

ETUC RESOLUTIONS 2010



ETUC RESOLUTIONS

Adopted by the Executive Committee
during 2010



EUROPEAN TRADE UNION CONFEDERATION (ETUC)

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MARCH 2010

THE EU SPRING SUMMIT – MESSAGE TO THE EU AND HEADS OF GOVERNMENT FROM THE ETUC

March 2010

The Crisis

I

Social Europe is under pressure – pressure which will intensify if Governments rush into premature exit strategies with severe social consequences. Already youth unemployment, in particular, is at catastrophic levels in many countries and as yet receives relatively little co-ordinated attention compared to that being demanded by the financial sector.

II

That sector, including some hedge funds, continues to speculate against some member states and the euro. This speculation should be met by united EU and Government action and by a strong desire to act together so that markets cannot divide and rule, and destroy the euro. This means greater common action on economic governance and a new focus on the urgent need for new sources of finance particularly financial transaction taxes, bonus taxes and on the issue of Eurobonds. Governments and the EU authorities share responsibility for the crisis with the financial services sector.

III

As a starting point, a plan should be agreed with Greece which does not involve workers paying the price for the country's problems which include breaches of the rules of the euro, and the "cooking of the books" for the previous Greek Government by certain banks to hide the true picture of the Greek economy from the European authorities. As well as

being assisted if necessary by the EU, Greece also should be motivated to improve its governance, to curb tax evasion and to develop a fair social pact with the social partners.

IV

The European Social Model with its emphasis on social dialogue leading to agreement is an important way to help Greece and other countries in difficulty: Putting people, not markets, first is an important European principle; and, for example, any reform of pension systems – an issue in several EU countries – must be based on protecting pensions and social security, not on impositions by Governments, panicking in the face of market pressures, and on social dialogue and agreement.

V

With these points in mind, the ETUC's main messages to the Spring Summit on the crisis are

- a/ "don't panic, don't exit" from the stimuli packages. Instead we need an entry strategy and the EU must concentrate now on reducing unemployment, especially among the young with a new EU recovery plan amounting to 1% of EU GDP, and plans to develop new, green industrial policies
- b/ develop European economic governance by agreeing a programme with Greece, including the Greek social partners, which is fair, protects workers and essential public services, and addresses the problems of tax evasion by the rich and privileged – and of unacceptable accounting and operations by some banks, especially Goldman Sachs, and the previous Greek Government. There should be a public enquiry on this last aspect
- c/ develop further European economic governance by introducing new means of raising funds, especially a financial transaction tax, bonus taxes, and the ability to issue Eurobonds
- d/ Quicken up the process in Europe, and internationally, of agreeing effective regulatory measures on banks, hedge funds, private equity and other financial institutions.

2020

VI

With regard to EU 2020, Europe must be careful to show that it can deal with the challenges of 2010 if its plans are to remain credible. While a long-term strategy can be useful in pointing the way forward, it is important that it addresses adequately the reasons for the current crisis – poor corporate governance, greedy financial institutions, tax systems which benefit short-term speculation, the need for new sources of public funds, lack of European economic competences, etc. At the moment 2020 does not pass this test.

VII

On the text itself, the ETUC is looking for a commitment to equality to be a guiding star to follow – equality of pay for equal work, fair, not flat, taxation, gender equality, and equality of opportunity. These are all key challenges for Europe to surmount over the next 10 years along with the environmental and demographic challenges.

VIII

We also miss a sharply defined role for welfare states and public services. These have been the “heroes of the recession” so far, helping avoid depression, and they must be a central pillar of the EU in future. They have been subject to privatisation and de-regulation but have still proved robust “automatic” stabilisers in the crisis. 2020 needs to maintain them and ensure consistency with the concept of a social market economy.

IX

On labour market questions, 2020 needs a social vision for a Europe of fair labour standards, narrowing / eliminating gaps between member states, the promotion of collective bargaining, more security for workers, not using flexicurity in precisely the same terms that flexibility was used (less job security, easier hire and fire, ending national collective agreements etc), and a just transition policy from the jobs of today to the greener jobs of tomorrow. Investment in all working people, in their education and skills for the future, will remain a major task in the next period.

X

Finally to emphasise the importance of developing the European Social Model, the EU should act now to introduce the Social Progress Protocol proposed by the ETUC which aims at a better balance between the single market and social rights.

ETUC RESOLUTION - SOLIDARITY FOR GREECE

Adopted by the Executive Committee
on 9-10 March 2010

The European Trade Union Confederation (ETUC) Executive Committee members attending the meeting of 9 & 10 March 2010, express their solidarity with the President of the Greek Confederation of Labour, GSEE, Yannis Panagopoulos, who was brutally attacked by perpetrators alien to the trade union movement. They note with concern that such condemnable actions inevitably bring to mind the rise of fascism and hope that the democratically elected Greek Government will swiftly bring the culprits to justice.

The ETUC expresses its full solidarity with Greek workers in their struggle against job cuts, wage freezes, wage and pension cuts. Europe's message to the Greek people should be one of stability and social progress and not one of economic stagnation and social dumping.

European trade unions are monitoring with the greatest concern the situation in Greece and in particular the pressure by the Commission, the Eurozone Ministers and the ECB on the Greek government for even harsher austerity measures that will mainly and irreversibly affect the working people and the most vulnerable segments of society and upset the social fabric in Greece.

The austerity packages announced so far comprise radical cuts in wages and pensions, extensive tax increases, lay-offs, large scale privatisation of public companies and cutbacks in welfare. Far from containing the crisis, such measures will aggravate it since they will fuel unemployment, demolish welfare, kill domestic demand and strangle economic activity.

We wholly support Greek unions in opposing this short-termist project and ask for realistic, well balanced and socially acceptable plans that are negotiated with the trade unions. We join our Greek colleagues in demanding a drastically different policy mix to support investment, growth and employment, safeguard incomes, provide fair and effective taxation, upgrade the State's regulatory role and sustain social cohesion and the environment.

The burden cannot fall unevenly on the working people of Greece who have already seen the gradual erosion of their rights, pensions and income. We cannot allow financial market speculation to shape economic and social development in Europe and to impose its agenda on society despite the near collapse of 2008 and the ensuing dramatic recession.

Europe needs to be present for its Greek citizens in a spirit of solidarity and cohesion and to shield people and countries from the lethal impact of casino capitalism. Europe needs to address the problems by shifting away from the blinkered belief in the supremacy of the markets over society and move ahead with a new architecture that puts people, solidarity and the real economy first.

ETUC RESOLUTION ON A NEW SOCIAL IMPETUS FOR THE INTERNAL MARKET STRATEGY 2010-2015

Adopted by the Executive Committee
on 9-10 March 2010

The impact of the internal market on Europe's social model prompts certain concerns. The crisis has brought cruelly to light the weaknesses of the strategy based on deregulation and liberalisation. If the European Union fails to safeguard its social achievements and to reconcile internal market rules with workers' rights, further development of the internal market could prove more difficult. Protectionist reflexes will become more pronounced and the single market will be confronted with more distortions.

Mere changes in internal market rules will not be enough to restore European citizens' confidence, even though doing so is vital to correct past errors (regulating the financial sector and setting up a better framework for public services, for instance).

A new social impetus is needed to strengthen workers' protection, including protection against competition that brings down salaries and working conditions. The ETUC considers it essential to adopt a social progress clause in primary law and directives in order to strike a balance among free movement of workers and services, fundamental rights and competition rules.

The new social impetus for the internal market also requires European economic governance. The crisis demonstrates that this is more urgent than ever at the moment. It should be based on common policies, particularly industrial and fiscal, so as to limit competition between systems and safeguard the financing capacity of social protection systems and public services.

I

Some new developments have taken place:

- former Commissioner Mario Monti has been charged by Commission President Barroso with preparing a report on the internal market to counter the “internal market fatigue” and concerns about protectionism;
- the new Internal Market Commissioner Michel Barnier has told the European Parliament that the internal market and social progress have to go together;
- the Lisbon Treaty, which provides for a more social framework, has come into force and now has to be translated into Commission strategy.

The ETUC looks forward to an approach which, as in the Delors period, combines a stronger social policy agenda with ambitious legislative initiatives. The aim of this ETUC contribution is to deliver an input to the Monti report and to the Commission’s work programme on the internal market.

A lesson from the crisis: European economic governance more urgent than ever

II

The financial crisis, followed by the worst economic and social crisis since the 1930s, has affected the framework for the internal market. The crisis has wiped out many of the gains of recent years. Public finances have been severely affected. Millions of people are suffering the consequences. The International Labour Office (ILO) stated in its annual [Global Employment Trends](#) report that the number of jobless worldwide reached nearly 212 million in 2009 following an unprecedented increase of 34 million compared to 2007, on the eve of the global crisis. Since 2008, over 8 million people in Europe have lost their job and at present more than 23 million women and men are jobless.

III

However, the Commission in its “Challenges for deepening the Single Market” (8 December 2009) congratulates the EU about the gains over

the period 1992-2006. The Commission saw “unfinished business” and “potential gains” and 20th announced that there will be “a major set of initiatives by 2012, the anniversary of the single market” to restore confidence so that it delivers its full potential for business and citizens. This is not the first time (the 2020 exercise is another) that the Commission seems to under-estimate the force, scale, and damage done by the crisis.

IV

The economic and social costs of the crisis are much higher than the expected or claimed savings from the “better” or “smart regulation” agenda and from the transposition of the services directive which needs an assessment of its social consequences. The crisis put paid much of the old Lisbon Strategy. The rapid rise of unemployment and state debts and the consequences on public expenditure are major challenges for years to come and highlight the need for better European economic governance and coordination at European level.

V

Indeed, it was benign, light touch financial regulation which helped bring about the crisis. The deregulatory approach, which started under Reagan and Thatcher, has contributed to the disaster we are facing. For some time, the European Commission has been basing its internal market strategy on the same deregulatory approach. But now it is time for change. The Commission has to become the motor of an internal market balanced with a strong social dimension instead of prioritising competitiveness at all costs.

Financial regulation

VI

Speculation against some countries in the Euro area underlines the urgency of calls for tougher financial regulation. The most important challenge is, in fact, to ensure that there is no return to business as usual. The financial and banking sector must be efficiently supervised and regulated and again contribute to sustainable economic growth and social development. Regulatory dumping must be stopped, and if necessary the European Union has

to create its own rules to avoid another global crisis. The ETUC is making separate submissions on this point.

Greater fiscal coordination

VII

EU Governments and others have saved the banks with taxpayers' money. One result is that some countries have a solvency problem and all have severe public deficits. The question of who pays the bill for the crisis is not answered yet. The total volume of crisis measures approved by the Commission between October 2008 and end of October 2009 amounted to around € 3 trillion. Now there is a need to avoid fiscal and regime competition, which undermines welfare states, social protection, and the financial stability of public expenditure. Yet until now, the Commission has avoided addressing aspects of tax competition in its internal market communications – this should change.

New resources and financial transaction tax

VIII

The predicted growth rates in Europe appear, perhaps, too weak to create growth, and new and better jobs. Policy makers all through Europe are too concerned with premature fiscal exit strategies, with wage freezes and wage cuts and cutbacks in welfare and public sector employment. Such policies risk killing domestic demand, trigger downwards competitive wage spirals, distort the internal market and increase unemployment and social misery. New resources are necessary; hence the ETUC asks for a new deal to inject 1% of GDP into the economy to boost jobs. The ETUC urges (as did the EP) to move forward on the idea of a financial transaction tax to ensure that the financial sector contributes fairly towards economic recovery since substantial costs and consequences of the financial crisis are being borne by the real economy, taxpayers, public services and workers. The EU is an independent economic entity, able to introduce a financial transaction tax on its own for purposes of international development, environmental improvement and anti crisis measures.

Public services

IX

The crisis has raised the role of public services, no longer regarded by politicians as an expensive burden but as “automatic stabilisers” – it would probably be more correct to talk of “social stabilisers”. They are pillars of the European social model and important in term of sustainability. The ETUC does not accept that the Commission in its internal market strategy and the 2020 agenda continues the liberalisation and privatisation agendas and neglects the importance of public services. The financing of public services has to be ensured as investment in the future of the European social market economies. It is also necessary to develop a quality framework for the public services to fulfil its general interest missions.

Public Private Partnership

X

In November 2009, the Commission presented the development of Public-Private Partnerships (PPP) as an essential element of finding a way out of the crisis (COM 2009, 615 final, 19 November 2009). A very broad and unspecific definition of PPP underlying the document made it possible to subsume service concessions and public procurement procedures under PPP. PPPs were presented as an instrument to promote “efficiency in public services” and to “relieve the immediate pressure on public finances”. The approach seems based on the ideological assumption that private is better. It is also a way of keeping public expenditure off Government balance sheets. The Commission sees a series of success stories and insists on focusing on the “challenge of why PPPs are not reaching their full potential?” It is strangely silent on failures of PPP, such as was the case with maintenance on London underground; and on the fact that some public-private partnerships, far from being long term initial commitments, are a new market in which the private side of the contract can change ownership with alarming frequency – another branch of casino capitalism.

Public procurement

XI

Since the adoption of the revised directives on public procurement and, in particular, since the publication in August 2004 of “Buying green! A handbook on environmental public procurement”, the ETUC has asked for a similar handbook on social public procurement – and in fact the Commission initially promised to come up with such a guide. But now, six years on, we continue to wait for such a handbook to explain how social, employment and ethical considerations can be included in contracting processes. These vary from providing information and ensuring compliance relating to employment protection, working conditions, respect for ILO Conventions and collective agreements.

Industrial policy

XII

The need for a new industrial policy is clear in all the countries of the EU: in those lagging behind and in need of major investment in order to modernise, in the powerful industrialised countries which are big exporters but hard hit by the crisis, and in the nations with a policy of industrial ‘laissez faire’. The ETUC has insisted that member states should be able to initiate public investments in order to facilitate the creation of new markets and new employment. (Cf. Resolution on Climate change, new industrial policies and the ways out of the crisis; Stockholm on 20 -21 October 2009).

Company law

XIII

The need to ensure that businesses do not abuse the opportunities offered by the internal market to evade their legal obligations that would otherwise be applicable under national law have been highlighted

by the discussions on the proposed European Private Company (SPE) Statute. Accordingly, the ETUC is renewing its call for the urgent adoption of a 14th Company Law Directive on cross-border transfers of registered offices to prevent the establishment of 'letterbox' companies. Such an initiative is an essential prerequisite to any further development of European company law, including in particular the adoption of the SPE Statute. The ETUC has called for vital modifications to be made to the proposed Statute for a European Private Company. It is crucial that the SPE Statute be accompanied by rules governing minimum standards on workers' involvement and that the SPE does not put national legal forms –and the participation rights that are attached to it– under pressure. A cross border dimension and minimum capital requirements are therefore essential prerequisite to the establishment of an SPE. The ETUC has expressed its strong opposition to compromises which would constitute a regression for workers' rights both at European and national level.

Creating a fair and social Internal Market

XIV

The different facets of the current internal market strategy show that an in-depth review and overhaul are necessary. The completion of the internal market should respect the interests of people and workers and particular measures should not go ahead if there is no clear social benefit. Creating an internal market does not mean that everything should be deregulated. The Commission should only push for freedom of movement of goods and services if it is clear that the measures will not undermine the protection of workers. The ETUC is concerned that a revived internal market strategy will result in new attempts to deregulate and to increase the risk of a race to the bottom. The social dimension of the EU is partly a question of having a framework labour protection, including European laws preventing competitive undermining of wages and working conditions. The ECJ court cases like Laval, Viking etc. have been extremely detrimental to workers' support for the EU. The Commission and EU authority must take the necessary measures to make it clearer to the ECJ that the internal market rules are not a means to dismantle decades of national efforts to improve workers' lives.

