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EUROPEAN CONFERENCE ON “ASSESSING THE IMPLEMENTATION OF THE DIRECTIVE CONCERNING THE POSTING OF WORKERS

EUROPEAN PARLIAMENT, STRASBOURG

ADDRESS BY MR MAXIME CERUTTI, SOCIAL AFFAIRS SENIOR ADVISER

- Let me start by making an announcement: After more than a year of discussions, European social partners have approved last Friday a joint report on the ECJ rulings in the Viking, Laval, Ruffert and Luxembourg cases.
- I would like to invite you to read this report, which includes important shared observations. For example, European social partners agree that we need to safeguard and develop the free movement of people, goods, services and capital in the internal market. They also recognised jointly the need to better implement and enforce the Posting of Workers Directive.
- The report is also helpful to understand the different points of view of employers and trade unions on the impact of the ECJ cases and their relation with the Posting of Workers Directive and different industrial relations systems in the Member States.
- As part of this exercise, European social partners have discussed the issue of fair competition at length. Companies need a climate of fair competition. This is an elementary condition for doing business.
- As a first observation, I would like to stress that measures to achieve fair competition between companies should not be confused with measures aiming to ensure equal treatment between workers. A climate of fair competition is ensured when companies have to respect the same rules and obligations. However, fair competition between companies often coexists with different working conditions for workers. This is true at European level but also at national level.
- Fair competition is ensured in relation to a market. EU competition regulations were developed in parallel to the goal to establish an EU single market in which goods, services, capital, and people can move freely.



- Articles 101-102 of the EU Treaty (formerly articles 81-82) prevent unfair behaviours of companies such as for example:
 - Abusive use of a dominant position within the internal market for example through price fixing,
 - Agreements between undertakings leading to a distortion of competition within the single market by limiting or controlling production, markets, technical development, or investment.
- In the field of social affairs, ensuring a climate of fair competition implies to determine the conditions that need to be fulfilled by companies with respect to the working conditions of their workers.
- National collective agreements and labour laws define the working conditions that must be observed by companies in domestic situations or for workers who exercise their right to move and work in any Member State of the European Union in accordance with article 45 of the EU Treaty (formerly article 39).
- In the context of the freedom to provide services (article 56 of the Treaty), companies have the possibility to post their workers in another Member State for a temporary period of time. The Posting of Workers Directive was adopted to ensure fair competition between companies with respect to the working conditions of their posted workers.
- It is important to recall that, according to the latest available data published by the Commission suggests, only 0,4% of the EU working age population are posted workers.
- During their posting abroad, posted workers continue to be employed by the same employer in their country of origin. However, in order to make sure that their working conditions are adapted to the situation of the host country, the Posting of Workers Directive imposes compliance with a nucleus of mandatory rules of the host country such as e.g. working time, rest periods, holidays, minimum rates of pay, health and safety and non-discrimination.
- The directive therefore ensures fair competition between companies and safeguards fair working conditions for posted workers. Going beyond this nucleus of rules by imposing equal treatment between posted workers and other national workers in the host country was not the intention of the EU legislator in 1996. The directive aims to coordinate national systems, not to harmonise national rules. This is due to the fact that, contrary to other mobile workers, posted workers go abroad for a temporary period of time. Imposing on foreign enterprises the observance of the entire labour law framework of the host country would constitute an obstacle to free movement in the internal market and would have a negative impact in terms of growth and jobs.

- In this context, BUSINESSEUROPE believes that there is no need to revise the Posting of Workers Directive.
- Nevertheless, action is needed to better implement the directive by:
 - Ensuring that the nucleus of mandatory rules is clearly defined in all Member States. The Member States which were affected by the ECJ rulings – Sweden, Denmark, Germany and Luxembourg - have already taken or are taking action to improve the transposition of the Posting of Workers Directive at national level.
 - Improving access to information on national regulations applicable to posted workers in the Member States for both companies and workers, including through a better administrative cooperation between the Member States. BUSINESSEUROPE supports the Commission's initiatives in this domain.
 - Ensuring better enforcement of the directive without imposing excessive administrative requirements on companies and in line with existing control mechanisms in the Member States. The European Commission should duly consider the joint report of European social partners before taking action on this issue.
- In addition, the fight against undeclared work is an important area of work. Companies employing posted workers illegally are in a situation of unfair competition compared to other service providers who respect the Posting of Workers Directive.
- To conclude, the Posting of Workers Directive ensures a climate of fair competition between companies and fair working conditions for posted workers. Therefore, it does not need to be revised. However, there is room to improve the implementation of the Posting of Workers Directive in some Member States. In addition, improved administrative cooperation between the Member States will help to make information on the working conditions which must be observed with respect to posted workers more widely accessible to companies and workers. This will ensure a better enforcement of the posting of workers directive in practice.