

# Challenging Europe: a view from RMT

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## Developments in European Employment Law

A one-day conference organised by The Institute of Employment Rights

Wednesday 4th July 2012 - 9.30am to 3.45pm at the Adelphi Hotel, Liverpool

1. The debate on EU employment law in UK trade unions has been dominated by false perspectives for 'social Europe';
2. RMT representing transport and offshore energy workers has developed a view of employment law attuned to the challenges to collective rights and bargaining posed by globalisation, 'free movement' and the weakness of national legislation;
3. Liberalisation policies driven by EU institutions have impacted transport workers and 'exempted' workers in offshore sector particularly;
4. ECJ decisions in the Viking quartet have confirmed the neoliberal mission of the EU;
5. Monti II regulates national courts to apply the most damaging, anti-worker aspects of ECJ decisions;
6. RMT calls for a trade union break with the EU as a step to restoring collective and individual workers' legal rights.

## The debate on EU employment law in UK trade unions has been dominated by false perspectives for 'social Europe':

The Eurozone crisis exposed the priority of the most powerful EU member states to protect their own banks by demanding austerity measures from Estonia to Italy, from Ireland to Greece. Moreover, EU institutions' dogmatic and ideological 'supply side' policies of public austerity, business deregulation, wage, pensions and job cuts to stimulate 'competitiveness' in world markets are leading to a global economic depression more severe, prolonged and profound even than that of the 1930s.

In this new reality 'Social Europe' launched 25 years ago is disappearing before our eyes. 'European social dialogue' and 'partnership' have been replaced by attacks on fundamental rights of workers to strike. The right of trade unions to engage in collective bargaining is overruled by technocratic fiat, enforced by decisions of the European Court, regulations such as 'Monti II'<sup>1</sup>

## The conceit of 'Social Europe'

'Social Europe'<sup>2</sup> advocates claim its roots lie in (1957) Treaty of Rome commitments to equal pay. However, these commitments had negligible impact for 15 years until national legislation was introduced from the early 1970s as a result of social and political struggles for women's equality.

Jacques Delors, economics and finance minister in Mitterrand's first government from 1981–1983, and economics, finance, and budget minister from 1983–1984, drew the lesson from the failed Keynesian re-launch of the French economy that reflationary policies were impossible in the face of

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<sup>1</sup> EUROPEAN COMMISSION, '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 2012/0064 (APP), [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2012/com\\_2012\\_0130\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2012/com_2012_0130_en.pdf)

<sup>2</sup> Lord Monks, 'Social Europe RIP?', in 'Single Market, Equal Rights? – UK Perspectives on EU Employment and Social Law' (Adam Hug and Owen Tudor, eds), The Foreign Policy Centre, February 2012  
<http://fpc.org.uk/publications/singlemarketequalrights>

international markets. As president of the European Commission from 1985 Delors pursued a goal of **reconciling social democracy to market forces**, advocating a pause in social policies and acceptance of market economics by European social democrats in order to espouse a '**social market**' ideology. Delors favoured French membership of the European Monetary System (EMS), not simply as an expression of deeper European integration, but as a tool to guarantee **priority for monetary stability** over left-wing social spending policies.

This period was marked by historic defeats for organised labour across Europe as post-war (KWS) models, which focused on full employment and rising wages were dismantled. Delors' conceit was that socially acquired gains of post-war societies achieved through social struggles in western European national states, would be replaced with an alternative 'Social Europe'.

This **European Social Model** based on 'partnership' expressed through **tripartite 'social dialogue'** between representatives of employers, workers and EU institutions targeted inflation over unemployment, building consensus for 'wage moderation' and 'flexible labour markets'. The economic objective was the need to restore competitiveness of European firms, which had lost market share to Japan and the USA and in the long-term to restore Europe's dominance in world markets, which had prevailed up until World War II.

