

ETUC resolution Stop the deregulation of Europe: Rethink Refit

Adopted at the meeting of the Executive Committee on 3-4 December 2013

With the publication of REFIT (Regulatory Fitness and Performance: Results and Next Steps) on 2 October 2013, the Commission took yet another step in a process aimed at the deregulation of Europe, the dismantling of legislation protecting workers' rights and the weakening of social dialogue.

The Council decision in December 2011 to exclude micro-enterprises from the scope of the new legislation, unless it could be demonstrated they should be covered, only triggered the next step, which was Top Ten, the infamous Commission consultation where small companies were invited to complain about EU legislation.

Incidentally, the Commission suggested companies complain about directives protecting workers' rights such as the directives on workers' health and safety including, not only REACH (Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals), the Posting of Workers, Working Time, Temporary Agency Work, but also the social partners' Framework Agreement on Parental Leave.

To make matters worse, the Commission is using the results of the consultation to underpin calls for further deregulation. The directives, preselected by the Commission, are now presented as the most burdensome pieces of EU legislation according to SMEs. The Top Ten consultation has created a self-fulfilling prophecy.

This deregulatory drive also seeks to change our perception of the law. Legislation has become synonymous with administrative burdens. Another example is the idea of gold-plating. Member States going beyond the minimum level when implementing a directive are accused of gold-plating. This undermines legislation in the area of social policy and workers' health and safety. They are all minimum directives – that is the whole point. Governments agree on minimum standards, a minimum floor that nobody should go below, but preferably beyond. If having higher standards is seen as gold-plating, there can be no social progress in Europe.

Some policymakers even treat regulation as a zero-sum game by setting net targets for legislation or adhering to the principle of "one in, one out", so that a new piece of legislation, regardless of how important it is, can only be introduced if another one is removed.

Regulatory Fitness and Performance (REFIT)

According to the Commission, the purpose of REFIT is to systematically review EU legislation to ensure that "aims are being met in the most efficient and effective way, to detect regulatory burdens and to identify opportunities for simplification".

In practice, it means that the Commission is withdrawing its proposal for a directive on musculoskeletal disorders and the revision of the Carcinogens Directive - the two key legislative challenges regarding workers' health and safety. According to the European Working Conditions Survey (2010), the gap between national situations is particularly worrying for a large number of indicators. The divide is even sharper within countries. When asked if they will be able to do their current job when they are 60 years old, less than 60% of workers thought they would.

The overall situation has deteriorated for all manual workers. The ETUC urges the Commission to change its policy and to follow the indications proposed by the European

Parliament for revitalising EU health and safety policy. To claim that the crisis renders the adoption of a new strategy pointless is a flawed argument. The experience of other crises shows that they actually force working conditions down so that health and safety at work policies are essential to offset the harm. We urge the Commission to adopt a strategy on health and safety at work before the end of 2013 and to present, without further delay, proposals on the protection of workers against work-related cancers and musculoskeletal disorders. Studies show that the cost of not having any kind of occupational health and safety policy would amount to 3-5 per cent of GDP.

Workers' rights to information and consultation is also targeted by REFIT. The Commission is envisaging a consolidation of the three directives Framework for Information and Consultation, Collective Redundancies and Transfer of Undertakings, which were subject to a so-called fitness check.

The ETUC considers that the (European) minimum standards laid down in the three directives constitute a floor, and not a ceiling, of rights, and continues to be sceptical about a consolidation exercise since the three directives serve different purposes, a general one (establishing a framework for I&C) and specific situations such as mass redundancies and the transfer of undertakings. Furthermore, the three directives each have a different legal basis. The ETUC supports the strengthening of information, consultation and participation rights and is not convinced that this would be achieved by merging the three directives.

Not only is REFIT used as an excuse to get rid of various pieces of legislation, but it is also a serious attempt to destroy the social dialogue and the whole social acquis. By refusing to present the social partner agreement on the Protection of Occupational Health and Safety in the Hairdressing Sector to the Council, the Commission is not fulfilling its function as the guardian of the treaties. It should promote the role of the social partners and respect their autonomy.

Furthermore, President Barroso has himself declared that safety norms for hairdressers are not an issue to be regulated at European level. His personal view is, however, of little relevance. His job is to ensure that social partner agreements are implemented at the joint request of the signatory parties by a Council decision on a proposal from the Commission (Article 155, TFEU).

REFIT also lists ongoing evaluations of social partner agreements such as the directives on part-time work and fixed-term work. The ETUC has already stated that it does not want to introduce any amendments to these directives at this point in time. Moreover, framework agreements negotiated by the social partners do take into account the specific characteristics of SMEs.

The deregulatory agenda is also driven and supported by the European Council. In its conclusions of October 2013, the Council welcomed REFIT and demanded further ambitious steps to make the EU regulatory framework lighter. It will return to this issue at its meeting in June 2014. Meanwhile, the Competitiveness Council met on 2 December 2013 to finalise its conclusions on smart regulation demanding a roadmap to reduce the overall regulatory burden over the next five years.

Trade Union Actions

The ETUC together with its affiliates will have to step up efforts to expose the fact that smart regulation is really about deregulation threatening the autonomy of the social partners, occupational health and safety protection for workers and information and consultation rights. Smart regulation is not about making legislation more effective or making sure that directives are properly implemented in EU Member States. Nor does it consider the benefits of legislation to society at large. Smart regulation is rather, an attempt at rolling back the role of the state in the belief that companies can self-regulate. This has to be stopped.

In the framework of its campaign for “A new path for Europe”, ETUC will fight against REFIT and raise awareness of the issues at stake. In view of the upcoming elections to the European Parliament in May 2014 and the ETUC manifesto, we will inform the candidates of the ETUC position and convince them to support our fight against deregulation. We will also have to engage our members so that they make use of their right to participate in the elections and vote for those candidates that defend workers’ rights.

However, the pressure to deregulate also stems from the national level. A number of governments, including the UK, have taken the lead in pushing for further deregulation. Activities at the national level are particularly important. Affiliates are requested to contact their governments to try to influence their positions. Affiliates are also encouraged to use the ETUC graphics and to organise events with politicians including workers affected by legislation that is under threat, stalled or withdrawn.

At the same time, it should be emphasised that the ETUC is in favour of making regulation more effective. We therefore call on the Commission to divert its focus from reducing legislation and instead improve the quality of it. The Commission and Council should consider how rules and regulations can best be designed to meet their objectives and, in particular, take measures to ensure that EU legislation is properly implemented in the Member States.