



ROYAL NORWEGIAN
MINISTRY OF LABOUR

*The Royal Ministry of Labour
The Minister*

László Andor
European Commissioner for Employment, Social Affairs
and Inclusion
European Commission
B - 1049 Brussels
Belgium

Your ref

Our ref

Date
03.07.2012

Proposals for an Enforcement Directive and Monti II-regulation

Dear Commissioner Andor,

As the Norwegian Minister responsible for labour market and labour law issues, I would first of all like to express my interest in the Commission's recent proposal for a Directive on the enforcement of directive 96/71 concerning the posting of workers in the framework of the provision of services (Enforcement Directive) and the proposal for a Regulation on the exercise of the right to take collective action in the context of the freedom of establishment and the freedom to provide services (Monti II Regulation).

Over the last few years, Norway has received a proportionally large number of posted workers from other countries. The protection of these workers, as well as securing the proper functioning of the Norwegian labour market by combating social dumping and enforcing the obligations according to the Posting of Workers Directive, has been, and still is, of high priority for the Norwegian Government. In order to ensure this, the Government has launched two action plans against social dumping in 2006 and 2008, and has introduced several measures to ensure compliance with the Directive. One of these measures being joint and several liability for minimum wages according to generally applicable collective agreements.

In the light of the importance of this work, I certainly welcome the initiative for an Enforcement Directive and the aims expressed in the proposal. Ensuring full compliance with the Posting of Workers Directive is crucial, both for the protection of workers and fair competition for businesses. I do however have some important concerns regarding the proposal, and in particular to the proposal to limit the control measures the Member States can have to a selected handful.

From our experience, the approach in preventing unfair competition and abuse of fragile workers should be a proactive one, and this has also been the philosophy behind our action plans against social dumping. Although we have continually worked on this for some years, it is my view that this should be continuing and ongoing work, and where the EU/EEA Member States can learn from each other. In my view, the control measures designed to ensure compliance with the core conditions in the Posting of Workers Directive should be viewed in the light of mutual experience.

The limiting of the list of permissible control measures at a point of time where one has simply established that solving the problem of non-compliance with the Directive is the main action which should be taken, therefore seems premature and not very purposeful, and could lead to increasing challenges to our efforts to combat social dumping instead of strengthening such work, and might even in a Norwegian context hamper the purpose of the proposal.

In addition, the list of measures only takes into account measures which have already been deemed in accordance with EU law by the Commission and the European Court of Justice, and not measures which have already been assessed by The Efta Surveillance Authority (ESA), such as controlling- and information obligations for trade unions and contractors in subcontracting chains.

It is important that the Enforcement Directive is also viewed in the light of the situation in, and the effects on the EFTA/EEA-states, as it is my preliminary view that the proposal is EEA relevant.

The EU/EEA Member States should jointly and continually be working on improving the enforcement of the Posting Directive. In my clear view, more efficient and less burdensome methods could and should still be explored.

Thus, my conclusion is that the list of control measures in the Enforcement Directive must be kept open, in order to allow for other control mechanisms than those currently in the list in the light of future developments and experience, without prejudice to the general criteria of EEA law as regards restrictions.

Concerning the so called Monti II Regulation, I agree with the national Parliaments that have 'raised the yellow card' because they do not find the proposal to be in accordance with the principle of subsidiarity, and have also pointed out that the EU lacks competence to regulate on the right to take collective action. From a Norwegian point of view, it should be made clear at EU level that that the right to pursue and defend collective rights is not to be affected by the economic freedoms, and should not be regarded as a restriction in the sense of EU law.

This could be a way to reinforce the role of the social partners, and thereby promote social dialogue and the social dimension of the Single Market which is of particular importance in a time of economic difficulties.

Yours sincerely,

Hanne Inger Bjurstrøm