

WRITTEN QUESTION E-4313/08  
by Jan Cremers (PSE)  
to the Commission

Subject: Directive 91/533/EEC as an instrument for combating illegal employment

The obligation to inform employees, laid down in Directive 91/533/EEC<sup>1</sup>, could be a substantial aid in the fight against illegal employment in the European Union.

Recent judgments by the European Court of Justice (such as *European Commission v Member State of Luxembourg*) appear to seriously constrain the opportunities for enforcing the obligation to inform. The Court confers the responsibility for monitoring compliance with Directive 91/533/EEC exclusively on the country of origin. This interpretation cannot be unambiguously derived from the original wording of Directive 91/533/EEC.

Moreover the judgment appears to be at variance with several provisions in Directive 2006/123/EC<sup>2</sup>, as set out in Article 31, and particularly in paragraph 4: 'On their own initiative, the competent authorities of the Member State where the service is provided may conduct checks, inspections and investigations on the spot, provided that those checks, inspections or investigations are not discriminatory, are not motivated by the fact that the provider is established in another Member State and are proportionate'.

1. Does the European Commission agree that the proper transposition of Directive 91/533/EEC into national law can help in the fight against illegal employment?
2. Does the Commission take the view that monitoring compliance with the provisions of Directive 91/533/EEC is exclusively a matter for the Member State of establishment? If so, how does the Commission reconcile this with the provisions of 2006/123/EC?
3. Is the Commission aware of the fact that the recent decision by the European Court (in the *European Commission v Luxembourg* judgment) makes it extremely difficult, if not impossible, to safeguard inspections and investigations that are intended to protect the fundamental rights of employees?

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<sup>1</sup> OJ L 288, 18.10.1991, p. 32.

<sup>2</sup> OJ L 376, 27.12.2006, p. 36.