

JUDGMENT OF THE COURT (Sixth Chamber)

15 July 2004^{*}

In Case C-349/01,

REFERENCE to the Court under Article 234 EC by the Arbeitsgericht Bielefeld (Germany) for a preliminary ruling in the proceedings pending before that court between

Betriebsrat der Firma ADS Anker GmbH

and

ADS Anker GmbH,

on the interpretation of Articles 4 and 11 of Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ 1994 L 254, p. 64),

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: V. Skouris, acting as President of the Sixth Chamber, C. Gulmann, J.-P. Puissochet, F. Macken (Rapporteur) and N. Colneric, Judges,

Advocate General: A. Tizzano,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

- Betriebsrat der Firma ADS Anker GmbH, by I. Seefried, Rechtsanwältin,

- ADS Anker GmbH, by U. Simdorn, Rechtsanwalt,

- the German Government, by W.-D. Plessing, acting as Agent,

- the Commission of the European Communities, by J. Sack and H. Kreppel, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Betriebsrat der Firma ADS Anker GmbH, ADS Anker GmbH and the Commission at the hearing on 5 December 2002,

after hearing the Opinion of the Advocate General at the sitting on 27 February 2003,

gives the following

Judgment

1 By order of 24 July 2001, received at the Court on 17 September 2001, the Arbeitsgericht (Labour Court) Bielefeld referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of Articles 4 and 11 of Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (OJ 1994 L 254, p. 64) ('the Directive').

2 Those questions were raised in proceedings between Betriebsrat der Firma ADS Anker GmbH (works council of the company ADS Anker GmbH, 'the works council') and the company ADS Anker GmbH ('ADS Anker') concerning the refusal

by the latter to accommodate the works council's request to be provided with certain information with a view to establishing a European Works Council.

Legal framework

Community legislation

- 3 According to the 11th recital in the preamble to the Directive:

‘... appropriate provisions must be adopted to ensure that the employees of Community-scale undertakings [or Community-scale groups of undertakings] are properly informed and consulted when decisions which affect them are taken in a Member State other than that in which they are employed’.

- 4 The 12th recital in the preamble to the Directive provides that ‘... in order to guarantee that the employees of undertakings or groups of undertakings operating in two or more Member States are properly informed and consulted, it is necessary to set up European Works Councils or to create other suitable procedures for the transnational information and consultation of employees’.

5 The 13th recital in the preamble to the Directive reads as follows:

‘... it is accordingly necessary to have a definition of the concept of controlling undertaking relating solely to this Directive and not prejudging definitions of the concepts of group or control which might be adopted in texts to be drafted in the future’.

6 The 14th recital in the preamble to the Directive provides:

‘ ... the mechanisms for informing and consulting employees in such undertakings or groups must encompass all of the establishments or, as the case may be, the group’s undertakings located within the Member States, regardless of whether the undertaking or the group’s controlling undertaking has its central management inside or outside the territory of the Member States’.

7 Article 1(1) and (2) of the Directive provides:

‘1. The purpose of this Directive is to improve the right to information and to consultation of employees in Community-scale undertakings and Community-scale groups of undertakings.

2. To that end, a European Works Council or a procedure for informing and consulting employees shall be established in every Community-scale undertaking and every Community-scale group of undertakings, where requested in the manner

laid down in Article 5(1), with the purpose of informing and consulting employees under the terms, in the manner and with the effects laid down in this Directive.’

8 Article 2(1)(a) to (e) of the Directive provides:

‘For the purposes of this Directive:

(a) “Community-scale undertaking” means any undertaking with at least 1 000 employees within the Member States and at least 150 employees in each of at least two Member States;

(b) “group of undertakings” means a controlling undertaking and its controlled undertakings;

(c) “Community-scale group of undertakings” means a group of undertakings with the following characteristics:

— at least 1 000 employees within the Member States,

— at least two group undertakings in different Member States, and

- at least one group undertaking with at least 150 employees in one Member State and at least one other group undertaking with at least 150 employees in another Member State;

- (d) “employees’ representatives” means the employees’ representatives provided for by national law and/or practice;

- (e) “central management” means the central management of the Community-scale undertaking or, in the case of a Community-scale group of undertakings, of the controlling undertaking’.