XV

For many years, the ETUC has been calling for a stronger social dimension for the internal market but the response has been inadequate. The ETUC now asks for “catch up”: Action is needed to advance Europe’s social objectives, in particular through an ambitious Social Agenda providing for equal treatment in terms of wages and working conditions applying to the place where the work is done; employment rights for excluded as well as domestic workers; joint and several liability and action against false self-employment; equal access to social systems; and the portability of rights, including transnational trade union rights.

XVI

In particular, the ETUC continues to attach a very high priority to the introduction of a social progress clause in primary law, and for the necessary instruments in secondary law to balance the movement of workers and services, fundamental rights, and the competition rules. The ETUC also asks for a review of the Posting Directive and a framework for public services. Finally, the ETUC asks for the inclusion of the Monti clause in all legislation on the single market in order to 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.

XVII

If Europe fails to reconcile internal market rules with workers’ and citizens’ rights, then the integration process may come harder. Protectionist instincts will become more prominent and the single market will meet more interference. A visionary and less market oriented approach is necessary to overcome the current concerns about the impact of the internal market on Europe’s social model. The ETUC offers renewed support for the internal market, but on condition that the new vision is socially and environmentally sustainable, leads to a strengthening of social welfare and the general interest, and promotes workers’ rights, and fair working conditions.

THE POSTING OF WORKERS DIRECTIVE: PROPOSALS FOR REVISION

Resolution adopted
by the ETUC Executive Committee
on 9-10 March 2010

Europeanising labour markets require firm and fair 'rules of the game'

Since 2005, the ETUC has been urgently calling, in a series of positions, for a framework of firm and fair rules, combining open borders and adequate protection of workers, to be developed both at national and EU level, to accompany the coming about of a genuine internal market in which goods, capital, services and workers can move around to the benefit of citizens, economies and societies.

According to the ETUC, a European labour market requires European 'rules of the game', combining open borders with adequate protection. These key conditions are:

- a/ equal treatment of local and migrant workers, no unfair competition on wages and working conditions
- b/ respect for national collective bargaining and industrial relations systems
- c/ equal access of all workers to social benefits;
- d/ proper instruments and tools for monitoring and enforcement of labour standards.

Recent developments have made the debate even more urgent, with the financial crisis now hitting the real economy, unemployment figures on the rise, public spending under pressure, and workers everywhere in Europe paying the price.

While from an economic perspective open borders and markets within the EU area are of major importance for a quick recovery of Europe's competitive position, workers everywhere in Europe are increasingly questioning what is in it for them. There are currently serious problems with regard to the side-effects of the internal market and increased cross border mobility of companies and workers, which demand for urgent action to be taken as they are threatening social cohesion and the support for the European project. Not only financial markets, but also the real economy and labour markets need a huge effort of confidence building.

At national level, voices are getting stronger to focus on better 'shielding' national industrial relations and social protection systems against the 'invasion' by internal market law. Others stress the need to develop a response at EU level, demanding for European harmonized rules and/or (minimum) standards in the social field.

In this context, the Posting of Workers Directive (PWD) plays a pivotal role. Once perceived as a key instrument to prevent unfair competition on wages and working conditions in situations of temporary cross border provision of services, it has now become the battle ground on which the fight about the social dimension of the internal market is fought.

Recent ECJ jurisprudence has exposed the weaknesses of the EU's legal framework

Four recent ECJ cases¹ have exposed the weaknesses of the current EU legal framework applicable to fundamental social rights and the free movement of workers and services.

They have created major social unrest and are endangering social partnership models.

1 Viking C-438/05; Laval C-341/05; Ruffert C-346/06; Commission v Luxembourg C-319/06. For summaries of the judgements, see: <http://www.etuc.org/r/846>

- a/ the ECJ confirmed a hierarchy of norms, with market freedoms highest in the hierarchy, and the fundamental social rights of collective bargaining and action in second place;
- b/ the ECJ interpreted the Posting Directive (covering workers that cross the borders in the framework of services), in a very restrictive way, limiting the scope for Member States and trade unions to take measures and action against 'social dumping'² and to demand better protection and equal treatment of local and migrant workers in the host country.

The ETUC consequently has called for a **Social Progress Protocol**, to be attached to the Treaties, to make absolutely clear that all free movement provisions of the Treaty must be interpreted in a way which respects fundamental rights, and to embed this in the broader concept of social progress and the harmonizing upwards of working conditions and social systems. As the new EU Treaties (in Article 3 (3), subparagraph 3, TFEU) say very explicitly: "*The Union shall work for (...) a highly competitive social market economy, aiming at full employment and social progress*". The Protocol would have as its objective to clarify the relation between the internal market and fundamental social rights.

Further work is necessary to investigate the possibilities for bringing our demands to confirm social progress as a clear and legally binding objective of the internal market on the European Union's political agenda. Former Commissioner Monti, who is currently working on a review of the state of the internal market in relation to its social dimension, has been urged to take our demands on board.

In addition, the ETUC called for a revision of the EU legal framework covering the free movement of workers and services, and in particular for an urgent revision of the **Posting Directive**.

2 'Social dumping' is unfair competition on wages and working conditions leading to a spiral downwards.

The Posting Directive must be revised to better achieve its aims

In the Resolution and attached Explanatory Memorandum in response to the Viking and Laval judgements, adopted in the ETUC Executive Committee of 4 March 2008, the ETUC expressed among other things the need to urgently revise the Posting Directive, and identified a list of key issues that would need to be addressed.

Since then, this demand has been further developed. In its resolution on "Conditions for free movement: more protection of workers and fair competition", adopted in the ETUC Steering Committee of 28 April 2009, the ETUC demanded:

"the Directive on the Posting of workers to be revised with a view to restoring its primary objective: ensuring a climate of fair competition and respecting workers' rights. Several issues need to be addressed, including in particular the legal base, the definition of a posted worker and of a trans-national service, the possibility for Member States to include the protection of workers as a 'public policy' provision, and the respect of the role of trade unions in negotiating and enforcing collective agreements. Special attention must also be paid to public procurement procedures, and the possibility for public authorities to introduce social clauses demanding the observance of the locally applicable collective agreement."

An ETUC expert group of trade union experts and academics, established beginning of 2009, was given the task to further develop the legal and technical aspects of these proposals. The expert group recently finalized its work. On the basis of the discussions in the expert group, eight proposals have been developed to revise and strengthen the Posting Directive (see below).

The political context

Recent developments at EU political level have put the ETUC under more pressure to come up with detailed proposals on the revision of the Posting Directive. At the same time, the political tide seems to be not very favourable to easily achieving the necessary improvements.

In his speech to the EP, on the 15-th of September, after a lot of political pressure had been put on him by especially the socialist group in the EP, **Barroso** said the following about Posting:

"I have clearly stated my attachment to the respect of fundamental social rights and to the principle of free movement of workers. The interpretation and the implementation of the posted workers Directive falls short in both respects. That is why I commit to propose as soon as possible a Regulation to resolve the problems that have arisen. This Regulation will be co-decided by the EP and the Council.

A Regulation has the advantage of giving much more legal certainty than the revision of the Directive itself, which would still leave too much room for diverging transposition, and take longer to produce real effects on the ground. If we discover during the preparation of the Regulation that there are areas where we need to revisit the Directive itself, I will not hesitate to do so. And let me be clear: I am committed to fighting social dumping in Europe, whatever form it takes."

A first assessment of what issues could possibly be dealt with in a Regulation shows, that problems like manipulative use of posted workers in non-temporary situations, the use of letter box companies and the instrument of chain-liability could be addressed, as well as providing social partners and Member States with more scope for enforcement instruments and mechanisms (the keeping of documents, etc.).

However, the more contentious these issues are, the more difficult it would be to find agreement in EP and Council (which would make the exercise similar to finding agreement on a revision of the Directive itself).

Since then, a new Commission has been inaugurated, and a new Commissioner for Employment and Social Affairs, Andor, is in function. In his exchange with the European Parliament, he has been rather careful and not very clear on his plans with regard to the Posting Directive. Commissioner Barnier for Internal Market, however, has said that he is in favour of an open debate on the Posting Directive, and certainly does not want to be associated to anything that leads to social regression.

In the meantime, the Commission's services are engaged, together with Member States and with social partners as observers, in a high level expert group on the implementation of the Posting Directive, in which current problems are investigated, and potential alliances with Member States on this matter can be built up.

In the European Parliament, the power relations have changed since last year's elections, with now a solid conservative majority in place, which will not make it easy to achieve majority support on social issues.

With employers, in recent discussions on the consequences of the ECJ cases (see point 9 on the agenda) we have not been able to achieve any progress on the Posting Directive or any other related matter.

On the other hand, the Spanish presidency has announced to organise a conference on the relation between fundamental social rights and economic freedoms, mid-March in Oviedo, Spain, to discuss among other things the Posting Directive, and has clearly stated its commitment to prevent any unfair competition based on the difference in salaries between countries and to take the necessary measures to guarantee the rights of workers within the framework of the freedom to provide services.

In this context, the ETUC proposes to adopt a list of key issues to be addressed, taking note of the detailed proposals for amendments as elaborated by the expert group³, which should be seen as guidelines for the further work of the ETUC and its affiliates when it comes to campaigning for a revision of the Posting Directive which will better protect workers and ensure fair competition in the internal market for services.

3 The report of the expert group is for the moment only a document for internal discussion within ETUC.

Key issues and proposals for revision

According to the **preamble** of the Posting Directive, the abolition of obstacles to the free movement of workers and services is one of the objectives of the Community, and any restrictions based on nationality or residence requirements is prohibited.

However, *'the promotion of the transnational provision of services requires a climate of fair competition and measures guaranteeing respect for the rights of workers'*.

To ensure clarity of the applicable rules, 'the laws of the MS's must be coordinated' in order to lay down a nucleus of mandatory rules for minimum protection to be observed in the host country in such situations.

This "hard core" of clearly defined protective rules should be observed by the provider of the services, notwithstanding the duration of the worker's posting'.

When the Posting Directive came about, it was generally understood as an important instrument to combat 'social dumping', i.e. unfair competition on wages and working conditions of workers by foreign service providers on a host country (labour)market.

In the meantime, it is increasingly the question if it still performs this important function, especially as a consequence of a long series of ECJ judgements, already starting before but culminating in the '*famous four*' (Viking, Laval, Ruffert and Luxembourg).

The ECJ, in the cases Laval, Ruffert and Com vs Luxemburg, has interpreted the Directive in such a way, that it is now to be understood as a **maximum** Directive with regard to the **matters** that can be regulated, the **degree of protection** that can be required, and the **methods** that can be used to ensure that employment conditions must be equally observed by all national and foreign undertakings in the same region or sector.

When host Member States want to apply higher or different standards by law, or trade unions in the host Member State take action to demand better standards by way of collective agreements, in particular to prevent 'social dumping' and promote fair competition between local and foreign service providers, this may be seen as an infringement of Article 56 of the new Treaty on the Functioning of the EU, TFEU (49 EC Treaty), i.e. as **obstacles** to the free movement of services.

This seriously hinders Member States and trade unions in their legitimate ambitions to protect both local and posted workers, to ensure fair competition, and safeguard national industrial relations and collective bargaining systems.

Therefore, the ETUC aims at a revision of the Posting Directive, to strengthen it and better achieve its aims of guaranteeing fair competition and the respect for workers' rights, while safeguarding the fundamental social rights of collective bargaining and collective action.

In order to better identify which revisions are necessary, and for which reasons, it is important to be aware of the current EU legal framework in which the Posting Directive is functioning.

The basic assumption in European law is that the posted worker is the worker of the foreign service provider, and the law applicable to his employment contract – which is normally country of origin law – does not change during the posting because of the temporary character of the posting.

When performing work in the host country, specific mechanisms are therefore necessary to:

- a/ ensure that the same rules apply to foreign and host country employers/companies, at least when it comes to key issues that have a strong influence on the competitive (dis)advantages of companies and the protection of workers (wages and working conditions);
- b/ ensure that this situation is not abused or manipulated to avoid or evade host country rules (the foreign company must be a real company established elsewhere, and not a letterbox company or a company in an artificial subcontracting chain; the posting must really be for a limited period only; the worker should really be habitually employed and residing in the home country, etc.)

The central and essential question is: to which extent, for which reasons, and under which circumstances can or must the employment contract (and possible collective agreement and other home country rules applicable to the parties to that contract, such as social security and tax rules) of the worker of a service provider moving cross border be 'overruled' by the rules (statutory or collectively agreed) of the host state?!

The Posting Directive is intending to do exactly that: it regulates if and under which conditions the host country rules regarding wages and working conditions (laid down in law or collective agreement) overrule the possible law and other rules of the country of origin (or any other country) applicable to the employment contract.

However, the next important question is, if the Posting Directive deals with this in an adequate way. Already before the “*famous four*” ECJ cases, there were some doubts about the functioning of the PWD in practice, and the possible need for revision.

Since the four ECJ-cases, these doubts have become serious concerns, and the position taken by the ETUC has been since 2008 that a revision is now unavoidable.

In this revision, the following points should be addressed:

- a/ The **objectives** of the Posting Directive, i.e. respecting the rights of workers and ensuring a climate of fair competition, now only figuring in the preamble of the Directive, must be more clearly laid down in the body of the Directive. In particular, a reference to the social policy objectives of Article 136 of the Treaty, with their clear reference to the aim of ‘improving the living and working conditions of workers’, would help to ensure a more coherent interpretation of the Directive. Furthermore, the Directive deserves a **broader legal basis**, i.e. Article 137 of the Treaty.

- b/ The **fundamental right to collective bargaining and collective action** should be understood as allowing trade unions to approach and **put pressure** equally on local and foreign companies to improve living and working conditions of workers and to demand equal treatment of workers performing similar work on the same territory, regardless of their nationality or the place of establishment of their employer.
This should be clarified by introducing in the body of the Directive the **equivalent of the Monti-clause**.

- c/ What is essentially **free movement of workers** should be covered by the Treaty provisions written for this purpose, i.e. especially

Article 39 with its strong equal treatment approach based on the host country principle. The original aim of the **Posting Directive, to only cover clear situations of temporary postings** (when the workers of a service provider cross the border in the framework of a short term service, but keep their main place of residence and employment in the home country and will return to their country of origin afterwards) must therefore be more clearly translated into the scope of the Directive. It is also important to more precisely define what is or is not ‘transnational provision of services’, to **prevent** companies to manipulate applicable law and standards by the **use of letterbox-companies**.

- d/ The **minimum character** of the Posting Directive must be **restored**, i.e. the notion that the Directive provides ‘minimum-protection’ (the core of rights that **must** be applied), which does not prevent legal or collectively agreed standards to provide the workers concerned with more favourable conditions (the standards that can be applied), as long as equal treatment and non-discrimination of local and foreign companies is ensured.
- e/ The Directive should more clearly **respect the different industrial relations models in Member States** as well as the instrument of collective bargaining as a flexible and dynamic process, which – in the interest of both sides of industry as well as of society at large – cannot and should not be treated as just another form of regulation. In addition, less rigid criteria should be developed to judge if a collective agreement can be upheld vis-à-vis a foreign service provider, for instance in situations in which the **majority** of local companies is **in practice bound** by the collective agreement.
- f/ Member States in their role of public authorities contracting out public works (**public procurement**) should be allowed via **social clauses** to demand observance of locally applicable collective wages and working conditions by any company, local or foreign, tendering for the contract.
- g/ When it comes to Member States in their role as legislator, this means that the very restrictive interpretation of the notion of

'public policy provisions' must be revised, to include social objectives and the protection of workers.

