

EUROPEAN PARLIAMENT

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Delegation for relations with the People's Republic of China

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MINUTES

of the meeting of 20 November 2008, from 10.15 to 11.15
STRASBOURG

The meeting opened at 10.15 on Thursday, 20 November 2008, with Dirk Sterckx (Chairman) in the chair.

1. Adoption of draft agenda (PE 414.660)

The agenda was adopted.

2. Approval of minutes of the meeting of 03 November 2008 (PE 414.660)

The minutes were approved.

3. Chairman's announcements

Mr. STERCKX announced that interpretation would only be available in English and French.

4. Preparation for the 27th EU-China Interparliamentary Meeting, Beijing/ Hangzhou/ Shanghai, 24 - 28 November 2008

Mr. STERCKX noted that the latest version of the draft programme had been sent out by e-mail, and that any changes could be communicated in Beijing on Monday. He outlined details of the programme, including the agenda speakers.

Mr. STERCKX noted that the list of Chinese speakers was in the dossier for those interested. He asked if introductions could be limited to five minutes rather than ten on the second day, since there would be four introductions. He reiterated that members who made introductions were doing so on behalf of the European Parliament and should reflect its position.

Mr. STERCKX said that a number of people were on the list of participants as accompanying persons and stressed that the rules were clear that the Parliament would not take any responsibility for accompanying persons, and that they were not officially members of the delegation. He added that one journalist, Mr. Banks, of the Parliament Magazine, would be accompanying the delegation.

5. Presentation of the White Paper on China Labour reform (by the Adecco Institute)

Mr. D'AVEZAC from the Adecco Institute talked briefly about the Institute, which had been created in 2006. He explained that the aims of the Institute were to deal with employment and labour issues, education, in terms of education to work, the issue of the demographic challenge, and recently the question of the Chinese labour market and Chinese regulations. He introduced Professor Neal who had contributed to the drafting of the labour laws in China.

Professor NEAL noted that he had been a member for three years of the drafting committee of the Ministry of Labour in Beijing, which had prepared the Labour Contract Law, and which was the focal point of the reforms.

Professor NEAL talked about the Adecco White Paper launched in 2007, reflecting the position of November 2007. He outlined that the first part of the paper gave a background of the labour market and a number of key pressure areas, including the transition from school and training to work, issues about the education system and pressure points within China, problems about demographic change and some of the challenges which had led to regulatory innovation. He pointed out that the last part of the paper presented the regulatory structure as it was in 2007.

Professor NEAL outlined the most recent situation of the new Chinese Labour laws. He noted that China was not looking at regulation of the labour market from a zero position, but had been working on this area for thirty years since the "Open Door" policy had been announced in 1978. He highlighted that this was both beneficial and problematic, since the speed of change meant that some of the innovations had been superficial, and some of the awareness of the problems had come after the event.

Professor NEAL added that the basic framework encompassed labour laws which would be recognisable to a Western observer, although there were differences, and that the Chinese focus was on individual labour rights, rather than collective labour rights and industrial organisations. He said that the main instrument in China was the Labour Law of 1994. This concerned such areas as working time, payment of wages, health and safety, some degree of social insurance provision and the administrative provisions for labour disputes. The latter, he clarified, in the Chinese context meant individual workers complaining that they had been dismissed, that they had not been paid their wages or that their employers had not made contributions to the social welfare provisions, rather than industrial disputes through industrial action or collectivised mouthpieces.

Professor NEAL indicated some of the key drivers which had led to the priorities placed on reform of labour market regulations in the last eight years. He stressed that the process of privatisation of previously state owned enterprises was continuing at a very high rate. There was pressure at provincial level, and the central Chinese government was only a form of umbrella and that the real implementation of legislation took place in the provinces of China. He said it was impossible to talk about a single China, that the conditions in the south east

corner were very different from those in the north-east part of the country which was still very reliant upon heavy industry, and that other areas of the country were different again.

Professor NEAL said that the emergence of non standard forms of work, such as flexible workforms, was a reality in China. He noted that the regulations and the sanctioning of the regulations was the problem and that new legislation provided provisions for flexible work to be promoted. He said that there were significant problems about the migrant workforce, in a country with 210 million migrant workers, but that since 1 January 2008, the new provisions had introduced rights not to be discriminated against on the basis of being a migrant worker. However he countered that there were no mechanisms for migrant workers to benefit from that provision in its own right. He said another problem was that of rising individual labour disputes, alongside fears of social instability, which the Chinese authorities were worried about. He stressed that the agenda of the Chinese authorities was therefore as much about maintaining social cohesion and stability as ensuring rights.