9 Article 3(1) and (2) of the Directive reads as follows:

‘1. For the purposes of this Directive, “controlling undertaking” means an undertaking which can exercise a dominant influence over another undertaking (“the controlled undertaking”) by virtue, for example, of ownership, financial participation or the rules which govern it.

2. The ability to exercise a dominant influence shall be presumed, without prejudice to proof to the contrary, when [one undertaking], in relation to another undertaking, directly or indirectly:

- (a) holds a majority of that undertaking's subscribed capital; or

- (b) controls a majority of the vote attached to the undertaking's issued share capital;
or

- (c) can appoint more than half of the members of that undertaking's administrative, management or supervisory body.'

¹⁰ Article 3(6) of the Directive provides that 'the law applicable in order to determine whether an undertaking is a "controlling undertaking" shall be the law of the Member State which governs that undertaking'.

¹¹ Article 4(1) to (3) of the Directive provides:

'1. The central management shall be responsible for creating the conditions and means necessary for the setting up of a European Works Council or an information and consultation procedure, as provided for in Article 1(2), in a Community-scale undertaking and a Community-scale group of undertakings.

2. Where the central management is not situated in a Member State, the central management's representative agent in a Member State, to be designated if necessary, shall take on the responsibility referred to in paragraph 1.

In the absence of such a representative, the management of the establishment or group undertaking employing the greatest number of employees in any one Member State shall take on the responsibility referred to in paragraph 1.

3. For the purposes of this Directive, the representative or representatives or, in the absence of any such representatives, the management referred to in the second subparagraph of paragraph 2, shall be regarded as the central management.'

12 Article 5(1) and (2) of the Directive provides:

'1. In order to achieve the objective in Article 1(1), the central management shall initiate negotiations for the establishment of a European Works Council or an information and consultation procedure on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States.

2. For this purpose, a special negotiating body shall be established ...'

13 Article 6(1) of the Directive provides that ‘the central management and the special negotiating body must negotiate in a spirit of cooperation with a view to reaching an agreement on the detailed arrangements for implementing the information and consultation of employees provided for in Article 1(1).’

14 Article 11(1) to (3) of the Directive provides:

‘1. Each Member State shall ensure that the management of establishments of a Community-scale undertaking and the management of undertakings which form part of a Community-scale group of undertakings which are situated within its territory and their employees’ representatives or, as the case may be, employees abide by the obligations laid down by this Directive, regardless of whether or not the central management is situated within its territory.

2. Member States shall ensure that the information on the number of employees referred to in Article 2(1)(a) and (c) is made available by undertakings at the request of the parties concerned by the application of this Directive.

3. Member States shall provide for appropriate measures in the event of failure to comply with this Directive; in particular, they shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced.’

15 Article 14(1) of the Directive required Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive no later than 22 September 1996 or to ensure by that date at the latest that

management and labour introduce the required provisions by way of agreement, the Member States being obliged to take all necessary steps enabling them at all times to guarantee the results imposed by the Directive. They were required immediately to inform the Commission thereof.

National legislation

- 16 The Directive was transposed into German law by the Gesetz über Europäische Betriebsräte (Law on European Works Councils) of 28 October 1996 (BGBl. 1996 I, p. 1548, 'the EBRG').
- 17 Under Paragraph 2(1) of the EBRG that Law applies to Community-scale undertakings having their seat in German territory and to Community-scale groups of undertakings where the controlling undertaking has its seat in German territory.
- 18 Under Paragraph 2(2) of the EBRG:

'Where the central management is not situated in a Member State but there is local delegated management for the undertakings or establishments situated in the Member States, this Law shall apply as from the time that local delegated management is established in German territory. In the absence of local delegated management, this Law shall apply in cases where the local management designates an establishment or undertaking as being its representative in German territory. If no representative is designated, this Law shall apply as from the time at which the establishment or undertaking which employs the largest number of employees, as

compared with the undertaking's other establishments or the group's other undertakings present in the Member States, is established in German territory. The foregoing examples shall be deemed to be equivalent to central management.'

19 Paragraph 3(2) of the EBRG defines 'Community-scale group of undertakings' in a manner similar to Article 2(1)(c) of the Directive.

20 Paragraph 5 of the EBRG, which was adopted in order to transpose Article 11 of the Directive, provides:

'1. The central management must give to the employees' representatives, upon request, information on the average number of employees and the distribution of these within the Member States, on the undertakings and establishments and on the structure of the company or group of companies.

