



EUROPEAN UNION

Brussels, 17 December 2018

Subject: Republic of Korea – compliance with obligations under Chapter 13 of the EU – Korea Free Trade Agreement

Request for Consultations by the European Union

Pursuant to Article 13.14 paragraph 1 of the Free Trade Agreement between the EU and South Korea (EU-Korea FTA)¹ the European Union is requesting consultations with the Republic of Korea (Korea) concerning certain measures, including provisions of the Korean Trade Union Act², which appear to be inconsistent with Korea's obligations related to multilateral labour standards and agreements under the EU-Korea FTA.

The measures at issue include the following:

- Article 2 paragraph 1 of the Korean Trade Union Act defining a “worker” as a person who lives on wages, salary, or other equivalent form of income earned in pursuit of any type of job. This definition, as interpreted by the Korean Courts, excludes self-employed persons (including those working mainly for one employer) as well as dismissed and unemployed persons from the scope of the freedom of association.
- Article 2 paragraph 4 d) of the Korean Trade Union Act stating that an organisation shall not be considered as a trade union in cases where persons who do not fall under the definition of “worker” are allowed to join the organisation.
- Article 23 paragraph 1 of the Korean Trade Union Act stating that trade union officials may only be elected from among the members of the trade union.
- Article 12 paragraphs 1 to 3 of the Korean Trade Union Act, in connection with Article 2 paragraph 4 and Article 10, providing for a discretionary certification procedure for the establishment of trade unions.
- Article 31 paragraphs 2 and 3 of the Korean Trade Union Act and the practice of Korea's Labour Administration to request changes in collective agreements.
- Section 314 of the Korean Criminal Code³ (obstruction of business) and its application by the Korean police and public prosecutor's office to certain peaceful strike actions.⁴

¹ Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, OJEU L 127/68 of 14.5.2011.

² Trade Union and Labour Relations Adjustment Act, Act No. 5310, 13 March 1997.

³ Criminal Code of the Republic of Korea, 3 October 1953.

In the view of the European Union the above measures appear to be inconsistent with Korea's obligations under the EU-Korea FTA, and in particular with Article 13.4 paragraph 3 thereof, where Korea commits to respect, promote and realise, in its laws and practices, the principles concerning the fundamental rights, namely the freedom of association and the effective recognition of the right to collective bargaining, in accordance with the obligations deriving from membership of the ILO and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up⁵.

In addition, Korea's efforts towards ratifying the following fundamental ILO Conventions appear to be inadequate:

- C87 Freedom of Association and Protection of the Right to Organise Convention, 1948;
- C98 Right to Organise and Collective Bargaining Convention, 1949;
- C29 Forced Labour Convention, 1930; and
- C105 Abolition of Forced Labour Convention, 1957.

Indeed, more than seven years after the entry into force of the EU-Korea FTA, Korea has still not ratified the aforementioned four fundamental ILO Conventions. Thus, Korea appears to have acted inconsistently with Article 13.4 paragraph 3 last sentence of the EU-Korea FTA, where Korea commits to make continued and sustained efforts towards ratifying the fundamental ILO Conventions.

The European Union reserves the right to address additional measures and claims under other provisions of the EU-Korea FTA regarding the above matters during the course of the consultations.

The European Union looks forward to receiving Korea's reply to this request for consultations in due course. The European Union is ready to consider with Korea mutually convenient dates for consultations.

⁴ For each of the measures referred to above, this request also covers any further amendments, supplements, replacements, extensions, implementing measures or other related measures.

⁵ Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998 (Annex revised 15 June 2010).