



## EUROPEAN NEWS BULLETIN (January 2009)

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**POSTING OF WORKERS & ECJ CASES – GMB campaign to secure revision of PWD and equal treatment for all workers:** actively seeking solutions to the recent disputes in the UK, GMB has stepped up its long established campaign for the UK Government to implement the Posting of Workers Directive (PWD) more effectively and extensively, to prevent undercutting of terms and conditions. We are also seeking measures to prohibit the exclusion of workers, including local workers on the basis of their nationality. At the same time, GMB is calling for revision of the protections at European level to deal with the recent ECJ judgments. GMB played a leading role in securing the deal to end the Lindsey dispute, which will see 102 new jobs for British workers in addition to the Italian and Portuguese workers already on the site. The dispute illustrates the concerns which GMB and other unions have been raising with the Government since 2004 about the botched implementation of the posting of workers provisions in the UK context. Trade unions received an assurance from Government as part of the Warwick Agreement in 2004 that the Posting of Workers Directive “will not lead to undercutting”. Unions are still waiting for the Government to act. At EU level the impact and consequences of the ECJ rulings in the Laval, Viking, Ruffert and Luxembourg cases, have undermined the original principles and

spirit of the Directive and GMB and our colleagues in the European trade union movement have been raising these concerns since the rulings were made. The rulings turned upside down the established balance between workers’ fundamental rights and business free movement rights, giving the latter priority. Although the PWD was intended to protect the rights of workers sent to work in another Member State, the Court’s narrow interpretation of the Directive provides employers with a licence to undercut wages and conditions, whilst restricting trade unions’ right to take collective action to secure equal treatment for workers. GMB and our trade union colleagues have called for a social progress protocol to be added to the EU Treaty to redress the balance between fundamental social rights and economic freedoms and, for a revision of the PWD. Despite a strong resolution adopted by the European Parliament in October 2008, reflecting the trade unions’ position, the European Commission has failed to take concrete action. On 21 January 2009, Socialist MEPs and trade unionists were shocked and angered to hear that the Commission was rejecting the European Parliament’s call for a legislative response to the problem. Reacting to the Commission’s position, Stephen Hughes MEP, the Socialist Group co-ordinator on employment and social policy and a GMB member warned: “The

people of Europe will not back a European Union that fails to take their concerns seriously. We want assurances that the Commission will act." Rather than acknowledge that the ECJ's interpretation of the PWD in the four cases lies at the heart of the UK disputes, and is likely to fuel similar protests across the EU, the Commission is instead trying to put the issue down to "protectionism". Commission President Barroso, has tabled a discussion on economic protectionism on the agenda for the EU Commissioners' next meeting on 11 February. GMB has made it clear that all workers across Europe need reassurance that they have equal treatment in the job market, including equal access, with jobs being widely and transparently advertised and filled fairly. Meanwhile, the EU Employment Commissioner Vladimir Špidla has maintained that "we should not jump into a hasty revision of the Directive". On 13 January 2009, a European Commission decision came into force establishing a Committee of Experts on Posting of Workers, in accordance with its 3 April 2008 *Recommendation on enhanced cooperation in the context of the posting of workers in the framework of the provision of services*. Worryingly, Commissioner Špidla has also said that the Commission intends to hold any action until its various projects and studies looking into the impact of the decisions are complete, which are likely to take at least a year. The ETUC has established a specialist Working Group, including the TUC, to carry out detailed work on the possible revision of the Posting of Workers Directive (PWD). Work is also underway to develop an early warning system and litigation strategy for any future cases. The ETUC hopes to organise a European Day of Action in mid May, with demonstrations taking place in several European cities. GMB's engineering construction members will lobby the UK Parliament on 10<sup>th</sup> February and a meeting with GMB MPs will also take place to further highlight these issues, along with demonstrations outside other sites where the employers' have indicated they will not be employing any UK workers. GMB press release: <http://www.gmb.org.uk/Templates/PressItems.asp?NodeID=98166>. Socialist Group Press release: <http://www.socialistgroup.org/gpes/newsdetail.do?lg=en&id=114023&site=main>