2. A works council or a central works council may exercise the right granted in subparagraph 1 against the local management of the establishment or undertaking; the latter shall be required to obtain from the central management the information and documents necessary to provide the particulars requested.'

21 Paragraph 6 of the EBRG defines 'controlling undertaking' in a manner similar to Article 3 of the Directive.

Main proceedings and questions referred for a preliminary ruling

- 22 It transpires from the order for reference that ADS Anker, an undertaking established in Germany, is part of a Community-scale group of undertakings within the meaning of Article 2(1)(c) of the Directive ('the Anker group').
- 23 The company Anker BV, established in the Netherlands, holds all of the shares in ADS Anker and other undertakings belonging to the Anker group, established in Sweden, Norway, Denmark, Finland, the United Kingdom, the Netherlands, Austria, France, Belgium and Hungary. Anker Systems GmbH, the parent company of Anker BV, is established outside the territory of the Member States, in Switzerland.
- 24 According to the order for reference, the Anker group undertaking with the largest number of employees in a Member State for the purposes of the second subparagraph of Article 4(2) of the Directive is the undertaking RIVA, established in the United Kingdom. That company employs approximately 1 000 workers and was acquired by Anker BV at the end of 1999.
- 25 According to the national court, the central management of the group is either the undertaking RIVA, which can be considered as being the deemed central management under the second subparagraph of Article 4(2) and under Article 4 (3) of the Directive, or Anker BV, which is the central management of the controlling undertaking for the purposes of Article 2(1)(e) and Article 3(1) of the Directive.

- 26 Neither a European Works Council nor a procedure for informing and consulting employees has been established within the Anker group.
- 27 The works council of ADS Anker requested the latter, pursuant to Paragraph 5(2) of the EBRG, to provide it with the information laid down in Paragraph 5(1) of the ERBG and the names of the employees' representation bodies and their representatives able to participate, on behalf of the employees of the undertakings or of undertakings controlled by them, in the establishment of a European Works Council.
- 28 ADS Anker replied that it was not able to accommodate that request because both the parent company, Anker BV, and the parent company of the group, Anker Systems GmbH, refused to provide the information requested. It added that the EBRG does not provide for a right to information which may be relied on as against other undertakings established in other Member States.
- 29 Following the refusal of its request for information, the works council brought proceedings before the Arbeitsgericht Bielefeld.
- 30 The Arbeitsgericht Bielefeld found that the employer cannot merely tell the works council to obtain the information it seeks by conducting its own research in the company registers or in other sources. The central management is itself responsible for creating the conditions necessary for the establishment of a European Works Council or a procedure for the purposes of informing and consulting employees.

- 31 The national court also refers to ADS Anker's argument that it was not able to provide the information requested because both Anker BV and the parent company Anker Systems GmbH refuse to provide the information needed by the employees.
- 32 The Arbeitsgericht Bielefeld held that, since the EBRG is a national law, its scope of application can cover only German territory and it does not impose an obligation on undertakings in the group which are established outside Germany to provide certain information to undertakings established in German territory.
- 33 The national court goes on to state, however, that the employer's argument that it was not able to provide the information requested by the employees cannot succeed if, under the legislative measures in place in other Member States to transpose the Directive, the employer can oblige central management established in another Member State to provide the necessary information to undertakings in the group which are established in German territory.
- 34 It notes, however, that the Directive does not contain any express provision on such a horizontal right for an undertaking in the group to obtain information from the central management established in another Member State.
- 35 As it took the view that the outcome of the dispute pending before it depended on an interpretation of the Directive, the Arbeitsgericht Bielefeld decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is it a requirement of ... Directive 94/45/EC ..., in particular Articles 4 and 11 thereof, that an undertaking established in the United Kingdom, which is

regarded as the central management under the second paragraph of Article 4(2) and Article 4(3) of the Directive, or an undertaking established in ... the Netherlands, which constitutes the central management of the controlling undertaking under Article 2(1)(e) and Article 3(1) of the Directive, is obliged to provide another undertaking resident in ... Germany belonging to the same group of undertakings with information on undertakings and establishments belonging to the group of undertakings and on their legal form and representation arrangements and the average total number of employees and their distribution across the Member States and the undertakings?