- h/ Member States and social partners must be allowed to use **effective monitoring and enforcement mechanisms**, Member States and social partners must be allowed to use **effective monitoring and enforcement mechanisms**, for instance to check if the posted worker is really 'habitually' employed in the country of origin, and that it is intended that he/she returns at the end of the posting.

Beyond the Posting Directive

In the current EU legal framework, the Posting Directive plays a compromise role. It does not establish minimum standards nor harmonized rules, but sets coordination rules, which are at the same time inspired by the important political choice to protect host country social standards. In many countries, it is still an important instrument that provides protection to posted workers and protects (at least) minimum host country rules laid down in law and (generally binding) collective agreements. It can therefore not be missed. When revised, it will be better capable of playing this role.

However, several problems areas will not be solved by the aspired revision:

1/ Article 56 TFEU (article 49 EC)

Generally speaking, the ECJ has interpreted the PWD in the context of the EU Treaty's provisions of free movement of services (notably Article 56 TFEU/former 49 EC) as a 'carve out' from the general obligations of the Treaty to remove obstacles to free movement. Anything that goes beyond, and is not explicitly allowed, by the PWD is considered to be an obstacle to the right of free movement of the transnational service provider. ***It is therefore necessary to continue fighting for a clearer and legally binding social policy orientation of the internal market provisions.***

2/ Posting from outside the EU

The Posting Directive only provides for coordination rules on applicable (minimum) standards within the EU's internal market, without setting

any standards in cases/countries in which there are little or no legal or collectively agreed standards in place. In recent times, new problems are arising to which this approach does not provide an appropriate response. This is for instance the case with service providers from outside the EU. ***ETUC and its member organisations must investigate these cases, in order to develop a proper policy response at national and EU level. The link with GATS must also be further assessed.***

3/ Public procurement and ILO Convention 94

ILO Convention 94 aims at preventing that public contracts exert downward pressure on wages and working conditions. The approach taken in ILC 94 is that conditions under public procurement contracts should not be less favourable than those established for the same work in the same area by collective agreement or similar instrument. 10 EU Member States have ratified this convention. The EU Commission and Council of Ministers included it in their call for ratification of all up-to-date conventions in 2006. The EU must therefore ensure that all Member States can continue to adhere to ILC 94, promote its ratification and implementation, and solve any ambiguities in EU legislation that might stand in the way.

ETUC calls on the European Commission to urgently address and solve the possible tensions between the Ruffert case, the Public Procurement Directive(s) and ILO Convention 94, and to promote its ratification by all EU Member States.

ETUC RESOLUTION ON THE ECONOMIC CRISIS: NEW SOURCES OF FINANCE

Adopted by the Executive Committee
on 9-10 March 2010

- 1/ The European economy is finding itself in an increasingly difficult position. On the one hand, the economic recovery remains fragile and subject to several downwards risks such as job shedding, rising unemployment, wage stagnation and ongoing and continuing deleveraging of high private sector debt positions. On the other hand, with public deficits in Europe twice as high as the Maastricht criterion, economic policymakers are keen to return to the pre crisis approach to cut public deficits and reduce the role of the state, hoping that private sector investment would automatically follow. The Ecfm Council and the European Commission have already decided that fiscal consolidation should start at the latest in 2011 (and even earlier for member states where financial markets set high risk premiums in interest rates) while procedures for breaching the Stability Pact have been opened against a majority of member states. Meanwhile, central banks in Europe, which through their liquidity injections into the banking sector have until now indirectly financed public deficits, are also taking a more conservative attitude and are calling for urgent and ambitious consolidation efforts involving, amongst other things, public sector wage cuts.
- 2/ Pressure to cut deficits is also coming from financial markets. Whereas Central and Eastern European countries have gone through serious financial turmoil in 2009, hedge funds and investment banks are now speculating against countries that are members of the euro area. It is highly likely that several euro area members will be singled out one by one, with financial speculators hoping to cash in big profits during

this process. This is highly cynical: If deficits are high and public debt has been soaring, this is mainly because governments were forced to step in to save the financial markets from their own irrational herd behaviour and from the damage they themselves were inflicting on the economy. Blinded by the quest for excessive profitability, financial markets now turn on the very same actor that saved them in the first place. In particular, the role of Wall Street rating agencies, having provided triple A ratings to toxic assets and now downgrading the ratings of sovereign bonds, as well as the role of investment banks like Goldman Sachs, suspected of manipulating Greece's accounts to deceive EU authorities; and now trying to influence financial market opinion by spreading unfounded rumours¹, is now even more questionable than it already was.

- 3/ These three pressures on public finances are already delivering results (see overview table attached). National stability plans, introduced by governments beginning this year, imply consolidation efforts and deficit cuts over the next three years in the order of 5% of GDP for the UK, 3% for Germany, France and Italy and 9 to 10% of GDP for Spain and Greece. A very ambitious and European wide² econsolidation policy is on its way. This is hardly compatible with the fragility of private sector demand dynamics or with the fact that monetary policy has already hit the zero bound of nominal interest rates.

- 4/ The ETUC argues against both a premature 'fiscal exit' strategy as well as a strategy of 'wait and see what happens'. The former risks to repeat the mistake of the 1930s when governments responded to the crisis by cutting deficits, thereby contributing to create the Great Depression. The latter ('too early to exit so let's do nothing') would tolerate unemployment to rise and to remain high, with the associated risk of persistent unemployment becoming 'structural',

1 Goldman Sachs has been acting as an adviser to the Greek government, using this role to spread rumours on Greece looking for Chinese financial support while at the same time taking speculative positions against Greek sovereign debt.

2 With the US intending to cut the deficit by 7% of GDP over the next three years, this is a fiscal contractionary policy that is de facto coordinated throughout the OECD. Japan seems to be the only exception.

for example because employers discriminate against those who have been long term unemployed.

- 5/ Instead of a premature 'deficit cutting' strategy, the ETUC wants an 'entry strategy into growth, investment and jobs'. The only way to get public deficits and public debt down over the medium term is by ensuring an immediate and forceful recovery of the economy and jobs. To do so, and as the ETUC has insisted upon before (October 2009 statement of the ETUC Executive), Europe needs a renewed, stronger and better targeted recovery plan. For the next three years, 1% of GDP should be invested each year in major European investment projects rolling out the necessary infrastructure and networks for the 'greening of the economy'. A key question is how can this be financed?

New sources of finance for European recovery and jobs

- 6/ Obtaining a stronger recovery plan as well as funding employment policy aimed at avoiding persistent unemployment turning into structural unemployment will be a major challenge. To help member states withstand the triple pressure of financial market speculation, rigid Stability Pact rules and conservative central banks, Europe needs to organise and make available new sources of finance for economic recovery.

A common Euro Bond

- 7/ A common bond, issued by the European Investment Bank, collectively guaranteed by European governments, backed up by national tax revenues as well as by liquidity support from the European Central Bank is urgently necessary. There are several advantages³ :

3 Other advantages include, in the longer term, the creation of a market that is even bigger than the market for German bunds, hence improved liquidity and lower liquidity premiums in interest rates for all countries, including Germany. Another advantage is that a common European bund would attract international capital and strengthen the role of the euro as an international reserve currency.

- I **'Fighting fire with fire'**. Issuing a common bond will allow member states to stand together and support each other to face the irrational and self destructive herd behaviour of financial markets. A common bond will make it harder for financial markets of singling out national states and their sovereign debt. Financial players will know that their usual game of trying to cash in on extraordinary profits by taking speculative positions against individual sovereign debt and thereby setting in motion a self fulfilling vicious circle will not work.

- II **'It's the economy stupid?'** A common bond will also shield member states from the 'animal spirits' of financial markets' in other respects. Excessive financial market pessimism and fears of a debt default usually forces countries into a radical and disastrous deflationary policy. However, once the economy goes into a tailspin, financial markets shift their attention to the state of the economy and maintain their position of financial restriction, now fearing a bankruptcy of the economy. Again, this is highly irrational: Countries still end up in being distrusted by financial markets, exactly because they follow up the Wall Street's bidding. A common Euro bond allows member states to break out of this other vicious cycle and set member states free from the irrationality and the stupidity of the global financial marketplace.

- III **'European money for European Investment'**. A common bond should not only be used to fight financial speculation, it should also be used to secure economic recovery as such. The negative demand impact of fiscal consolidation at national level (which will be required in return for access to the financial proceeds of the European bond) can be offset by European financial flows entering the country, investing in infrastructure, networks and innovation, thereby re launching both short term demand and economic activity as well as long term growth potential.

- IV **'European wide solidarity'**. The solidarity which the common Euro bond implies should not be limited to the members of the euro area only. Several member states of Central and Eastern Europe have found themselves in a similar position, with their currencies de

facto linked to the euro exchange rate while at the same time having to continue high (private sector) debt levels expressed in euro. The policy approach up to now has been up to now to call in the IMF as an alibi⁴ by forcing incredibly tough adjustment measures upon several of these countries, resulting in a major depression and a social bloodbath. The common Euro bond should also be used to rectify this approach and end this 'barbaric' structural adjustment.

- 8/ However, let us also be clear. A common bond has the objective of liberating member states from the irrational herd behaviour of financial markets. It is certainly not the intention of trying to 'mimic' financial markets by imposing the same (or even worse) type of pro cyclical and anti social policies upon member states. However tempting it may be for some to abuse the euro bond by pushing through a liberal model of deregulation, this will not help the economy and deservedly give Europe a bad name in the minds of workers and citizens. Any conditionality to be attached to the euro bond should respect the need for a strong social dimension, strictly steer away from deflationary wage cuts and wage freezes and be sequenced in time so as to avoid pro cyclical fiscal tightening.
- 9/ The ETUC urges a move forward on the idea of a common euro bond issue. Postponing or even rejecting a common bond will prove the speculators right, reward them and allow one country after the other to be subjected to speculative attacks. In the absence of European solidarity to face the speculators, there will also be enormous pressure to cut wages in major parts of the euro area, internal market demand dynamics will be destroyed (who to export to if a major part of Europe is mired in depression and deflation?) while surplus savings countries will import a renewed banking crisis⁵.

10/ In short, a single currency and a single market need a common bond.

4 Both the IMF as well as the Commission send in negotiating teams and provide adjustment loans.

5 80 to 90% of the debt of the savings deficit countries (Spain,Greece,Portugal,Italy) is in the hands of banks from Germany, France as well as the UK.

Financial Transaction Taxes

11/ Studies⁶ show that a carefully designed tax – not necessarily at a high rate -on particular financial transactions would make them more expensive and so less attractive, helping to stabilise the prices of shares, commodities and exchange rates. Speculative trading would be hardest hit, with short-term investors paying higher taxes due to their higher transaction frequency. Debates on the advantages of a general tax on financial transactions are also taking place beyond the frontiers of Europe and are being actively pursued by the International Trade Union Council and TUAC with the G20 and the IMF. But the European Union is an independent economic entity, able to introduce such a tax on its own for purposes of international development, environmental improvement and anti crisis measures. The revenues from this tax could be allocated entirely or partially to the European budget. From a public-finance perspective , a FTT should essentially be collected for either of two reasons: to collect revenues for public expenditures and to discourage activities that are deemed to have negative side effects not properly taken into account by market participants (the so called Pigou taxes).

12/ The European Commission, following questions raised at the meeting between the Economic and Monetary Affairs Committee and the Commissioner responsible for taxation on 6 October 2009 is currently working on ideas for “innovative financing” in the context of global challenges, including financial transaction taxes in order to put forward proposals at an appropriate time. The IMF is currently seeking views from the public on the matter of financial sector taxation as part of the request made by the G-20 at the Pittsburgh Summit of 24 and 25 September 2009. In fact, taxes and levies on financial transactions exist in different forms in the Member States; but these national taxes and duties usually cover only transactions of selected assets – Belgium and France have adopted legislation on a currency transaction tax at national level, but will only put it in effect if implemented at EU level.

6 A general Financial Transaction Tax ; Motives, Revenues, Feasibility and Effects by S. Schulmeister, M. Schratzenstaller and O. Picek (Osterreichisches Institut für Wirtschaftsforschung.

- 13/ There has been a huge and rapid increase in the past decade of the volume of financial transactions as compared to the volume of trade in goods and services, which can be explained, amongst other things, by the fast-growing derivatives market. G-20 leaders have a collective responsibility to mitigate the social impact of the crisis, both in their member states and in developing countries, which have been hard hit by indirect effects of the crisis, whereas financial transaction tax would contribute towards covering the costs generated by the crisis.
- 14/ The European Union should agree on a common position in the international framework of G-20 meetings as regards the options as to how the financial sector should make a fair and substantial contribution toward paying for any burden which it has caused to the real economy or which is associated with government interventions to stabilise the banking system. We also take the view that the EU, in parallel and consistent with the G-20 work, should develop its own strategy with regard to the range of possible options for action.
- 15/ The Commission should elaborate, sufficiently in advance of the next G-20 summit, an impact assessment of a global and European financial transaction tax, exploring its advantages as well as drawbacks.

Balance sheet levies, moral hazard and the banks

- 16/ The financial crisis has in fact assured the market that governments in practice do bail out the financial sector and that there is little risk of being allowed to fail. Public support for the banks, both in terms of capital injections, government guarantees and central bank money at almost zero cost for the banks has been and still is massive (3 trillion Euros in Europe). Moreover, this huge public bail out has come with few strings attached. The single 'conditionality' attached was to force banks to pay interest premiums on government provided loans and guarantees. In this way, banks are motivated to repay public support and get the public actor out of the banks as soon as possible.
- 17/ However, the latter implies that banks having restored liquidity and in the process have paid back public support in order to save on the interest premiums and fees required by it. That is not necessarily so. Banks

continue to have an implicit but strong guarantee on a public sector bail out but at the same time do not have to pay any fee for this.

18/ A balance sheet levy on banks' liabilities (excluding deposits since these are covered by an explicit deposit scheme guarantee with a fee to be paid) is therefore a logical and fair measure: The 'bail out' guarantee banks enjoy would no longer be 'free' and banks would contribute at the same time in the general costs of the crisis they have inflicted on the economy.

19/ Moreover, the ETUC insists on additional advantages of such a balance sheet tax: By modulating the tax rate in function of the size of balance sheets, governments can increase the levy on big banks, thereby addressing the additional problem of banks becoming so big that they are 'too big to fail'.

A tax on banks' bonuses, dividends and stock options

20/ There are strong reasons for tax policy to intervene in financial sector remuneration policy. France and the UK have taxed bonuses for one year but this is not enough. Bonus payment structures as well as stock option systems have not aligned CEO and traders' interests with long term shareholder value as they were supposed to do but have instead promoted speculative behaviour, short termism and excessive risk taking. Taxing bonuses will flatten the pay structure and take away some of the incentive and reward of risk taking. It is also clear that the financial sector is now maintaining or, in some cases even increasing its profits⁷, not because of 'good management' practice but simply because of government and central bank support. Banks can not continue to pay out bonuses and dividends, coming from public money support while at the same time the entire economy, governments included, has to pay the price of a crisis which was caused by the banks in the first place. Social welfare is not to be replaced by 'welfare for the banking sector'.

7 See graph in attachment 2.

'Unconventional' Fiscal Policy

21/ Household savings rates have increased massively because of fears of rising unemployment, troubled capitalisation pension systems and destruction of financial and housing wealth. Moreover, the pressure to cut public deficits with which public opinion has become entrenched makes households anticipate tax hikes as well as major cuts in social protection (including raising the retirement age) and public services. Households will most likely react to this by maintaining or even increasing high savings rates. This will work to drag a possible recovery further down.

22/ At the same time, high savings rates also present an opportunity. Mobilising high savings by transforming them into productive investment strengthens economic recovery as well as economic growth potential. This can be done by a 'smart' fiscal policy which increases the tax pressure on high savings while using the receipts from it to increase public sector led investment. In this way, demand dynamics are strengthened without the deficit increasing (or even with deficits falling).

