



Directors General
European Commission
B-1049 Brussels

16 January 2012

Dear Director General,

It has come to our attention that the two following draft Commission proposals are currently being assessed as part of an inter-service consultation:

- 1 – Draft regulation on the exercise of the right to take collective action within the context of the economic freedoms of the single market, in particular the freedom of establishment and to provide services;
- 2 – Draft directive concerning the enforcement of the provisions applicable to the posting of workers in the framework of the provision of services.

I am writing to you to express our deep concerns about these two proposals.

I. Draft regulation on the right to collective action within the context of the economic freedoms

Considering that the Treaty excludes in article 153.5 the right to strike from EU competences, the Monti II proposal can only be justified under article 352 of the EU Treaty as a single market initiative.

Like regulation 2679/98, it should promote cross-border service provision by setting a notification procedure in cases where economic freedoms are hindered by a disproportionate use of the right to strike.

But the Monti II proposal does much more:

1. By stipulating that any collective action would be assumed to be legitimate and lawful under EU law when cross-border elements are lacking or hypothetical. This interferes with the way in which national industrial relations systems organise the right to take collective action.
2. By setting up a notification system for acts or circumstances that may cause serious damage to national industrial relations systems or create social unrest. The proposal gives no indication of such acts or circumstances. This creates legal uncertainty for companies.
3. By establishing a European informal conflict resolution mechanism. Such a system is no realistic in view of the diversity of industrial relations systems in the Member States.



II. Draft enforcement directive on posting of workers

A number of conferences have been organised in the last few years to discuss the type of EU action needed on posting of workers. Like many, BUSINESSEUROPE agrees that EU action is needed to ensure better enforcement of the Posting of Workers Directive. To achieve this, we have advised to the European Commission an EU initiative based on article 197 of the EU Treaty on administrative cooperation.

In its proposal, the Commission comes up with one approach. However, it did not indicate the other approaches that could have been followed. And which would create a lighter burden on European companies' competitiveness and Europe's attractiveness for foreign investments. For this reason, BUSINESSEUROPE calls into question the way in which the impact assessment for this proposal has been conducted.

Our main concern relates to the proposal to achieve better enforcement of the directive by establishing joint and several liability of the main contractor for his supplier(s) in subcontracting chains. This system shifts the duty to enforce rights from public authorities to private companies. It creates legal uncertainty and costs for companies. And it has emerged even though an ongoing Commission study on this issue has not been finalised yet.

In the European context, such a system would clearly go against our growth agenda. Indeed, by breaking the existing level playing field between national and foreign companies, this mechanism would limit cross-border service provision. That is probably why this system was not proposed by Mr Mario Monti in his report prepared last year as part of the measures that could help achieve greater clarity in the implementation of the Posting of Workers Directive.

To conclude, a substantial re-writing of the two proposals is needed to ensure that they respect the principles of subsidiarity and of proportionality. In addition, measures hampering growth which are not indispensable to achieve better compliance with the Posting of Workers Directive should be avoided.

I thank you in advance for taking into account our comments as part of the ongoing inter-service consultation. I am at your disposal for a meeting for any clarifications you want to ask us.

Yours sincerely,

Philippe de Buck