2. If the Court of Justice answers the first question in the affirmative: does the obligation to provide information also encompass the names of the employees' representation bodies and their representatives who are to participate, on behalf of the employees of the undertaking or the undertakings controlled by it, in the establishment of a European Works Council?

Questions referred for a preliminary ruling

Observations submitted to the Court

- ³⁶ Turning, first, to the question of whether there is an obligation under the Directive for central management, or the deemed central management, to provide another undertaking in the group with certain information with a view to establishing a European Works Council, the works council, the German Government and the Commission observe that, under Article 4 of the Directive, the central management is responsible for creating the conditions and means necessary for the setting up of a European Works Council in Community-scale undertakings and Community-scale groups of undertakings. In their view, if the Directive is to serve a useful purpose, it is imperative that the central management of an undertaking or a group of undertakings be obliged to provide employees' representatives with the information

which will enable them to determine whether a European Works Council must be set up within the undertaking or the group of undertakings in question and, if so, whether the special negotiating body may be set up.

- 37 According to the works council, the obligation under Article 5(2) of the EBRG for the central management to communicate that information even when it is not situated within the territorial scope of application of the EBRG but rather in another Member State follows not only from the Directive but also from the objective behind the creation of a European Works Council, that is, transnational information and consultation of employees. If the application of Article 5(2) of the EBRG were to be limited to German territory, it would be more difficult for employees' representatives to obtain information with a view to setting up European Works Councils, and would make attainment of the objectives of the Directive that much more difficult and involve unnecessary loss of time, procedures and costs.
- 38 The Commission submits, with respect to the obligations imposed on the central management by Article 4 of the Directive, that regardless of which Member State is involved, it does not matter if the group's employees exercise their legitimate right to obtain information as against that central management directly or through an undertaking in the group, as is the case in Germany.
- 39 ADS Anker maintains that even though the objective of the Directive is to make it possible to create a European Works Council, it cannot result in an undertaking's being forced to bring legal proceedings against its controlling undertaking.
- 40 If the works council of the controlled undertaking does not manage to obtain the information necessary for a request under Article 5(1) of the Directive from that undertaking because that information is not available there, it will be necessary for that works council to exercise its right to information against the undertaking which

controls the group, pursuant to the provisions in place for transposing the Directive in national law.

- 41 Turning, second, to the nature of the information which the central management or the deemed central management is obliged to provide pursuant to the obligation to give information laid down by the Directive, both the works council and the German Government submit that the Directive must be interpreted broadly, having regard to its meaning and purpose.
- 42 According to the works council, the right to information covers the information essential for determining whether, in the undertaking or group of undertakings, it is appropriate to set up a European Works Council. The employees' representatives should also be able to obtain the information they require to submit a request pursuant to Article 5 of the Directive, with a view to setting up a European Works Council, and to set up the special negotiating body required for that purpose. The fact that the request to set up a European Works Council must be presented by the employees or their representatives in at least two different Member States for a special negotiating body to be established implies knowledge of other employee representation bodies and their members.
- 43 By contrast, ADS Anker maintains that the names of the employee representation bodies and their representatives are not prerequisites for instituting the negotiation process with a view to establishing a special negotiating body pursuant to Article 5 (1) of the Directive.
- 44 Relying on Case C-62/99 *Bofrost** [2001] ECR I-2579, the Commission maintains that when, in the view of the court dealing with a request for information, the names of the employees' representation bodies and their representatives required to participate, on behalf of the employees of the undertakings or of undertakings controlled by that undertaking, in the establishment of a European Works Council are part of the information essential for the opening of negotiations for the

establishment of such a council or a procedure for the purposes of transnational information and consultation of employees, an undertaking in that group must provide the information in its possession or which it is able to obtain to the internal employee representation bodies which so request.

Findings of the Court

- 45 According to the 11th recital in the preamble and Article 1(2) of the Directive, its purpose is to ensure that the employees of Community-scale undertakings or groups of Community-scale undertakings are properly informed and consulted when decisions which affect them are taken in a Member State other than that in which they work.
- 46 As is clear from its general scheme, transnational informing and consulting of employees under the Directive are essentially to be ensured by means of a system of negotiations between the central management and the workers' representatives (*Bofrost**, paragraph 29, and Case C-440/00 *Kühne & Nagel* [2004] ECR I-787, paragraph 40).
- 47 In that connection, a European Works Council or a procedure for the purposes of informing and consulting employees is established in each Community-scale undertaking and each Community-scale group of undertakings when a request to that effect is made in accordance with the procedure set out in Article 5(1) of the Directive.