Italy and Germany, pursued this using Keynesian corporatist arrangements, notably the post-war industrial relations institution of 'co-management' through Works Councils, imposed on West Germany by the victorious Allied Powers after 1945. In Britain, change came through brutal confrontation, defeat and shackling of organised labour by the state under the Thatcher, Major and Blair governments. Yet, common to both was the invocation of 'Social Europe' as a mechanism for ending "the social bonds and obligations of the Keynesian 'Golden Age'." <sup>3</sup>

EU policies for financial **liberalisation of markets** leading to privatisation of public services all came about as a result of decisions by national governments implemented within the framework of the European Single Market (accelerated after the signing of the **1986 Single European Act** – memorably described as "*the Thatcherisation of Europe*") and with the help of the European Commission in order to limit the possibilities for opponents to mobilise at the national level.

### **Social Europe's leaders**

Europe's 'good pupils' (Germany and Netherlands) in reality used **anti-social growth models**. In Germany, wage moderation the government secured from unions representing workers in export industries was critical to the country's successful growth after the downturn of the early 2000s.

Similar social partnership policies sacrificing job security for growth, led the Netherlands to become the EU member state with the lowest unemployment, but also the highest proportion of workers on fixed-term (i.e. temporary work) contracts in Europe.

These growth models supported Eurozone average annual GDP figures but created conflict between core member states (Benelux, Germany, Austria) able to achieve internal competitive devaluations through investment in new productive capacity allied with low labour costs and those, in the Eurozone periphery (Ireland and Spain), where cheap credit-fuelled growth led to asset inflation expressed through a property market bubble.

We see these asymmetries reflected in the figures for **average household disposable income as a percentage of annual growth** provided by the OECD for the period 2000-2008; **Germany (0.6%), Netherlands (1%), Spain (3.1%), Ireland (2003-2008 - 3.8%)**.

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<sup>3</sup> Chris J Bickerton, '*Anti-Social Europe*' Le Monde Diplomatique (English Edition), August 2011

<http://mondediplo.com/blogs/anti-social-europe>

### **'Anti-social Europe'**

**European monetary union** was an extension of this **anti-social European growth model**: by preventing countries from using **currency devaluations** to regain competitiveness, all pressure for adaptation was transferred to labour markets, i.e. **into downward pressure on wages** and in particular onto the social wage (including pensions, retirement, training and job security).

Post-2008, with EU member states' fiscal resources tied up in bank bailouts, the reality of this transfer has begun to bite. Labour market reform is now the main tool available to policymakers today, with predictable consequences politically and socially. Protests in European capitals, from Athens to Madrid, have become a regular feature of European news in 2011, whilst policymaking at the European level, isolated from protests and complaints of national populations, has intensified.

The pretence of 'social Europe' is being rapidly replaced by an overt and distinctly 'anti-social Europe' characterised not by social partnership, but social dumping as EU rules and ECJ judgements drive an accelerating race to the bottom in jobs, wages and conditions. European TUC<sup>4</sup> general secretary, Bernadette Segol admitted in June 2011: "*cuts in salaries, cuts in public services and weakening collective bargaining rights are all on the agenda*".

### **RMT representing workers transport and offshore energy has developed a view of employment law informed by challenges to collective rights and bargaining posed by globalisation, EU 'free movement' and weak national legislation:**

At the time of the passage of the **1968 Race Relations Act** there were three exceptions to the general principal of non-discrimination on racial grounds. Shipowners could:

1. refuse to employ a person on board a ship if this would result in persons of different colour, race or ethnic or national origin being compelled to share sleeping, eating or sanitary accommodation.
2. discriminate in such a way as not to force passengers of different colour, race or ethnic or national origin to share sleeping cabins.
3. engage seamen abroad at lower rates than and on different terms from United Kingdom domiciled seamen.

The **1976 Race Relations Act** outlawed the first two exceptions despite shipowner opposition. A subsequent Working Group recommended wage discrimination be outlawed over five years. The Labour Party maritime transport strategy, 'Full Steam Ahead' in 1993 stated that discrimination, applied to seafarers on UK-registered ships, would not be tolerated in an egalitarian society: 'Labour is pledged to the principle of pay parity and harmonisation of working conditions for all seafarers on UK flagged vessels in accordance with the European Social Charter and new employment standards will apply to seafarers, including Labour's proposed minimum wage'.