In terms of reform, Professor NEAL noted that there were four key measures. The Labour Contract Law and the Employment Promotion Law had both come into force as of January 2008. From May 2008 the Labour Disputes, Conciliation and Arbitration Law had been introduced which only dealt with administrative resolution of labour disputes, not with judicial resolution of these disputes. This law was not regarded as a major success. The Social Insurance Law had not yet been completed. The Labour Contract Law was the most significant of the measures, reinforcing the existing rights from the Labour Law of 1994 and Professor NEAL felt that there was a genuine intention to give real effect to these declarations of rights, but that resources and capacity to actually deliver the rights would take a long time to put in place. He added that they were also hampered by geography.

Professor NEAL noted that the Labour Contract Law was an example of public consultation, and was only the second time the government had used this method. 190,000 individual responses had been received, of which 165,000 had come from various levels of the Chinese Trade Union, the All China Federation Trade Unions, and the others came from not only within China but from a number of outside observers, including the EU and the US Congress. He noted that this opened up prospects for further social and civil dialogues.

Professor NEAL noted in particular that the Labour Contract Law no longer tied itself to the 1994 Labour Law, in which the rigidities which reflected the labour market of the 1980s were taken away. He said that this gave it greater potential for flexibility, and made labour relationships subject to formalities, including written labour contracts. He said one of the particularly noteworthy reasons behind this move was to have a monitoring process to enable the proposed social insurance provisions to take effect administratively, but also to assist in the enforcement of the labour contract provisions.

Professor NEAL noted the non payment of wages provision, in which the non payment of wages by an employer would attract a penalty of twice the sum due payable to the worker. He added that this was already taking place in the labour arbitrations, and that the number of arbitrations had tripled compared with 2007 figures.

He concluded on the topic of labour disputes which were increasing in numbers which, he added, was very similar to Europe.

Mr. STERCKX thanked Professor NEAL for his introduction and opened the floor to questions.

Mr. PARISH asked how easy it was for a worker to take a case of non payment of wages to arbitration and how expensive it was, and secondly if the financial crisis would put pressure on the social fabric in China.

Professor NEAL replied that the current impact of the financial crisis was showing an increase in outsourcing of jobs to Vietnam, and some downturn in various parts of the labour market. He stressed again the varied nature of China, and that it had to be considered regionally in terms of labour. He said that pressure on the social fabric had always been there, and that the focus was on stability.

He clarified that access to labour arbitration was straightforward and that this had been improved in terms of professionalisation. He added that there was a small fee that had to be paid, but that this could prove to be a major obstacle in China. He concluded that broadly there was good access, but the main problem was for migrant workers, whose status was linked to the household registration system known as the "hukou". They did not get rights to medical care, housing and schooling if they were in the wrong place with the wrong household registration, so he stressed that for migrant workers who lost their jobs, it was very difficult to use the arbitration system. He added that there was also now a backlog of cases, and that while cases were meant to be resolved within 45 days, they were sometimes not even heard within that timeframe.

Mrs. GEBHARDT referred to the restrictive conditions in China on worker mobility, and mobility more generally. She therefore wanted to know how legislation in China fitted with that. She noted that it was not easy to change provinces and that to do so was a lengthy process. She considered that the process of registration was both a monitoring device and a means of political control.

Professor NEAL responded that the question of internal labour mobility was very relevant to the challenges that one could see in the 27 member states of the European Union. He noted that there were similar questions about the formalities and the rigidities that follow from those. He gave a brief history of registration as a form of political control as well as a monitoring device. He stated that the hukou system was still in place in China, although it was clearly loosening.

Professor NEAL noted that the main challenge was the difference between the reality and the theory, the theory saying that one had to get permission to change hukou, but in practice there was a broad level of free movement. The problem was the level at which that had been formalised and this formed a large grey area of the Chinese labour force. He said the main culprits were the Chinese owned small enterprises, and that this was the area that the regulations did not hit. He reminded the delegation that the law enforcement agencies in Beijing were incapable of monitoring these companies.

He said the problem was that the regulation and enforcement took on the Central European model of inspection rather than the Anglo-American form of litigation and judicial practices and explained that this meant that inspectors would only find out about what they asked about, whereas victims who went to litigation created the awareness of problems. He felt that labour mobility in practice was not a problem but that there were problems of criminality, of exploitation of young female workers and of floating populations divorced from their family roots. These were also recognisable in a European context, albeit they were on a larger scale in China.