- 48 Under that provision of the Directive, in the case of a Community-scale group of undertakings, the central management, on its own initiative or at the written request of at least 100 employees or their representatives in at least two undertakings or establishments in at least two different Member States, must initiate negotiations for the establishment of such a European Works Council.
- 49 Under Article 6(1) of the Directive, the special negotiating body, which is an employee representation body established pursuant to Article 5(2) of the Directive, and the central management must negotiate in a spirit of cooperation with a view to reaching an agreement on the detailed arrangements for setting up a European Works Council.
- 50 The Court has already stated that, if the Directive is to serve a useful purpose, it is essential that the employees concerned be guaranteed access to information enabling them to determine whether they have the right to demand the opening of negotiations between central management and the employees' representatives, such a right to information constituting an essential prerequisite for determining whether a Community-scale undertaking or group of undertakings exists, which is itself a condition precedent for the setting up of a European Works Council or of a transnational procedure for informing and consulting employees (*Bofrost**, paragraphs 32 and 33, and *Kühne & Nagel*, paragraph 46).
- 51 As regards, first, the setting up of such a council, the central management must, in accordance with Article 4(1) of the Directive, create the conditions and means necessary for the setting up of such a council. That responsibility includes an obligation to supply the employees' representatives with the information essential to the opening of negotiations for establishing a European Works Council (see *Kühne & Nagel*, paragraphs 49 and 51).

52 Central management is the central management of the controlling undertaking, namely the undertaking which can exercise a dominant influence over all the other controlled undertakings of the group within the meaning of Article 3(1) and (2) of the Directive. It is that undertaking which, by virtue of its dominant influence, can request – and oblige – the other undertakings in the group to provide it with the information essential for opening negotiations in order to enable it to communicate that information to the representatives (see also, to that effect, *Kühne & Nagel*, paragraphs 52 and 54).

53 Moreover, in order to guarantee attainment of its objective pertaining to employees' rights to have access to that information, the Directive even provides that, where the central management is situated outside the territory of the Member States, the responsibility conferred on it by Article 4(1) of the Directive is to be assumed, pursuant to the first and second subparagraphs, respectively, of Article 4(2), by either the representative agent of the central management in one of the Member States or, in the absence of such a representative, by the central management of the establishment or group undertaking employing the greatest number of employees in a Member State, that is, by the deemed central management.

54 In order to ensure that the Directive serves a useful purpose, the other undertakings belonging to the group and located in the Member States are under an obligation to assist the deemed central management in fulfilling the main obligation referred to in Article 4(1) of the Directive. The corollary of the deemed central management's right to receive essential information is an obligation on the part of the management of each of the other undertakings belonging to the group to supply the deemed central management with the information concerned where it is in possession of the information or is in a position to obtain it (*Kühne & Nagel*, paragraph 59).

55 In the present case, the essential question which arises is whether the central management or the deemed central management is also obliged under the Directive to supply information which is essential in order to open negotiations to set up a European Works Council to a controlled undertaking within the group, the request

for information in question having been presented by the employees' representatives to that controlled undertaking, and whether such an undertaking is entitled under the Directive to require that that information be supplied to it.

- 56 It is clear from both the purpose and the general scheme of the Directive that the obligations by which the central management or the deemed central management is bound under Article 4(1) of the Directive must be interpreted as encompassing both the obligation to supply directly to the employees' representatives information which is essential for the opening of negotiations to set up a European Works Council and the obligation to supply that information to employees' representatives through their undertaking in the group to which those representatives submitted a request for information in the first place.
- 57 Any other interpretation of the obligations by which the central management or the deemed central management is bound under Article 4(1) of the Directive would be liable to undermine the useful purpose of the Directive referred to by the Court in *Bofrost** and *Kühne & Nagel*, cited above.
- 58 The Directive seeks to impose obligations on all undertakings in the group intended to facilitate the setting up of European Works Councils (see, to that effect, *Bofrost**, paragraphs 31 and 35). As the Court has already held, it is implicit in the Directive's purpose that the obligations which it lays down are to be fulfilled in such a way as to enable the workers concerned, or their representatives, to have access to the information which is necessary if they are to be able to determine whether or not they are entitled to request the opening of negotiations (*Bofrost**, paragraph 38).
- 59 A restrictive interpretation of the obligation laid down in Article 4(1) of the Directive, to the effect that that provision would apply only to situations where employees' representatives submit requests for information directly to the central

management or the deemed central management, would place an unjustified limitation on the application and scope of that provision, and indeed of the Directive, and might even discourage employees from exercising the rights conferred on them by the Directive.

