



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

Trade Union Memorandum

to the

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**European Trade Union Confederation
(ETUC)**

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1. INTRODUCTION

After the 2004 enlargement of the EU Slovenia is the first country of Central and Eastern Europe to preside the European Union. ETUC warmly welcomes this fact and expresses its wishes of a successful Presidency of the EU at a moment of great challenges for Europe and for the world in general.

The Slovenian Presidency has a number of important challenges on its agenda: The ratification of the **Lisbon Treaty**, signed on 13 December 2007, the EU enlargement and new neighbourhood policy, climate change and energy, the continuation of accession negotiations with Croatia and Turkey as well as the situation in the Western Balkans.

Slovenia has engaged to ratify the Lisbon Treaty as soon as possible; likewise, the other Member States will pursue the ratification processes in order to allow for the Treaty to enter into force before the 2009 elections to the European Parliament. A “reflection group horizon 2020-2030” will start its reflections on the Future of the EU. It is important that the composition of this group is balanced and that social concerns are taken into consideration as part of the agenda of this group.

During the Presidency, the second three-year cycle of the renewed **Lisbon Strategy** will commence. The spring European Council will adopt the Integrated Guidelines for Growth and Jobs 2008-2010. The position of young people in the labour market, the common principles on flexicurity, the European social model and demographic challenges will also be dealt with. The review of the Social Agenda will be launched by the Spring 2008. Gender equality will be a cross-cutting theme, with special emphasis on reconciliation of work, private and family life and tackling the gender pay gap deserves special attention.

In the area of social legislation, the Slovenian Presidency must continue the work regarding social security and contribute to the adoption of the Pensions directive. It will have to consider how to pursue the debate on the revision of the Working Time Directive and the draft Temporary Agency Work Directive in a meaningful way, building on the relaunch of the political discussions launched by the Portuguese presidency. At the same time, ETUC also expects progress to be achieved concerning the measures to improve the implementation of the Posting of Workers Directive.

The Presidency has also to focus on **energy policy**. The negotiations on the **reduction of greenhouse gas emissions** after 2012 is one of the major issues for the first half of 2008. The main priority will be to continue the promotion of the EU position for a balanced and fair post-2012 regime and to further strengthen the EU leading role in the international climate change process.

2. MAIN AREAS OF ACTION FOR THE SLOVENIAN PRESIDENCY

THE LISBON STRATEGY: Putting the quality of jobs at the heart of the new Lisbon Strategy

Both the 2006 economic upturn and the creation of 18 million of new jobs over the period 1997-2005 point to the reality that Europe is operating like a “job creation” machine. These facts undermine the case of those claiming that Europe cannot grow and create jobs because its labour market is not ‘flexible’ enough. Instead, and as shown by the joint analysis of the European social partners on the labour market challenges, the central issue now must be to improve the quality of

the jobs that are being created, to make the European labour market more secure for workers and not more flexible than it is already.

Special attention must be given to the specific situation of young people in the labour market, precariousness being the most constant characteristic. Mechanisms to reinforce their access and allowing for a successful, sustainable and qualitative integration into the labour market should be further developed. In order to achieve this, the ETUC expects the Slovenian Presidency to give a new impetus to the Youth Pact.

The ETUC therefore demands from the Slovenian presidency to put the quality of jobs at the heart of both the Spring Council and the revision of the Lisbon agenda for 2008-2010. In order to achieve this, it is necessary to rediscover and re-appraise the importance of the European Social Acquis.

The ETUC urges the Slovenian presidency to put forward and defend two practical policy proposals:

First, to insert a new recommendation in the European employment guidelines inviting member states in their national reform plans to improve the respect and implementation, **both of the letter as well as the principles**, of the existing European Social Acquis.

Second, to be more ambitious and **to put the 'E' of Europe back into the Lisbon process**, adding to the Community Action Plan a chapter on the need to ensure a level playing field for good work practice throughout Europe, by 'intensifying' and 'enlarging' the Acquis. We welcome the fact that the discussion on equal rights for temporary agency workers has been re-opened. However, more could be done, amongst other things, in terms of the possibility for workers to request flexible working hours or a shift to full time or part time contracts and vice-versa. This would address phenomena such as involuntary part time work or qualified workers taking up lower skilled part time jobs to be able to combine work and family life.

