



17 March 2010

## **SPANISH PRESIDENCY CONFERENCE ON “POSTING OF WORKERS AND LABOUR RIGHTS”, OVIEDO, 17-18 MARCH 2010**

**ADDRESS BY Ms LOES VAN EMBDEN ANDRES**

- Let me start by thanking the Spanish presidency for organising this important seminar and inviting the social partners to contribute to discussions on this subject. My Spanish colleague and I will do that from the perspective of employers.
- Mobility of workers is at the heart of this debate and key for a well functioning European internal market. From an economic perspective as well as from a social and employment angle. During the full period of existence of the European Union the free movement of workers *and* the posting of workers have improved the position of individuals to ‘sell’ their working capacity in another member state and to earn a good or decent income. Mobility of workers is important for the EU as a whole, but it is and has been of particular importance for those countries which have joined the EU and are or were in the process of catching up with social and economic developments in the other member states. The internal market has increased welfare for all our countries and there is still potential if efforts to remove existing obstacles are successful.
- And this brings me to another factor that needs to be addressed: the tendency towards protectionism and xenophobia. We are very concerned about developments in this direction that seem to be intensified by the economic crisis. It is in all our interest to firmly combat a short-sighted view that may temporarily solve a national problem but that – in the long run - is detrimental for our social and economic development.
- I will now focus on the subject of this conference, the posting of workers directive. This piece of legislation regulates the social dimension of the freedom to provide services. It guarantees that fair competition is realised between workers and companies throughout the EU and is therefore one of the key elements of Social Europe.
- The implementation and enforcement of this directive have been challenged in the past few years. The member states involved were forced by decisions of the European Court of Justice to revise their legislation or practices. And this can be painful, especially when it affects a national system of labour relations with a long tradition. But we can conclude that the member states concerned were able to find solutions without subverting the main characteristics of their national labour relations systems.



- The ECJ cases were the reason for the European social partners to jointly develop an analysis of the consequences of this jurisprudence and the challenges related to increased mobility in Europe. This joint work has lasted more than one year. Discussions were intensive but fruitful. A joint report has been made that contains important shared observations. Two persons, present in this panel, have put enormous efforts in this project as spokespersons on the trade union and employer side: Catelene Passchier and Roberto Suarez. Also in this audience, I want to thank them both for finalising an almost impossible task. We expect that one of these days the report will be send to the Commission and the Council and that it will be made available for everyone who is interested in reading it.
- By both parties it is acknowledged that the internal market has been a key factor in improving living standards throughout the EU, as an instrument to achieve economic and social progress. We both underline that the free movement of people, goods, services and capital needs to be safeguarded and further developed to enable higher levels of prosperity. This should take place in a context of fair competition between companies, while ensuring an adequate level of protection for workers. In that context we acknowledge that fundamental social rights are also essential features of European economic and social systems. We also jointly express our concern about the rise of protectionism and xenophobia.
- With respect to the posting of workers directive we jointly conclude that it provides for minimum standards which must be observed to ensure respect for the rights of workers and a climate of fair competition. Both parties realise that it is important for workers and employers that they are well informed about their obligations and their rights. This is a precondition to ensure good compliance and public authorities also have to play an important role in this respect. Last but not least we have noted that posted workers only represent 0.4% of the working age population.
- Our joint report also contains paragraphs in which different views are described. Of course, we regret that we could not agree with the trade unions on all aspects that were discussed. But the diverging views are extensively explained in the separate paragraphs of employers and trade unions and that certainly creates added value.
- Employers clearly indicate that in their view the ECJ rulings have not affected the relationship between social fundamental rights and economic freedoms and that neither of them is more important than the other. But, in the same way as there are numerous limitations on economic freedoms, there can also be limits on the exercise of social fundamental rights, such as the right to take collective action. Such limitations are also often foreseen in national regulations.
- Employers do not agree with the trade unions that the Posting of Workers Directive should be revised. This directive requires foreign service providers to comply with a hard core of labour standards of the host country. In our view this



creates a situation of fair competition. It protects the rights of workers and it creates a balanced and adequate level playing field for enterprises. It has never been the intention to impose fully 'equal conditions' because posted workers face different conditions from workers who are employed by employers in the host country. Requiring foreign enterprises to comply with the entire labour law framework of the host country would in practice close national markets to foreign service providers. It would be counterproductive in terms of economic and social progress.

- So far, some elements taken out of our joint report. I want to advise you to read it as soon as it is published because it will provide you with our common shared and diverging views and the reasons underpinning these views.
- I want to conclude by saying that we see no need to revise the posting of workers directive, but that we should put more energy into the proper implementation and enforcement of the directive in member states. The administrative cooperation between member states should be improved as well as the information of national regulations applicable to posted workers.

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