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## **NO NEED FOR REVISION OF POSTING OF WORKERS DIRECTIVE AFTER ECJ RULINGS**

The advantages of a well-functioning single market are numerous and important for companies, workers, citizens and the economy in general. It has helped companies to grow and have access to a market which now comprises almost 500 million people in 30 countries (EU-27 plus Iceland, Liechtenstein and Norway). It has boosted European companies' competitiveness and reinforced their position in the global market. As for employment, since the launch of the single market Programme 15 years ago, 2.75 million additional jobs have been created. Workers are free to move to another EU Member State to work while EU rules have considerably strengthened employees' rights.

However, there are still many remaining barriers and unjustified restrictions which must be removed in order for the internal market to achieve its full potential.

In the course of 2007 and 2008, the Court of Justice of the European Communities (ECJ) has delivered a series of judgements concerning the relationship between social rights and fundamental principles of the internal market, in particular the freedom of establishment (Viking case) and the freedom to provide services (Laval, Rüffert and Commission vs. Luxembourg cases).

BUSINESSEUROPE is convinced that the ECJ judgements in these cases will contribute to a better functioning of the internal market whilst at the same time protecting workers' rights.

In the Viking and Laval cases, the ECJ acknowledged that the right to take collective action is a fundamental right and . as such . part of EU law while emphasising that it is not superior to other EU law, such as the freedom to provide services or the freedom of establishment. The Court rightly observed that industrial action should not only have a legitimate objective and be necessary for ~~an~~ overriding reasons of public interest~~+~~, but that it should also be proportionate and must use appropriate means which do not go beyond what is necessary to attain its objective.

Likewise, in matters related to the Posting of Workers Directive (PWD), BUSINESSEUROPE supports the Court's interpretation in the Laval, Rüffert and Commission vs. Luxembourg cases. The ECJ rightly concluded that the problems that have occurred are respectively due to national transposition being silent on some provisions of the PWD (Laval), incompatible national legislation (Rüffert) or an overly wide interpretation of the PWD and unclear and unjustified control measures (Luxembourg).

Uniform application and sound and effective enforcement of the provisions of the PWD is particularly important for companies' ability to provide cross-border services through the posting of workers. BUSINESSEUROPE firmly believes that the ECJ rulings will contribute to a more secure legal environment for companies operating in different EU countries and help remove unjustified restrictions to the freedom of establishment and the freedom to provide services.

Contrary to what is sometimes claimed, the ECJ rulings do not affect the right to conclude or the content of collective agreements. Neither does the ECJ's interpretation of the PWD open the door for social dumping as service providers have to guarantee clearly defined terms and conditions of employment to employees during their period of posting abroad. Moreover, the PWD does not prevent the application of more favourable terms and conditions of employment as long as this is done fully in line with the provisions of the directive.

BUSINESSEUROPE therefore stresses that there is no need for a revision of the PWD. Both its general approach and provisions remain valid. Rather than requiring changes in the EU text itself, the problems that have occurred should be solved in the countries concerned.

As opposed to a potentially very difficult debate in the EU-institutions on a revision of the PWD, the best way to address the fears and concerns expressed by some in the wake of the ECJ rulings is through better implementation and enforcement of the provisions of the PWD. In this respect, recent European Commission initiatives to provide guidance to Member States on the implementation and enforcement of the PWD in accordance with judgements of the Court of Justice are strongly supported by European companies.<sup>1</sup>

At the same time, it is imperative to improve administrative cooperation and exchange of best practices and information between national authorities. Likewise, companies and workers must be better informed about their obligations and their rights. Improving information is a pre-condition to ensure good compliance.

BUSINESSEUROPE therefore strongly supports the Commission's recommendation and Council conclusions on enhanced administrative cooperation in the context of the posting of workers. In particular the development of an electronic information exchange system and the establishment of a High-Level Committee closely involving the social partners would play a much-needed and key role in this respect.

Sound and effective compliance with and enforcement of the PWD is essential for the good functioning of the internal market, elimination of distortions of competition and protection of workers. This should increase the confidence of workers and business in the internal market and thereby ending controversy around an instrument that, in our view, remains valid and the best way to facilitate the cross-border provision of services while providing protection against social dumping.

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<sup>1</sup> Communication COM(2006) 159 "Guidance on the posting of workers within the framework of the provision of services"; Communication COM (2007) 0304 "Posting of workers in the framework of the provision of services: Maximising its benefits and potential while guaranteeing the protection of workers".