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Focus on ...

The exercise by trade unions of their right to take collective action

While competition and the Charta of fundamental rights are currently in the centre of the discussions about the new revised (see page 2), two important cases are pending at the European Court of justice relating to the collective action taken by trade unions in the context of freedom of establishment and freedom of provision of services within the Community.

- the first case is about a Latvian company that posted workers from Latvia to work on building school in Vaxholm Sweden. In 2004, the Swedish building trade union started collective action with the aim of compelling the Latvian company to subscribe to a rate of pay determined in accordance with a domestic collective agreement.

According to the Advocate general's opinion, the freedom to provide services does not prevent trade unions from attempting by means of collective action in the form of a blockade to compel a service provider of another Member State to apply local collective agreement. However such a collective action must be motivated by public-interest objectives such as protection of workers and the fight against social dumping and must be proportionate to the attainment of those objectives. In particular it must be verified whether the conditions of employment laid down in the collective agreement involve a real advantage significantly contributing to the social protection of posted workers.

- the second case, that is even more complex concerns a Finnish ferry company that intended to re-flag its loss-making ferry operating between Talinn and Helsinki in order to employ an Estonian crew on the lower Estonian wages and therefore to be able to compete with other ferries on the same route.

The Finnish Seamen Union opposed the re-flagging and requested the International Transport Workers' Federation ITF to call on its affiliated unions not to enter into negotiations with the relocated company: therefore the company was effectively prevented from dealing with an Estonian crew.

The Advocate general recognises that public interests relating to social policy and fundamental rights may justify certain restrictions on freedom of movement as long as they do not go beyond what it is necessary. A coordinated policy of collective action among unions constitutes a legitimate means to protect the wages and working conditions of seafarers. However collective action that has the effect of partitioning the labour market and impedes the hiring of seafarers from certain Member States would strike the principle of non-discrimination.

The Advocate general's opinion is not binding on the Court. Judgements will be given at a later date.

☞ Case C-341/05 Laval Un Partneri / Case C-37/07 ITF&FSU/Viking Line

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AEIP

New presidency for the next two years

In accordance with the two-years mandate, Bernard Devy (ARRCO France) handed the Presidency of AEIP over to Jacques Brossard, representative of Employers for the 2nd pillar foundation LODH, Switzerland. The new vice-president is Esa Swanljung and represents the employees' side and TELA, the Finnish Pension Alliance.

Under the presidency of ARRCO, 8 new members joined AEIP as observers or correspondents. Today AEIP is composed of 28 members representing paritarian schemes (in charge of pensions, health, provident benefits and paid holiday schemes) in 16 UE Members States. Moreover, CWPS the industry-wide pension scheme Construction Workers' Pension Scheme in Ireland joined AEIP as a full member in June 2007.

In the pension area, technical commissions and task-forces are working mainly on portability and mobility, social and labour law in the context of the 2003 IORP Directive and solvency II.

Member of the Pension Forum, AEIP (European Association of Paritarian Institutions of social protection) celebrated its 10th anniversary on September 2006 in Brussels as a recognized lobby promoting paritarian values.

INSTITUTIONAL ISSUES

Towards a Reform Treaty by the end of 2007

The European Summit in June 2007 agreed to a mandate for an Intergovernmental Conference (IGC) to finalise the details of a Reform treaty. Political agreement was reached on the main parameters for the final deal and over the coming months the IGC will work on a legal form. **The ICG began on July the 23rd** and it is hoped that a text can be agreed upon in October 2007 and that the **ratification process in all the 27 countries can be completed before the European Parliament election in June 2009.**

The Treaty on the European Union (TEU) will keep its present name and the Treaty establishing the European Community (TEC) will be called **Treaty on the Functioning of the Union.**

The main changes concerns the second Treaty:

- the President of the European Council will be appointed to serve for two and a half years, renewable once, instead of just six months as at present ;
- from 2014, the Commission will be reduced from 27 to 18 Commissioners selected on a system of equal rotation among Member States to serve five-years terms ;
- qualified- majority voting will be based on the principle of double majority : from 2014, decisions will need the support of 55% of Member States representing 65% of the EU's population ;
- **a cross-reference to the Charter of Fundamental Rights** binding on all the Member States, except United-Kingdom that got an opt-out clause.

SERVICES OF GENERAL INTEREST

A Protocol on services of general interest will be annexed to the treaties

A Protocol will be annexed to the treaties that refers for the first time to **non economic services of general interest**: *"the provisions of the treaties do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest"*. The Commission and the European Court of justice will have to clarify what, among public services, is economic and what is non economic and therefore whether competition rules (*articles 81 to 89*) apply or not.

What about social services of general interest?

Taking into account the Reform Treaty process, the works announced by Vladimir Spidla in order to clarify legal concepts around social services of general interest are suspended.

The first Forum on social services on general interest will be held under the auspices of the European Parliament in Lisbon on September the 17th.

What about competition?