23/ The ETUC therefore urges the Commission, the Ecfincouncil and the European Council to explore this avenue and develop a coordinated tax policy targeting high savings rates and connected income flows. This concerns taxes on business profits, on income from capital (dividends, interest rates), on capital gains and on big fortunes. We note that the US is taking this direction: In the US 'stabilisation plan' (which by the way is using a ten year horizon, unlike in Europe where a three year adjustment period is planned), measures like hiking marginal tax rates on high revenues, increasing the tax rate on capital gains and dividends and raising taxes on business profits, amount to 1,6 trillion dollars over the next ten years.

24/ These proposals are even more justified with regard to tax evasion, which has reached a very high level in several Member States.

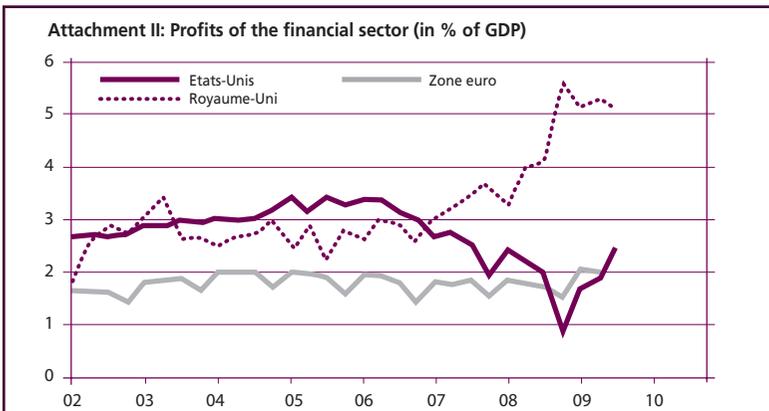
The current crisis makes this situation even more unacceptable because workers are in a situation where they have to foot the bill

not only for the impact of the crisis on jobs and wages, but also because they are the ones reliably bearing the tax burden.

That is why the ETUC is calling on the European and national political institutions to develop tougher measures for fighting tax evasion, to step up audits and penalties and, more generally, to pursue a progressive tax policy as opposed to a flat-rate tax policy.

Attachment I: Overview of deficit objectives of national governments					
	2009	2010	2011	2012	2013
Uk	12,6	12	9,1	7,3	5,7
GE	3	6	5	4	3
FR	7,9	8,2	7	6	5
IT	5,3	5	3,9	2,7	2,2
ES	11,4			3	
GR	12,7	8,7	5,3	2,8	2
IR	11,7	11,6	10	7,2	4,9
US	9,9	10,6	8,3	5,1	4,2
JP	7	7,2	7,1		

Source: Natixis, Flash 2010 64



Source: Datastream, BEA, Eurostat, NATIXIS

ETUC RESOLUTION ON BURMA

Adopted by the Executive Committee
on 9-10 March 2010

On 11th and 12th February 2010, the International Trade Union Confederation (ITUC) Conference on restoration of democracy in Burma took place in Tokyo. It gathered ITUC affiliates, European trade unions affiliated to the ETUC, as well as Global Union Federations.

In the context of the upcoming general elections in Burma, the Conference worked on identifying possible ways of short and long term actions to maintain pressure on the junta and to support the Federation of trade unions – Burma (FTUB), affiliated to the ITUC.

Burma is going through a decisive moment. While general elections are planned for 2010, no date has been officially communicated yet, and the necessary election legislation has not been passed. The Constitution adopted in 2008 by a controversial referendum that took place after Cyclone Nargis contains draconian restrictions which clearly hamper a free and transparent election process. It clearly seeks to entrench military rule and limit the role of independent political parties such as Daw Aung San Suu Kyi's NLD.

The ETUC, along with the ITUC, considers that if the Burmese 2010 general elections were to be held in these circumstances, they could not be deemed legitimate. Basic conditions must be met, the release of all political prisoners including Aung San Suu Kyi, and dialogue with the opposition and ethnic groups, to ensure national reconciliation and constitutional changes providing for a genuine transition to democracy and respect for human rights.

The ETUC calls upon the EU to clearly identify strong benchmarks based on these conditions according to which the election process should be assessed.

This is a moment for the international community not to reduce pressure, but on the contrary to maintain and reactivate it. The European Union must take the lead in this process.

There is clear evidence that sanctions do have an impact. The European Union has adopted sanctions and strengthened them, particularly after the Saffron Revolution. Their effectiveness must be assessed and communicated in a transparent manner, and they must be maintained and reinforced until the Junta responds in a truly positive way to the demands of the international community.

The ETUC, along with the ITUC, has consistently called for the EU to adopt tougher sanctions. Additional sanctions to those already in place, including financial and third party transactions, insurance, energy and banning all new investment, must be considered now so that they can be implemented immediately in case the general elections are not held according to the benchmarks identified by the EU.

The ETUC also calls on the EU to:

- take advantage of the Asia-Europe Meeting (ASEM) to work towards Asian Governments' stronger commitment and to elaborate a coordinated approach; and
- in preparation for the EU high-level mission to Burma at the end of April, meet with the ETUC and the ITUC to discuss the terms of such a mission and incorporate the views of the Burmese trade union movement.

It further calls on the EU to support and promote, during the March meeting of the ILO Governing Body stronger action on:

- abolishing forced labour, given the continued prevalence of forced labour in the country, and the Burmese Government's alarming reprisals against victims of forced labour and facilitators filing complaints under the ILO's Supplementary Understanding; and

- guaranteeing the right to freedom of association, given the ban on free and independent trade unions in Burma, and particularly in light of the recent worker strikes emerging across Burma.

The ETUC recalls the unique decisions by the ILO in 2000 to request international organisations, governments, employer organisations and workers organisations to take action against the military regime in Burma and the additional specific request concerning foreign direct investment (FDIs) in 2005 to exert pressure in order to achieve the eradication of forced labour in Burma. The affiliates of the ETUC are called upon to take any legally possible action and where appropriate refuse to deal with goods and services of Burmese origin.

The ETUC calls on all of its affiliates to raise these issues directly with their national governments.

JUNE 2010

POSITION ON THE FINANCING AND MANAGEMENT OF CLIMATE POLICIES

Adopted by the Executive Committee
on 1-2 June 2010

I

Context

The ETUC adopted a resolution in October 2009 on “climate change, new industrial policies and the ways out of the crisis” including strong and ambitious policy recommendations. The ETUC called on the European Union to consider workers and their representatives as crucial players with whom the European Union must engage in a dialogue and negotiate the transition to a low carbon economy that will provide sustainable jobs and social progress.

Following the Copenhagen negotiations, the ETUC steering committee of 4 February 2010 again called on the European Union to “commit to a concerted policy of green growth that contributes to maintaining and creating quality jobs and social progress throughout the economy.”

The position that follows intends to develop further the ETUC policy recommendations made in the resolution adopted in October 2009 as well as in the previous ones, in particular on the financing and management instruments to be used in climate policies in order to contribute reaching our priorities.

It intends to allow the ETUC to react as precisely and focused as possible to the Communication that the European Commission is about to publish on the future European Union climate policies to be developed.

This position was prepared by the ETUC sustainable development working group which gathered the 7 May, following a joint seminar ETUI-ETUC on these issues which took place in March 2010.”



Further developments on climate policies

Although China and the United States were not willing to agree to binding targets in CO₂-reduction in Copenhagen, they in particular are investing massively in low-carbon technologies.

This is not being done sufficiently in Europe, which is consequently in danger of losing quickly its current position as world leader in this decisive economic sector.

Europe, apart from enhancing the pressure on the other global CO₂ emitters to agree to ambitious binding targets on CO₂ reductions, must urgently develop a strategy ensuring innovation in clean technologies in Europe while preserving and reinforcing the European social model at the same time.

It must invest urgently in technologies ensuring its energy security of supply, including through increased energy efficiency and diversified energy supply.

This race for technological innovations cannot be at the expense of social gains.

Government intervention is needed to achieve these goals as well as a portfolio of more efficient public and private instruments.

The instruments to be activated by public authorities, such as support for R&D, support for demonstration and deployment of technologies, predictable and right scale support to energy intensive industries to facilitate their necessary investments, standards setting, regulation, public investments, diffusion of technologies to the South, good management of green jobs and skills resulting from education, training and life long learning frameworks, etc. require that public authorities should have important budgets available, at the European, territorial and sectoral levels.

Financial instruments are key

Existing European financial instruments can be used to finance these policies but they are currently insufficient: the EU general budget; the European recovery plan; the structural funds under the European cohesion programme 2007-2013.

Current financial instruments must be reinforced and further mobilised to the benefit of a European Union development strategy.

The European Investment Bank is an important budget instrument not tied to the EU general budget, and adopted in 2009 a “Statement of Environmental and Social Principles and Standards”, including the ILO core labour standards, now included in its strategy for project selection and implementation. This bank, possibly by establishing special (national) funds, should be used more to finance European climate policies, to support R&D efforts not only in large firms but also in small enterprises, and should develop further the implementation of its sustainable development strategy through dialogue with the trade unions and civil society, and through a representation of social partners on the board of this bank.

The European Bank for Reconstruction and Development also offers interesting prospects.

To tackle the climate challenge, the European Union must

- Mobilise and reinforce existing resources,
- Reform its system of governance of funds used to combat climate change, including through integration of social and environmental principles as requirements for providing support to projects.
- Use new and innovative sources of financing, such as a tax on financial transactions.

Carbon pricing is a key instrument for achieving the objective of green growth

Among the different instruments that fall within price signals on emissions is the **CO₂ tax, which should meet a number of conditions:**

- There must be further analyses of the introduction of a CO₂ tax.
- **The ideal level for introduction of a CO₂ tax is the global level, or otherwise the European level** (some countries may however implement such a tax in the meantime).
- **It should be part of a coherent set of measures and be part of a global approach aiming at reducing emissions while pursuing fiscal and social justice.** This requires that counterproductive measures to this end (such as environmentally damaging subsidies) should be dismantled, that there should be no increase in the taxation burden on households and that it would be implemented in the framework of a social redistribution set of measures.
- **It must cover several complementary objectives:**
 - Furthering the objectives of the Energy-Climate Package by increasing energy efficiency, reducing CO₂ emissions, raising the share of renewable energy and reducing dependence on fossil fuels;
 - Stimulating research and innovation;
 - Not compromising the competitiveness of the European economy
 - Contributing to a fair transition by reinforcing social cohesion.
- The possible introduction of a tax on CO₂ emissions can be contemplated in terms of its effectiveness at changing behaviours and investments from goods and services with high carbon content to those with lower content, and at compensating for the costs of CO₂ emissions.

- For these reasons, the amount of the tax must reflect (at least partially) the external costs of pollution resulting from CO₂ production; be set at a level and via a process (phased in and foreseeable) that brings about changes of behaviour over the longer term and can influence investment decisions on a lasting basis.
- The introduction of any CO₂ tax must **form part of an environmental approach aimed at giving a price signal**, rather than being conceived of in a budgetary logic.
- **The basis of assessment for the tax should be enlarged to cover both CO₂ and energy.**
- **A tax on energy and CO₂ could apply to all sectors of activity (households, transport and enterprises), with the exception of ETS enterprises, provided several conditions are met:**
 - **The ETS system should be revised because in its present version**
 - it may not contribute to real reductions of CO₂ considering that a significant share of emissions allowances will be distributed for free and that, due to the economic crisis, an additional surplus of emissions allowances will be generated. Consequently, **the price of CO₂ in the emissions trading scheme might fall constantly too low, making thereby the ETS offer too few incentives to reduce CO₂ ;**
 - it is a victim of **speculation and fraud**;
 - **it gives rise to uncertainty as to the future price and industry needs to know what to expect** (anticipation required for a period of 30 to 50 years) before adopting investment decisions.
 - **A European regulator should therefore be established** and placed in charge of setting a minimum price, ensuring a degree of price stability (essential for the necessary investments), preventing financial speculation, ensuring transparency and social and environmental traceability, etc.
 - **Sustainable alternatives must exist**, such as effective, regular and outstanding public transport systems, energy-efficient housing, etc. and **must be available at accessible prices.**

- **Targeted compensation measures should be put in place**, sector by sector, such as targeted aid for disadvantaged households to enable them to renovate their housing, targeted aid for non-ETS sectors threatened by international competition due to introduction of the tax, etc.
- **Social and environmental criteria must be built into all the public authorities' decision-making processes (definition of benchmarking in ETS; public investments; public aid for private investments; etc.)**
- **The tax revenues must be spent transparently and totally on internal investment measures to reduce emissions, on climate support for the developing countries and to finance the necessary compensating measures for low income households.**
- The discussion on the revenues from a CO₂ tax must be matched with the debate on revenues from the auctioning of CO₂ quotas.
- It is **essential to make such a tax visible, acceptable and comprehensible** to households and enterprises

Good management of green jobs and skills is also a key instrument for achieving the objective of green growth

It can only happen in a just transition framework requesting social dialogue instruments at all levels: European, sectoral, national, regional, etc.

All sectors of activities -industry, building, transport, services are concerned.

Following just transition principles, for each key sector, the common agenda of priorities includes: social partner representation, issues of capacity and demand, finance for investment in low carbon technologies, and appropriate skills and training strategies.

All should contribute significantly to emissions reductions and will require initiatives and councils including social partners to manage the transition to a low carbon economy.

For example, there is a need for a European automotive sectoral council to manage the transition (EMF demand)

- Dealing with existing over-capacity in the car industry.
- Adopting a comprehensive approach to mobility not just a 'green car' agenda.
- Coherent support for new technologies, putting the accent on training (the sector is currently lacking people specialised in training staff for the production of electric vehicles).
- European industrial policy considering the potential for negative spillovers from a national industrial policy approach.

The flagship initiative "An agenda for new skills and jobs" of the Europe 2020 Strategy does not pay enough attention to the need to create quality jobs nor to provide new skills through adequate, on time and well designed education, training and lifelong learning programs.

This can only happen through social dialogue and through such councils at all levels - including at the global inter-sectoral European level - that can better anticipate and manage the transition to a low carbon economy.

The communication to come from the commission on climate policies should fully integrate these social aspects and needs.

THE WORKING TIME DIRECTIVE: **LIMITATION** OF WORKING HOURS AND MORE INFLUENCE OF WORKERS, FOR **HEALTHIER** WORKING LIVES

Position of the ETUC on the Communication of the European Commission of 24 March 2010, being the first stage consultation of the social partners at EU level on the review of the Working Time Directive

Approved by the ETUC Executive Committee,
Brussels, 3 June 2010

Introduction

I

On 24 March 2010, the Commission adopted a Communication on the review of the Working Time Directive (WTD), which constitutes the first stage in consulting the EU social partners (again) on the *'possible direction of EU action regarding the Working Time Directive'*. The Commission proposes a **comprehensive review** of the WTD, the objectives of which are set out in the consultation paper, and invites the social partners *'to reflect broadly on the kind of working time regulation the EU will need in order to cope with the challenges of the 21st century.'*

II

Directive 2003/88/EC (revising the original Directive 93/104/EC) is a very important element of the EU's social policy acquis, and is based on a 'health and safety' legal basis. However, the Directive must be understood as being firmly embedded in a wide range of international standards and

fundamental rights (ILO conventions, the European Social Charter, the Charter of Fundamental rights, etc.).

With the entry into force of the Lisbon Treaty, the Charter of Fundamental Rights (Charter FR) has become legally binding. Article 31 of the Charter deals with '*fair and just working conditions*'. According to this Article, "***every worker has the right to working conditions which respect his or her health, safety and dignity***". In its second paragraph, it says "***every worker has the right to limitation of maximum working hours, to daily and weekly rest and to an annual period of paid leave***".

