



2 June 2010

EP HEARING ON THE IMPACT OF THE ECJ RULINGS REGARDING THE POSTING OF WORKERS DIRECTIVE

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Dear Members of the European Parliament,

- I would like to thank you for inviting us to present social partners' joint report on ECJ rulings in the Viking, Laval, Ruffert and Luxembourg cases.
- This report addresses the issues raised by the rulings, including the controversial ones. It reflects our points of agreement as well as the issues on which we have different views.
- We have concluded this work on 19 March. Since then, we have learned from Commissioner Andor that a proposal on posting of workers would be published within a year. Achieving the better implementation of the Posting of Workers Directive was also supported by Mr Mario Monti in his report on "a new strategy for the single market" earlier in May.
- We believe that the ECJ report constitutes a balanced contribution to the ongoing debate in view of the Commission's proposal to achieve a better implementation of the Posting of Workers Directive.
- European social partners agreed in the ECJ report that:
 - Free movement of people, goods, services and capital in the single market needs to be properly developed and protectionism should be combated;
 - Mobility of workers and companies in the single market is a key element in the further building of Europe from an economic, social as well as cultural point of view;
 - In order to preserve a climate of fair competition, all companies and service providers in a comparable situation should be subject to the same rules and regulations without discrimination;
 - The Posting of Workers Directive, which affects 0,4% of the EU's working age population, needs to be better implemented and enforced.

EP position

- The European Parliament report on "challenges to collective agreements in the EU" adopted on 22 October 2008 indicates that a partial review of the Posting of Workers Directive should not be excluded if deemed necessary after analysing the



challenges raised by the ECJ rulings with regard to some national industrial relations systems.

- By participating in this hearing, we want to demonstrate to the European Parliament that there is no need to revise the posting of workers directive.

Rights to strike and to negotiate collective agreements are preserved

- First, what is sometimes ignored is that, in the Viking and Laval cases, the ECJ recognised the right to strike as an EU fundamental right for the first time.
- Since 1 December 2009, this right has become legally binding following the introduction of the EU Fundamental Rights Charter in European primary law. It would be interesting to assess the impact of the Lisbon Treaty with regard to the right to take collective action.
- According to a set jurisprudence of the ECJ, the right to strike is not an absolute right. Absolute rights, such as the right to life or the prohibition of torture, cannot be limited. But the right to strike needs to be used proportionately. Without limits, it could affect others' rights or freedoms excessively. This is also the case for other fundamental rights such as the freedom of expression. The Viking and Laval cases did not innovate in this respect. Limitations on the right to strike also exist in several Member States.
- The measures that have been taken in the affected Member States to comply with the ECJ rulings do not undermine trade unions' right to take collective action and to negotiate collective agreements. They enabled a better implementation of the Posting of Workers Directive in the countries concerned without calling into question their industrial relations systems.
- For example, the Laval ruling illustrates the particularities of the Swedish collective bargaining system (where there is no minimum wage or generally binding collective agreements), which made it sometimes impossible to know which obligations had to be applied to posted workers. This lack of transparency has now been addressed, thereby achieving a better implementation of the Posting of Workers Directive in Sweden. But the measures taken at national level do not call into question the fundamentals of the Swedish collective bargaining system.

Posting of workers directive does not need to be revised

- The Posting of Workers Directive draws a delicate balance between its aim to facilitate the cross-border provision of services and the necessity to provide a climate of fair competition between companies and an adequate protection for posted workers:
 - It facilitates cross-border provision of services by defining a nucleus of rules of the host country that must be observed by companies without



- imposing the entire legal framework of the host country on posting companies;
- It ensures a climate of fair competition by imposing the same rules on all companies posting workers in another Member State;
 - It offers adequate protection to posted workers by defining clearly the rules of the host country that must be observed with respect to posted workers, including minimum rates of pay.
- This balance has not been affected by the ECJ rulings. Therefore, there is no need to revise the Posting of Workers Directive.
 - Rather, the problems raised by the ECJ rulings regard the way in which the nucleus of rules set in the directive is enforced in practice in different national contexts.
 - Action at European level is necessary to improve administrative cooperation between the Member States. Better information of companies and workers regarding the working conditions that must be observed with respect to posted workers in all EU countries is a precondition to achieve a better enforcement of the directive.
 - However, any measures to improve the enforcement of the directive should not lead to create excessive burdens for companies.

Conclusion

- It is true that the ECJ rulings have underlined some problems concerning the way in which the Posting of Workers Directive has been transposed in some Member States. But the affected Member States have taken action to improve their national transposition rules in light of the ECJ rulings without calling into question their national industrial relations systems fundamentally.
- Therefore, we hope that the European Parliament will agree with us that there is no need to revise the Posting of Workers Directive. We should focus our efforts on reinforcing administrative cooperation to improve information of companies and workers, which is a precondition for compliance.

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