The common principles on flexicurity:

The ETUC is pleased to observe that the European Council, the Employment ministers, just like the European social partners and the European Parliament, have rejected to confuse flexicurity with the easy firing of workers. The ETUC welcomes the fact that European employment ministers are instead taking a balanced approach to flexicurity by putting emphasis on:

- the role of social partners and collective bargaining, not only in implementing but also in designing flexicurity policies;
- internal flexicurity as an important alternative to external flexicurity;
- the objective of promoting stable jobs, in particular by improving the transition from unstable jobs into secure jobs.

This represents an important political choice: the refusal to attack labour law and job protection and instead to pursue reforms which strengthen and improve the functioning of labour law by complementing job protection with employment security measures.

The ETUC urges the Slovenian presidency to watch over the fact that this fundamental political choice is respected in the practical process of follow up and implementation of the 2008-2010 Lisbon integrated guidelines. In particular, the ETUC urges the Slovenian presidency not to use the famous OECD employment protection legislation indicator because this indicator carries with

it a strong and misguided bias in favour of deregulation of important workers' rights such as the right to information and consultation in case of restructuring or the right to have advance notification in case of dismissals.

Europe as its own engine of growth

The ETUC observes that threats to European growth often come from outside the Union, and not from an 'inside' factor such as an inflexible labour market. At present, the collapse of the dollar exchange rate and the sub-prime crisis on international financial markets are endangering Europe's economic prospects.

A European response to these external challenges is necessary and possible, however. Indeed, the European Union has economic instruments such as the monetary policy implemented by the European Central Bank, the possibility for the ECOFIN Council to establish exchange rate policy guidelines, the co-financing of transeuropean projects by the European Investment Bank and taxation policies to ensure the proper working of the internal market. The ETUC invites the Slovenian presidency to focus on the need to undertake action at the European level in order to stabilize the European economy and to avoid that the financial market turmoil once again squeezes economic activity below its potential level.

Here, the ETUC also urges the Commission to consider developing a 'double dividend' approach while aiming for robust growth that is qualitatively different and more 'intelligent' from the standpoint of sustainable development.

Climate change and energy

The Commission is due to adopt the legislative package on climate change and energy on 23 January. The ETUC has repeatedly supported EU's unilateral commitments to reduce GHG emissions by around 25% in 2020 on the condition that:

- a structured dialogue is established with the European social partners (employers and trade unions) on the design, implementation and monitoring of the EU emissions trading scheme, with the aim to anticipate, minimise and accompany the necessary restructuring and exploit the positive employment opportunities.
- The EU-ETS is harmonised at EU-level, through the setting of a single EU- ETS cap and the move towards more auctioning for the power sector.
- The energy intensive industries exposed to international competition are granted a specific treatment, allowing for deep cuts in emissions while preserving their competitiveness, notably through the implementation of a border adjustment mechanism as long as the main competitors are not exposed to similar carbon constraints;

The ETUC urges the Slovenian presidency to make sure that such key demands are reflected in the conclusions of the European Councils in March and June.

The ETUC also calls upon the Slovenian Presidency to impose minimum social quality requirements on bio-fuels, so that the bio-fuels that would qualify for the 10% target meet both social and environmental criteria as regards the conditions of production. At minima, the respect of the core labour conventions by the International labour organisation (ILO) should be verified by independent auditors.

3. SOCIAL EUROPE

Gender Equality

Tackling the gender pay gap and ensuring gender mainstreaming will be priorities during the Slovenian presidency. The European Commission will prepare in this period the follow up to its Communication on the pay gap, with measures to be taken to reduce the pay gap. ETUC is calling on the Slovenian presidency to actively support this initiative.

Furthermore, it will be necessary to ensure that all policies that are developed at EU level are explicitly addressing how the gender dimension has been taken into account. The Slovenian presidency can play an important role in ensuring this.

Reconciliation of work, private and family life

At the tripartite social summit during the Slovenian presidency, social partners will have to report about progress made on the issue of reconciliation of work, private and family life, and especially about their evaluation of the parental leave agreement. This issue is also of major importance in the context of the demographic challenges facing the EU. The Slovenian presidency is particularly well placed to push the social partners and the Member States in the Council towards a proactive approach in this area, as Slovenia has a quite elaborate and innovative system of support for working parents in place. The Council should recognize that a wide range of measures – including legislative measures – is necessary to address the work-life balance needs of (male and female) workers. The ETUC considers that Social partners at EU level should act responsibly especially for reviewing and adapting the parental leave Directive where needed, since it is based on a Social Partner agreement.

