



ECA
Piloting Safety

**ECA CONFERENCE STATEMENT
ON THE PROPOSED MONTI 2
REGULATION**

Paris, 05 May 2012

**Pilots reject the proposal to limit the right to take collective actions
through the judicialisation of industrial conflicts**

The Conference of the European Cockpit Association,

Having met in Paris, on the 5 May 2012,

Having discussed the “European Commission’s proposal for a Regulation on the exercise to take collective action within the context of the freedom of establishment and the freedom to provide services,” the so called Monti 2 proposal,¹ the ECA Conference notes,

That the current EU legal framework does not provide sufficient protection for the exercise of fundamental rights for European workers notably regarding the exercise of collective actions;

That the proposed Monti 2 fails to fulfil its declared objective to clarify the legal situation of the exercise of the fundamental rights after the Viking and Laval cases. The proposed text only repeats general principles ignoring the legislative changes brought in by the Lisbon Treaty without clarifying anything;

¹ Proposal for a COUNCIL REGULATION on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services, Brussels, 21.3.2012 -COM(2012) 130 final

That the Commission's failure to clarify in this proposal the extent under which trade unions can make use of their fundamental right to strike creates legal uncertainty and risks of systematic legal challenges and claims resulting in a disproportionate limitation of the right to take collective actions and therefore denying European employees their fundamental rights;

That the International Labour Organisation's committee of experts already expressed that the current legal uncertainty and judicialisation of the industrial conflicts resulting from the Viking and Laval cases has a "significant restrictive effect on the exercise of the right to strike in practice in a manner contrary to the Convention"² and that resulting damage claims on trade unions' collective actions threaten the existence of trade unions and render industrial actions "irrelevant and meaningless."³

That, according to the Commission's own analysis, the absence of legal clarification would have a negative impact on the Single Market and on the protection of workers' rights;

That the Commission's Monti 2 proposal maintains and consolidates an unequal treatment of fundamental rights by assuming that the exercise of economic freedoms is respectful of fundamental rights while fundamental rights are de facto considered a limitation of economic freedoms that need to be justified;

That the Monti 2 regulation will provoke a systematic obligation to justify the proportionality of industrial actions before courts, making the exercise of collective action impossible due to the often long procedures and the risk of large damage claims. This threatens the existence of trade unions and gives an unfair advantage to employers in the conflicts with their employees;

That fundamental rights and economic freedoms shall be treated in the same manner. Today, the exercise of economic freedoms is considered legal if it complies with the corresponding legal requirements and cannot be restricted unless on grounds of public policy, public security or public health. The same treatment shall be granted to the exercise of the right to collective actions: collective actions shall be considered legal if the national procedures and deadlines have been followed and cannot be restricted unless justified on grounds of public policy, public security or public health;

The Conference of the European Cockpit Association therefore agreed to:

Reject the European Commission's Monti 2 proposal for a Regulation on the exercise to take collective action within the context of the freedom of establishment and the freedom to provide services.

² International Labour Organisation convention N°87 on Freedom of Association and Protection of the Right to Organise Convention, 1948

³ Observation (CEACR) - adopted 2009, published 99th ILC session (2010) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - United Kingdom

Request the establishment of an appropriate legal framework where workers and their fundamental rights are not compromised by economic interests;

Urge the EU and its Member States to comply with their obligations under the ILO Conventions and notably with Convention 87 on Freedom of Association and Protection of the Right to Organise Convention;

Ask the Commission to recognize the legality of all industrial actions carried out in conformity with the appropriate national laws;

Consequently, to seek a Directive or Regulation, either via the Social Dialogue, engagement with the European Parliament, or from the Commission, to clarify that the ECJ does not have the remit to rule on an individual industrial conflict, only on compliance of the relevant national law with EU laws. Since the EU does not have competence over Right to Strike legislation, this will include clarification that any collective action fully complying with national laws shall be deemed legal, and that the Freedoms of Establishment and Service provision will need to be considered without reference to legal collective actions. It is suggested that due to the Aviation sector's inherent trans-national nature, this piece of legislation should be sought for introduction to the sector as a priority, the sector being an ideal arena for a pilot or trial before wider application.

Further, to support ETUC's proposal to establish a Social Progress Protocol. This Protocol says among other things that:

- [the EU] ensures the effective exercise of the fundamental social rights and principles, and in particular the right to negotiate, conclude and enforce collective agreements and to take collective action,
- [the EU] in particular protects workers by recognizing the right of workers and trade unions to strive for the protection of existing standards as well as for the improvement of the living and working conditions of workers in the Union also beyond existing (minimum) standards, in particular to fight unfair competition on wages and working conditions, and to demand equal treatment of workers regardless of nationality or any other ground
- Nothing in the Treaties, and in particular neither economic freedoms nor competition rules shall have priority over fundamental social rights and social progress as defined in Article 2. In case of conflict fundamental social rights shall take precedence.

* * *

For further information, please contact:

Philip von Schöppenthau, ECA Secretary General, Tel: +32 2 705 32 93
Nico Voorbach, ECA President, Tel: +32 32 491 378 982

Note to editors:

ECA is the representative body of over 38,000 pilots from across Europe, striving for the highest levels of aviation safety and fostering social rights and quality employment for pilots in Europe.

ECA Website: www.eurocockpit.be

European Cockpit Association AISBL

Rue du Commerce 20-22, 1000 Brussels, Belgium | T +32 2 705 32 93 | F +32 2 705 08 77 | eca@eurocockpit.be | www.eurocockpit.be