**Laval – Swedish inquiry presents its results:** the Laval Inquiry (set up by the Swedish Government to analyse the impact of the ECJ ruling for Sweden and present proposals for action in response), has published its report. The Inquiry does not propose that Sweden should introduce minimum wages or a system of declaring collective agreements to be universally applicable. Instead, it suggests modifications to the Swedish collective agreement

model and other changes relating to industrial action, to achieve Swedish compliance with the PWD within the Directive's existing framework. The Swedish social partners have given mixed reactions to the report. The trade union confederations criticised several of the proposals, which they believe could create loopholes for unscrupulous employers. The social democratic opposition party wrote to the Swedish Employment Minister expressing concerns reflecting those of the unions and demanding that the centre-right government seek a solution at European level, for example a revision of the PWD, and also referring to the ETUC's proposal for a Social Progress Clause. Inquiry Report Summary: <http://www.sweden.gov.se/content/1/c6/11/77/22/fa71ed8c.pdf>

**SOCIAL PROGRESS PROTOCOL – needed more urgently than ever:** this was one of the key messages from the ETUC when it delivered the Trade Union Memorandum to the Czech Presidency on 28 January. The memorandum outlines the European trade union movement's priority areas for action in the social and economic fields, including a New Social Deal in conjunction with a Green Deal investing in research to ensure sustainable development. In particular, the ETUC proposes adding a social progress protocol as an annex to the EU treaties to reaffirm the pre-eminence of fundamental rights over single market rules and to initiate a revision of the PWD. The ETUC called on the Czech Presidency to play a strong, positive role in the conciliation process in the revision of the Working Time Directive, saying that the revision of the Directive should, at least, "ensure that individual opt-outs do not remain in place forever and that balanced solutions are developed to deal with on-call time in the workplace, while respecting the relevant ECJ rulings". The ETUC later criticised as "misleading" the Czech Presidency's press statement released after the meeting, which did not entirely reflect the ETUC's key messages. It reiterated that a co-ordinated European approach was required to avoid protectionist action by individual Member States and that the free movement of labour, which it supports, is being threatened by recent decisions of the European Court of Justice which undermine collective bargaining. Trade Union Memorandum: [http://www.etuc.org/IMG/pdf\\_CZ\\_Presidency\\_Memorandum\\_final\\_EN.pdf](http://www.etuc.org/IMG/pdf_CZ_Presidency_Memorandum_final_EN.pdf)

**EUROPEAN PARLIAMENTARY LABOUR PARTY – GMB's Glenis Willmott elected as new leader:** on 14 January, UK Labour MEPs elected Glenis Willmott as the new leader of their group in the

European Parliament. Commenting on her success Glenis said: "I feel privileged to have been elected to lead the party. Europe has such an important part to play in making our everyday lives better and we have already achieved so much by working together". Glenis is a GMB member and a former GMB Senior Organiser. Welcoming her election, Paul Kenny, GMB General Secretary said: "Glenis' election gives the EPLP a strong leader for the important European Election campaign and elections on 4<sup>th</sup> June 2009. GMB works closely with the European Labour Party to effect European legislation that will benefit the lives of working people in Britain": GMB Press release <http://www.gmb.org.uk/Templates/PressItems.asp?NodeID=98053>; Glenis Willmott's website: [http://www.gleniswillmott.eu/glenis\\_willmott\\_is\\_labours\\_new\\_leader\\_in\\_europe](http://www.gleniswillmott.eu/glenis_willmott_is_labours_new_leader_in_europe). On 26 January, Glenis and the Prime Minister, Gordon Brown launched the new EPLP website: [www.eurolabour.org.uk](http://www.eurolabour.org.uk).

**WORKING TIME DIRECTIVE – Member States drag their heels on start of conciliation:** following the European Parliament's vote on 17 December 2008, positively amending the Council's dreadful political agreement in June 2008, conciliation proceedings between the two were expected to start at the end of January. However, the Czech Presidency has, as yet, been unable to get a mandate to negotiate from the Member States thus delaying the official start of the conciliation procedure. Outlining the Czech Presidency's priorities to the Employment Committee on 20 January, the Czech Deputy Prime Minister said it was "unfortunate" that the Parliament had voted down the Council's June 2008 common position and that it would be difficult to find a better compromise. He said that the Czech Presidency would make every effort to try and achieve a compromise but that flexibility and concessions would be needed on both sides (see also Czech Presidency below). A first round of discussions took place between the Member States on 14 January and EU Labour Ministers also discussed the issue when they met for an Informal Employment and Social Affairs Council on 23 January 2009. Although Member States may be more willing to reach a compromise on the issue of on-call time, it is clear that the UK Government, supported by a blocking minority of Member States – including Germany – is unwilling to negotiate on the phased-end to the opt out. The European Parliament has now agreed its delegation for the conciliation talks. The delegation consists of 27 cross party MEPs, with a strong negotiating team for the European Socialists which includes GMB MEP group convenor Stephen Hughes, Alejandro Cercas who drafted the Parliament's report and