Migration

During the Slovenian Presidency, the Council will discuss several legislative initiatives in the area of legal and illegal migration.

The ETUC is in favour of a comprehensive EU policy on migration, integration and development, offering legal channels for migration at all skills levels, while at the same time rigorously applying and enforcing labour standards and guaranteeing equal treatment with local workers. However, immigration cannot be an easy solution for dealing with labour market shortages and demographic change. Social partners will have to be involved in assessing real labour market needs, and investment in training of unemployed workers – including those from a migrant or ethnic minority background – is a first priority. Also, jobs in sectors where there are shortages must be made more attractive to the locally unemployed in terms of wages and working conditions.

With regard to the proposals on introducing a ‘blue card’ for highly skilled migrants, the ETUC warns about making a sharp difference between ‘those we want’ and ‘those we do not want’. It will in practice be very difficult to define precisely who is the kind of high skilled worker that is needed, it may imprison those workers to a certain sector or profession for which they have been selected without allowing them to develop themselves in a different direction, and it may create unjustified and unjustifiable unequal treatment between various groups of workers.

For the ETUC, the issue of equal treatment in terms of wages, working conditions and contracts is a key issue, and any proposal to facilitate admission of certain groups of workers should be based on this principle, while also offering migrants and their families opportunities to integrate in our societies.

Another key issue is the global social responsibility the EU has to prevent draining especially developing countries from their young talent and the professions they need for their own economic and social development and survival. This is an area where a coordinated EU policy on high skilled migration would be very welcome, to prevent Member States to compete with each other on skilled workers at the expense of the countries of origin.

The ETUC is aware of the constraints the Commission is facing, with Member States being very reluctant to hand over competence in the area of migration management to the EU. But this should not lead to a piecemeal approach, dealing only with bits and pieces of policy which could add to bureaucracy and lack of transparency in an area that urgently needs coherent and proactive measures.

In this context, the ETUC has expressed its disappointment about the proposal for a Directive on sanctions for employers employing 'illegal' migrants presented by Commissioner Frattini in May, as being the wrong instrument at the wrong moment. Without offering legal channels for migration also to low skilled migrants (currently the great majority of migrants to Europe!) and without offering them bridges out of illegality, this Directive may well turn into another instrument that hits migrant workers hardest. The ETUC demands to focus instead on enforcement of minimum labour standards and decent working conditions.

The ETUC welcomes the initiative for a Framework Directive on rights for migrant workers as an important step in the right direction. On many occasions in recent years the ETUC has emphasized that a Europe with open markets and open borders needs a strong and supportive legal framework of rules guaranteeing a level playing field, and especially establishing clear principles of equal treatment in wages and working conditions applying to the place where the work is done.

The ETUC calls on the Slovenian presidency to promote progress on the various initiatives, while taking ETUC's concerns into serious account, and promoting more close involvement of social partners at all relevant levels.

Mobility

In the area of cross border mobility of workers and services, several issues continue to be of particular importance. One is the proper implementation and enforcement of the Posting Directive, and the potential tension between the objectives of the Posting Directive (protection of workers in a climate of fair competition) and the freedom to provide services. Member States should be allowed sufficient scope for the keeping in place of mechanisms and instruments to monitor and enforce labour standards, and prevent social dumping. In this context, some recent ECJ cases (Viking and especially Laval) are of particular concern to the ETUC.

Another important issue is the need for a regulatory framework at EU level to deal with temporary agency work.

European Works Councils

In 2008 the European Commission will launch the review the directive of the European Works Councils directive. The revision, due since 1999, is a top priority and it should be done in a quick and effective way

ETUC considers that the revised legal text must be in line with the recent development of the European acquis on information and consultation of workers. ETUC considers it necessary to include in the directive those measures that workers and companies have already agreed upon in the context of the EWCs' constitutions.

Company law; information, consultation and participation; employee participation and companies' governance; revision of the directive on transfers of undertakings

Currently, also European company law is subject to impact assessment and simplification. Generally, ETUC is in favour of simplifying European company law, accounting and auditing. But ETUC very strongly opposes to use this procedure for relaxing concerned European rules and regulations. ETUC emphasises the need for uniform standards to ensure that the internal market works efficiently, upholds workers' rights and offers similar competitive conditions to all. At this juncture, ETUC emphasises that harmonising company law is also beneficial for companies and provides legal security. Under no circumstances may this process entail the erosion of workers' rights.

