

Challenges to collective agreements in the EU

2008/2085(INI) - 22/09/2008

The Committee on Employment and Social Affairs adopted the own-initiative report by Jan ANDERSSON (PES, SE) on challenges to collective agreements in the EU.

Freedom of treatment, a fundamental principle: MEPs are of the opinion that any EU citizen should have the right to work anywhere in the European Union and thus should have a right to equal treatment. They regret that this right is not applied uniformly across the EU. MEPs consider that this aspect should be balanced, on the one hand, against fundamental rights and the social objectives set out in the Treaties and on the other hand, against the right of the public and social partners to ensure non-discrimination, equal treatment, and the improvement of living and working conditions. MEPs recall that collective bargaining and collective action are fundamental rights that are recognised by the Charter of Fundamental Rights of the European Union and that equal treatment is a fundamental principle of the European Union.

MEPs emphasise that freedom to provide services does not contradict and is not superior to the fundamental right of social partners to promote social dialogue and to take industrial action. They reaffirm that fundamental social rights are not subordinate to economic rights in a hierarchy of fundamental freedoms and ask for a re-assertion in primary law of the balance between fundamental rights and economic freedoms in order to help avoiding a race to lower social standards.

Directive on the posting of workers (PWD): the report recalls that the posting of workers Directive allows public authorities and social partners to lay down terms and conditions of employment which are more favourable to workers according to the different traditions in the Member States. The Directive is without prejudice to the law of the Member States concerning collective action to defend the interests of trades and professions. MEPs emphasise therefore the need to safeguard and to strengthen equal treatment and equal pay for equal work in the same workplace. The report underlines that, in the framework of freedom to provide services or freedom of establishment, the nationality of the employer, or of employees or posted workers cannot justify inequalities concerning working conditions, pay or the exercise of fundamental rights such as the right to strike.

MEPs question the introduction of a “**proportionality principle**” for actions against undertakings which, by relying on the right of establishment or the right to provide services across borders, deliberately undercut terms and conditions of employment.

MEPs acknowledge that the **European Court of Justice rulings** in the *Laval*, *Rüffert* and *Luxembourg* cases have demonstrated that it is necessary to clarify that economic freedoms, as established in the Treaties, should be interpreted in such a way as not to infringe upon the exercise of fundamental social rights as recognised in the Member States and by Community law, including the right to negotiate, conclude and enforce collective agreements and to take collective action, and as not infringing upon the autonomy of social partners when exercising these fundamental rights in pursuit of social interests and the protection of workers.

Revision of the current legislation: recognising that the ECJ rulings have caused great concerns as to the way in which minimum harmonisation directives must be interpreted, the report sets out a number of actions to ensure the necessary changes are made to European legislation:

- emphasising that the current situation might as result lead to workers in host countries feeling pressured by low wage competition, MEPs consider that consistent implementation of the **posting of workers Directive** must be ensured in all Member States. The Commission is invited to prepare

the necessary legislative proposals which would assist in preventing conflicting interpretation in the future. It should be made absolutely clear that the PWD and other directives do not prohibit Member States and social partners from demanding more favourable conditions, aimed at equal treatment of workers;

- the Commission and the Member States are asked to adopt measures to combat abuses, in particular regarding activities of those "**letterbox-companies**" which are not engaged in any genuine and effective business in the country of establishment but which have been created, sometimes even directly by the main contractor in the host country, for the sole purpose of carrying out business in the host country, in order to circumvent the full application of host country rules and regulations in particular with regard to wages and working conditions;
- the Commission is called upon to present its Communication on **transnational collective bargaining** proposing the establishment of a legal framework for transnational collective agreements.