**EU Clarifies the Definition of Collective Redundancies**

**The European Court of Justice has in two recent cases decided on the definition of “collective redundancies”, which is crucial for whether the rules on massive layoffs are to be followed in connection with a round of layoffs. The Court clarifies how the word “company” is to be interpreted and whether fixed-term employees are included.**

**Two companies decided to reduce the staff level due to financial difficulties.**

**One of the cases concerned the English chain of stores Bonmarché with 20 out of almost 400 shops placed in Northern Ireland. Bonmarché was proclaimed insolvent and acquired by another company, which immediately started a restructuring, which meant that a number of shops were closed down and the staff level was reduced.**

**The company did not follow the information- and consulting procedure that applies for collective redundancies, when it carried out the round of layoffs in the individual stores. For that reason, four of the terminated employees took legal action before the UK national courts.**

**The other case concerned the Spanish company Nexea, which was employed with different kinds of postal services. The company had branches in Madrid and Barcelona, but felt it necessary to merge the two branches and to terminate a number of employees.**

**In the period between the two rounds of layoffs, a number of fixed-term appointments expired. The fixed-term appointments were not included in the total number of dismissals. For that reason, the company did not follow the information- and consulting procedure in the Collective Dismissal Act. Consequently, one of the employees sued the employer before the Spanish national Court.**

**Subsequently, both cases were forwarded to preliminary reference before the European Court of Justice, which was to decide on whether the two cases concerned “collective redundancies”. From a Danish perspective, the judgement from the European Court of Justice is interesting, because the Danish Collective Dismissal Act is built on the EU directive on collective redundancies.**

**What is a “company”?**

**The definition of “collective redundancies” requires at least 20 employees in the company and at least 10 dismissals within a defined time period. Against this background, it is crucial to clarify the definition of the word company.**

**In both cases, the European Court of Justice ruled that a company is defined as the operating unit in which the employee is placed to perform his job. The European Court of Justice specified that an operating unit for instance can be an individual operating unit with a certain kind of permanent stabile character, which has specific tasks and commends a whole of employees and technical instruments. Furthermore, the operating unit may have an organizational structure to execute the tasks.**

**It is without importance whether the operating unit has a management, which is permitted to execute collective redundancies, or if the unit has a legal, economic, financial, administrative or technological independence.**

**Thus, the duty to consult depends on the number of employees who are dismissed within the same operating unit. This is of importance for companies with more business premises within the same corporation.**

**At this point, the ruling does not conflict with the principles in the Danish administrative order on calculation, which defines how to calculate a company with more operating units in Denmark. In the Danish administrative order on calculation it is emphasized whether or not the operating units are placed in the same labour market region. If they are placed in the same labour market region, they are to be counted as a whole due to the existing Danish laws.**

**This principle goes further than the EU directive, but as it is putting the employees in a better position, it is not violating with EU after the latest rulings from the European Court of Justice.**

**Fixed-term appointments**

**In the Spanish case, the European Court of Justice also ruled to what extent fixed-term or project-based employments which expired within the relevant period, were to be included in counting of the number of dismissals. This was of importance regarding the estimation of whether it was a “collective redundancies”.**

**The European Court of Justice also ruled, that fixed-term employments or project-based employments, which expire after the terms in the contract or in which the tasks expire, are not to be included in the adding up of the dismissed employees. On the contrary, fixed-term appointments, which are terminated before expire of the contract, are to be included in the adding up.**

**On this point, the European Court of Justice’s ruling is in line with the Collective Redundancies Act, which is implemented in Denmark.**

**IUNO’s opinion**

**IUNO recommends companies to be aware that even small branches or operating units can be considered as a “company” within the Collective Redundancies Act, and that closing down a small branch or operating unit might trigger a duty to inform and consult with the employees.**

**Furthermore, companies should be aware that fixed-term employees in some cases are to be included in the number of intended dismissals in connection with a round of layoffs.**

**[Cases C-182/13 and C-392/13, EU Court of Justice, 13 May 2015]**