

## CALL FOR ACTION

The EFBWW Executive Committee:

- Fully supports the ETUC demand to include a Social Progress Protocol as an attachment to the Treaty in connection with the accession of Croatia to the EU.
- Calls on the Commission to introduce a “Monti Regulation” for services, securing the right to collective bargaining and the right to strike within the framework of the free movement of services and the right of establishment. Regulation 2679/98 on the functioning of the internal market in relation to the free movement of goods among the Member States includes a “Monti Clause”, protecting fundamental social rights, including the right to collective bargaining and the right to strike. But there is no corresponding regulation related to services and the right of establishment. This proposed new “Monti Regulation” should be based on Article 352 of the Treaty on the Functioning of the European Union, and be inspired by Article 28 of the EU Charter of Fundamental Rights.<sup>1</sup>
- Reminds the European Court of Justice that the role of trade unions in any democracy is not that of a tool of the state and that by definition trade unions are autonomous organizations to represent the interests of the workers whose demands in the negotiation process with the employer thus cannot be put under a prior obligation to observe a one-sided “proportionality principle” in setting up their demands, without structurally shifting the balance towards the employer’s side.
- Reminds the European Court of Justice that it would be a severe discrimination and human rights violation if trade unions in the country of work are not free to negotiate with an employer that posts workers to their country on an equal footing about all relevant working conditions according to the national law in place, but instead has to observe severe restrictions unknown of in the relevant national law of the country of work, just because the employer is registered in another country and is making use his economic freedoms within the internal market.
- Reminds the European Court of Justice that it would be a severe discrimination and a violation of core labour standards if posted workers could not enjoy the full workers’ rights in the country of work, which means to be represented by a union under the same conditions as resident workers including the possibility to demand and negotiate a full collective agreement that covers every item that is usually subject of collective agreements in the country of work and is not restricted to the list of minimum conditions in the Posting Directive. Reminds the European Court of Justice that it

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<sup>1</sup> Mr Monti concludes in the report “A New Strategy for the Single Market” that there **“is a broad awareness among policy makers that a clarification on these issues (the right to take industrial action) should not be left to future occasional litigation before the ECJ or national courts. Political forces have to engage in a search for a solution, in line with the Treaty objective of a “social market economy”** (p 69). However, Mr Monti’s proposal for an “arbitration system” involving the Commission and a prior notification system (p 71) is strongly denounced by the EFBWW.

would be absurd if posted workers through their union in the country of work would not be allowed to negotiate about conditions such as accommodation, travel costs, allowances, merely because these items are not mentioned in the Posting Directive

- Reminds the Commission and the Council that the European Parliament in its Resolution *Challenges to Collective Agreements in the EU* expressed regret that the ECJ Rüffert ruling failed “sufficiently to take into consideration ILO convention 94 and is worried that the application of this Convention in the Member States concerned might be in conflict with the application of the PWD”.
- In line with the demand from the European Parliament, calls on the Commission “to clarify this situation as a matter of urgency and to continue to promote the ratification of this Convention in order to enhance further the development of social clauses in public procurement regulations, which itself is an aim of the Public Procurement Directive”<sup>2</sup>
- Demands that the European Public Procurement Directives are clarified to allow Member States to fulfil their international obligations according to ILO Convention 94.
- Urges all Member States of the European Union to ratify ILO Convention 94.
- Takes note of, and fully support, the conclusions contained in the Report of the Committee of Experts on the Application of Conventions and Recommendations presented at the International Labour Conference, 99th Session, 2010.
- Takes note of, and support, the initiative to open negotiation for the European Union's accession to the European Convention on Human Rights (ECHR). In this process, it is a *sine qua non* that the provisions of the European Convention are not watered down.
- Calls on the Commission to integrate a fundamental social rights perspective within the framework of its social impact assessment, in particular as regards the following legislative and non-legislative initiatives in the Commission’s work programme:
  - i. The “Barroso-Regulation” – or any other legislative initiative deemed necessary – on the interpretation and the implementation of the Posting of Workers Directive. In this initiative, measures combating bogus self-employment should be included.
  - ii. The revision of Regulation (EC) No 44/2001 on Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters (Brussels I);
  - iii. The Communication on the Fundamental Rights policy;
  - iv. The Commission’s Communication on Corporate Social Responsibility;
  - v. The Commission’s Green Paper on the use of Alternative Dispute Resolution in the EU, and in particular in the Commission’s analysis of the issue of policy coherence in the field of collective redress, which should not only include disputes on consumers’ rights and competition law, but should in particular include labour law, due to the precariousness of many employment relationships

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<sup>2</sup> European Parliament resolution of 22 October 2008 on challenges to collective agreements in the EU (2008/2085(INI), article 23