### **Some case studies of exploitation in the maritime sector**

UK shipowners are intent on reducing numbers of UK seafaring ratings as quickly as possible.

- Bibby International ship, the *Baltic Eider*, was sold to German financiers in early 1999 and then chartered back to its previous owners Andrew Weir. The crew were never advised. On Wednesday 7 April 1999 the crew were advised by letter sent on Tuesday 6 April, a day after the Easter holiday that they were to be dismissed. No consultation was undertaken

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<sup>4</sup> Founded in 1973, the ETUC represents 84 trade union organisations in 36 European countries, plus 12 industry-based federations.

with RMT. UK seafaring ratings were dismissed and replaced by Russian nationals without any opportunity to present a case for retaining their jobs. The change of crew took place in Amsterdam and the crew members on leave had to travel to the Port of Felixstowe to pick up their personal belongings. The ship was registered in the Isle of Man whilst the employer, Bibby International Services, had their operation registered in the Cayman Islands. Baltic Eider crew had previously assisted in the deployment of the 7th Armoured Brigade to the Gulf during the War with Iraq. Their compensation amounted to 60 days notice and a mere 20 days compensation payment.

- In June 1999 Serac Maritime Crewing Ltd dismissed RMT members and replaced them with Filipino seafarers. They were unceremoniously dumped in Italy. Subsequent claims for redundancy payments went unheeded.
- The largest UK employers, **P&O** and **Stena**, have dismissed RMT members in controversial circumstances. In October 1999 **P&O European Ferries (Irish Sea) Ltd** dismissed 22 UK seafaring ratings. The tactics employed by the company were particularly underhand. After being evicted from the freight ships two years previously the company stated their intention to transfer those ratings not dismissed from the *Pride of Rathlin* to the freight vessel, *European Endeavour*. The jobs were taken by Spanish ratings. The company made it clear that the terms and conditions for those not opting for voluntary redundancy would be inferior to the previous agreement. Crew members were intimidated out of their jobs as the company made it quite clear they wanted to be rid of them as soon as possible.
- Stena Line until recently only employed UK seafarers on UK ferry routes. However when they chartered the Stena Invicta for a three-month period on the Holyhead to Dun Laoghaire route from December 1999 they delegated the ship management to Northern Marine Management, who employed Polish deck and engine ratings despite RMT protests. Unsurprisingly, the union is deeply concerned given the previous commitments by Stena Line to UK seafarers.

Shameless exploitation of UK seafarers can only be curtailed by ending the exemption of seafarers from the Race Relations Act. RMT argues that this should be applied universally to services around the UK Coast to ensure minimum terms and conditions for seafarers, irrespective of nationality.

### **Liberalisation policies driven by EU institutions have impacted transport workers and 'exempted' workers in offshore sector particularly**

Work in the ferry sector, which has been the one remaining area of significant employment for UK seafaring ratings, is being steadily eroded. EU Enlargement, with unregulated access for Polish and other Eastern European nationals, makes matters worse in the long term. Officials at the DETR advised that the **Posted Workers Directive** cannot be extended to seafarers. Given the opposition to the EU crewing directive the solution will obviously not be found in Europe.

Council Regulation 3577/92/EEC 7 December 1992 applied the principle of **freedom to provide services** to maritime transport within Member States (**maritime cabotage**). Maritime cabotage was liberalised on 1 January 1993. In the case of France, Italy, Greece, Portugal and Spain mainland cabotage was gradually liberalised according to a specific timetable for each type of transport service. Mainland-island and inter-island cabotage for these countries was liberalised in 1999. This exemption was prolonged until 2004 for scheduled passenger and lighter services and services involving vessels of less than 650 gross tonnage in the case of Greece.

Almost immediately a bitter industrial dispute at **Irish Ferries** ignited after management proposed to replace 543 Irish seafarers with predominantly eastern European agency crew, and to reflag its vessels to Cyprus in the process. The company secured savings amounting to EUR 11.5 million, for wages of new agency seafarers (a bosun wages were cut from EUR 42,000 pa to EUR 24,349, while the lowest ratings are paid Irish national minimum wage of EUR 7.65 per hour, based on a 10-hour day, 2,433.3 hours worked per year, and a lower 'ratio' of 1.5, giving an annual salary of EUR 18,615).

