



EUROPEAN UNION

Brussels, 4 July 2019

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

Request for the establishment of a Panel of Experts by the European Union

On 17 December 2018 the European Union (EU) requested consultations with the Republic of Korea (Korea) pursuant to Article 13.14 paragraph 1 of the Free Trade Agreement between the EU and Korea (EU-Korea FTA)¹ 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 consultations took place on 21 January 2019 in Seoul with a view to reaching a mutually satisfactory resolution of the matter. Unfortunately, the consultations did not lead to the matters being satisfactorily addressed and thus failed to settle all the issues raised by the EU. The EU therefore requests that a Panel of Experts be convened pursuant to Article 13.15 paragraph 1 of the EU-Korea FTA to examine the issues that have not been satisfactorily addressed through the consultations.

The measures at issue are the following:

- 1) 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 some categories of self-employed persons such as heavy goods vehicle drivers, as well as dismissed and unemployed persons from the scope of the freedom of association.
- 2) 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.
- 3) 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.
- 4) 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.

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.

Pursuant to Article 13.4 paragraph 3 of the EU-Korea FTA, Korea has committed, in accordance with the obligations deriving from membership of the International Labour Organisation (ILO) and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up³, to respecting, promoting and realising, in its laws and practices, the principles concerning the fundamental rights, including the freedom of association and the effective recognition of the right to collective bargaining.

The EU considers that the restrictive definition and interpretation of the notion of “worker” operated by the measures identified under 1) and 2), as well as the requirement that trade union officials be elected from among trade union members stipulated by the measure identified under 3), are inconsistent with the above mentioned principles of freedom of association and, therefore, with Article 13.4 paragraph 3 of the EU-Korea FTA.

The EU further considers that the discretion accorded by the measures identified under 4) to the administrative authorities when certifying trade unions is also inconsistent with the above mentioned principles of freedom of association and, therefore, with Article 13.4 paragraph 3 of the EU-Korea FTA.

Article 13.4 paragraph 3 last sentence of the EU-Korea FTA further stipulates that Parties will make continued and sustained efforts towards ratifying the fundamental ILO Conventions.

The EU considers that Korea’s efforts towards ratifying the following fundamental ILO Conventions are 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, eight years after the entry into force of the EU-Korea FTA, Korea has still not ratified the aforementioned four fundamental ILO Conventions. Moreover, Korea has not been making efforts towards ratification of the above fundamental Conventions that could be qualified as sustained and continuous over this period. Thus, Korea appears to have acted inconsistently with Article 13.4 paragraph 3 last sentence of the EU-Korea FTA.

The EU looks forward to receiving Korea’s reply to this request for the establishment of a Panel of Experts. The EU is ready to engage with Korea on the selection of the Experts for the Panel.

³ Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998 (Annex revised 15 June 2010).