Richard Falbr former GS of Czech TUC. However, due to the current inability of the Council to agree their negotiation mandate, there will be a tight timetable and getting progress before the European Parliament elections in June will be a battle. GMB and TULO (Trade Union & Labour Party Liaison Organisation) have written to Westminster MPs seeking their assistance in urging the UK Government to work positively with Council and European Parliament colleagues in conciliation to reach a positive outcome to the process. The letter points out that while the reasons for ending the opt-out are clear, the case for keeping it has never been made either by the Government or the CBI. The letter also states that the UK Government now has the opportunity to justify a change in position regarding the opt-out by defending the principle that working hours should be reduced and shared more evenly to create jobs during the economic crisis. The European Commission, which has said that it intends to act as an 'honest broker' in reaching an agreement on the Directive during the current Parliament, has published its Opinion on the Parliament's amendments. Whereas it has indicated that it can accept the Parliament's position regarding on-call time, it says it is unable to accept the amendment ending the opt-out, despite the fact that in its amended 2005 proposal, it had supported a 3 year phased end to the opt-out. Its current Opinion states that while, in principle, it supports the eventual end of the opt-out, it does not consider that current conditions, with more Member States now making use of it, allow for this. If the Parliament and Council fail to reach a compromise in conciliation the existing 2003 Directive will continue to apply.

**SICKNESS LEAVE & HOLIDAY PAY – workers on sick leave retain right to paid annual leave:** on 20 January, the European Court of Justice (ECJ) gave a joint decision on the Stringer and Schultz-Hoff cases, confirming that workers on long term sick leave do not lose their right to statutory paid holiday including where, due to their sickness absence, they are unable to take annual leave during the relevant leave year. Both cases (referred by the UK House of Lords and a German Higher Labour Court respectively) involved the interpretation of the Working Time Directive (WTD) in relation to the effect of long term sick leave on a worker's entitlement to paid annual leave. The WTD, implemented in the UK by the Working Time Regulations 1998, gives all workers the right to a minimum of four weeks paid annual leave. The ECJ decision is welcome and the Stringer Case will now return to the House of Lords for a final ruling in light of the ruling. Currently the UK's Working Time

Regulations prevent workers from carrying over statutory holiday entitlement into the next leave year. In order to give effect to the ECJ decision, either these will have to be amended or UK workers will have to be allowed to take holiday leave while on sick leave. ECJ press release: <http://curia.europa.eu/en/actu/communiqués/cp09/af/cp090004en.pdf>

**CROSS BORDER HEALTHCARE:** on 26 January, the European Parliament's Employment Committee considered over 200 proposed amendments to its Opinion on the European Commission's draft Directive on patients' rights in cross-border healthcare. Many of the amendments reflect trade union concerns. The Committee will vote on the Opinion on 11 February 2009. If adopted, the Opinion will be forwarded to the Environment Committee, which is responsible for drafting the European Parliament's main report responding to the proposals, drafted by centre-right UK MEP John Bowis. Over 600 amendments have been submitted to his report, which will be debated in the next Environment Committee meeting on 9-11 February. As well as working with Unison and EPSU (European Federation of Public Service Unions) to raise trade union concerns for amendments with supportive MEPs, GMB is working with the TUC and other UK unions at a national level to raise awareness of the issues with Westminster MPs and the general public.

