

To the attention of:

Mr Thierry Breton
Commissioner for the Internal Market

Mr Nicolas Schmit
Commissioner for Jobs and Social Rights

European Commission

[Letter sent by e-mail]

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SMEI must respect fundamental trade union rights

Dear Commissioner Breton,
Dear Commissioner Schmit,

On behalf of the European Trade Union Confederation, I write to you regarding the upcoming proposal for a Regulation for a **Single Market Emergency Instrument**, foreseen for 13 September 2022.

The ETUC wishes to express its **strong concerns** regarding the SMEI in the light of fundamental trade union rights, in particular the right to take collective action, including the **right or freedom to strike**.

We understand that the Commission through the SMEI proposes to **repeal** the 'Strawberry Regulation' 2679/98 on the functioning of the internal market in relation to the free movement of goods among the Member States. At the same time, the SMEI proposal does not seem to foresee any similar **safeguards** to ensure the respect of trade union rights, as set out in Article 2 of the said 'Monti I Regulation':

This Regulation may not be interpreted as affecting in any way the exercise of fundamental rights as recognised in Member States, including the right or freedom to strike. These rights may also include the right or freedom to take other actions covered by the specific industrial relations systems in Member States.

In this context, we also wish to recall the highly **controversial** 2012 proposal for a 'Monti II Regulation' regarding the freedom to provide services, which ultimately had to be withdrawn by the Commission. The ETUC will continue to oppose any such attempts.

Any lawful strike action carried out by trade unions must not in any way be considered as a crisis under the SMEI, and cannot be considered as a legitimate reason to trigger a Single Market emergency response. Article 28 of the Charter of Fundamental Rights of the European Union explicitly guarantees the right to collective bargaining and action, including workers' right to strike to defend their interests. Article 153(5) of the Treaty on the Functioning of the European Union explicitly excludes the right to strike from the legislative competences of the EU.

A strike cannot be considered as an exceptional, unexpected and sudden event for the purposes of the SMEI. As notably confirmed by the Court of Justice of the European Union in case C-28/20 of 23 March 2021, a lawful strike action cannot be

considered as such an extraordinary circumstance. The modalities and limits for the exercise of collective action, including strike action, come under national laws and practices alone.

Likewise, **any measure or action undertaken by Member States or economic operators under the SMEI must not be used to circumvent or undermine directly or indirectly a collective action** undertaken by workers and trade unions to defend their economic and social interests through the exercise of their fundamental rights. The right or freedom to strike is something all Member States must both permit and make possible in accordance with their international human rights commitments under ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise, the European Convention on Human Rights, and the European Social Charter.

Crises preparedness and response must never be used as means to undermine or set aside fundamental rights. The COVID-19 pandemic and the war in Ukraine are important reminders of such risks. The respect for fundamental labour rights is fundamental to the EU social market economy, and can never be treated as an obstacle to the functioning of the Single Market.

To tackle the crises of tomorrow, trade unions must be part of the solution. The elaboration and implementation of the SMEI will require full respect for the autonomy of social partners and their effective involvement throughout the process.

For all these reasons, the ETUC calls on the Commission to strengthen the fundamental rights **safeguards** in the SMEI, in particular when it comes social, workers' and trade union rights. First of all, this necessitates a **clarification** that a strike action cannot be considered as a crisis for the purposes of the SMEI. Secondly, any measure triggered under the SMEI must not be used to undermine such strike action. All this at the very least requires the introduction of a so-called '**Monti clause**' similar to 'Article 2 of the "Strawberry Regulation'.

The ETUC urges the Commission to **remedy these outstanding fundamental rights concerns**, in order to honour its own obligations under the Treaties. We will closely scrutinise the final SMEI proposal in the light of the issues I have raised in this letter, as they will be decisive for our overall assessment and support for the SMEI.

I thank you for your consideration and look forward to receiving your reply.

Yours sincerely,



Luca Visentini
ETUC General Secretary