



EUROPEAN COMMISSION

Brussels, 15/03/2013
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Dear President,

The Commission would like to thank you for the Opinion on the Commission proposal for a 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 {COM(2012) 130 final}.

In May 2012, following reasoned Opinions adopted by 12 national Parliaments and representing a total of 19 votes, the "yellow card" mechanism according to Protocol n°2 of the TFEU was triggered in relation to the abovementioned Commission proposal. The Commission has carefully assessed the arguments put forward by national Parliaments in their reasoned opinions, taking note that the concerns expressed relate in particular to the added value of the draft Regulation, the choice of the legal basis, the EU competence to legislate on this matter, the implications of the general principle included in Article 2 of the draft Regulation and the references to the principle of proportionality in Article 3(4) and in recital 13 of the draft Regulation, equal access to dispute resolution mechanisms and the alert mechanism. The Commission has not found, based on this assessment, that the principle of subsidiarity has been breached.

At the same time, the Commission has taken careful note of the views expressed as well as the state of play of the discussions on the proposed Regulation among relevant stakeholders, in particular the European Parliament and Council. Against this background, the Commission concluded that the proposal was unlikely to gather the necessary support and, after having informed national parliaments and the EU legislator of its intention, withdrew the proposal on 26 September.

The aim of the Commission proposal was to clarify the general principles and applicable rules at EU level with respect to the exercise of the fundamental right to take collective action within the context of the freedom to provide services and the freedom of establishment, including the need to reconcile them in practice in cross-border situations. The Commission believes that this cannot be achieved by the Member States alone and requires action at European Union level.

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Given the absence of an explicit provision in the Treaty, the proposed Regulation was based on Article 352 TFEU. It is true that Article 153(5) TFEU excludes the right to strike from the range of matters that can be regulated across the EU by way of minimum standards through Directives. However, Court rulings have clearly shown that the fact that Article 153 does not apply to the right to strike does not exclude collective action from the scope of EU law.

The Commission considers that a Regulation would have been the most appropriate legal instrument to clarify the general principles and applicable rules at EU level in order to reconcile the exercise of fundamental rights with the economic freedoms in cross-border situations. Directly applicable, the proposed Regulation would have reduced regulatory complexity and offered greater legal certainty for those subject to the legislation across the Union by clarifying the applicable rules.

Moreover, the proposed Regulation would have recognised the role of national courts in establishing the facts and ascertaining whether actions pursue objectives that constitute a legitimate interest, are suitable for attaining these objectives, and do not go beyond what is necessary to attain them. It would equally have recognised the importance of existing national laws and procedures for the exercise of the right to strike, including existing alternative dispute-settlement institutions, which would not have been changed or affected by the proposal. Indeed, the proposal would not have created an obligation to introduce such a mechanism for the informal resolution of labour disputes at national level which could lead to some form of pre-judicial control over union actions (as suggested in the 2010 Monti report), instead indicating the role of alternative informal resolution mechanisms that exist in a number of Member States.

The Commission hopes that these explanations serve to clarify the Commission's position on this matter and looks forward to continuing the dialogue with the Bundesrat on this and other matters.

Yours faithfully,

*Maroš Šefčovič
Vice-President*