



## SPEECH

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### **COMMISSION FORUM ON PROTECTION OF WORKERS' RIGHTS AND ECONOMIC FREEDOMS**

**9 OCTOBER 2008**

#### **Address BY PHILIPPE DE BUCK SECRETARY GENERAL OF BUSINESSEUROPE**

Dear Ministers, dear Commissioner, Ladies and Gentlemen,

First of all, let me welcome the opportunity we have been given today to discuss the recent Viking, Laval, Rüffert and Commission vs. Luxembourg cases.

A number of far-reaching interpretations have been expressed over the last months, in particular with respect to the consequences of these cases for the Posting of Workers Directive. We are aware that the trade union movement and some Members of the EP have made this a top priority on their agenda.

The Commission was therefore right to convene this forum in the presence of the French EU Presidency and many Ministers. We will be able to discuss these rulings, in particular if there are implications for the Posting of Workers Directive.

What should be our mindset today? This Forum should improve our understanding of what needs to be done in order to ensure the freedom to provide services and freedom of establishment, this in full respect of the social rights of the country where you work.

I will turn to the issue at stake today in a minute. But I would first like to say a few words about how the single market has contributed to Europe's prosperity and jobs.

#### **On the single market**

The Single Market is generally hailed today as one of the Europe's Union's great successes. The good news is that economic and social matters go hand in hand. Single Market Integration has led to increased prosperity for companies, workers and citizens.

There has been an increase in welfare of 480 euro capita in 2006 compared to a scenario with no Single Market. 2.75 million additional jobs have been created just thanks to the Single Market.

So it is not only an economic success as it is pretended very often. It is also a key instrument for social progress in Europe. However, there are still many remaining barriers. Unjustified restrictions must be removed in order to achieve its full economic and social potential for European citizens and for companies.

### **On the ECJ rulings**

Let me now turn to the European Court of Justice rulings. What do they entail for companies, workers, social partners and even EU legislation?

These rulings will contribute to a better functioning of the internal market. At the same time they protect workers' rights. But no matter what one may think about the rulings, as a preliminary remark, I would like to stress that that ECJ judgements are not political decisions. We are not always pleased with ECJ rulings but we acknowledge the independence of the European Court of Justice and its competence to interpret Community law.

Let me now dig into the content of these cases.

First of all, BUSINESSEUROPE respects the fundamental right to take collective action. We agree with the Court that this right is part of EU law but it is not superior to other EU law. Key principles such as the freedom to provide services and the freedom of establishment must be equally respected.

In the Laval case, a collective action by Swedish trade unions has led to a business closure. It would be unreasonable to consider the right to take collective action as an unlimited right. As you know, the collective action was undertaken to force Laval to sign a collective agreement. Laval was willing to sign such an agreement by accepting to pay the minimum required by the collective agreement for the building sector. It did not want to pay the alleged average level of pay as demanded by the trade unions. In other words, it was not that Laval was not willing to sign a collective agreement. It was simply that what was being asked for – imposing the obligation to pay average wages to all workers – was not accepted. Moreover, this demand was going beyond the aim of the Posting of Workers Directive. This directive is to provide a nucleus of mandatory rules for minimum protection to be observed in the host country.

### **On the Posting of Workers Directive**

BUSINESSEUROPE supports the Court's interpretation of the posting of Workers Directive. In the Laval case, the ECJ rightly concluded that the problems that have occurred are due to national transposition being silent on some provisions of the Posting of Workers Directive. In the Rüffert case, they were due to incompatible national legislation. In the Commission vs. Luxembourg case they were caused by an unduly wide interpretation of the Posting of Workers Directive as well as unclear and unjustified control measures.

We are convinced that the Court's interpretation will lead to a more coherent application of the provisions of the Posting of Workers Directive. This is particularly positive for companies to provide cross-border services with posted workers.

Let me now rectify some untrue claims we have heard in the wake of these rulings. First, the ECJ rulings do not affect the right to conclude collective agreements or their content. Secondly, the ECJ's interpretation of the Posting of Workers Directive does not open the door for social dumping. In fact, service providers have to guarantee clearly defined terms and conditions of employment to posted employees. Thirdly, Member States and/or social partners can still apply more favourable terms and conditions of employment. The only precondition is that this should be done in accordance with the procedures laid down by the Posting of Workers Directive such as, for example, by means of a collective agreement which has been declared universal.

The question of today concerns a revision of the Posting of Workers Directive. To be very clear, we do not see any need for a revision. The existing text remains a valid instrument to ensure fair competition between companies and avoid social dumping in the Single Market.

In particular, BUSINESSEUROPE believes that the legal basis of the Posting of Workers Directive should remain limited to the freedom to provide services. The directive should not be linked to the free movement of workers in the EU. Indeed, posted workers go abroad under contractual obligations. They therefore cannot be considered as workers exercising their freedom to work in another EU Member State.

This view is also shared by the construction sector, probably the sector which is most concerned by the posting of workers directive. In a recent joint position, the construction industry's social partners – FIEC and EFBWW – confirmed jointly that this directive does not need to be revised.

While there is no need to revise the Posting of Workers Directive, neither should there be any changes made to the EC Treaty. We should all remember that the Treaty of Lisbon includes significant improvements in the field of employment and social affairs. It gives binding effect to the EU charter on fundamental rights. It introduces a social clause which requires taking into account social objectives in all EU policies. It reinforces the role and autonomy of the social partners at all levels. There is therefore no need to introduce a Social Protocol in the Treaty.

Having said this, we acknowledge that the situation is not perfect. Action can and should be taken, in particular to improve compliance with the Posting of Workers Directive in the Member States. Some progress has been made. But companies wishing to post workers in another EU country still lack easily accessible information on their obligations. Good compliance goes together with good information. Similarly, administrative cooperation will facilitate control and will achieve better compliance with the Posting of Workers Directive.

The Commission and the Council has our full support on enhanced administrative cooperation in the context of the posting of workers. Developing an electronic information exchange system and establishing a High-Level Committee involving the social partners will help.



## **Conclusion**

The balance between fundamental freedoms on the one hand and the right to take collective action and the rights of employees during posting is a delicate but crucial one. Any debate should take fully into account companies' rights in the single market.

BUSINESSEUROPE has therefore accepted the offer of the Commission to undertake a joint analysis with the trade unions on the balance between fundamental freedoms and social rights. It should result in a thorough assessment of the legal, economic and social consequences of the ECJ rulings. This is urgently needed to rectify misconceptions and draw the right conclusions with respect to the Posting of Workers Directive.

But one thing is already clear. The quality and accessibility of information on rights and obligations stemming from this directive needs to be improved. The same is true for administrative cooperation between member States. Making progress in those two areas should be the focus of attention and is in the interest of companies, workers and society as a whole.

Thank you for your attention.

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