



European Trade Union Confederation (ETUC)  
Confédération européenne des syndicats (CES)

## **ETUC Declaration on the Commission proposals for a Monti II Regulation and Enforcement Directive of the Posting of Workers Directive**

Adopted at the ETUC Steering Committee on 19 April 2012

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The Commission package on the posting of workers adopted on 21 March 2012 does not strike the right balance between protecting workers and facilitating cross-border service provision. The ETUC rejects the proposal for a Monti II Regulation and calls on the Commission to revise the Posting of Workers Directive.

European legislation restricting the freedom to take collective action will never be accepted by the European trade union movement. The right to take collective action is a fundamental right guaranteed by European and international legislation. The Commission's proposal contravenes the EU Charter of Fundamental Rights, the European Social Charter, the European Convention on Human Rights and ILO Conventions 87 and 98.

The ETUC opposes the Monti II Regulation on the following grounds:

- It restricts the right to take collective action;
- It does not ensure that economic freedoms do not take priority over fundamental social rights and that, in case of conflict, fundamental social rights will take precedence;
- It reinforces the proportionality test as developed by the ECJ in Viking which leaves it up to the national courts and ultimately the ECJ to decide if collective action is necessary;
- It reinforces the interpretation given by the ECJ in Viking and Laval and does not solve the problems resulting from the judgments, to which President Barroso committed himself to finding a solution.

The ETUC deplores the minimalistic approach taken by the Commission by proposing an Enforcement Directive instead of a revision of the Posting of Workers Directive itself. Besides falling short of key ETUC demands, such as equal treatment, the proposal will not prevent abuses of workers' rights nor does it clarify the scope of the Posting of Workers Directive.

Furthermore, the Enforcement Directive does not propose effective and dissuasive measures to combat fraud and so called letter-box companies.

The ETUC regrets that the onus is on the Member State of establishment to carry out the control and monitoring, and not the host country in which the posted worker is actually working. The proposed national control measures are too restrictive and not even binding upon Member States. Governments must be free to take other measures than those listed in the Directive.

In order to ensure the compliance of subcontractors with their legal and contractual obligations, the ETUC has requested the introduction of a system of joint and several liability. Although the Commission's proposal foresees joint and several liability limited to the construction sector and direct subcontractor situations, it is undermined by the stipulation that a contractor that has taken due diligence cannot be held liable.

The European Union should commit to the precedence of fundamental social rights over economic freedoms and stop undermining workers' rights such as the right to take collective action and the right to bargain collectively. The ETUC is therefore reiterating its demand for a social progress protocol, to be attached to the treaties.

The ETUC will also put forward a proposal for a social contract for Europe to ensure that all workers can fully enjoy their fundamental rights.