PARLAMENTO
DE EXTREMADURA

QUESTIONNAIRE ISSUED BY MR HUTCHINSON, CoR RAPPORTEUR FOR THE CONSULTATION ON THE MONTI II REGULATION

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On behalf of: **(name of local or regional authority)**	ASSEMBLY OF EXTREMADURA
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1. Would you agree with the line taken in my working document (attached), i.e. that the legal basis of Article 352 TFEU chosen by the European Commission is not appropriate since "the right to strike is an inviolable principle enshrined in the Charter of Fundamental Rights and the provision governing this specific subject matter, Article 153 (5) of the Treaty on the Functioning of the EU, explicitly excludes the right to strike from the scope of EU legislation"?

Effectively, we concur that the legal basis of Article 352 TFEU is not appropriate as it runs counter to the provisions of Article 153 TFEU.

However, this shared view only relates to the right to strike, and not to all the aspects concerning social conflict measures.

In this regard, the consultation on the Monti II regulation is geared towards the 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; therefore, although striking is one means of collective action, it is not the only one.

Freedom of establishment and the freedom to provide services are part of the fundamental principles of EU law. Restricting these freedoms would therefore only be acceptable if in pursuit of a legitimate goal in accordance with the Treaty and on imperative grounds of general interest. In other words, any restriction should be sufficient to reach the stated goal but should not go beyond what is strictly necessary to achieve this.

Consequently, given that Article 153 TFEU does not exclude collective action measures from European legislation, we understand that Community legislation is possible thereon, with the exclusive exception of the right to strike.

2. Although the right to strike is often regarded as a matter of national competence, in your view, which specific aspects are relevant at local and regional level and could justify an interest from local and regional authorities in this subject area?

As stated above, the right to strike is among the so-called social rights, rights to take social or collective action; therefore, to understand their meaning and the extent of their impact, consideration must be given to the social and labour arrangements in the area in question.

In this context, the labour fabric of the EU countries comprises a varied mix of contracts, hours, wages, trade union forces, social models, etc. which mean that each country may have different needs, which should not be confined within an inflexible framework, and taking account of every specific social feature.

Indeed, any initiative in this field should respect not only the autonomy of the social partners but also the different social models and the diversity of labour relations systems in the Member States.

3. Were you consulted by your national parliament during the elaboration phase of its position/ reasoned opinion, when relevant?

No.

4. In your opinion, does the use of Article 352 TFEU in itself entail a risk as far as respect of the subsidiarity principle is concerned? Do you believe that this provision should be revised/amended in the future?

In principle, yes, as it allows for the application of this article in order to legislate on aspects that, when taken individually, would be covered by the subsidiarity principle.

It should be revised in order to give greater value to the subsidiarity principle.

5. What lessons should be drawn for the future from the first "yellow card"?

Although the "yellow card" mechanism had not been used before, it has become clear that when necessary, as with this proposal, certain national parliaments have used it to emphasise their rejection of the proposal.

However, the yellow card only signifies a request for reconsideration, so the proposal can be maintained, amended or abolished, which illustrates the non-binding nature of the card.

One lesson to be learned is that when so many national parliaments have been united in issuing a yellow card, it should have greater weight.

6. What added value do you see in such a regulation in light of ECJ decisions on the matter?

The added value of this regulation lies clearly in the fact that it reiterates the provisions already laid down by the ECJ in terms of protecting and respecting the social purpose underpinning the EU.

It recognises that the right to take collective action, including the right to

strike, is a fundamental right that forms an integral part of the general principles of EU law, compliance with which is guaranteed by the Court of Justice.

In this regard, a certain harmonisation of social conflict measures is necessary, with a view to ending particular situations concerning the mobility of workers that carry out specific practices which should be eradicated.

However, the added value is lost if the specific social features of each country are not taken into account, as seems to be the case here.

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