**ANTI-DISCRIMINATION- Employment Committee tackles discrimination in financial services:** on 21 January, the Employment Committee adopted its Opinion on the European Commission's proposals for a draft Directive prohibiting discrimination on the grounds of disability, religion or belief, age or sexual orientation outside the employment field. The adopted Opinion includes an amendment restricting the possibility of age and disability discrimination in access to financial services, an issue which GMB had specifically raised with our MEPs. It will require service providers, when assessing risk, to justify findings of significantly higher risks for these groups on up to date, accurate and published statistical or actuarial data. Also welcome in the adopted Opinion are amendments to the European Commission's draft Directive which: extend its scope on multiple discrimination; require Member States, where possible, to use policy such as public procurement to encourage providers to purchase and design products and services that are accessible to; and, states that 'disability' should be understood in the light of the UN Convention on the Rights of Person with Disability, including people with chronic disabilities. The Opinion will be sent to the Civil

Liberties Committee (LIBE), which is responsible for drafting the European Parliament's main report, for incorporation into its report. Also on 21 January, the Civil Liberties Committee held an initial debate on its draft report prepared by a Dutch Green Group MEP. GMB will work with supportive MEPs to ensure that the improvements to the draft Directive contained in the Employment Committee's Opinion are reflected in the final report. In outlining the Czech Presidency's priorities to the Employment Committee on 20 January, the Czech Deputy Prime Minister and Minister for Labour and Social Affairs signalled that this issue would require long debates among the Member State Governments and that he did not expect to make any progress during the Czech Presidency.

**Racism in Europe** – the European Network Against Racism (ENAR) recently published its Shadow Report 2007. The report, based on 25 country-specific Shadow Reports produced by ENAR members, concludes that there was very little improvement in the situation of racism in the EU in 2007. It reveals worrying evidence of manifestations of racism and xenophobia against EU citizens, particularly Bulgarian and Romanian nationals, as well as increased incidents of racially motivated crime against visible minorities, across Europe including the UK. It also emphasises that the particular situation of the Roma across Europe urgently needs to be addressed. [http://cms.horus.be/files/99935/MediaArchive/pdf/Shadowreport2007\\_EN\\_Low%20final%20with%20corrections.pdf](http://cms.horus.be/files/99935/MediaArchive/pdf/Shadowreport2007_EN_Low%20final%20with%20corrections.pdf)

**CZECH PRESIDENCY – it's the 3 E's Economy, Energy & External Relations:** on 20 January, the Czech Deputy Prime Minister and Minister for Labour and Social Affairs, Petr Nečas, presented the Czech Presidency's priorities to the European Parliament's Employment Committee. He outlined the three main priorities as: "an economically strong and competitive Europe", creating "a balance between energy security, competitiveness and the protection of the environment" and an emphasis on "keeping Europe strong in the world and secure at the same time". Specifically, regarding labour, employment and social affairs issues he said that the Presidency was primarily concerned with the removal of all barriers to the free movement of workers, increasing employment and labour market flexibility using the general principles of flexicurity, achieve horizontal support for families and focusing on social services as a tool of active social integration and employment opportunity. Referring to the Informal meeting of EU Labour Ministers due to take place a few days later (see below), with a

focus on the mobility of workers, he pointed out that employee mobility in Europe was comparatively low and that in the Czech Presidency's view, "liberalisation of the labour market is the best response to its current needs". In the question session that followed, several MEPs referred to his comments regarding the negotiations on revision of the Working Time Directive (see further Working Time Directive above). Stephen Hughes MEP indicated that it would be useful to have an independent analysis on whether the 15 Member States that are now said to use the opt-out, were justified in doing so and whether this would remain the case if there were to be a seven or eight year phasing out period. Alejandro Cercas emphasised that the European Parliament second reading amendments offered a very flexible Directive, but that if Member States wanted the opt-out to continue indefinitely it would not be possible to reach an agreement in conciliation. In response, Mr Nečas stated that the Directive was inflexible on the issue of on-call and inactive on-call time, hence the reason more Member States were using the opt-out, and that if people wanted to work longer hours politicians should not prevent them from doing so.

**Romania & Bulgaria – four more Member States give full access to labour markets:** on 8 January, the European Commission announced that Greece, Spain, Hungary and Poland had lifted restrictions on access to their labour markets for Bulgarian and Romanian workers. Eleven Member States, including the UK, still have restrictions on the free movement of Bulgarian and Romanian workers. Denmark has said that it will also lift restrictions on Bulgarian and Romanian workers on 1 May, when it ends restrictions on workers from the other EU 8 New Member States.

