



European Trade Union Confederation (ETUC)
Confédération européenne des syndicats (CES)

Brussels, 1 December 2011

BS/VN/aa

To:

The EU Heads of State and Government

Dear Heads of State and Government,

The economic situation remains extremely serious and will require swift measures by the European Council in line with the ETUC declaration that was adopted by the Executive Committee on 19-20 October, which we hope that you have received. The crisis will obviously be one of the major items on the agenda of your meeting on 8-9 December, but I understand that you will also discuss the report from the European Commission on “Minimizing regulatory burden for SMEs – adapting EU regulation to the needs of micro-enterprises”.

I am writing to express our deep concerns about a number of the proposals made in the report. Although there may be reasons for excluding micro-enterprises from certain legal acts or applying lighter requirements, the ETUC opposes the general objective of exempting small businesses from legislation. We cannot agree to the idea of reversing the burden of proof, that “all future legislative proposals will be based on the premise that in particular micro-entities should be excluded from the scope of the proposed legislation unless the proportionality of their being covered can be demonstrated”. What such a “proportionality test” would mean in practice needs further clarification. It appears that the Commission is only adding to the complexity and regulatory burden by creating additional tests and tailor-made solutions for SMEs.

The ETUC is also concerned about the reference to eliminate so called gold-plating, which is the notion that Member States are going beyond what is necessary to implement EU law. The Commission even intends to create a scoreboard which would show where gold-plating is done at the national or regional level. How the Commission would evaluate this gold-plating remains unclear. Furthermore, EU legislation is normally based on a minimum approach, and not maximum harmonisation, in order to set a minimum floor that Member States cannot go below, eg in the area of social policy. Therefore, Member States should be encouraged to go further than the minimum standards and not criticised for applying higher standards.

Typically, the pieces of future legislation identified by the Commission in Annex 2 for exemptions or lighter regime primarily concern social policy and are not only inappropriate (any review of legislation concerning employment and social policy must involve the social partners as provided for by the Treaty), but also dangerous from a worker’s health and safety point of view.

The ETUC has repeatedly argued that exempting small companies carrying out low risk

activities from producing a written risk assessment will increase the exposure of workers to risks arising at the workplace. All available data suggest that the risks are greater in micro-enterprises, which constitute the bulk of all European enterprises. Moreover, the Commission has not offered a definition of what they mean by low risk. This would actually require a prior risk assessment. An activity may be low risk in terms of accidents, but high risk in terms of psychosocial factors. Besides, the cost of excluding micro-enterprises should be calculated with regard to increased risks of injury and other health and safety problems.

The report also states that the Commission is going to consider the possibility of having a lighter regime for or exempting small companies from the upcoming enforcement Directive of the Posting of Workers Directive and the Directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment. Exempting micro-enterprises from these two new legislative instruments would make it impossible to ensure equal treatment of posted and migrant workers and would further undermine the objective of the Posting of Workers Directive to protect the rights of posted workers. Furthermore, this would introduce discrimination between those companies that are covered by the directive and those that are not.

We believe that the proposals developed in this report need further discussion and clarification before they can be put to the Council. The social partners should be invited to present their views on the proposal to exclude 80-90 per cent of all enterprises from EU legislation.

Yours sincerely,



Bernadette Ségol

Copy to:

László Andor, European Commissioner for Employment, Social Affairs and Inclusion
Pervenche Berès, Chair of the Employment and Social Affairs Committee
Alejandro Cercas, Employment and Social Affairs Committee Coordinator
Marian Harkin, Employment and Social Affairs Committee Coordinator
Jean Lambert, Employment and Social Affairs Committee Coordinator
Klaus-Heiner Lehne, Chair of the Legal Affairs Committee
Jo Leinen, Chair of the Environment, Public Health and Food Safety Committee
Elisabeth Morin-Chartier, Co-Chair of the Trade Union Intergroup
Csaba Öry, Employment and Social Affairs Committee Coordinator
Evelyn Regner, Vice-Chair of the Legal Affairs Committee
Herbert Reul, Chair of the Industry, Research and Energy Committee
Bernadette Vergnaud, Vice-Chair of the Internal Market and Consumer Protection Committee
Gabriele Zimmer, Employment and Social Affairs Committee Coordinator