With regard to the preparation of a Statute for the "European Private Company" (EPCS) it should be clear from the outset, that any proposal on an EPCS should adequately address the rights of the employees to information, consultation and participation in the affairs and decision making process of the European Private Company.

No measures should be taken so far aiming to change SE-legislation. In particular, there is no reason to enable by law that the real seat could be separated from the registered seat of a SE. At the moment, it is too early to learn from the 115 SEs (Dec 2007) from which we already know. Only a very few of them used the SE for moving its seat from one EU-member state to another one.

The currently running considerations on a revision of the ARD directive on Transfer of Undertakings should be used to seek proper answers how to achieve a better protection of workers in case their employers are targeted by active investors like private equity agencies. Also a take-over by a transfer of shares from the company's existing shareholders to the private equity firm should be ruled by this directive and not only an effective transfer of ownership of the company from one identified employer to another.

PENDING LEGISLATIVE PROPOSALS

Working Time Directive

The ETUC will continue to fight for a revision of the Working Time Directive that puts an end to the individual opt-out and develops balanced solutions to deal with on-call time in the workplace while respecting ECJ decisions. Unblocking the situation in the Council on this issue should not be pursued at any price, as the Working Time Directive is an important cornerstone of Social Europe.

Temporary agency work directive

The need for a framework Directive on temporary agency work is becoming more urgent with the increase of cross border mobility of workers and services, and the increased potential for abuses and manipulation by agencies and gangmasters. The deadlock on this issue in the Council is deplorable, and it seems that the great majority of Member States would be able to support progress. The ETUC therefore calls on the Slovenian presidency to further explore the possibility for a sustainable solution.

Directive on pension portability

Agreement proved impossible under the Portuguese EU presidency on the directive that now focuses, to the ETUC's regret, on the mobility - rather than portability - of supplementary pension rights. The opportunity offered by the continuing discussions must be seized to make improvements to the provisions on vesting periods (reducing them to two years at most) and membership age (which cannot be over 21). These changes are essential for achieving the stated objective of the draft directive, namely the improvement of workers' mobility.

Health and safety at work

Work related diseases still affect an important proportion of EU workers. The Slovenian presidency should promote a rapid adoption of the new directive on musculoskeletal disorders and of the revision directive for carcinogens.

4. THE SOCIAL DIMENSION OF THE INTERNAL MARKET

The internal market strategy

The Commission has published a communication on the single market in the 21st century, where it promised once again to take seriously its social dimension, announcing a renewed Social Agenda and a strategy for Services of General Interest. The ETUC fears that the internal market Communication pays lip service to public services and the EC proposals for concrete action in the social field will contradict these promises. The ETUC expects the Slovenian Presidency to transform the nice words and declarations into concrete actions.

When the ETUC accepted the internal market as the EU's pivotal project, the Commission promised and delivered a strong social dimension: an ambitious social policy agenda, several legislative initiatives on health and safety at work and gender equality, as well as promotion of social dialogue. The internal market strategy did not concern competition alone, but was a balanced approach. The social agenda was considered as part of the internal market, not as a marginal, external factor.

But in the late 90ties the Commission changed its strategy: For a long time, the Commission focused only on efforts to complete the internal market by promoting liberalisation and privatisation. Less or no importance was attached to the social dimension. The ETUC agrees that the EU should take action where markets do not deliver, but there is no self-criticism of liberalisation and privatisations.

Now the Commission has turned once again to the social dimension, announcing a renewed Social Agenda. The ETUC will closely follow if the Commission will deliver the substance behind the declarations. The strategy it unveils for services of general interest, for example, is unsatisfactory and we fear that this will also be the case for other proposals for action. The preference is given to sectoral approach, which can create serious problems, notably in terms of equal access to services fundamental for social cohesion like health or social services.

The Commission has confirmed that it does not intend to legislate for the moment on **social services of general interest**. Yet there is a need to guarantee the legal certainty of such services, following their exclusion from the services directive. Since these are essentially personal services that clearly have a social dimension (they allow for implementation of the social rights contained in the Charter of Fundamental Social Rights), they cannot be governed by market rules and competition alone, and the limits of their application must be more clearly defined at European Union level.