The ETUC is of the opinion, that the Commission does not give due consideration in its Communication to this legal framework, and its implications for the current re-examination process.

III

The starting point for any debate on the WTD must be the recognition that the EU and all its Member States have a double legal obligation, i.e. to ensure that every worker has a right to limitation of his working hours which is implemented in a way which respects his health, safety and dignity (Article 31 Charter FR), and to progressively reduce (long) working hours, while improvements are being maintained (Article 151 TFEU¹).

Also, as mentioned in the preamble of the WTD: "***the improvement of workers' safety and health at work is an objective which should not be subordinated to purely economic considerations***".

These obligations give direction to the scope for a 'comprehensive review' of the Directive, which must clearly respect and build on this Community acquis. Any attempt to extend, working time practices, involving long, irregular and unhealthy hours for business and/or financial reasons must be considered to be not in conformity with these legal obligations.

1 Article 151 of the TFEU: "*The Union and the Member States, having in mind fundamental social rights as those set out in the European Social Charter (...) and the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, **improved living and working conditions, so as to make possible their harmonization, while the improvement is being maintained**, proper social protection, dialogue between management and labour (...) etc."*

IV

The Working Time Directive is based on Article 153, 1 (a) TFEU (former 137 EC), allowing the Union to take measures on health and safety. Long and irregular hours, unilaterally imposed on workers, are unhealthy² and outmoded forms of work organization. The protection against such working hours must continue to be the main goal of the WTD also in the 21-st century. Its minimum regulations should be consistent with modern insights with regard to the health and safety needs of workers.

V

As mentioned by the ECJ in its judgement of 12 November 1996 (UK vs Council of the EU) and confirmed in the Jaeger-case, the **concept of health and safety** used in the Treaty should be interpreted in a wide sense, as **embracing all factors, physical or otherwise, capable of affecting the health and safety of the worker in his working environment**, including in particular certain aspects of the organization of working time.

The Court makes reference to the Constitution of the World Health Organization (to which all Member States belong) in which health is defined as a state of complete physical, mental and social well-being that does not consist only in the absence of illness or infirmity. .

VI

This brings into the picture the health and safety dimensions of new forms of flexible and precarious working time arrangements (broken hours, unpredictable on call duties, etc.), unsocial working hours (shift work, night- and weekend work), intensification and higher paces of work, and working time patterns that make it difficult or impossible for workers to enjoy a proper family life and reconcile work with care obligations for children and other dependents. According to recent research, all these working time patterns can lead to increased stress and illnesses leading to absenteeism, related to strong feelings of lack of control over and influence on one's work and life.

2 Just one example out of many: A recent study shows that overtime work is related to increased risk of incident coronary health disease, CHD independently of conventional risk factors. Marianna Virtanen, Jane E. Ferrie, Archana Singh-Manoux, Martin J. Shipley, Jussi Vahtera, Michael G. Marmot, Mika Kivimäki; "Overtime work and incident coronary heart disease: the Whitehall II prospective cohort study", European Heart Journal, March 2010
<http://eurheartj.oxfordjournals.org/content/early/2010/05/04/eurheartj.ehq124.abstract>

VII

Protection against long and exhausting working hours and patterns is important to protect the individual worker and provide him/her with fair and just working conditions. However, rules on maximum working hours and minimum rest periods are also very important to limit competition on working conditions to the detriment of the worker and possible third parties that could fall victim to the mistakes and accidents that could be caused by an exhausted worker (in traffic, in health care, etc.).

VIII

In a context of globalization and Europeanizing labour markets, clear rules providing for a bottom in competition, both nationally and cross border, are key, to ensure fair competition and the support of workers for open borders and markets. The EU, at the forefront when it comes to defending fundamental social standards in international trade and development, has an important responsibility to give the right example in its internal regulation.

It is therefore fully inappropriate from a health and safety perspective, and not defensible towards the outside world, to allow for provisions that make it possible for Member States and/or their companies to get a blanket exception from the rules, on the single condition that an individual worker agrees to it...

IX

The WTD is a health and safety Directive and only deals with the organization of working time, and not with how any specific working time arrangement is paid. However, it is clear that in the socio-economic reality pay is strongly related to working hours. When workers are not sufficiently paid per working hour to be able to lead a decent life with a normal full time working week, they will be under pressure to work long hours and overtime.

Decent levels of pay are therefore an essential pre-condition underpinning health and safety protection against long and irregular working time patterns.

The Working Time Directive, fit for the 21-st century?

X

The WTD is based on a long and turbulent history of more than 150 years of trade union struggle and scientific evidence, claiming long and irregular hours as damaging for the health and safety of workers and third parties, detrimental for family- and social life and negative for productivity. More recently, the long term negative effects on economies and societies, in relation to demographic change (dropping fertility rates and ageing of the population) have been brought to the fore. There is no basis in recent research supporting the view that protection of workers against long and irregular hours is outdated.

However, new practices in the organization of work and new forms of contractual arrangements are raising questions if the current provisions are sufficiently capable of protecting workers against unhealthy and unsocial working hours (see point 6 above). ETUC would welcome a genuine effort of the European Commission to investigate these risks and the necessary responses to them, which in ETUC's view call for strengthening the WTD.

XI

The WTD 1993 was a difficult political compromise, shown in its far reaching possibilities for 'flexible' working time arrangements and derogations from the general rules. Already its central standard, the 48 hour working week, was introduced as a flexible provision, i.e. an average maximum of 48 hours, related to a reference period of 4 months. This allowed the working week to go far beyond 48 hours per week (!), if averaged out on a longer period. On top of that, additional room for flexibility was allowed on the basis of collective agreements, up to a reference period of 12 months. However, an even more striking compromise was the option given to the UK (although potentially open to every MS), to allow employers the possibility not to apply the maximum 48 hours at all, on the basis of an individual agreement with a worker, the so called individual opt-out. Both provisions were seen as so far reaching, that they had to be evaluated after 10 years (!)

XII

The research reports, provided to the Commission in 2003 to prepare its evaluation, showed:

- a/ that the implementation of the opt-out in the UK was very problematic, and led to serious forms of abuse and lack of protection (while the UK even not properly applied the basic rules on the opt-out itself.....) ;
- b/ that the collective bargaining practices, based on the 12 month reference period, were in general considered to be acceptable, as they often led to balanced and innovative forms of working time arrangements.³

In the meantime the EU and MS's were confronted with new challenges: the ECJ had, in a series of judgments, given a clear and unambiguous interpretation of the concept of working time, clarifying that on-call time in the workplace had to be considered as working time. The practices in a number of MS's, especially in the healthcare sector, were not in conformity with this jurisprudence, and MS's were reluctant to adapt their laws to the jurisprudence.

In addition, the Commission came across some MS's interpreting the WTD as if it protected maximum hours per contract of work, rather than taking the worker as the reference point. This could be considered as clearly not in line with the aims and objectives of the WTD and its health-and-safety basis, as this would make the protection of the worker against long hours in practice illusory.

3 See for examples of innovative working time arrangements, including examples of annualised hours, the report of the ETUC project "Challenging Times, innovative ways of organising working time, the role of trade unions", July 2006, www.etuc.org/a/2807

XIII

In this context, it would have been logical for the Commission to propose

- an end to the opt-out
- keeping in place the rules on the reference period
- codification of the ECJ jurisprudence on on-call work in the workplace
- clarifying in the Directive that it had to be applied 'per worker'

Instead, the Commission sought from the very beginning of the revision process compromises with MS's that were unwilling to change their practices, for mostly ideological and/or short term economic/financial reasons.

XIV

For the last 7 years, ETUC and its member organizations have mobilized against this approach and its negative consequences for workers and their families, but also for the long term interests of economies and societies at large. In this, the ETUC got the support of the majority of the European Parliament (EP), until the very end, i.e. the failure of the conciliation process with Council in spring 2009.

One year later, in ETUC's view, the Commission cannot just ignore this history, and simply ask from all stakeholders to move '*beyond the unsuccessful debates of the last conciliation process*'. Trade union members did not go out in the streets in masses to defend outdated interests, and MEP's did not fight for their majority position because they had wrong ideas about the needs of workers and companies and about EU social policy!

XV

The ETUC cannot and will not abandon the fundamental and essential notions and concepts underlying a long history of health and safety research and regulation, which continue to underpin our major demands:

- a/ **Workers' safety and health at work cannot be subordinated to purely economic or financial considerations.** The WTD must provide a level playing field of minimum standards and prevent downward competition at the expense of workers at national and European level, and can therefore not be put on the same footing as arguments of 'competitiveness'. As President Barroso said when accepting his new term:

"if globalization puts pressure on our competitiveness, our response should never be to lower our standards".

- b/ **The individual opt-out is not compatible with the basic principles of health and safety protection**, which must protect the individual against undue pressure put on him by his employer or by circumstance to accept working conditions that are detrimental to the health and safety of him/herself and of others dependent on his/her proper work performance. The opt-out, once meant as a temporary compromise for one MS in order to help it adapt to the mainstream Community approach, has now become a virus infecting working time regulation throughout the EU. It serves as an exit strategy, preventing negotiations on more sustainable solutions for working time challenges. It also provides the MS's making extensive use of it a competitive advantage vis-à-vis other MS's that don't use it. This must be stopped.
- c/ **On-call work in the work-place is working time, and not rest.** In the reality of workers' living and working situations, there is no category between the two, and the ETUC will not accept the introduction of one (such as the notion of 'inactive' working time...), which – as also said by the ECJ – would not be in line with the objectives of the Directive.
- d/ **The notion of 'equivalent compensatory rest' in the WTD is fundamental**, in the sense that it is the condition on which derogations allowing for more flexible working time arrangements are allowed. The ETUC cannot accept a hollowing out of this principle.
- e/ The 'average 48 hour maximum' is already a very flexible concept, and a reference period of 4 months gives ample scope for modern needs of companies and workers. **Longer reference periods without proper safeguards** can lead to unilaterally imposed extremely long and irregular working time patterns, which are **unacceptable**. **Derogations from this basic rule**, when inevitable, must be put in such a form that they promote **negotiated** solutions between sufficiently strong bargaining parties which can guarantee a balanced outcome. Keeping **collective bargaining as a pre-condition** for derogating from the 4 month reference period is therefore the best safeguard.

f/ The average maximum of 48 hours of the WTD must be understood to be applied **'per worker' and not per contract**, regardless if the worker has more contracts with the same or another employer. This is the only interpretation compatible with the health and safety objective of the Directive.

The ETUC is of the opinion that the Commission, rather than suggesting the necessity of giving up or relaxing these boundaries and safeguards, should develop more activities to draw attention to the innovative working time practices and good practice examples on the basis of collective agreements and other social partner arrangements, benefiting both employers and workers, that have flourished in the last two decades since the WTD was adopted!

XVI

In addition to the end of the opt-out, the codification of the ECJ jurisprudence on on-call working time, and clarification of the application of the WTD 'per worker' there are other reasons why the WTD might need to be reviewed in terms of its relevance for the 21-st century:

- a/ Updating the notion of **'adapting the work to the worker'**, acknowledging that the average modern worker is no longer a full time available breadwinner, but a worker (male/female) with other obligations in life than work (see below under 17-20);
- b/ Introducing provisions that **strengthen the bargaining position of workers** to influence working time patterns adapted to their needs (see below under 17 and 21-23);
- c/ Recognizing **'better working time'** as a factor to improve productivity and reduce absenteeism (see under 24);
- d/ **Clarifying the definition of 'worker'** covered by the WTD, limiting exclusions from the scope for higher and managerial staff, tackling bogus self employment, and considering to extend protection to own-account workers;
- e/ Calling on MS's to **strengthen enforcement**, by investing in labour inspection and support social partner initiatives.

XVII

An important principle of general health and safety regulation is the concept of 'adapting the work to the worker' (and not vice versa), which is laid down in the WTD in Article 13. This should be urgently 'updated' to take account of the feminisation of the workforce, and expected ageing of the working population. If we want more women on the labour market, more babies to be born, and workers to remain in employment until their pension age, it is not possible to demand from workers at the same time longer working hours, days, weeks, months and lives!

With regard to the future of social policy, the EU is at a cross roads here: either to fight the battle for competitiveness and growth with a limited work force making long and exhausting working hours, or with a broad workforce making reduced and healthy working hours.

XVIII

As long as working time practices in Member States are continuing to demand from 'normal' (=male) workers to make long hours, and do not allow them to share family duties with their partners, women will continue to juggle and struggle with the combination of work and family life, will continue to be excluded from adequate career-perspectives, and will either leave the labour market for long periods in their lives, or refrain from having children. The current situation in many Member States, in which there is increasing pressure on families to ensure that both parents have a paid job without providing for the necessary supportive framework in terms of childcare facilities and working conditions, leads to **increased stress** for men and women both at home and in the workplace. In this context, increasingly also the issue of **shared social time** for families is becoming an important issue, which is reflected in new calls for respecting the work-free weekend/Sunday.

XIX

The same issue is at stake with regard to the objective of increasing the employment rate of older workers, which is only possible if workers are not exhausted by long working hours many years before the actual pension date. **Reduced and adaptable working hours throughout working life are important preconditions for a healthier working life.**

XX

Policy coherence at EU level when it comes to gender equality and the employment agenda in relation to demographic change demands for different and more sustainable working time policies at all relevant levels. These issues are of particular relevance for the public sector (especially health care and social services), with an increasing female workforce and increased needs and demands for services supporting working families and the ageing population.

Recruitment and retention, and ensuring public services as attractive workplaces delivering high quality services, are of key importance for the quality and sustainability of EU's societies.

XXI

Taking account of the needs of workers in a way which is fit for the 21-st century requires a 'modernisation' of the WTD indeed. Some elements of such modernisation were already proposed in the previous stages of the debate by the European Parliament with ETUC's strong support,

- **limitation of excessive hours** will contribute to more well being of families and more gender equality;
- giving workers the **right to request adaptation of their working hours** to their needs does not only recognize the importance of giving workers influence in the scheduling of their working hours, but also provides them with a tool to put pressure on their employer to negotiate a better outcome;
- the obligation for employers to **notify workers in time about changes** in their working schedules is a first step to reduce the negative impact of irregular and unpredictable working hours.

XXII

More could however be done, to give more and better minimum protection to workers that are confronted with stressful and unhealthy working time patterns, such as broken day shifts etc., and work intensification.

Research shows, that it is the lack of control and influence over their working situation and consequently their life, from which they are suffering most. At the same time, modern insights show that the needs of workers change with the seasons in their lives. This is a further argument

to provide workers with individual tools and collective support that allow them to evaluate and negotiate adaptations to their working time patterns with their employers. Such a “life course approach”, in which working time patterns are potentially regularly adapted, can lead to a win-win approach also from an employer’s perspective.

XXIII

The economic crisis is giving a particular edge to the debate on working time and adaptability. ‘Old’ instruments, such as collective arrangements for temporary short term working, helping ailing industries to overcome a temporary fall out in demand while keeping their skilled workers in employment so as to make use of their skills as soon as demand increases again, show that ‘adaptability’, given form in a balanced way taking into account interests of employers and workers, is much more important than accommodating the cry for working hours without limits. Moreover, these experiences can form stepping stones for more extensive practices and experiments with **smart working time arrangements**, combining working time reduction and innovation.

However, another dimension of the crisis is the effect on the public sector, which is under severe threat of budget cuts, while workers are called upon to provide the same level of production or services with longer hours for the same or even lower wages.

