



Members of the European Parliament Committee
on Employment and Social Affairs

15 September 2008

Dear Sir or Madam,

BUSINESSEUROPE is following with great interest the work of the European Parliament Committee on Employment and Social Affairs with regard to the report on ~~the~~ challenges to collective agreements in the EU+.

Ahead of the Committee vote on this report on 22 September, we hereby aim to inform Committee members about BUSINESSEUROPE's views as to whether the recent case law of the European Court of Justice (ECJ) regarding the relationship between social rights and fundamental principles of the internal market justifies any corrective action by the EU institutions.

BUSINESSEUROPE is of the opinion that the Viking, Laval, Rüffert and Commission vs Luxembourg cases do not bring into question the validity of existing European primary and secondary law such as the EC Treaties or the Posting of Workers Directive. These judgments did not contradict the letter or the spirit of these texts, which remain valid instruments notably to ensure fair competition between companies and avoid social dumping in the Single Market.

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 EU law. The Court rightly observed that industrial action should not only have a legitimate objective and be necessary for ~~the~~ 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.

Whereas economic and social matters go hand in hand and are mutually reinforcing in order to achieve the objectives of the Lisbon strategy and facilitate the well-functioning of the Single Market, it would be excessive and counterproductive to make the right to take industrial action an unlimited right and, by doing so, to prevent companies from doing business in full respect of existing laws.

BUSINESSEUROPE is therefore strongly against the development of any horizontal social clause making the right to take industrial action an unconditional right. Likewise, we urge the European Parliament to abandon its idea to develop a Social Protocol or an inter-institutional agreement in this regard.

In matters related to the Posting of Workers Directive, BUSINESSEUROPE supports the Court's interpretation in the Laval, Rüffert and Commission vs Luxembourg cases. The ECJ rightly concluded that, in the Laval case, 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; and in the Commission vs Luxembourg case they were caused by a too wide interpretation of the Posting of Workers Directive and unclear and unjustified control measures.

BUSINESSEUROPE reminds the European Parliament that the Directive's objective was to ensure the free movement of services, while guaranteeing a nucleus of mandatory rules for minimum protection of posted workers in the host country. The Posting of Workers Directive fulfils this objective.

BUSINESSEUROPE therefore opposes the European Parliament's call for a revision of the Posting of Workers Directive. In addition, its legal basis should remain limited to the freedom to provide services. Posted workers go abroad under contractual obligations and therefore cannot be considered as workers exercising their freedom to work in any of the EU Member States.

However, the ECJ judgments have shown that national implementing laws may be in breach of the European text, either because of partial implementation or due to a wrong interpretation of the Directive's provisions. Legal uncertainties and a lack of information at the national level prevent many companies from providing services abroad.

BUSINESSEUROPE therefore shares the view of the European Parliament that administrative cooperation between the Member States needs to be reinforced in order to ensure the consistent implementation of the Directive. We would therefore urge the European Parliament to call on the Member States to step up initiatives aiming to improve the implementation and enforcement of the Posting of Workers Directive in accordance with judgments of the Court of Justice.

Yours sincerely,



Philippe de Buck
Secretary General