Importantly, the company also secured a three-year industrial peace (no-strike) clause, with any issues of dispute going to binding arbitration.

The repercussions from the Irish Ferries dispute are still playing out in the ferry industry with German-owned, Estonian-flagged vessels attempting to low-cost operations between Liverpool and Douglas Isle of Man in 2010. The evidence of the ECJ judgement in the Viking case in this context has had a profound effect on the analysis of RMT and the attitude of RMT members towards EU liberalisation legislation.

### **Monti II<sup>5</sup> regulates national courts to apply the most damaging, anti-worker aspects of ECJ decisions:**

Publication of the Monti II proposals by the European Commission on 21 March 2012 confirms this assessment. European Court decisions on the so-called '**Viking-Laval-Ruffert-Luxemburg Quartet**' enshrining primacy of business freedoms over trade union rights, including the concept of '**proportionality**' (a test of appropriateness to be made by national courts for collective action taken by trade union members in the course of a trade dispute) now carry mandatory legal status.

The ETUC describes the prime objective as: *“to promote the European Social Model”, which “embodies a society combining sustainable economic growth with ever-improving living and working standards, including full employment, social protection, equal opportunities, good quality jobs, social inclusion, and an open and democratic policy-making process that involves citizens fully in the decisions that affect them.”*

RMT's recent 2012 Annual General Meeting noted with deep concern that on Wednesday, 21 March 2012 the European Commission published a final 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”, known after its author as the 'Monti II Regulation'. This new proposal gives the anti-union Viking and Laval judgements of the European Court of Justice (ECJ) the force of statutory regulation rather than mere case law to attack collective agreements and usher in social dumping.

Under 'Monti II' national courts (such as the High Court or the Court of Sessions) must enforce the so-called 'economic freedom' of big business in cross-border trade where business interests conflict with national collective bargaining, statutory employment standards and trade union rights. This means multinational firms (including transport and energy employers) will be able to rely on court orders to tear up pre-existing collective agreements where they employ a workforce to work across borders, or bid for contracts to provide services in other EU member states.

'Monti II' also reinforces a legal test known as 'proportionality' developed by the ECJ in the Viking case, which gives the ECJ and national judges the power to ban collective action including strikes. This means that even where a trade union has lawful trade dispute in UK law, a British judge may decide strike action is 'disproportionate' to achieve the objectives in the dispute and can rule the strike action illegal under EU law, with unlimited liability on the trade union for compensation.

'Monti II' reinforces the ECJ interpretations in Viking and Laval cases, does not solve the problems created by the judgments and marks the death knell of the myth of 'social Europe' promoted by European Commission President, Jacques Delors in his address to BTUC Congress in 1988.

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<sup>5</sup> EUROPEAN COMMISSION, '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 2012/0064 (APP), [http://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2012/com\\_2012\\_0130\\_en.pdf](http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2012/com_2012_0130_en.pdf)

RMT's 2012 AGM reiterated our union's policy to campaign for a positive framework of trade union and workers' rights, including the right to belong to a trade union for the purposes of collective representation, bargaining and action including the right to strike and take solidarity action. RMT reiterates our demand for repeal of all anti-trade union laws, for a referendum on Britain's membership of the EU and our policy to call for withdrawal from the EU in such a referendum.

The AGM instructed the RMT General Secretary and Council of Executives to:

1. Launch a high profile information campaign in the labour and trade union movement to raise awareness of the new wave of anti-trade union legislation embodied in 'Monti II';
2. Consider placing a resolution on this matter on the agenda of the 2012 TUC Conference, together with a call for the TUC to support a referendum on UK membership of the EU in line with RMT policy;
3. Call on members of RMT's parliamentary group to raise the issue of 'Monti II Regulation' in parliament to draw attention to this EU attack on workers' rights.