With unemployment on the increase in many EU countries, the logical thing to do is to promote solutions which keep as many workers as possible in employment, **rather than putting pressure on workers to work longer hours!**

XXIV

Promoting healthy working hours is not just ‘the right thing to do’ in the interest of workers but can also serve as an effective competitiveness strategy. Work organisations and businesses can benefit through increased productivity, reduced rates of absenteeism and staff turnover, and improved motivation and morale of workers and more efficient use of time leading to better work performance.

Official statistics show remarkable differences in **productivity** per hour worked, with the countries having the longest working hours (such as the UK) ranking lowest on the productivity scale. Advocating more possibilities for long working hours is therefore also from an economic point of view not viable, and contradictory to EU-policies. On the contrary, seeking innovative working time arrangements which combine business efficiency with increased worker influence over the scheduling of their working hours seems to be particularly successful.

XXV

The paragraphs above show, that, in addition to arguments of health and safety, **there is a legal, an economic, and a demographic case for a win-win approach, in which there is a combined effort to put limitations to long working hours in the framework of offering more 'adaptability' to employers and workers.**

XXVI

The ETUC urges the Commission to ensure that all relevant research and evidence, of the ILO, Dublin Foundation and others, underpinning the above mentioned issues is investigated and integrated in its upcoming social and economic impact assessment, and taken into account while drafting its proposals on the revision of the Working Time Directive.

This impact assessment should be available before the next stage of the debate, i.e. before the second stage consultation of the EU social partners, to ensure that they can take an informed position on the proposals of the Commission.

Response to the specific questions

Based on the above, the ETUC responds as follows to the questions raised by the Commission in its consultation document:

a/ How could we develop balanced and innovative proposals regarding the organisation of working time that move beyond the unsuccessful debates of the last conciliation process? What is your long-term vision for the organisation of working time in a modern setting?

For the last 7 years, ETUC and its member organizations have fought against a weakening of the Directive and the preservation of its basic principles, with the support of the majority of the European Parliament (EP), until the very end, i.e. the failure of the conciliation process with Council in spring 2009. One year later, in ETUC's view, the Commission cannot just ignore this history, and simply ask from all stakeholders to move '*beyond the unsuccessful debates of the last conciliation process*'.

The ETUC reiterates its key demands from the previous rounds of discussion, because they are based on the obligations of the Union according to the Treaty and the, legally binding, Charter of Fundamental Rights, and regard fundamental principles of health and safety protection (see above under 14). However, according to the ETUC, it should be possible to move forward at EU level towards a sustainable working time policy, if all stakeholders would agree that 'unilaterally imposed long and irregular hours' are outdated and will not provide Europe with a highly competitive knowledge economy, nor with solutions for the demographic challenges and ageing of the workforce.

In ETUC's view, sustainable working time arrangements need a basis in strong and clear legal minimum rules, at both national, European and global (ILO) level, which can prevent that workers are put under undue pressure of market forces to give up on the protection of their health and safety, and are incentives for negotiations that can adapt the rules to the needs of work organisations and workers. Such rules must take into account that modern workers are men and women with care obligations, for themselves, their families and other dependents, and their communities, and with the need to continuously educate themselves and to take active part in society. Their needs will differ throughout their life course, which means that it must be possible to adapt their working pattern accordingly, which must be properly safeguarded in collective agreements, social security and other arrangements. **Limitation and adaptability in smart working time arrangements** are key words for the future of working time organisation.

b/ What impact do you think that changes in working patterns and practices have had on the application of the Directive? Have any particular provisions become obsolete, or more difficult to apply

The Directive is complex, because of all the compromises that were made in the past in attempts to reconcile contradictory interests. This complexity does not help to improve application in practice. However, the most detrimental to its proper application has been the practice of public authorities both at national and European level, which have allowed the erosion of this important piece of social legislation, leading to a situation in which the majority of MS's is not applying the Directive properly or is even clearly infringing its rules.

The European Commission must now urgently take full responsibility, as guardian of the Treaties, to not let this situation grow further out of hand, and call the MS's to order in all possible ways including launching infringement procedures.

The progressive de-standardisation of individual working time in most cases has not led to more workers with time-sovereignty, but a more generalised feeling of time pressure and lack of control. Although there is indeed also a growing group of 'knowledge workers' with a certain degree of autonomy regarding the organisation of their work, employers have developed also new ways of exerting control on result and output, and have developed new technologies which can also monitor workers when working from home or elsewhere.

With regard to changes in working patterns and practices, it is not so much that certain provisions have become obsolete, but **additional safeguards and rules are necessary**, especially in terms of procedural safeguards and provisions ensuring that the worker can exert influence on his/her working time pattern, to ensure that modern workers are properly protected against health and safety risks related to long, irregular and stressful working time arrangements.

It is important to mention here, that the existing provisions of the WTD already provide for such limited protection and extensive flexibility when it comes to the scheduling of working hours and rest breaks, by averaging

maximum hours over long reference periods and allowing for many derogations, that even without applying an opt-out certain groups of workers in some countries, such as urban bus-drivers in the UK, could be left with dangerously long and exhausting working patterns.

c/ What is your experience to date on the overall functioning of the Working Time Directive? What has been your experience regarding the key issues identified in section 5 of this paper?

In ETUC's view, the overall functioning of the Directive is still of great importance and should not be underestimated. In all EU MS's, working time regulation is based on the WTD. However, ETUC and its member organisations have major concerns about the perverse effects of the 'individual opt-out' which is spreading like a contagious virus throughout Europe and which prevents stakeholders at all relevant levels to make use of normal negotiating procedures and social dialogue traditions to address new challenges and solve problems in the area of working time.

With regard to the key issues identified in section 5, the ETUC takes the following position, as explained more extensively above:

1/ Working hours should be maximized to 48, without opt-out. The British TUC has given extensive evidence⁴ that this can be introduced and implemented even in the UK without major economic or other problems given a transition period.

The derogation for autonomous workers must be further limited, to only include genuine senior management positions.

The definition of 'worker' should be clarified, and guidelines developed to prevent circumvention of working time rules by bogus-self-employment.

4 See, for example, «Ending the opt-outs from the 48 hour week - easy steps to decent working time», TUC, 2008: <http://www.tuc.org.uk/extras/48houroptout.pdf>; «Slaying the working Time Myths», TUC, 2009: <http://www.tuc.org.uk/extras/workingtimemyths.pdf>; or indeed the joint guide «Managing change: practical ways to reduce long hours and reform working practices», Department of Trade and Industry; CBI, TUC, 2005: <http://www.berr.gov.uk/files/file14239.pdf>

Maximum working time should be **counted per worker**, not per contract, regardless if the worker has more contracts with the same or different employers.

- 2/ **On-call time in the workplace**, according to the ECJ in constant jurisprudence since 2000 (!), **is working time**. It is high time that this is now considered to be the Community *acquis*, and properly implemented and enforced throughout the EU. Attempts to legislate in contradiction to the ECJ judgments have not worked out. The existence of the opt-out has provided an easy exit-strategy, has prevented social partners in the relevant sectors to negotiate solutions adapted to their needs, as well as has been used as manipulation tool to put pressure on workers and unions to accept drastic changes to fundamental principles of health and safety protection.

On-call working time in the work place is currently a key issue for the public sector and in particular the provision of health and residential care and emergency services (but also other frontline services such as fire fighters and police). Experiences in important health care systems (NHS, UK⁵), and research into possible working time systems (Deutsche Krankenhausinstitut, Germany⁶) have shown that working time arrangements in health care that respect the ECJ judgements are possible, if social partners are willing to negotiate innovative systems.

However, with the European Commission promising reversal of the ECJ judgments in a revision of the WTD, MS's and public sector employers have not been sufficiently interested to invest in such solutions, and have instead introduced the individual opt-out.

5 The UK National Health Service has dealt with the full implementation of the Working Time Directive by introducing a range of innovative new working patterns, as reported in «the Hospital at Night», «24/7» and a range of other projects under the banner of «Skills for Health». In March 2010 the NHS published a final report on these initiatives: <http://www.healthcareworkforce.nhs.uk/workingtimedirective.html>

6 Auswirkungen alternativer Arbeitszeitmodelle, Abschlussbericht, Deutsches Krankenhausinstitut e.V. in Zusammenarbeit mit der Universität Düsseldorf, February 2004.

In health care, workers' health and safety is closely linked to patient safety. It is vital that health and emergency services are provided by fit and healthy workers, whose skills and judgment is not undermined by exhaustion and stress resulting from long periods of continuous service. A day-shift, followed by an on-call night shift, and then immediately followed by another full day's work is no exception for certain groups of workers. This is unacceptable. This issue is closely linked to the issue of compensatory rest (point iv. below). It cannot be addressed only from the perspective of short term staffing problems which would require workers to overwork themselves. Long term sustainable solutions can only be found if issues like the feminisation of the health workforce and increasing recruitment and retention problems are properly taken into account.

If we all still want to be cared for by quality staff when we are sick and/or old, more sustainable working time and work organisation models will have to be developed. On-call working time should be progressively integrated into regular shift-work and roster systems that safeguard workers' long term health and safety and the attractiveness of the sector. Creative and innovative models can be developed by social partners to address specific problems with made-to-measure solutions.

Such negotiated solutions will only come about, if easy exit strategies, such as the opt-out and the defining away of the problem (by inventing a new category of working time, i.e. inactive on-call time) are made impossible.

- 3/ **Flexibility in averaging weekly working hours** is already possible in a far reaching manner on the basis of the current WTD. A general reference period of 4 months and a 12-months reference period on the basis of collective bargaining offer ample scope for flexibility, while safeguarding the protection of workers against unilaterally imposed long and irregular hours. The ETUC considers the argument that SME's and companies without collective agreements are 'disadvantaged' by the condition that longer reference periods than 4 months can only be regulated by collective agreement a perverse way of putting the world upside down. The 12-months

reference period is a derogation of an already quite flexible rule, which potentially can lead to working patterns that are very disadvantageous and harmful for workers. Rather than introducing rigid and detailed rules accompanying such derogation to prevent abuses, **the pre-condition of collective bargaining is a very flexible solution**, allowing made-to-measure-arrangements benefiting both employers and workers. Experience has shown that such provisions promote negotiated and balanced solutions. Employers and companies interested in such solutions can freely seek a collective bargaining partner, or adhere to an employers' organisation concluding such agreements. This approach is fully compatible with the EU's tradition and obligation to promote social dialogue and collective bargaining.

- 4/ **Flexibility on the timing of minimum daily and weekly rest periods** is already possible on the basis of the current Directive. This issue is of extreme importance for the practical meaning of working time protection, especially because other provisions in the WTD are already given a very flexible form.

In the context of an **average 48 hour maximum**, averaged out over 4 months, with further rules only saying that a worker needs at least 11 hours rest per 24 hours (which allows for a working day of 13 hours!) and 35 hours uninterrupted rest per seven days which allows for a working week of up to 78 hours⁷, ensuring that rest periods are safeguarded is essential. The Directive already allows derogation of these rules, as long as 'equivalent compensatory rest' is provided. The rules on rest periods have come under attack especially because of the on-call rulings of the ECJ.

The ETUC considers the judgments of the ECJ, stating that compensatory rest must follow immediately on periods of on-call working time, as fully in line with the objectives of the Directive, which should be upheld.

7 In specific circumstances, it is even possible to reduce the weekly rest to 24 hours, and increase the maximum scope of the working week to 89 hours!

d/ *Do you agree with the analysis contained in this paper as regards the organisation and the regulation of working time in the EU? Are there any further issues which you consider should be added?*

The ETUC has not extracted a clear analysis from the Communication, as most issues are addressed in a 'on the one hand, on the other hand' approach. However, what does stand out is the attempt of the Commission to argue in favour of 'modernisation' of EU working time regulation, although it is not clear in which precise direction the Commission is thinking. The ETUC and its member organisations are not convinced that the current Directive is outdated, and find its basic provisions still very necessary and up to date.

However, they do agree that the Directive could better accommodate the needs of 21-st century workers by providing them with tools and procedural safeguards to exert more control and influence on their working time patterns, and thereby allow them more say in the organisation of their lives.

One consistent mistake made in the analysis is, to address the needs for flexibility of companies and workers in one breath, as if they are the same thing and can be accommodated by the same solutions. The ETUC proposes to replace the word 'flexibility' (with its multitude of contradictory meanings) with the word 'adaptability', which allows for a more accurate description of the different needs of companies and workers.

The ETUC does not agree with the Commission's analysis, that there would be '*insufficient legal clarity on how to interpret a number of issues left unresolved by the lack of decision by the co-legislators*'. On most issues at stake (opt-out, reference periods, on-call work, counting working time per worker or per contract), it is not the lack of legal clarity but the lack of political will or courage to deal with the consequences of this clarity which has been the problem for the last 7 years.

e/ *Do you consider that the Commission should launch an initiative to amend the Directive? If so, do you agree with the objectives of a review as set out in this paper? What do you consider should be its scope?*

The ETUC wants to emphasize that an **initiative to amend the Directive is only desirable if it would genuinely address the need to put an end to the opt-out and to find balanced and sustainable solutions for on-call working time which respect the ECJ jurisprudence.** If it does not do so, workers around Europe will be extremely worried about further deregulation and weakening of working time protection. In such a situation, they will rather want to focus on better implementation and enforcement of the current Directive and jurisprudence, and raise awareness and mobilise at all relevant levels against the use of the opt-out and other bad working time arrangements in practice.

f/ Do you think that, apart from legislative measures, other action at European Union level would merit consideration? If so, what form of action should be taken, and on which issues?

The Commission mentions in its Communication the increasing polarisation of working time between groups of workers and especially the increase of part time work. ETUC recognizes indeed the need to address the situation of workers who, rather than being confronted with too many working hours, have jobs in which they have not enough working hours to earn a decent living. Involuntary part time and precarious jobs are on the increase. And an increasing amount of workers, in particular women, have part time jobs in which the volume of working hours does not match their wishes and needs. The ETUC has in recent times addressed this matter on several occasions⁸, and argued in favour of an evaluation of the Part time Directive with a view to a possible revision to strengthen its provisions on quality part time work.

Increasingly workers have an interest in a variety of temporary exits from work, for education, to prevent a burn out, to take care of dependent relatives, etc. In a life-course approach to working time, the various needs for leave and how to integrate them in a sustainable long term organisation of work and time and income security is an important issue that should be urgently addressed at all relevant levels including the European level.

8 ETUC reply to the European Commission's consultation on the follow-up strategy to the Roadmap for equality between women and men 2006-2010.

In the above (point 15) the ETUC has also addressed the problems with enforcement of minimum working time standards in many MS's. The Commission should address this matter as part of a wider debate on lacking enforcement of labour standards throughout the EU, and call on MS's to invest in labour inspection and support social partner initiatives.

g/ Do you wish to consider initiating a dialogue under Article 155 TFEU on any of the issues identified in this consultation? If so, on which ones?

The ETUC is currently not considering to initiate a dialogue with the European level employers' organisations on the review or revision of the WTD. Recent exchanges of views, including in a meeting with Commissioner Andor for Employment and Social Affairs, have confirmed that the positions of the European social partners are too far apart to expect a fruitful exercise. In ETUC's view, the conditions are currently not there for addressing the matter in the social dialogue.

THE WORKING TIME DIRECTIVE: LIMITATION OF WORKING HOURS AND MORE INFLUENCE OF WORKERS, FOR HEALTHIER WORKING LIVES

Resolution on the Communication of the European Commission of 24 March 2010, being the first stage consultation of the social partners at EU level on the review of the Working Time Directive

**Adopted by the ETUC Executive Committee
in Brussels on 2 June 2010**

Introduction

I

On 24 March 2010, the Commission adopted a Communication on the review of the Working Time Directive (WTD), which constitutes the first stage in consulting the EU social partners (again) on the '*possible direction of EU action regarding the Working Time Directive*'. The Commission proposes a **comprehensive review** of the WTD, and invites the social partners '*to reflect broadly on the kind of working time regulation the EU will need in order to cope with the challenges of the 21st century.*'

II

Directive 2003/88/EC (revising the original WTD of 1993) is a key element of the EU's social policy acquis, based on the Treaty's 'health and safety' legal basis, but also on ILO conventions and other international standards. The Commission in its Communication does not give due consideration to this legal framework, and especially the implications of the

Charter of Fundamental Rights (CFR) which is now legally binding, for the current re-examination process.