The constitutional treaty mentioned among its objectives *"an internal market where competition is free and undistorted"*; the Reform treaty drops this formula and refers to *"a highly competitive social market economy, aiming at full employment and social progress"*.

However, all the provisions on competition (*current articles 81 to 89 of the Treaty of Rome*) will remain in the new Treaty on the Functioning of the Union.

Regarding the Directive on services in the internal market, the proposal finally adopted by the European Parliament in a second reading (*see Bref 2/2006*) excludes from its scope non-economic services of general interest and also social services “*relating to social housing, childcare and support of families and persons permanently or temporarily in need which are provided by the State, by providers mandated by the State or by charities recognised as such by the State*”.

The Court of Justice recalls the principle of freedom of services in the healthcare sector

A judgment of the Court on 19 April confirms a constant jurisprudence regarding the free movement of patients: the Greek legislation that excludes reimbursement of the costs of hospital treatment in the case of treatment in private hospital in another Member State is contrary to Community law.

The Commission adopted, in September 2006, a **Communication** for consultation regarding the establishment of an EU framework on healthcare services to ensure cross-border access to safe, high-quality and efficient care. The focus is to provide legal certainty for cross-border patients and help co-operation between member states' health services. A proposal for a directive is expected in 2008.

☞ *Communication “Consultation regarding Community action on health services” September the 26th, 2006 - SEC (2006) 1195/4*

POSTING OF WORKERS AND FREEDOM OF SERVICES

Commission proposes to reinforce administrative cooperation

The number of posted workers is estimated by the Commission to be around 1 million i.e. 0.4% of the active EU population.

As a follow-up to the 2006 Communication (*see Bref 1/2006*) a new Communication issued on June 13 calls on Member States to *improve administrative cooperation in the context of supervising the posting of workers*. The aim is to remove unnecessary obstacles to the free provision of

services while continuing to ensure adequate protection for posted workers.

After having examined the situation in all Member States, the Commission considers that some measures are excessive and go beyond the protection of posted workers as *unjustified obstacles to the free movement of services*. According to the Commission, the situation may be related to the *absence of administrative cooperation* which should be reinforced through the use of the *Internal Market Information system IMI*.

The Commission will launch, if necessary, infringement procedures to ensure conformity with Community law as interpreted by the European Court (proportionality of control measures).

☞ *Posting of workers in the framework of the provision of services : Maximising its benefits and potential while guaranteeing the protection of workers – June the 13th, 2007*

PORTABILITY

A new proposal for a directive on portability without transferability of rights

On June the 20th, in its first reading the European Parliament adopted its report dropping the provisions related to transferability of pension rights (within the same Member State or cross-border).

The rights of pension holders has generated a lot of political debate since October 2005 when the European Commission released a proposal on a *Directive on improving the portability of occupational or supplementary pension rights* (*see Bref 1/2006 and 2/2006*). On March 21st, 2007, the Employment and Social Affairs Committee of the European Parliament adopted a report which endorsed a deletion of transferability from the scope of the Directive (in agreement with the compromise reached by the Finnish Presidency of the EU).

Other major changes are :

- the vesting period passed to 5 years (from 2 years) ;
- the limit of minimum age passed to 25 (from 21) ;
- waiting periods (minimum period of employment or minimum age to becoming

- member of the occupational pension fund) are removed ;
- indexation of “dormant rights “ refers to “fair treatment” with precise criteria such as the value of the rights of active members or adjustment to inflation.

The scope of the directive still excludes schemes covered by the EC Social security Regulation n°1408/71.

The European Commission is now likely expected to work on a revised proposal. The Council is expected to try to formally adopt its common position under Portuguese Presidency (most likely in December). The European Parliament's 2nd reading is scheduled to commence at the beginning of 2008.

OPEN METHOD OF COORDINATION

Joint report on social protection and social inclusion 2007

The Council adopted the Commission proposal for a joint report on social protection and social inclusion on February the 22nd, 2007. This is based on the first ever integrated EU-27 national strategies on social inclusion, pensions, healthcare and long-term care.

The 2007 Report underlines big challenges to tackle child poverty, promote 'active inclusion' of the most disadvantaged in society, ensure adequate and sustainable pensions as well as equal access to health and long-term care.

The report draws a series of conclusions on where to focus future efforts:

- Member States need to back their commitments to reduce **child poverty**
- There is a growing consensus that '**active inclusion**' – balancing stronger incentives to work with access for all to enabling services of high quality and with guarantees for adequate minimum income levels for those who cannot work
- Given demographic trends (with wide disparities across the EU), there is a need to expand **long-term care** and to put it on more secure financial footing.
- **Adequation of pension systems** depends also on expending working lives.

From 2005, three policy areas provide the framework for the open method of coordination process: poverty and social exclusion; pensions ; health and long-term care. The process aims to translating EU objectives into national/regional policies on the basis of National Reports on Strategies for Social Protection and Social Inclusion provided by the 27.