Mr. HUGHES asked about the controls in China on the limits on working time. He also asked about enforcement implementation, and how effectively regulation was implemented, and what structures existed at the local and provincial level to deliver inspections and how effective they were. He also asked if there was a debate in China about the possibility of a move towards recognition of the freedom of association in the context of better enforcement of the labour code and resolving labour disputes and if there was recognition that individualisation of labour rights could actually be a barrier to the resolution of labour disputes. He asked too if there was a conscious decision to transfer the Luxembourg Treaty framework to China.

Professor NEAL said that there were provisions in the 1994 Labour Law, and that they were subject to variation between provinces, and the situation was similar for the minimum wage. He added that these variations between provinces were one of the challenges to the Social Insurance Scheme, with such questions as who contributed money to collective funds. On working time, he clarified that enforcement was through inspection, though in practice it was non-existent in large parts of the labour market.

In terms of enforcement, Professor NEAL again indicated the gap between central and provincial regulation. The provincial labour bureaux were responsible for the administrative control and were party to the experiments with the labour arbitration courts. He said there was a level of professionalisation taking place, mostly in the field of law, and that there was a growing legal profession dealing with labour disputes, providing lucrative business for lawyers. He reiterated that inspection was a weakness, and added that the engagement of the judicial dispute resolution mechanism was incomplete in this area. He said that appeals on these labour arbitration cases could be automatically made into the judicial system with no requirement to show an error of the law or wrong behaviour, merely an appeal and a complete new hearing. He added that this was very inefficient, and that it could take years to get laws through, so he felt that this undermined the force of the law which had come into place in May. He suggested that the problem was that the approach to labour disputes fell between two ideologies, the first being the socialist ideology of administration and inspection and the approach of developing the rule of law which would give judicial roles. This tension led to inefficiency in the system.

Professor NEAL admitted that there was a debate on freedom of association, and added that compared to six years ago, when one would not have dared to mention the words 'strike' or 'collective bargaining', there was now much more open public debate on the issue, even in the newspapers, where the terminology 'strike action' had now been used.

Finally on the employment promotion law, Professor NEAL said that the model was clearly derived from experience under the employment chapter of the Amsterdam Treaty. He concluded that it was important to look specifically at what the Chinese were doing in these areas, rather than looking at Asia as a whole.

Mr. STERCKX thanked Professor NEAL for his extremely useful explanation of the labour laws in China. He said the European and the Chinese depended on each other to find solutions to the current turmoil in the markets. He noted that the Adecco study had been sent out electronically to members. He also thanked Mr. D'AVEZAC for helping the Parliament on this issue.

6. Any other business

There was no other business.

7. Date and place of next meeting

Mr. STERCKX noted that most of the delegation would be meeting in China on the Sunday or Monday.

The meeting closed at 11.15.

**ПРИСЪСТВЕН ЛИСТ/LISTA DE ASISTENCIA/PREZENČNÍ LISTINA/DELTAGERLISTE/
ANWESENHEITSLISTE/KOHALOLIJATE NIMEKIRI/KATAΣTAΣH ΠΑΡΟΝΤΩΝ/RECORD OF ATTENDANCE/
LISTE DE PRÉSENCE/ELENCO DI PRESENZA/APMEKLĒJUMU REĢISTRS/DALYVIŲ SĄRAŠAS/JELENLÉTI ÍV/
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PREZENČNÁ LISTINA/SEZNAM NAVZOČIH/LÄSNÄOLOLISTA/DELTAGARLISTA**

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Dirk Sterckx (P); Jean-Luc Dehaene(VP)
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Maria Badia i Cutchet, Jorgo Chatzimarkakis, Evelyn Gebhardt, Hans-Peter Martin, Neil Parish, Rihards Pīks, Martine Roure, Helga Trüpel
Заместници/Suplentes/Náhradníci/Stedfortrædere/Stellvertreter/Asendusliikmed/Αναπληρωτές/Substitutes/Suppléants/Supplenti/ Aizstājēji/Pavadojuantys nariai/Póttagok/Sostituti/Plaatsvervangers/Zastępcy/Membros suplentes/Supleanți/Náhradníci/Namestniki/ Varajäsenet/Suppleanter
Kathalijne Maria Buitenweg, Philip Bushill-Matthews, Bogdan Golik, Klaus Hänsch, Stephen Hughes, Struan Stevenson

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Professor Neal, Avezac, von Chrismar

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- * (P) = Председател/Presidente/Předseda/Formand/Vorsitzender/Esimees/Πρόεδρος/Chair(wo)man/Président/Priekšsēdētājs/Pirmininkas/Elnök/Chairman/Voorzitter/Przewodniczący/Preşedinte/Predseda/Predsednik/Puheenjohtaja/Ordförande
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