

## **Presentation to the Employment and Social Affairs**

### **Committee of the EP**

1. Chairman, thank you for this invitation to present the views of the ETUC on these two cases. We are grateful that you have moved swiftly to deal with them. They are of massive importance to the European trade union world, and not just to our colleagues directly affected in Sweden/Latvia and Finland/Estonia. It is deeply ironic that the Swedish and Danish models – the widely respected home of flexicurity - are under particular pressure from these cases.
2. They are different cases with different implications and the Viking case in particular has not yet finished its legal journey. The consequences of the Laval case for the Swedish system are the subject of social partner negotiations in Sweden, and talks are also underway in Denmark which shares many similarities with Sweden. But the cases have huge European importance to which I want to draw your attention.
3. In effect, in the Laval case, the European Court of Justice, by accident or design, has come close to challenging the European Parliament's compromise position on the

Services Directive by ruling that the free movement of services can impede the exercise of trade union fundamental rights to demand equal treatment. Collective action by unions to push for equal pay with host country workers could be regarded as an obstacle to free movement (although the ECJ recognised there could be an overriding public interest to avoid social dumping).

4. In the Viking case, although there are positive features to this case, one worrying point in particular stands out. The Court stressed that collective action must be “proportionate” to the issue in dispute and has indicated that the action of the International Transport Workers was not proportionate. (This issue is now referred to a UK court if the case is not otherwise settled between the parties). We are now left with not knowing what is “proportionate” action and what is not. Presumably a court will define “proportionality” in the context of each case, so creating intolerable uncertainty for unions involved in virtually any case of industrial action over migration and free movement, a naturally growing area for disputes as Europe integrates its labour and services markets. In some member states, the right to strike is a first rank constitutional right and this is now at risk. So, generally, is trade union autonomy.

5. The Laval case is unclear as to the question of when collective agreements set standards above minimum levels; are these standards recognisable by the ECJ as applicable standards? A German case – the Rueffert case – will be important on this issue when the judgment is issued in mid March.
  
6. So we are being told that the right to strike is a fundamental right but not so fundamental as the EU's free movement provisions. This is a licence for social dumping and for unions being prevented from taking action to improve matters. Any company in a transnational dispute has the opportunity to use this judgement against union actions, alleging "disproportionality".
  
7. This is intolerable and I am asking you today to initiate action to repair the damage being done. Unions across Europe are now deeply concerned with defending their national systems – and we risk a protectionist reaction. Bolkestein derailed the EU Constitutional Treaty. The Laval case, in particular, could damage the ratification of the EU Reform Treaty as awareness of its implications spreads.

8. What can be done to repair the damage? Our Executive meets next week and we are still at work on these two complex cases, but our proposals are as follows:
9. Firstly, quickly, we need a “Social Progress Clause” issued in anticipation of the EU Reform Treaty (article 5(a)), which firmly establishes that the Treaty and especially its fundamental freedoms shall be interpreted as respecting the observance of fundamental rights and especially collective action. It should also establish the rights of workers and their representatives to take collective action to improve their working and living conditions above minimum standards. (There is a precedent for this procedure with the Amsterdam Treaty to which the Employment Chapter was added at a late stage. There are also precedents with the Monti clause and the Services Directive).
10. Second, the Posted Workers Directive should be strengthened to fulfil its original aims of protecting workers. We have to reflect on the need for a revision.
11. Third, we need the speedy implementation of the Temporary Agency Workers Directive which has been blocked in the Council of Ministers. This Directive is

highly relevant to mobility and migration and its principle of equal treatment would reassure unions that the EU was not to be a vehicle for social dumping.

12. The idea of social Europe has taken a blow. Put simply, the action of employers using free movement as a pretext for social dumping practices is resulting in unions having to justify, ultimately to the courts, the actions they take against those employers' tactics. That is both wrong and dangerous. Wrong because workers' rights to equal treatment in the host country should be the guiding principle. Wrong because unions must be autonomous. And dangerous because it reinforces those critics of Europe who have long said that liberal Europe would always threaten the generally excellent social, collective bargaining and welfare systems built up since the Second World War.

13. Europe needs to move fast to repair the damage.