**INFORMAL EMPLOYMENT COUNCIL: unions warn of threats to support for the single market:** in keeping with the Czech Presidency's priorities, the Informal meeting of EU Labour Ministers focused on the role of workers' mobility in enhancing labour market flexibility, social cohesion and economic growth in the EU. The discussions focused on three themes: geographical mobility (free movement of workers), professional mobility and mobility towards employment (active inclusion). The Presidency put across its view that "the current financial and economic crisis only highlights the need for greater workforce mobility", requiring employees to quickly adapt to changing conditions, transfer of workforce to regions where new jobs are being created, as well as the rapid re-inclusion of unemployed and inactive persons into the labour market. Meeting with the EU Labour Ministers'

before the informal Employment Council, the ETUC stressed its concern that the recession and the recent ECJ decisions threatened trade union support for the single market and the free movement of labour. <http://www.etuc.org/a/5751>

**EUROPEAN ELECTIONS – getting the vote out!** Elections for the 2009-2014 European Parliament will take place in the UK on 4 June 2009. The UK will be electing 72 MEPs, six fewer than it had for the 2004-2009 parliamentary term. A total of 736 MEPs will be elected across the 27 EU Member States. GMB has a dedicated webpage showing candidates who are GMB members and campaign leaflets will shortly be available. GMB National and Regional magazines are running features on the elections, including articles written by MEPs. It is vital that GMB members and other trade unionists go out and vote for our Labour MEPs, who have a great track record of supporting workers rights. If not, there is a real prospect of the BNP gaining a seat in the European Parliament and promoting nothing but hate and division and ignoring our members' interests. UK citizens living overseas as well as other EU citizens living in the UK can register to vote in the UK. For more information and voter registration forms: <http://www.aboutmyvote.co.uk/>. The deadline for registration is 19 May 2009. The European Parliament launched its election website on 19 January 2009, with information on the 27 Member States, why European citizens should vote, online debates and other information. <http://www.europarl.europa.eu/elections2009/default.htm?language=en>

**REMPLOY CAMPAIGN – OGC publishes revised guidance on supported employment:** on 21 January, GMB welcomed the publication of the Office of Government Commerce (OGC) Guidance on reserved contracts for supported factories & businesses. GMB was heavily involved in the revision of the guidance, which explains how public authorities can apply the European legislation on reserved contracts for supported factories and businesses, implemented by the Public Contracts and Utilities Contracts Regulations 2006. A key paragraph of the guidance is clause 7.2 which states "As a matter of Government policy, contracting authorities should aim to have at least one or more contracts with a supported factory or business". Commenting on the new guidance Phil Davies, GMB National Secretary for Remploy, said that "it now makes a much more positive case for reserving contracts, and GMB will draw it to the attention of all public authorities in particular to point 7.2". GMB South Western Region has also been

working very closely with the Welsh Assembly on this issue, and they too have recently produced similar positive guidance in the form of Frequently Asked Questions.

**HEDGE FUNDS & PRIVATE EQUITY – Socialist Group criticises Commissioner McCreevy:** the Socialist Group has written to the President of the European Commission demanding clarification “on how the Commission proposes to proceed with its commitment to ensure appropriate regulation for private equity. The letter strongly criticises the Commissioner for Internal Market and Financial Services Charlie McCreevy, for failing to act on the European Parliament’s demands for regulation covering all financial players, including private equity and hedge funds. The letter accuses Mr McCreevy of demonstrating “a total absence of respect for the European Parliament” and says that his action “appear to be more appropriate for a paid lobbyist of the finance industry than a European Commissioner”.

**FINANCIAL CRISIS – EU Finance Ministers encourage banks to lend to creditworthy borrowers:** EU Finance Ministers, meeting on 20 January, continued to discuss the measures needed to face up to the economic and financial crisis and the implementation of the European economic recovery plan agreed in December 2008. They confirmed that the provision of capital to the banking sector was not intended to shore up their capital reserves, but rather as a buffer both to withstand the challenging economic conditions and to maintain lending to creditworthy borrowers.