60 Accordingly, Article 4(1) of the Directive lays down both the obligation to supply directly to employees' representatives certain information with a view to setting up a European Works Council and the obligation to supply them with that information through the undertaking in the group which received a request to that effect from its employees' representatives.

61 In addition, under Article 14(1) of the Directive, the Member States must take all the necessary steps in order to be able at all times to guarantee the results imposed by the Directive. Under Article 11(3) of the Directive, they must provide for appropriate measures in the event of failure to comply with the Directive and, in particular, they must ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from the Directive to be enforced. It follows from the purpose of the Directive that the Member States must take all the measures necessary to ensure that the obligations deriving from Articles 4(1) and 11 of the Directive are fully performed (see, to that effect, *Kühne & Nagel*, paragraph 61).

62 With regard to the nature of the information which the central management or the deemed central management is bound to supply by virtue of that obligation to supply information, it should first be borne in mind that Article 11(2) of the Directive imposes an express obligation on Member States to ensure that the information on the number of employees referred to in Article 2(1)(a) and (c) is made available by undertakings at the request of the parties concerned by the application of the Directive.

- 63 Next, where the management of the other undertakings belonging to the group is located in the Member States, there is an obligation to supply the deemed central management with the information essential to the opening of negotiations for the establishment of a European Works Council where it is in possession of the information or is in a position to obtain it (*Kühne & Nagel*, paragraphs 64 and 69).
- 64 Finally, as evidenced by paragraph 58 of this judgment, it is implicit in the Directive's purpose that the obligations which it lays down are to be fulfilled in such a way as to enable the workers concerned, or their representatives, to have access to the information which is necessary for them to be able to determine whether or not they are entitled to request the opening of negotiations and, where relevant, to make that request in due form (*Bofrost**, paragraph 38).
- 65 It follows that the provision of information on the group's companies and establishments, their legal form and representational structure, the average total number of employees and their distribution across the Member States, may be requested in so far as that information is essential for the opening of the negotiations referred to in Article 5(1) of the Directive for the establishment of a European Works Council (see, to that effect, *Kühne & Nagel*, paragraph 70). The same holds true for information on the names of the employees' representation bodies and their representatives required to participate, on behalf of the employees of the undertakings or of undertakings controlled by them, in the establishment of a European Works Council.
- 66 It is for the national courts to ascertain, on the basis of all the evidence before them, whether the information requested is essential for opening the negotiations referred to in Article 5(1) of the Directive.

57 In the light of the foregoing, the questions referred should be answered as follows: Article 4(1) and Article 11 of the Directive must be interpreted as meaning that Member States are required to impose on undertakings established within their territory and constituting the central management of a Community-scale group of undertakings for the purposes of Article 2(1)(e) and Article 3(1) of the Directive, or the deemed central management under the second subparagraph of Article 4(2), the obligation to supply to another undertaking in the same group established in another Member State the information requested from it by its employees' representatives, where that information is not in the possession of that other undertaking and it is essential for opening negotiations for the setting up of a European Works Council.

Costs

58 The costs incurred by the German Government and by the Commission, which have 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 (Sixth Chamber),

in answer to the questions referred to it by the Arbeitsgericht Bielefeld by order of 24 July 2001, hereby rules:

Article 4(1) and Article 11 of Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees must be interpreted as meaning that Member States are required to impose on undertakings established within their territory and constituting the central management of a Community-scale group of undertakings for the purposes of Article 2(1)(e) and Article 3(1) of the Directive, or the deemed central management under the second subparagraph of Article 4(2), the obligation to supply to another undertaking in the same group established in another Member State the information requested from it by its employees' representatives, where that information is not in the possession of that other undertaking and it is essential for opening negotiations for the setting up of a European Works Council.

Skouris

Gulmann

Puissochet

Macken

Colneric

Delivered in open court in Luxembourg on 15 July 2004.

R. Grass

V. Skouris

Registrar

President