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MOTION FOR A RESOLUTION

further to Question for Oral Answer B6-0132/2007

pursuant to Rule 108(5) of the Rules of Procedure

by Jan Andersson

on behalf of the Committee on Employment and Social Affairs

on the Commission's Communication on the 'Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers'

European Parliament resolution on the Commission's Communication on the 'Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers'

The European Parliament,

- having regard to Directive 96/71/EC concerning the posting of workers in the framework of the provision of services¹,
 - having regard to Commission Communication of 4 June 2006 on 'Guidance on the posting of workers in the framework of the provision of services'²,
 - having regard to Commission Communication of 13 June 2007 on the 'Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers'³,
 - having regard to its resolutions on the posting of workers⁴,
 - having regard to Question for Oral Answer B6-0132/2007 put to the Commission on the Commission's Communication on the 'Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers',
 - having regard to Rule 108(5) of its Rules of Procedure,
- A. whereas full, consistent, implementation of Directive 96/71/EC has proved to be problematic due to a lack of proper implementation in the Member States and coordination among their competent authorities,
- B. whereas the previous Commission Communications on this issue were considered insufficient by Parliament and have not solved the problems encountered by the Directive; whereas divergent points of views between the Commission and Parliament remain on issues such as the availability of a legal representative of the posting company in the host country and the keeping of documents at the workplace to control compliance with the Directive,
- C. whereas protection of posted workers is of the utmost importance in guaranteeing the free movement of workers and preserving working conditions as provided for in the Treaty, and should be regarded as an overriding reason of general interest,
- D. whereas European Court of Justice case law, as well as the opinion of the Advocate

¹ OJ L 18, 21.1.1997, p. 1.

² COM(2006)0159 of 4.4.2006.

³ COM(2007)0304 of 13.6.2007.

⁴ Resolutions of 15 January 2004 (T5-0030/2004) and 26 October 2006 (T6-0463/2006).

General in the Laval case¹, clearly state that measures falling within the scope of the Posting of Workers Directive, and hence also of the Communication, can be justified if motivated by public-interest objectives, such as the protection of workers,

1. Is convinced that full implementation of Directive 96/71/EC is paramount for achieving a right balance between the freedom to provide services and worker protection, notably against social dumping;
2. Suggests that, in its guidance and legal interpretation, the Commission goes in some cases beyond what has been established by the case law of the European Court of Justice;
3. Calls on the Commission to fully take into account the variety of labour market models existing in the European Union when it comes to adopting any measure on posting; calls on the Commission to respect the fact that some Member States require the availability of a mandated representative in the host country to properly implement and control the Directive; considers that this could be any person that has been provided with a clear mandate from the company (including a worker);
4. Considers that cooperation and exchange of information among Member States has been insufficient to date, and that addressing this problem is a prerequisite for the successful implementation of the Directive; takes the view that the Commission should be more precise when providing guidance to the Member States on control measures acceptable under the scope of the Directive to protect posted workers;
5. Considers that the checks and controls carried out by host Member States under the Directive, notably the obligation to keep certain documents in the host country, must be seen as an important tool to guarantee the protection of the rights of posted workers; considers, however, that these measures should be strictly proportional and not constitute hidden obstacles to exercising the right of free movement;
6. Insists that existing case law recognises the right of the host Member State to require certain documents to verify compliance with the employment conditions laid down in the Posting of Workers Directive;
7. Invites the Commission to find the right mix of guidance measures addressed to both companies and Member States so that they have a better understanding of what they are allowed under the Directive and the relevant case law; requests the Commission actively to support close cooperation between inspection bodies in the Member States by providing a permanent European platform for cross-border cooperation; welcomes in this respect the future setting-up by the Commission of a high-level group in order to support and assist the Member States in identifying and exchanging good practices and to formally involve social partners on a regular basis;
8. Takes the view that it would be appropriate for the social partners in those Member States where the Directive is implemented through collective agreements to gain direct access to information about the posting companies, so that they can exercise the supervision which in other Member States is subject to authorities that have such access to company

¹ C-341/05 Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet.

information;

9. Supports the Commission conclusion to the effect that the host Member State should be able to require a prior declaration by the service provider to enable it to verify compliance with the employment conditions;
10. Instructs its President to forward this resolution to the Commission and the Council.