III

The EU and its Member States have a double legal obligation, to ensure that *“every worker has a right to limitation of his working hours”* which respects his health, safety and dignity (Article 31 CFR), and *to progressively reduce (long) working hours, while improvements are being maintained* (Article 151 TFEU). Moreover, the WTD states that *“the improvement of workers’ safety and health at work is an objective which should not be subordinated to purely economic considerations”*. Any ‘comprehensive review’ of the Directive must clearly respect and build on this Community acquis.

IV

This means that any revision will have to put an end to the opt-out, and include full recognition of on-call time in the workplace as working time, as well as compensatory rest taken immediately after periods of time spent on duty, in accordance with the jurisprudence of the ECJ. In this respect, the ETUC recalls the clear and strong position taken by the European Parliament, and calls for its absolute majority vote of 17 December 2008 to be respected. Any attempt to prolong or extend working time practices, involving long, irregular and unhealthy hours for business and/or financial reasons must be considered to be not in conformity with these legal obligations and with basic principles of health and safety protection. The ETUC will not support any initiative for revision that does not address these points clearly and unambiguously.

The Working Time Directive, fit for the 21-st century?

V

The main goal of the WTD is, and must remain the protection of workers against the health and safety risks of long and irregular hours. The concept of health and safety must be interpreted in a wide sense, as embracing all factors, physical or otherwise, capable of affecting the health and safety of the worker in his working environment, and take

on board new insights in the health and safety needs of workers. New forms of flexible and precarious working time arrangements, unsocial working hours, intensification and higher paces of work, and working time patterns that stand in the way of work-life balance can lead to increased stress and illnesses, related to lack of control over one's work and life. These must be addressed in any review of the WTD.

VI

Protection against long and irregular working hours is important to protect the individual worker and possible third parties (in traffic, in health care, etc.), but also to limit downward competition on working conditions. In a context of globalization and Europeanizing labour markets, clear and unambiguous minimum standards – without opt-outs - providing for a bottom in competition, both nationally and cross border are necessary to ensure fair competition and the support of workers for open borders and markets. Decent levels of pay are an essential pre-condition for health and safety protection, to prevent undue pressure on workers to accept unhealthy and unjust working conditions.

VII

There is no basis in recent research supporting the view that protection of workers against long and irregular hours is outdated. Its provisions already allow for a wide range of flexibility options and derogations. Rather than introducing even more 'flexibility', the WTD needs to be strengthened, to ensure that workers are better protected against the health and safety risks of new practices in the organization of work and new forms of contractual arrangements affecting working time.

ETUC's views

VIII

For the last 7 years, ETUC and its member organizations have mobilized against proposals to weaken the WTD, with the support of the majority of the European Parliament (EP). The process in the end led to the failure of the Conciliation process with Council in spring 2009. One year later, in ETUC's view, the Commission cannot just ignore this history.

IX

The ETUC cannot and will not abandon the fundamental concepts underlying a long history of health and safety research and regulation, which continue to underpin our major demands:

- a/ Workers' safety and health at work **cannot be subordinated to purely economic or financial considerations.**
- b/ **The individual opt-out is not compatible** with the basic principles of health and safety protection. Working hours must be limited to the average maximum of 48 hours, without opt-out. The ETUC will continue to mobilize for an end to the opt-out in the WTD, and its use in practice.
- c/ **On-call work in the work-place is working time, and not rest.** This is the Community acquis which must now urgently be enforced. The ETUC will not accept the introduction of a new category of 'inactive' working time between work and rest.
- d/ The notion of **'equivalent compensatory rest'** in the WTD is **fundamental.** The ETUC cannot accept a hollowing out of this principle. Compensatory rest must immediately follow on-call duties, as judged by the ECJ.
- e/ A reference period of 4 months for the average 48 hour working week gives ample scope for modern needs of companies and workers. **Longer reference periods without proper safeguards** can lead to unilaterally imposed extremely long and irregular working time patterns, which are **unacceptable.**
Derogations from this basic rule, when inevitable, must be put in such a form that they promote negotiated solutions between sufficiently strong bargaining parties which can guarantee a balanced outcome. Keeping **collective bargaining as a pre-condition** to derogate from the 4-month reference period is therefore the best safeguard.
- f/ The average maximum of 48 hours of the WTD must be understood to be applied **'per worker' and not per contract**, regardless if the worker has more contracts with the same or another employer. This is the only interpretation compatible with the health and safety objective of the Directive.

X

In addition, the WTD might need to be reviewed in terms of its relevance for the 21-st century, in order to:

- a/ Update the notion of **'adapting the work to the worker'**, acknowledging that the average modern worker is a worker (male/female) with other obligations in life than work, which can lead to different needs throughout the life course;
- b/ Introducing provisions that **strengthen the bargaining position of workers** to influence working time patterns adapted to their needs;
- c/ Recognizing **'better working time'** as a factor to improve productivity and reduce absenteeism;
- d/ **Clarifying the definition of 'worker'** covered by the WTD, **limiting exclusions from the scope for higher and managerial staff** to genuine senior management positions, **tackling bogus self employment**, and considering to extend protection to own-account workers;
- e/ Calling on MS's to **strengthen enforcement**, by investing in labour inspection and support social partner initiatives.

XI

These issues are of particular relevance for the public sector (especially health care and social services, but also other front line services such as police and fire fighters), with an increasing female workforce and increased needs and demands for services supporting working families and the ageing population. Recruitment and retention, and ensuring public services as attractive workplaces delivering high quality services, are of key importance for the quality and sustainability of EU's societies.

XII

Adaptable working hours throughout working life are an important precondition for a healthier working life; this can contribute to achieving the objective of increasing the employment rate of older workers, which is only possible if workers are not exhausted by long working hours many years before the actual pension date. A "life course approach", in which working time patterns are potentially regularly adapted to the worker's needs, can lead to a win-win approach also from an employer's perspective.

XIII

The economic crisis is giving a particular edge to the debate on working time and adaptability. With unemployment on the increase in many EU countries, the logical thing to do is to promote solutions which keep as many workers as possible in employment, **rather than putting pressure on some workers to make longer hours!**

XIV

Promoting healthy working hours is not just 'the right thing to do' in the interest of workers but can also serve as an effective competitiveness strategy. Work organisations and businesses can benefit through increased productivity, reduced rates of absenteeism and staff turnover, and improved motivation and morale of workers and more efficient use of time leading to better work performance. There is a strong business case for a win-win approach, in which there is a combined effort to put limitations to long working hours in the framework of offering more 'adaptability' to employers and workers.

XV

The Commission must integrate all relevant research and evidence of the ILO, Dublin Foundation and others, in its upcoming social and economic impact assessment, and take it into account while drafting its proposals on the revision of the Working Time Directive. This impact assessment should be available **before** the second stage consultation of the EU social partners, to ensure that they can take an informed position on the proposals of the Commission.

XVI

Any initiative to amend the Directive must put an end to the opt-out and find balanced and sustainable solutions for on-call working time which respect the ECJ jurisprudence. ETUC and its member organisations will not support any proposals to weaken the current Directive. In such a situation, they will focus on better implementation and enforcement of the current Directive and jurisprudence, and raise awareness and mobilise at all relevant levels against the use of the opt-out and other bad working time arrangements in practice.

XVII

The ETUC will not consider initiating a dialogue with the European level employers' organisations on the review or revision of the WTD as long as the positions of the European social partners are too far apart to expect a fruitful exercise. In ETUC's view, the conditions are currently not there for addressing the matter in the social dialogue.

ETUC RESOLUTION ON THE WORSENING CRISIS – EUROPE AT RISK

Adopted by the Executive Committee
on 1-2 June 2010

I

It was always evident that after the initial, generally positive EU and G20 reaction to the financial crisis of 2008, the next difficult task would be to arrange the exit from high public expenditure (the stimuli packages) towards more normal levels of public debt. The public deficit has risen from 2.3% of GDP in 2008 to 7.5% in 2010 with the public debt to GDP ratio rising from 61.6% of GDP in 2008 to 80% in 2010. Unemployment is forecast to reach 10.3% by the end of 2010. The European Commission originally envisaged this exit process getting underway in 2011 provided growth in the private sector would compensate for cuts in the public sector.

Panic

II

But events – especially speculators in the markets – have moved quickly and panicked governments. Premature exit strategies have been adopted by some European countries which appeared to be at risk of defaults. Greece, first, now Spain and Portugal have found themselves threatened in this way and join Rumania, Ireland, Iceland, Hungary, the Baltic States and now the UK, Italy and Germany in cutting public expenditure, welfare, and various labour conditions. The result in some countries is a wave of general strikes and social unrest.

III

The EU's response to the strengthening crisis has been hesitant and uncertain. The eurozone was initially too slow to move to protect itself and its member countries in distress. The negotiations with Greece were protracted and unnecessarily humiliating for Greece; the terms eventually agreed were very tough, too harsh, and could well have killed the prospects of growth there for years. The ETUC recognises that the Greek government and people have no alternative currently to the bail out deal but considers that in due course, sooner rather than later, an extra element of growth and job creation be added to the package.

IV

The terms of the Greek deal has provided much of the basis for the subsequent agreement of EU finance ministers on a large stability fund for distressed eurozone member countries. Again, the conditions for help are very tough, almost certainly designed to deter applicants by encouraging them to devise their own escape route from the high debts of this recession.

V

In these circumstances, the ETUC calls on the European authorities to match their insistence on tough exit strategies with new, entry strategies towards growth and lower unemployment. Funds have been made available in the eurozone for financial retrenchment and to support banks but the growth dimension has hardly been addressed.

The need for growth

VI

The ETUC therefore reiterates its demand for a European Recovery Plan with New Green and Social Deals equivalent to 1% of European GDP to stimulate jobs, investment and growth. Europe needs huge investment in new clean technologies in the fields of energy, transport, and construction, among other sectors, and it needs new industrial policies to boost manufacturing in Europe. The myth that societies could become post industrial and live on services, especially financial services, has been comprehensively exploded.

VII

A European Recovery Plan would also include

- robust regulation of financial markets – the German move on banning “naked short selling” is a welcome move, as are the decisions of the European Council and the European Parliament on hedge funds and private equity;
- new sources of taxation, especially the long overdue introduction of a Financial Transaction Tax (the “Robin Hood’ Tax), ideally G20-wide, but if necessary at EU level;
- special long-term help for young people, the group perhaps hit hardest by the crisis with unemployment rates as high as 40% in some countries / regions;
- industrial policies which promote European manufacturing and accelerate the development of a low carbon, sustainable economy;
- a strengthening of Social Europe with the adoption of the key features of the Monti report on the single market but additionally to the Monti report include a Social Progress Protocol to be attached to the next EU Treaty;
- start a process of transformation of capitalism from the model, strongly based on financial capitalism and rising inequality, which grew rapidly in strength in the past 30 years, into a more sustainable, greener, longer term, more equal system where profits are made through making things, not gambling on socially useless financial instruments;
- new balanced economic and employment guidelines instead of the existing ones which put almost all the burden of adjustment on the deficit countries, and little obligation on the surplus countries to foster wage growth and internal demand.

The Threat from the Far Right

VIII

The ETUC is launching a new campaign for Growth, Jobs and Europe – and against nationalistic, racist forces in Europe. The economic policies of harsh cuts in a recession resemble those of the 1930s which led quickly in that decade from economic disaster to political catastrophe as the forces of

nationalism, racism and militarism flourished. This must not happen again and the ETUC must take a prominent part in ensuring that it does not.

IX

History shows us that direction and that seems the dominant direction in the EU today. Recent results and trends show a rightward move:

- the French regional elections where the National Front made gains;
- gains in Italy for the Northern League; -victory in the general election in Hungary for the centre right with nationalists entering the Parliament for the first time;
- the campaign – fortunately unsuccessful campaign – of the far right candidate for the Austrian Presidency attracted the support of the country's biggest selling tabloid;
- in Belgium, the extreme right separatist Vlaams Belang has been accepted by some mainstream right parties, and separatist parties are tipped to do well in the forthcoming general election;
- in central and eastern Europe, the old enemies –Jews, Roma and national minorities – have become targets for the far right.

X

The ETUC is highly alert to this trend. In the 1930s depression, Europe steered more right than left with disastrous consequences.

ETUC Action

- **A Growth Summit**

XI

The ETUC is demanding an emergency Social Summit to plan to inject growth into the European economy. Unions must stand ready to be militant against the unfair imposition of austerity packages but must also be prepared to share in the difficult processes of devising exit strategies where a fair burden falls on the broadest shoulders, the rich and the comfortable. This is the ETUC basic message – Don't panic, don't exit. But use social dialogue to discuss when and what to do and equip the EU to aid growth and job creation strategies.

- **European Trade Union Mobilisation**

XII

On September 29, to coincide with a meeting of European finance ministers, the ETUC will organise a European Day of Action.

XIII

As European Governments move collectively to slash public expenditure, including jobs, pay and pensions, while the European economy is fragile and vulnerable to renewed recession, the ETUC is to mobilise a collective trade union response. This will be centred on a big demonstration in Brussels but the ETUC is calling on affiliates to take the maximum possible degree of action in all the countries of the European Union. This can include protest stoppages, demonstrations, meetings with Government finance ministers etc.

XIV

The ETUC is also supporting the ITUC world wide Day of Decent Work on October 7.

ETUC RESOLUTION TOWARDS A NEW IMPETUS FOR PUBLIC SERVICES

Adopted by the Executive Committee
on 1-2 June 2010

Introductory remarks

Quality of life of European citizens is fashioned greatly by public policies responsible for maintaining vital infrastructures like hospitals or roads and for providing major social services as health, housing and education. Public services¹ are a pillar of the European social model, important for welfare and social cohesion, job creation and economic prosperity, contributing to more than 26% of the EU27 GDP and employing more than 64 million people. There is a fundamental mutuality between a prosperous modern economy and a fully developed public sector. A successful economy depends upon the availability of a well-educated workforce. This not only implies a need for a well-resourced, effective public education system but also for decent housing and effective health care. Public services are not only major employers but also purchasers of goods and services, investing more than 150 billion € yearly. Furthermore, public investments in green electricity, renewable energies and green transport should be important contributions to ensuring the transition to a sustainable and low carbon economy.

1 In European jargon, Public services are divided into two categories, (non-economic) services of general interest ((NE)SGI) and services of general economic interest (SGEI). SGEIs are subject to the European Treaties, but derogations are possible subject to specific public service obligations by virtue of a general interest criterion.

II

Public services are confronted today with a double challenge: the worst crisis since the 1930s and the ongoing policy emphasis on the austerity measures by the European Institutions. The public sector has become the main target to compensate for the budget deficits generated by the financial bail-outs for defaulting banks. Draconian cuts in public expenditure are imposed by various national governments seriously jeopardizing social justice and social inclusion. The European Commission exerts pressure on member states by giving absolute priority to budget consolidation over growth. This will further deepen the recession resulting in high unemployment. The quality of public services and their accessibility for citizens will be dramatically reduced, whilst the financial and banking sector reaps in massive profits again. Moreover, even in the middle of the crisis, the Commission is upholding its approach of putting competition first. It is interfering with the competence of the Member States when defining public services, for instance when limiting the scope of social housing in the Netherlands. This intrusion is unacceptable as it severely limits the possibilities of financing quality public services.

