

Challenges to collective agreements in the EU

2008/2085(INI) - 22/10/2008 - Text adopted by Parliament, single reading

The European Parliament adopted by 474 votes to 106 with 93 abstentions, a resolution on challenges to collective agreements in the EU.

The own-initiative report had been tabled for consideration in plenary by Jan **ANDERSSON** (PES, SE) on behalf of the Committee on Employment and Social Affairs.

Freedom of treatment, a fundamental principle: Parliament is 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. It regrets 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 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): Parliament believes that the intention of the legislator in the PWD and Services Directive is incompatible with interpretations which may invite unfair competition between undertakings. It considers that correct application and enforcement of the provisions of the PWD are essential to secure the attainment of its objectives, namely to facilitate the provision of services while guaranteeing the appropriate protection of workers, and to fully respect collective bargaining arrangements existing in the Member States to which workers are posted within the framework of that Directive.

The resolution emphasises that Community law has to respect the principle of non discrimination and that the Community legislator has to ensure that no obstacles are created either to collective agreements, for example, those implementing the principle of equal pay for equal work for all workers in the workplace, regardless of their nationality or that of their employer, in the place where the service is provided, or to industrial action in support of such an agreement which is in accordance with national laws or practice. Parliament therefore considers that **the legal basis of the posting of workers directive could be broadened** to include a reference to the free movement of workers.

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 final resolution sets out a number of actions to ensure the necessary changes are made to European legislation:

- Parliament invites all Member States to properly enforce the posting of workers Directive and calls on the Commission to prepare the necessary legislative proposals which would assist in preventing conflicting interpretation in the future. Parliament emphasises that it must be made absolutely clear that the directive on the posting of workers and other directives do not prohibit Member States and social partners from demanding more favourable conditions, aimed at equal treatment of workers, and that there are assurances that Community legislation can be implemented on the basis of all the existing labour market models;

- Parliament considers that any review of that Directive should be done after a thorough analysis at national level of the actual challenges to the different models of collective agreement, and that the review, if deemed useful, should deal in particular with issues such as applicable working conditions, pay levels, the principle of equal treatment of workers in the context of free movement of services, respect for different labour models and the duration of posting;

- MEPs encourage the implementation of the Council Conclusions of 9 June 2008 without delay to remedy shortcomings in the implementation, to prevent further problematic situations and abuses and to create the desired climate of mutual trust and confidence. They call on the Commission and the Member States to foster closer cooperation between the Member States, national authorities and the Commission with regard to monitoring and the exchange of best practice;

- MEPs ask the Member States and the Commission 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;

- lastly, the Commission is invited to put forward the long awaited Communication on transnational collective bargaining proposing the establishment of a legal framework for transnational collective agreements.