For the ETUC, the recent draft directive on **health care** requires careful analysis on a number of points, particularly with regard to conditions for the availability and universality of care. The instrument foreseen to provide more legal certainty in cases of cross-border services may not endanger the viability of national systems, nor may it heighten inequalities of access resulting from patients' capacity to contribute.

The ETUC expects the Presidency to push strongly for action. The internal market cannot bring benefits for business alone, but must also serve workers. It is necessary to deliver a framework directive for services of general interest, as proposed by the ETUC in June 2006. The ETUC expects the Slovenian Presidency to stir in the right direction of more legal clarity and security for public services. As a lesson from the battle on the services directive, the ETUC insists to include the Monti clause (EC Reg. 2679/98)¹ in all legislation of the Single Market. This would ensure that the implementation of the four fundamental freedoms of the Single Market does not impede collective bargaining rights and the right to strike as defined by national legislation. Already appearing in some sector related legislation, the Monti clause is an effective instrument to guarantee a balance between the completion of the Internal Market and the maintenance of a high level of social welfare.

Better regulation

The ETUC recalls its support for the improvement of the European legislation in order to fulfil the needs to regulate the economic development of Europe in particular the internal market and to ensure the implementation of the social charter principles. In this line, the ETUC stresses the need to ensure the reinforcement of the democratic process of elaboration of European regulations, the need to ensure their full implementation at national level as the need to organize a permanent return of experiences with the support of the social partners and the other concerned actors. Also in this line the ETUC recalls the role of the social partners as co-legislators in the field of social policies and the need to ensure their full consultation on all regulations that have a social link, be it economic, social or environmental regulations.

¹ “This Directive may not be interpreted as affecting in any way the exercise of fundamental rights as recognized in Member States and/or in the EU Charter of fundamental rights, including the right or freedom to strike. These rights may also include the right to take other action covered by the specific industrial relations systems in Member States.”

The ETUC insists that any simplification initiative, including the codification of social directives, is subjected to consultation of social partner in line with the Treaty and recalls that presently the impact assessment of community initiatives dealing with the social chapter is done by the social partners. The simplification should not result in a reduction of existing rights at European or national level. If the Commission considers that a supplementary impact assessment should be performed, the results of the exercise should be part of the consultation process.

The ETUC insists also that most of the EU social legislation is based upon the principle of minimal harmonisation. The "better regulation" exercise should not be used to reduce higher levels of protection granted by national legislations or collective agreements.

Finally, regarding the objective of the reduction of 25% of the so-called administrative burden by 2012, the ETUC calls the attention of the Presidency that this objective should neither jeopardize the principles of the social charter nor the rights of information and consultation of workers. In particular, such an objective could not apply mechanically to all the fields of social legislation. In health and safety, it would be incompatible with the principle of a systematic management of the health and safety at the workplace level based upon the principle of risk assessment and the consultation of the workers' representatives.

5. TRADE AND EXTERNAL RELATIONS

We call for active external policies both within and outside Europe that will contribute to sustainable growth, the development of decent work, and the promotion of EU values such as those set down in the EU Charter of Fundamental Rights. We ask the Presidency to react swiftly and robustly against violations of human and trade union rights wherever they may occur.

Social and environmental standards must be incorporated in all EU bilateral trade and association agreements, with effective provisions to ensure implementation and social partner involvement, in particular in the bilateral free trade agreements currently being negotiated with South Korea, India, ASEAN and Ukraine. The same approach should be taken in connection with action plans under the European Neighborhood Policy. We also look forward to progress in relation to Latin American countries and regional groupings notably in the context of the EU-LAC Summit in Lima in May.

We urge the presidency to give a significant impulse to economic and social development, and social partnership and good governance, in Africa following the EU-Africa Summit, including in the Euro-Mediterranean area. We support EU moves to promote social dialogue and decent labour standards in the ASEM context, and urge the Presidency to pursue that policy.

Trade Defence Instruments (TDI)

The ETUC is strongly opposed to any attempt to undermine the current EU trade defence instrument system, which has prove to function correctly so far and is consistent with the WTO rules. The ETUC asks that trade unions should be given the right to lodge complaints in EU trade defence instruments procedures, as this is the case in the USA.
