

EUROPEAN PARLIAMENT

2004



2009

Committee on Employment and Social Affairs

2007/2264(INI)

29.5.2008

OPINION

of the Committee on Employment and Social Affairs

for the Committee on Petitions

on the Special report from the European Ombudsman following the draft recommendation to the European Commission in complaint 3453/205/GG (2007/2264(INI))

Draftsman: Alejandro Cercas

PA_NonLeg

SUGGESTIONS

The Committee on Employment and Social Affairs calls on the Committee on Petitions, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Underlines the conclusion of the European Ombudsman that the failure of the Commission to deal with the petitioner's complaint what was objectively established as several years' unjustified delay, constitutes ineffective administration;
2. Agrees with the European Ombudsman that the Commission should deal with the petitioner's complaint as rapidly and diligently as possible;
3. Considers that the instant case may constitute an abuse of the discretion that the Commission enjoys when interpreting its obligations under Article 211 of the EC Treaty, which confers on it the role of guardian of the Treaties, in that the Commission so far exceeded the discretionary power it accorded itself in its Communication on Better Monitoring of the Application of Community Law (COM(2002)0725) that it could be regarded as having acted in an arbitrarily rather than in the exercise of its discretion;
4. Also stresses that Community law must be applied as it stands unless and until it is amended by subsequent legislation, and that, consequently, no proposal for amending legislation by the Commission can create a legislative *lacuna* (*vacatio legis*), which, in effect, was the Commission's justification for its failure to act in the instant case;
5. Notes that no account was taken of the introduction, on 1 January 2004, of German legislation which nevertheless contained a transitional provision concerning the existing collective agreements allowing derogations from Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time¹ until 31 December 2005, a deadline subsequently extended to 31 December 2006 by a decision of the German *Bundesrat*; expresses its surprise at this state of affairs and emphasises that the Commission must examine the German legislation and all collective agreements containing exemptions to working time legislation in order to assess whether Directive 2003/88/EC is being implemented thereby;
6. Notes that the instant case is one example of the systematic failure and difficulties encountered by various Member States in complying with the basic provisions of Directive 2003/88/EC, as can be seen from the Extended Impact Assessment (SEC(2004)1154) which the Commission produced before embarking on the planned review of Directive 2003/88/EC; reminds the Commission that further complaints have been addressed to the Ombudsman regarding the failure of other Member States to comply with Directive 2003/88/EC;
7. Also urges all the Member States, in the light of the foregoing, to apply faithfully all the rules relating to health and safety at work on the basis of the principle that, in event of any doubt, the interpretation of the law which is most favourable to the health and safety of workers should prevail (*in dubio pro operario*).

¹ OJ L 299, 18.11.2003, p. 9.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	29.5.2008
Result of final vote	+: 35 -: 1 0: 1
Members present for the final vote	Jan Andersson, Edit Bauer, Philip Bushill-Matthews, Alejandro Cercas, Derek Roland Clark, Luigi Cocilovo, Jean Louis Cottigny, Jan Cremers, Harald Ettl, Richard Falbr, Roger Helmer, Stephen Hughes, Jan Jerzy Kułakowski, Jean Lambert, Bernard Lehideux, Elizabeth Lynne, Thomas Mann, Maria Matsouka, Elisabeth Morin, Juan Andrés Naranjo Escobar, Csaba Óry, Marie Panayotopoulos-Cassiotou, Pier Antonio Panzeri, Rovana Plumb, Jacek Protasiewicz, Bilyana Ilieva Raeva, José Albino Silva Peneda, Jean Spautz, Gabriele Stauner, Ewa Tomaszewska, Anne Van Lancker, Gabriele Zimmer
Substitute(s) present for the final vote	Françoise Castex, Gabriela Crețu, Sepp Kustatscher, Roberto Musacchio, Ria Oomen-Ruijten, Csaba Sógor, Tatjana Ždanoka