

SPEAKING NOTES

*** check against delivery ***

24 January 2008

CONFERENCE ON “EU INTERNAL MARKET AND COMPETITION LAW” PHILIPPE DE BUCK, SECRETARY GENERAL

Panel discussion: From flexicurity to globalisation adjustment: a European labour law embrace of the internal markets’ creative destruction

- The Internal Market is a tremendous instrument for economic power and a pillar of the European well-being. Since the 90s it has created numerous advantages and opportunities for consumers, citizens, companies and the economy. Moreover, a strong single market is Europe’s best asset to respond to and benefit from globalisation. In addition to reduced prices and increased choice for consumers, it stimulates firms to become more efficient and innovative which helps them to strengthen their competitiveness so as to enter global markets. It increases the attractiveness of Europe for investors and companies across the world, stimulating growth and employment.
- However, the Internal Market is far from being fully developed. Much more can be done and many obstacles are yet to be removed, including in the field of employment. First and foremost, in a Europe with no internal borders and competing in a global economy, we need more efficient and dynamic labour markets. Workers need to be more mobile and adaptable while labour markets need to become more flexible.
- The flexicurity approach is key in this respect. In essence, flexicurity is about moving away from a job preservation mindset into a job creation mindset. The European social partners recently conducted a joint labour market analysis in which they agree that flexicurity can create a win-win situation for companies and workers based on five components: labour law, active labour market policies, lifelong learning, modern social protection systems and an effective social dialogue.

The novelty of the flexicurity approach is that flexibility and security are not considered contradictory concepts but mutually reinforcing. Flexibility allows workers to better reconcile work and family life and is a key factor for companies’ competitiveness. In addition, flexible and smoothly operating labour markets

facilitate labour re-allocation to new and dynamic activities, thereby enhancing productivity and creating upward mobility for workers. Modern labour laws, in particular, are needed to reduce the legal and financial barriers that discourage hiring of workers as well the creation and, in particular, the growth of businesses.

At the same time, policies supporting transitions on the labour market will enhance the employability of workers and improve the innovation capacity and competitiveness of firms. By reconciling flexibility and security, flexicurity is at the heart of efforts to restore the positive relationship between competitiveness and social protection and address the challenges of globalisation, ageing and rapid technological developments.

- Workers not only need to be more mobile between jobs but also between regions and Member States. Increasing labour mobility is essential for the efficient use of EU-labour since it will help tackling labour shortages, leading to a better match between labour demand and supply in the European Union. Currently, less than 2% of European citizens live in a different Member States than their own. If anything, this shows that geographical mobility still remains restricted by a number of barriers, including the restrictions on the free movement of workers from the new Member States.
- Evidence shows that migration flows from the new EU Member States were limited, helped tackle labour shortages and alleviate skills bottlenecks and spurred economic growth. Such data is key to provide a positive message about mobility and encourage Member States to lift existing restrictions on labour market access for workers from the new Member States.
- In the area of cross-border mobility of workers, a distinction should be made between free movement of workers and free movement of services. The cross-border provision of services can involve posting workers from one member state to another. In that case, the posting of workers directive specifies which working conditions apply to the posted workers. It thus facilitates mobility of workers while providing a significant protection, guaranteeing a level playing field and protecting against so-called “social dumping”. In order for the posting of workers directive to achieve its full benefits and potential, full compliance with and proper enforcement of its provisions is key! Problems that may occur can be solved in the countries concerned and do not require changes in the EU directive itself. This remains true after enlargement of the EU.
- This is clearly illustrated in the Laval case. The Swedish legislation implementing the posting of workers directive is silent as to whether collective agreements on wages should be extended to posted workers. After Laval conclude two collective agreements with the relevant trade union in Latvia, Swedish unions took collective action – a blockade – against the company. The European Court of Justice rightly concluded that collective action to impose negotiations on a foreign service provider cannot be justified given the lack of precise and accessible provisions which would make it impossible or extremely difficult for an undertaking entering into negotiations to determine the obligations with which it is required to comply as

regards minimum pay. As a result, this would raise a barrier to the company's entry on the Swedish services market. Moreover, the Court also considered Sweden's national rules discriminatory as they do not take into account collective agreements by which undertakings that post workers are already bound in the member state in which they are established.

- According to BUSINESSEUROPE, the Court delivered a balanced judgment. It rightly emphasised that industrial action is part of EU law, but that it is not superior to EU law. The Court has made clear that the blockade prevented free movement of services and stressed that Swedish collective agreements cannot take precedence over foreign collective agreements already concluded. The ruling therefore safeguards the value of free and fair competition, which benefits business, employees and consumers. In short, the judgement means increased legal security for cross-border service providers, which is key for improving the functioning of the internal market.
- A final word regarding the harmonisation of national employment law: While some might see this as the logic consequence to some in relation to internal market integration, it is important to bear in mind that employment law is an area in which the differences in the legislation, cultures and legal traditions in the member states play a major role. Besides, the differences in the regulation of pay and working conditions reflect major differences in the levels of productivity in the different countries, regions and branches in the EU. These differences have become even greater following enlargement. Harmonisation of employment law in the EU is therefore unrealistic and impossible to achieve. Rather, European economic integration demands well functioning and flexible labour markets.
- To conclude, a modern and better functioning Internal Market is the best instrument that Europe has to enable citizens and businesses to reap the benefits and respond to the challenges that globalisation and the needs of today's society pose. Policy-makers and social partners should therefore join hands to remove remaining obstacles to mobility on Europe's labour markets. Only by doing so, we will be able to fully exploit the potential of the internal market.