

EUROPEAN PARLIAMENT

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Committee on Legal Affairs

2008/2085(INI)

17.9.2008

OPINION

of the Committee on Legal Affairs

for the Committee on Employment and Social Affairs

on Challenges to collective agreements in the EU
(2008/2085(INI))

Rapporteur (*): Tadeusz Zwiefka

(*): Associated committees – Rule 47 of the Rules of Procedure

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SUGGESTIONS

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

- A. whereas the Treaty establishing the European Community acknowledges the fundamental rights laid down in the Charter of Fundamental Rights of the European Union, as well as in the Member States' constitutions and in different international treaties and conventions, as fundamental references for EU law and practice,
- B. whereas the Treaty establishing the European Community lays down a number of principles; whereas one of the main activities of the Community is an internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital, as well as a policy in the social sphere,
- C. whereas one of those principles is the recognition of citizens' basic constitutional rights, including the right to form trade unions, the right to strike and the right to negotiate collective agreements,
- D. whereas the fundamental principles of the internal market include freedom of movement for workers, freedom of establishment and freedom to provide services,
- E. whereas, according to Article 39 of the Treaty establishing the European Community, freedom of movement for workers entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment,
- F. whereas the right to take collective action and to conclude collective agreements is a fundamental right which forms an integral part of the general principles of Community law; whereas in that context the Court of Justice should not rely on a statement of the Council and the Commission dated 24 September 1996 that has not been adopted by the European Parliament as co-legislator in order to restrict the interpretation of the concepts of "public policy provisions" and "national provisions crucial to political order" merely to mandatory rules laid down in legislation,
- G. whereas Article 3(1)(a) of the Services Directive clearly indicates that that Directive is not intended to replace Directive 96/71/EC (the PWD)¹ and is without prejudice to it,
- H. whereas restrictions on fundamental freedoms are possible under the EC Treaty, if they pursue legitimate aims compatible with the Treaty, are justified by an overriding reason of public interest, are suitable to attain the objectives pursued and do not go beyond what is necessary to attain them; whereas at the same time, according to Article 52 of the Charter of Fundamental Rights, any limitations on the exercise of the rights and freedoms recognised by that Charter may be made only if they are proportional and necessary and if

¹ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

they genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others,

- I. whereas it is the role of the Court of Justice to interpret Community law in the light of fundamental rights and freedoms and to ensure that in the interpretation and application of the EC Treaty the law is observed,
- J. whereas it is up to the national courts to ascertain, on a case-by-case basis, whether the criteria for regarding the restriction of fundamental freedoms as compatible with Community law are fulfilled,
- K. whereas uniform application and enforcement of the provisions of the PWD are essential in order to ensure its objectives, and in particular respect for collective bargaining arrangements existing in the Member States,
- L. whereas it has been noted that differing views and interpretations existed within the Court of Justice and between the Court and its Advocates-General in the various cases relating to the PWD, in particular in Case C-341/05 *Laval*¹ and Case C-346/06 *Rüffert*²; whereas when such views and interpretations differ, there may be a case for clarification in the light of the balance between fundamental rights and freedoms,
 1. Points out that none of the recent judgments of the Court of Justice³ affects either the content of any collective agreements which might be concluded in Member States or the right to conclude such;
 2. Underlines that, according to the case-law of the Court of Justice, Member States may not impose minimum standards in matters other than those provided for in the PWD and the content of such minimum standards may not be determined by a source which is not provided for by that directive;
 3. Underlines the need to guarantee certain minimum workplace conditions for workers moving within the EU;
 4. Observes that national rules which fail to take into account collective agreements – irrespective of their content – to which undertakings that post workers to a host country are already bound in the Member State in which they are established, give rise, as ascertained by the Court of Justice, to discrimination against such undertakings, in so far as under those national rules they are treated in the same way as national undertakings which have not concluded a collective agreement;
 5. Recognises that, as the Court of Justice has clearly stated in the *Laval* and *Viking* cases, the right to take collective action falls within the scope of Community law, in particular

¹ Judgment of the Court of Justice of 18 December 2007 in Case C-341/05 *Laval un Partneri Ltd* [2007] ECR I-11767 (the *Laval* case).

² Judgment of the Court of Justice of 3 April 2008 in Case C-346/06 *Rüffert*, not yet published in the ECR (see OJ C 128, 24.5.2008, p. 9).

³ See, in addition to the judgments in *Laval* and *Rüffert*, cited above, the judgment of the Court of Justice of 11 December 2007 in Case C-438/05 *International Transport Workers' Federation and Finish Seamen's Union* [2007] ECR I-10779 (the *Viking* case).

Articles 43 and 49 of the EC Treaty, and must therefore be justified by an overriding reason of public interest, must be proportionate and must use appropriate means which do not go beyond what is necessary; emphasises in this context that, in accordance with the judgments of the Court of Justice, the right to take collective action for the protection of workers may constitute such an overriding reason;

6. Notes that the horizontal effect of certain provisions of the EC Treaty depends on precise conditions being fulfilled, *inter alia* the condition that they confer rights on an individual who has an interest in compliance with the obligations thus laid down; expresses its concern that, in the specific circumstances of the cases recently ruled on by the Court of Justice, the horizontal effect of Article 43 of the EC Treaty was duly identified, and considers that this might result in more cases before the court;
7. Calls on the Member States to ensure proper implementation, application and enforcement of the PWD; calls on the Commission to provide appropriate guidance to Member States regarding the implementation, application and enforcement of that directive;
8. Welcomes in that respect the Commission's Recommendation of 3 April 2008¹ and the Council Conclusions of 9 June 2008² on enhanced administrative cooperation in the context of the posting of workers in the framework of the provision of services;
9. Calls on the Commission to take appropriate action vis-à-vis those Member States that do not apply Community law in this field as interpreted by the Court of Justice.

¹ OJ C 85, 4.4.2008, p. 1 and OJ C 89, 10.4.2008, p. 18.

² Not yet published in the OJ.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	9.9.2008
Result of final vote	+: 24 -: 0 0: 0
Members present for the final vote	Marek Aleksander Czarnecki, Bert Doorn, Monica Frassoni, Lidia Joanna Geringer de Oedenberg, Othmar Karas, Piia-Noora Kauppi, Klaus-Heiner Lehne, Katalin Lévai, Antonio Masip Hidalgo, Hans-Peter Mayer, Manuel Medina Ortega, Hartmut Nassauer, Aloyzas Sakalas, Francesco Enrico Speroni, Daniel Stroj, Rainer Wieland, Jaroslav Zvěřina, Tadeusz Zwiefka
Substitute(s) present for the final vote	Vicente Miguel Garcés Ramón, Jean-Paul Gauzès, Georgios Papastamkos, Gabriele Stauner, Jacques Toubon, Ieke van den Burg
Substitute(s) under Rule 178(2) present for the final vote	Renate Weber