

The Vaxholm Case of Swedish ‘Social Dumping’ The ECJ Does its Job CEPS Commentary

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In last month’s decision in the so-called ‘Vaxholm’ case,¹ the European Court of Justice managed the unique feat of simultaneously enraging European trade unions and free-market eurosceptics. The former condemned the court for permitting ‘social dumping’, while references to the right to strike in the judgment have conservative nerves, particularly those in the UK, twitching at the prospect of socialism returning through the back door. Neither, of course, is true. But emotions were running high as the judges in Luxembourg dealt with an extremely controversial issue: the right of a company from one member state (in this case Latvia) offering its services in another (Sweden) to bring its own employees to carry out the job for less money than local workers would have charged. No fewer than 17 of the EU’s 27 member states intervened in the case, illustrating its political sensitivity. Ever since the 2004 accession of 10 mostly East European countries, the fear of the ‘Polish plumber’ suddenly gripped the richer western member states. Protectionists are afraid that the upstarts from the east would drive out domestic businesses by offering their services at ‘slave labour’ rates. The Court in the end struck a reasonable balance between the legitimate interests of richer countries in protecting their basic social standards and the equally legitimate interests of the poorer ex-communist countries, which seek to benefit from the economic opportunity of the EU’s single market.

The facts of the Vaxholm case are quite extraordinary. A Latvian company, Laval, obtained in 2004 through its Swedish subsidiaries a series of building contracts, including the renovation of school premises in the town of Vaxholm. Laval and the Swedish building and public-works union failed to reach a collective wage agreement. The company then signed instead a collective agreement with the Latvian building-sector trade union, agreeing on wages below what comparable Swedish workers would make. The Swedish union responded by instituting a full blockade of Laval’s work sites across Sweden. Under Swedish law, trade-union action is only allowed against companies that have not signed a collective agreement. In the absence of such agreements, however, the workers’ rights are almost unlimited. Even trade unions not directly involved in the dispute are allowed to join in, giving them the right to effectively blockade a business and force executives to the negotiating table or face closure. This is exactly what happened in this case. The building-sector unions induced other unionised workers, notably electricians, not to enter the work premises of Laval throughout Sweden. As a result, Laval’s Swedish subsidiary became insolvent, and the Latvian workers returned home. Laval then sued the unions in Swedish courts for compensation, arguing that the blockade was illegal under EU single-market rules guaranteeing the free movement of businesses. The unions countered that their right to strike trumped any EU single-market rights.

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¹ Laval un Partneri Ltd v. Svenska Byggnadsarbetareförbundet and Others, C-341/05, European Court of Justice (Grand Chamber), Luxembourg 18 December 2007.

The case made its way through national courts and was eventually referred to Luxembourg. The ECJ had to consider that although the freedom of movement of establishment and services represents fundamental EU principles, those freedoms are not unlimited. European legislation permits member states to impose their local minimum working conditions on foreign workers 'posted' to work in their state. But governments cannot impose conditions that are more stringent than those that apply to its local workforce. However, when the Swedish government implemented the relevant EU law, it opted to not impose minimum pay rates because in Sweden wages are set by collective agreements and not by legislation. Hence, there was no Swedish minimum wage that Laval would have had to follow. What's more, with respect to non-wage work conditions, such as holidays or rest periods, the court said that the Swedish trade union asked for terms that went beyond the minimum rights set out in Swedish law. But only those minimum rights are protected under EU legislation. The judges also ruled that the unions' blockade of Laval was not illegal per se, which is what made those British conservatives so nervous. But these eurosceptics should have continued reading the verdict. The court added that such action was not acceptable if designed to impose terms more generous than those protected under EU legislation and where there are no specific domestic minimum pay rules.

Moreover, by applying that old EU principle of 'mutual recognition', the Court struck another victory for the single market. It noted that Swedish law prohibiting industrial action against firms that had signed collective agreements must also apply to similar foreign collective agreements. In other words, Laval, because it signed an agreement with the Latvian union, should have benefited from the same 'no strike' rules that employers enjoy when they sign a Swedish collective agreement. The case now goes back to Swedish courts for final judgment. But the ECJ's ruling should bolster Laval's demands for compensation and open a legal pathway for the company to return to the Swedish construction market, if it so wishes.

The key to understanding the judgment is to understand what the Court and EU legislation mean by 'social dumping', which they seek to prevent. Contrary to the construction some radical unions put on the term, this does not mean stopping EU firms from posting their employees in other EU member states just because those employees work for lower wages and less-strict conditions than those of local employees. Such commercial activity is, in principle, a legitimate exercise of the rights of freedom to provide services and establishment. What the Court's case law and EU legislation seek to do is put a minimum floor of rights in place, which will apply to posted and local employees. The aim is to permit the free movement of labour and services while maintaining the social norms of the host state. The Vaxholm case is neither a disaster for 'Social Europe' nor does it constitute socialism by the back door. Instead, the ruling will allow the EU to take full advantage of the cheaper and more efficient services the new member states can provide while ensuring the social peace in Old Europe.