controlling that employer.

62 Consequently, Article 2(1) and the first subparagraph of Article 2(4) of Directive 98/59 are to be interpreted to the effect that, under those provisions, irrespective of whether collective redundancies are contemplated or projected as a result of a decision of the undertaking which employs the workers concerned or a decision of its parent company, it is always the former which is obliged, as the employer, to start consultations with the representatives of its workers.

63 As regards the time at which that obligation arises, it is evident, as observed by the Finnish Government, that consultations with the workers' representatives can be started only if it is known in which undertaking collective redundancies may be made. Where the parent company of a group of undertakings adopts decisions likely to have repercussions on the jobs of workers within that group, it is for the subsidiary whose employees may be affected by redundancies, in its capacity as their employer, to start consultations with the workers' representatives. It is therefore not possible to start such consultations until such time as that subsidiary has been identified.

64 In addition, with regard to the intended objectives of the consultations, under Article 2(2) of Directive 98/59, those consultations are, at least, to 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. If a consultation on those matters is to have any meaning, the subsidiary whose employees will be affected by the contemplated collective redundancies must be known.

65 In those circumstances, the answer to be given to the third and fourth questions referred is that Article 2(1) of Directive 98/59, read in conjunction with the first subparagraph of Article 2 (4) of that directive, must be interpreted to mean that, in the case of a group of undertakings consisting of a parent company and one or more subsidiaries, the obligation to hold consultations with the workers' representatives falls on the subsidiary which has the status of employer only once that subsidiary, within which collective redundancies may be made, has been identified.

The fifth and sixth questions

66 By its fifth and sixth questions, the referring court seeks clarification on when the consultation procedure, laid down in Article 2(1) of Directive 98/59, is to be concluded, in the case where, when there is a group of undertakings consisting of a parent company and one or more subsidiaries, the decision which either may or must lead to collective redundancies is taken within the parent company.

67 As explained in relation to the answer given to the third and fourth questions, the obligation to hold consultations laid down in Article 2(1) of Directive 98/59 is binding solely on the employer.

68 There is no provision in that directive which can be interpreted to the effect that it may impose such an obligation on the parent company.

69 It follows that it is always for the subsidiary, as the employer, to undertake consultations with the representatives of the workers who may be affected by the collective redundancies contemplated and, if necessary, itself to bear the consequences of failure to fulfil the obligation to hold consultations if it has not been immediately and properly informed of a

decision by its parent company making such redundancies necessary.

70 As regards the conclusion of the consultation procedure, the Court has previously ruled that, where Directive 98/59 is applicable, an employment contract can be terminated by the employer only after that procedure is concluded, in other words after the employer has fulfilled the obligations set out in Article 2 of that directive (see *Junk*, paragraph 45). It follows that the consultation procedure must be completed before any decision on the termination of employees' contracts is taken.

71 In the context of a group of undertakings such as that in question in the main proceedings, it follows from that case-law that a decision by the parent company which has the direct effect of compelling one of its subsidiaries to terminate the contracts of employees affected by the collective redundancies can be taken only on the conclusion of the consultation procedure within that subsidiary, failing which the subsidiary, as the employer, is liable for the consequences of failure to comply with that procedure.

72 In light of the foregoing, the answer to be given to the fifth and sixth questions referred is that Article 2(1) of Directive 98/59, read in conjunction with Article 2(4) of that directive, must be interpreted to mean that, in the case of a group of undertakings, the consultation procedure must be concluded by the subsidiary affected by the collective redundancies before that subsidiary, on the direct instructions of its parent company or otherwise, terminates the contracts of the employees who are to be affected by those redundancies.

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 (Fourth Chamber) hereby rules:

1. **Article 2(1) 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 to mean that the adoption, within a group of undertakings, of strategic decisions or of changes in activities which compel the employer to contemplate or to plan for collective redundancies gives rise to an obligation on that employer to hold consultations with workers' representatives.**

2. **Whether the obligation has arisen for the employer to start consultations on the collective redundancies contemplated does not depend on whether the employer is already able to supply to the workers' representatives all the information required in Article 2(3)(b) of Directive 98/59.**

3. **Article 2(1) of Directive 98/59, read in conjunction with the first subparagraph of Article 2(4) of that directive, must be interpreted to mean that, in the case of a group of undertakings consisting of a parent company and one or more subsidiaries, the obligation to hold consultations with the workers' representatives falls on the subsidiary which has the status of employer only once that subsidiary, within which collective redundancies may be made, has been identified.**

4. **Article 2(1) of Directive 98/59, read in conjunction with Article 2(4) of that directive, must be interpreted to mean that, in the case of a group of undertakings, the consultation procedure must be concluded by the subsidiary affected by the collective redundancies before that subsidiary, on the direct**

instructions of its parent company or otherwise, terminates the contracts of employees who are to be affected by those redundancies.

[Signatures]

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* Language of the case: Finnish.