**MARITIME TRANSPORT – EU Commission presents strategic policy goals up to 2018:** on 21 January, the European Commission presented a ten year strategy plan to promote safe, secure, clean and efficient shipping. According to the Commission “the proposed strategic options are built on an all-inclusive approach, which are at the basis of the new European Integrated Maritime Policy, and reflect the core principles of sustainable development, economic growth and open markets in fair competition and high environmental and social standards”. EU Commission press release: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/84&format=HTML&aged=0&language=EN&guiLanguage=en>

**LISBON TREATY – further delay to Czech vote:** on 29 January, the Czech Parliament postponed its vote on ratification of the Lisbon Treaty for a second time, to allow more time for the Czech Parliament’s foreign affairs committee to scrutinise the Treaty.

Meanwhile, in Germany, another challenge regarding the Treaty’s constitutionality has been made to the Constitutional Court which could delay final German ratification.

**GUANTANAMO BAY – EU welcomes decision to close detention centre:** at a meeting on 26 January, EU Foreign Affairs Ministers welcomed the decision by US President Barack Obama to close the Guantánamo Bay detention centre and discussed how to respond to his request to resettle some of the released detainees within the EU. The Portuguese foreign minister, who asked for the issue to be placed on the agenda, had already indicated last December that Portugal would be willing to accept some of the detainees. The Ministers agreed that while whether to accept released Guantánamo detainees on their territory was a national decision, a common EU political response was desirable. They will therefore explore the possibility of a coordinated EU action. MEPs will also debate the closure of the camp and vote on a resolution during the February plenary session. GMB has been working with the Socialist Group to try to use this policy development as a hook to raise the issue of the release of the Miami Five, five Cubans wrongly imprisoned in the USA.

**GAZA – MEPs call for immediate and permanent ceasefire:** on 15 January, in a resolution adopted almost unanimously, the European Parliament expressed its shock at the suffering of the civilian population in Gaza and called for an immediate and permanent ceasefire, including a halt to rocket attacks by Hamas on Israel and the end of Israel’s military action in Gaza. The President of the European Parliament will lead a delegation of the Euro-Mediterranean Parliamentary Assembly to Gaza on 23-24 February to objectively assess the needs of the civilian population.

**EUROPEAN YEAR OF CREATIVITY & INNOVATION:** on 7 January, the European Year of Creativity & Innovation (2009) was officially launched with the slogan “Imagine, Create, Innovate”, aimed at encouraging greater creativity and innovation in education, employment and cultural activities. <http://www.create2009.europa.eu/>

**EU ENLARGEMENT – Slovenia threatens to scupper Croatia’s EU accession plans:** Slovenia has indicated that Croatia’s accession to the EU could remain blocked indefinitely if a border dispute between the two Balkan neighbours is not resolved to its satisfaction. Slovenia vetoed the opening of several of the negotiating chapters for Croatia’s candidacy to the EU over the issue. Croatia hopes

to become the 28<sup>th</sup> EU member by 2011. The dispute, dating back to 1991, concerns small pockets of land along the Adriatic coast. On 23 January, following talks with Czech deputy prime minister for European affairs, the Serbian Deputy Prime Minister for European Integration announced that his country intends to apply for EU membership during the Czech Presidency. However, the Netherlands, which blocked the extension of an EU – Serbia trade agreement in September 2008, has warned that closer ties with the EU would be premature until Serbia hands over two war crimes fugitives suspected of hiding in its territory.

**EU – USA TRAVEL – EU citizens will have to register online for prior authorisation:** on 12 January, new rules came into force for EU citizens wanting to travel to the USA. Under the Electronic System for Travel Authorization (Esa), potential travellers will have to register online and receive authorisation to travel or risk being detained and sent back home. The scheme revises the former US Visa Waiver Program where most EU citizens travelling to the US without a visa could fill simply fill out a form on board the plane.

**SLOVAKIA ADOPTS EURO** – Slovakia marked the New Year by becoming the 16<sup>th</sup> Member State to join the eurozone.

**ETUC NEWSLETTER (January 2009)** - including: ETUC in Action, Trade Union Agenda January - February 2009, Focus on the EU and trade union positions, EU Agenda, a feature on 'Monitoring job losses across Europe & more:  
[http://www.etuc.org/IMG/pdf\\_Newsletter\\_33-2009\\_EN.pdf](http://www.etuc.org/IMG/pdf_Newsletter_33-2009_EN.pdf)