



Employment rights in a Europe of open borders

The European Commission has proposed to strengthen social protection for workers temporarily posted abroad – a controversial issue at the intersection of economic freedoms and fundamental rights.

Employment legislation proposals

After repeated [delays](#), on 21 March 2012 the Commission [published](#) two legislative proposals concerning employees temporarily sent to work in another Member State. The aim is to protect these workers' rights and avoid "social dumping", an unfair business advantage that exploits national differences in labour standards. The Commission estimates that out of about one million workers posted in the EU each year, many do not enjoy their full rights such as pay and holidays. Abuses occur in the construction sector especially.

The proposed [Enforcement Directive](#) seeks to resolve problems with the implementation of the 1996 [Directive on posted workers](#), without changing its provisions. The original Directive defines core employment conditions such as minimum rates of pay, holidays, maximum working hours and minimum rest periods, as well as health and safety at work. The new draft would require that workers and employers be better informed about their rights and duties, and defines rules for cooperation among national supervisory authorities. Most crucially, it would make construction companies liable for violations by sub-contractors who post workers abroad.

The related draft [Regulation](#) clarifies posted workers' right to take collective action, including the right to strike. Known as the Monti II Regulation, it states that there is no primacy between the right to take collective action and the freedom to provide services. It aims to end uncertainty about the implications of 2007 rulings by the Court of Justice of the EU in the [Viking Line](#) and [Laval](#) cases. The proposed regulation would also establish an alert mechanism for severe cross-border industrial conflict. It would not affect national laws on striking.

Separately, the Commission is due to present on 18 April 2012 an employment package, "[Towards a jobs-rich recovery](#)", to identify opportunities for job creation, investment in human capital, and promotion of a European labour market.

Stakeholder positions

[Business Europe](#), representing industrial and employer federations, called the proposals "problematic" because they burden companies with the responsibility to monitor sub-contractors' payslips in another language. In addition, Business Europe argued that the right to strike is not an EU competence, and that the draft regulation risks upsetting the balance of industrial relations at national level.

On the other hand, the [European Trade Union Confederation](#) (ETUC) said the proposals were insufficient to address social dumping and the problems brought about by the Viking Line and Laval judgments. ETUC welcomed steps to improve implementation of the Posted Workers Directive but found the Commission's text too weak on contractor liability.

[Analysts](#) view the Commission proposals as part of a drive to deepen the single market and act against Member State infringements, using faster procedures under the Lisbon Treaty.

European Parliament

Adoption of the Monti II Regulation requires unanimity among Member States – some of whom are demanding [revisions](#) – and the consent of the EP. Parliament and Council will co-decide on the Enforcement Directive.

In a February 2012 [debate](#), MEPs questioned Commissioner for employment and social affairs László Andor on delays in finalising the proposals. Commission President José Manuel Barroso had [promised](#) MEPs in 2009 to propose legislation "as soon as possible".

Parliament has previously [urged](#) Member States to enforce the 1996 Directive properly. The EP has also [called](#) repeatedly for EU-level liability, to address abuses in the cross-border sub-contracting of workers.