☞ *Joint Report on Social Protection and Social Inclusion 2007.*
http://ec.europa.eu/employment_social/social_inclusion/jrep_en.htm

PENSION REFORMS

People will need to save more as reforms cut pension promises, says OECD

People in OECD countries will have to save more for their retirement as a result of the major pensions reforms carried out across the OECD in recent years. **The average pension promise in 16 OECD countries studied was cut by 22%.** For women, the reduction was 25%.

The latest edition of the OECD's biennial **Pensions at a Glance 2007** issued in June 2007 notes that in only two countries, Hungary and the United Kingdom, pension promises increase on average. **In France, Germany, Italy, Japan and Sweden, future benefits will be cut by between 15 and 25%** and in Mexico and Portugal by over 30% from what people would have been entitled to before the reforms.

The impact on workers varies widely across the OECD. Several countries moved towards greater targeting of benefits on poorer pensioners, notably Mexico, Portugal and the United Kingdom. In other countries, Poland and the Slovak Republic, for example, the link between pension entitlements and earnings has been tightened, without putting in place any new social safety nets for low earners.

The most common feature of the reform packages is a change in pension age. When reforms are complete, most OECD countries will have a **standard retirement age of 65 years**, although in Denmark, Germany, Iceland, Norway, the United Kingdom and the United States, the pension age is or will be 67. Only France, Hungary and the Czech and Slovak Republic plan to have pension ages below 65.

☞ www.oecd.org/els/social/ageing/PAG

DEMOGRAPHY

The Commission promotes support for families

On June the 11th, a high level group of government experts met for the first time in Brussels to discuss demography issues. The group headed by the former Austrian Minister of Labour and Social affairs Leonora Hottasch will support the Commission in monitoring and implement policy guidelines set out in the Commission's 2006 communication on demography (see *Bref 2/2006*).

The group will also act as a platform for Member States to exchange experiences and good practices in areas like active ageing, family policy, care for elderly dependant.

The first meeting focused on family policy, subject of a new communication on promoting solidarity between generations adopted by the Commission on May the 10th.

As a follow-up to the 2006 Communication "*The demographic future of Europe – from challenge to opportunity*" (see *Bref 2/2006*), the new issue examines how Member States can achieve a better work-life balance and support families so they can resolve low birth rates. Three areas are highlighted:

- financial support to cope with the cost of raising a family ;
- quality care services both for children and for the dependant elderly ;
- flexible working time, with appropriate work schedules and leave arrangements.

The Communication also recalls the difference between Member States in addressing families' needs: childcare provision for the under-three varies from 8% in Germany and 2% in the Czech Republic to 36% in the Netherlands and 22% in Sweden. Social spending on families and children also varies from 0.7% to 3.9% of GDP.

☞ Communication "Promoting solidarity between generations" COM(2007) 244 final – May the 10th, 2007

European Alliance for Families

An initiative of the German presidency, the European Alliance for Families has been adopted by the EU Spring Summit of Heads of State and Government, on March 2007 and emphasized in the European Council conclusions.

In short, the Alliance is based on the observation that all EU member States are suffering from low birth rates and that Europeans are experiencing difficulties in founding families and ensuring a good standard of living for them. The Alliance will therefore serve as a platform for exchanging information and experiences on family-friendly policies and for sharing best-practice examples.

EQUALITY BETWEEN MEN AND WOMEN

An European Institute for gender Equality

The regulation (EC) n° 1922/2006 adopted on December 2006 set up an European Institute for gender equality that will be seat in Vilnius and operational in January 2008.

Supported by the 2004 European Council, the Institute will ensure the collection and analysis of objective, reliable and comparable information and data at community level as regards gender equality.

SOLVENCY II

The Commission aims to have the new system in operation in 2012

The European Commission (DG Internal Market) proposed on July 10 a framework directive "*on the taking-up and pursuit of the business of Insurance and Reinsurance – SOLVENCY II*". The new system would replace by 2012, 14 existing directives with a single one introducing deeper solvency requirement for insurers through comprehensive coverage against market risk, credit risk and operational risk beyond insurance risks.

The new system would also enable insurance groups to be supervised through a "group supervisor" in the home country that would cooperate closely with the relevant national supervisors.

The proposed directive does not apply to pension funds covered by the directive 2003/41/EC (IORPs). A review of this directive will take place in 2008 and the Commission will examine whether and how suitable solvency requirements should be developed for pension funds.

The proposed directive is a Lamfalussy-style proposal which means that the framework

directive “level 1” focuses mainly on elaborating the basic enduring principles ; the more detailed technical rules will then put in place by the Commission through implementing measures “level 2” with the advice of the Committee of European Insurance and Occupational Pension Supervisors CEIOPS.



CEIOPS is the “level 3” Committee that enhances convergent and effective application of EU legislation and facilitates cooperation between national supervisors. It runs “quantitative impact studies” that are simulations performed by insurers to.

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☞ *Proposal for a directive on the taking-up and pursuit of the business of Insurance and Reinsurance SOLVENCY I COM(2007) 361 final – July the 10th, 2007*