III

Public services play a key role in the current financial crisis ensuring social cohesion and cushioning the effects of the crisis and could play an even bigger role. Even neo-liberals have acknowledged that the public services are twin economic and social "automatic stabilisers". ETUC insists therefore that funding for public services needs to be underpinned by appropriate fiscal policy measures, including the introduction of fairer and progressive taxation systems (for instance financial transaction tax), as well as improving the efficiency of tax collection. Exit strategies and adjustments of public finances need to be planned over the medium and long-term. The pre-crisis concepts of the European Commission contained no reference to the contribution which public services make to job creation, prosperity and welfare nor to the importance of public investments and wide access to public services. However, the pre-crisis strategy to win the race to lead the world has not delivered the desired results. The new 2020 strategy should acknowledge the role the public sector and public services play in building sustainable growth and a fair inclusive society.

IV

In recent years, many problems for public services have occurred at the EU level; the delivery of SGIs, public procurement, state aid have been subject to European Court of Justice (ECJ) cases. Public services have come under increasing scrutiny from the European Commission seeking to expand its internal market concept. The slow “creep” of Commission and ECJ decisions seeking to define more and more services as “economic” strengthens the trend that more and more local non-profit public services could be deemed to be “economic”. There is a dilemma between the need to increase legal security by legislation or leaving the question to the ECJ which will end up opening and liberalising all public services.

V

When the ECJ continues to rule that market freedoms and competition are superior to fundamental rights, the principle of public services is at stake and the idea of social Europe takes a blow. This trend is reinforced in particular by the Laval and Rüffert cases in which public authorities are involved and public procurement rules are under attack. The local or regional authorities applied local collective agreements as a condition for the acceptance of tenders from foreign service providers. Public authorities’ obligation to tender for construction works and services provided to them puts local authorities in particular at the heart of this matter. They can apply social criteria, but in a restricted way.

VI

The **Lisbon Treaty** brings about new institutional developments and introduces changes, calling for an update of the ETUC strategy. The logic of the Lisbon Treaty is one of greater openness in the debate on Services of General Interest. The social market economy has become the new framework, and competition is no longer a goal, but a tool.

VII

The **Charter** of Fundamental Rights by virtue of Article 6 (1) becomes legally binding. The Charter lays down, in its Article 36, a right of access to SGIs “in order to promote the social and territorial cohesion of the Union”. In addition, several provisions of the Charter imply the existence of a mission of general interest. For instance, the right to education (Art.14), the right of children to protection and care (Art. 24.1),

the right to social and housing assistance (Art. 34.3), the right to healthcare (Art. 35) etc. constitute fundamental rights recognised and protected by the Union.

VIII

The new **Article 14** TFEU provides a **legal basis**. It is a widespread consent that article 14 leaves the Community legislator with no choice as to the form of action: it imposes the instrument (Regulation) and the procedure for its adoption (the ordinary legislative procedure). Regulations leave Member States no leeway in implementation and it may therefore be difficult to achieve a consensus for adoption, but not impossible, as the new Regulation on public passenger transport services by rail and by road (1370/2007) showed.

IX

The **new protocol** (no. 26) on SGIs lays down interpretative provisions concerning the common values of the EU with regard to SGEIs and confirms the broad margin of manoeuvre of the Member States in providing, commissioning, financing and organising SGEIs as closely as possible to the needs of the users. Article 1 of the protocol acknowledges the essential role and the wide discretion of national, regional and local authorities.

X

These three new foundations (Charter, new protocol, legal base in Article 14) of the Lisbon Treaty are an important cornerstone in the construction of a new architecture for SGIs and a transversal regulatory approach with regard to SGEIs, not only by making it legally possible henceforth, but also by making it necessary in the light of the guidelines now set out firmly in primary law (Protocol). Article 14 offers the possibility to move away from a mere derogation from internal market rules to a more positive stance, taking into account the shared values embodied by public services across the EU. The Charter of Fundamental Rights, together with Article 14 TFEU and the new protocol can be used to build up an authentic notion of SGIs as common values of the EU. These three new foundations above all place a shared responsibility on the EU and Member States to ensure the application of principles that are inherent to public services, i.e., the principle of solidarity, universal access, equal treatment, availability, continuity and sustainability, of quality public services and principle of

user rights. The EU should now skip from the strict derogation approach that has prevailed so far to a promotion approach based on the notion of common value, i.e. solidarity and social and territorial cohesion. It is also important to note that the treaty reserves an original power of self-determination and autonomy for local and regional authorities.

ETUC proposals and actions to promote public services

XI

The ETUC is convinced that the new article 14 together with the new protocol is an **obligation** to act. It is unacceptable that the Commission continues to abstain from any action. The ETUC asks the Commission to come up with a legislative proposal on the basis of the new article 14. The previous demand for a “framework directive” which was based on internal market rules (Article 114) is from now on replaced by the new demand for regulation(s).

XII

The **content** of such a regulation should reinforce the ‘public service mission’ of public services and provide that

- 1/ the power of definition is with the relevant local, regional and national public authorities,
 - 2/ the exercise of this discretion should not be open to challenge in any legal proceedings except in case of manifest error, and
 - 3/ the burden of proof should fall on the European Commission or other complainant and not on the local or regional or national authority.
- More provisions are possible. The subsidiarity rules are important in creating a balance between the nationally established public services and European competition rules and the internal market. The Member States can exercise wide discretion which is strengthened by the new treaty to define missions and obligations of general interest. The times, when the Commission turned a “blind eye” towards the regional and local organisational levels, prioritising market and competition over regional and local self governance, should definitely be over.

XIII

In complement to regulations each Member State, local and regional public authorities can (on the appropriate level) establish a **register** of

non-economic services of general interest, which are excluded from the application of the rules on the provision of services, on competition and on state aid. The new double track approach has the advantage that the diversity of national traditions, cultures, values etc. can be fully taken into account and a Member State with an ambitious definition of public services can establish a broader list than a Member State with less ambition. Unanimity would no longer be necessary and the situation that one Member State can block any progress would be avoided as well. The register can be updated whenever necessary.

XIV

Member States have the competence to provide, commission and fund SGEIs. As it is shared with the EU institutions, there is at present considerable legal uncertainty and insecurity, so it will be necessary to clarify the conditions for implementation in regulations, namely:

- a/ the conditions for defining SGIs, SGEIs, non-economic SGIs and social SGIs - in respect of the Member States' competence of definition. A clarification of the conditions for "particular tasks", their methods of implementation, and the methods for appointing operators is necessary as well;
- b/ the definition of their forms of organisation – under what conditions may any exclusive or special rights be decided, and more generally what type of derogations may be applied to the rules set out in the Treaties, the conditions for choosing management methods ("in-house"), and the conditions for cooperation of activities and/or services between local public authorities;
- c/ the financing of SGEIs, - particularly from the viewpoint of the application of the rules for the supervision of state aid, in the context of a revision of the "Altmark" package (of November 2005). It is necessary to better define which compensations do not fall under the treaty provisions on state aid.

XV

The ETUC demands a serious assessment of **Public Private Partnerships** (PPPs). It is not acceptable for the Commission to push, without any critical assessment of problems and failures, for an increased scope for PPPs, to stimulate unilaterally a greater role for the private sector. The Commission treats as evidence the claim that PPPs improve efficiency and reduce

burdens on public budgets, which is contested by many scientific researchers. So there should be an independent evaluation about PPP and much larger transparency about legal, economic and social consequences of PPP contracts and subcontracts. The responsible public authorities should have sufficient public resources to finance public services. Statistical requirements about public deficits should not lead to indirectly promote PPPs.

XVI

The ETUC has been asking for a handbook on **social public procurement** for more than six years to explain how social, employment and ethical considerations can be included in contracting processes varying from providing information and ensuring compliance relating to employment protection, working conditions, respect for ILO Conventions and collective agreements.

XVII

The ETUC demands a **critical in-depth assessment** of previous liberalisations and privatisations with the participation of all major stakeholders and maintains its demand for a **moratorium for liberalisations**. In particular, the ETUC asks the Commission to declare that there is no intention to come forward with proposals to liberalise **water or waste** as well as domestic rail passenger services, and to commit itself to this declaration.

XVIII

The ETUC supports the efforts of the European Parliament and the Belgian Presidency to improve the security, quality and availability of social services of general interest. **Social services** are part of a “grey area”, which is prejudicial to the accomplishment of the missions entrusted to them. They are faced with an increasing level of legal insecurity, uncertainties and disputes. Therefore, regulations on health and social services should take the new treaty provisions fully into account. A derogation from internal market rules should be applied according to Art. 86, paragraph 2 EC, as far as the development of trade is not really affected². The creeping precarization of public services must be reversed.

2 In the case of social services: absence of a profit motive, services of proximity: Article 106.2 TFEU “the development of trade must not be affected to such an extent as would be contrary to the interests of the Union”, operation on the basis of the principle of solidarity.

The Decision of the Commission against the Netherlands on social housing which sets an income limit (of 33 000 €) and prevents mixing inhabitants from different social classes is a clear breach of the subsidiarity rules and should be challenged. The ETUC remains sceptical vis-à-vis voluntary frameworks on the quality of social services. Quality of work, social dialogue and secure funding are essential elements of strategies to promote quality public services. ETUC calls in addition for a strengthening of the Open Method of Coordination processes related to public services and for the appropriate involvement of social partners.

IXX

In general, new initiatives regarding public services should be benchmarked against the public service provisions of the Lisbon Treaty and should have Article 14 as their legal basis. Existing **sectoral directives** should be revised and improved in the light of the new treaty provisions and in particular complemented by the Monti Clause (EC Reg. 2679/98) and a social clause. The aim of this clause is to anchor fundamental rights in all legislation on the single market. It would ensure that the implementation of the economic fundamental freedoms of the single market does not impede collective bargaining rights and the right to strike as defined by national legislation.

XX

The ETUC attaches a very high priority to the introduction of a **social progress clause** governing primary law, and for the necessary instruments in secondary law to balance the movement of workers and services, fundamental rights and the competition rules. In case of conflict social rights should prevail over internal market freedoms. The ECJ cases like Rüffert etc. have been extremely detrimental to workers' support for the EU.

XXI

The Belgian Presidency, the European Parliament and the European Commission are asked to act and to come forward with proposals to strengthen high quality, accessible, affordable public services, and essential for social, territorial and economic cohesion and to ensure more legal security in order to allow the development of sustainable public service missions and to guarantee fundamental rights.

OCTOBER 2010

RESOLUTION ON A SUSTAINABLE NEW DEAL FOR EUROPE AND TOWARDS CANCUN

Adopted by the Executive Committee
on 13-14 October 2010

The EU must adopt *A Sustainable New Deal* , underpinned by a development strategy to secure Europe's recovery from recession, to adopt a just transition, to create millions of decent, sustainable and green jobs, and to make a fair and effective contribution to the global fight against climate change.

1/ Introduction

In recent years, the European Trade Union Confederation has adopted a number of resolutions and positions on climate policy, together with the ITUC, shaped by various studies it has commissioned¹, on which this resolution is based.

This resolution details the position of the European trade union movement, particularly in view of the climate negotiations to be held in Cancun in December 2010. It also forms part of the general framework of the recent resolution adopted by the International Trade Union Confederation, «Combating climate change through sustainable development and a just transition»², to which the ETUC subscribes.

The ETUC sees just transition as a genuine opportunity. Work must urgently be started to implement its basic principles within the framework of a European strategy: dialogue between government, industry

1 See our dossier at <http://www.etuc.org/r/749>

2 See http://www.ituc-csi.org/IMG/pdf/2CO_10_Sustainable_development_and_Climate_Change_03-10-2.pdf

and trade unions, and other interest groups; green and decent jobs; investments in low-carbon technologies, and new green qualifications.

The European strategy must be a development strategy and not merely a negotiating strategy.

Europe has to impulse and persuade the other countries, including developing and emerging countries, of the importance of social and environmental transparency, control instruments, regulation, standards and sanctions, to avoid competition based on the lowest common social and environmental denominators and ensure a virtuous circle.

From the point of view of the trade union movement, action on climate change can and must seek to become a strategy for sustainable growth and social progress. Such action must entwine the battle against climate change with the fight against poverty and social inequality. Caution in this regard is no longer possible. Urgent action is required, including through the Europe 2020 strategy which must be revised and strengthened to include these priority actions, in order to contribute to the transformation of our societies avoiding conflict.

2/ General context

2.1. Austerity strategies are no response to recession or climate change

The financial crisis plunged Europe into the worst situation it has ever known since the 1930s: 23 million unemployed in Europe, millions of European citizens made vulnerable and insecure, and growing social tension across the continent. The centre of gravity of global economic activity has also shifted outside of Europe and climate change – together with environmental damage in general - is worsening social inequalities between and within the different regions of the world.

To cope with this situation, the only response most European governments have been able to come up with is to adopt austerity measures that will drive up unemployment and radically damage social solidarity and growth as well as Europe's capacity to contribute effectively and fairly at global level to the fight against climate change and the struggle for social

progress. During the financial crisis, however, huge amounts of money were raised to save banks and guarantee their financial assets. Now, Europe must urgently mobilize and strengthen its financial resources to guarantee a sustainable economic recovery. A financial transactions tax (FTT) is essential.

The ETUC is concerned that austerity measures will lead Europe into recession and result in even more unemployment, deep cuts in salaries and pensions, insecure working conditions for young people and other workers, poverty, social exclusion and social inequalities. It is also alarmed that recorded reductions in greenhouse gases emissions – resulting largely from the economic crisis rather than climate policies - together with austerity measures will delay and complicate the investments needed to bring about the transition to a low-carbon economy.

2.2. A European sustainable development strategy is the right response to recession and climate change

For the ETUC, it is possible to build a more social Europe, a Europe of solidarity that offers its citizens access to quality jobs, stable jobs, training for all, the guarantee of decent pay, strong social protection as a guarantee of social cohesion and solidarity, protection of purchasing power, the guarantee of better pensions, and quality public and social services available to all; a Europe based on solidarity contributing to the respect for human and labour rights globally, through the prioritisation of these rights and social conditions in all treaties, agreements and institutions and by promoting an integrated sustainable development approach in all international decision-making processes.

For the ETUC, it is possible to meet at the same time these social objectives and environmental requirements, among which the reduction of greenhouse gas emissions.

To help achieve these objectives, Europe must adopt an integrated sustainable development approach and put in place a development strategy that establishes the conditions for sustainable growth, namely concerted green growth that contributes to the creation and maintenance of quality jobs and social progress throughout the economy, because all jobs are concerned.

Simultaneously, Europe must:

- ensure the development of coordinated, sustainable and dynamic industrial policies in the European Union based on low-carbon policies, R&D, technological innovation and suitable education and training programmes;
- improve European governance;
- reinforce public control in such a way that any measure designed to promote any policy is impossible to separate from compliance with labour legislation;
- strengthen means of fiscal coordination and transparency to prevent social dumping in Europe;
- adopt appropriate climate change legislation;
- ensure a strong public investment policy;
- ensure the transparency, coherence and complementarity of its public policies, including fiscal policy measures, that must all contribute reaching sustainable development objectives;
- develop instruments to finance the necessary policies;
- implement urgently a financial transactions tax.

In short, Europe must oblige the Member States to assume a high level of responsibility and must put in place genuine, strong and coherent European policies. Otherwise, in the longer term, it risks wasting the opportunity offered by today's crisis to develop a low-carbon economy rich in quality jobs, losing its voice in the international arena, and contributing to a historic weakening of Europe.

The sustainable growth that Europe so badly needs can only be based on stability and security grounded in a dynamic employment and social protection policy. Workers will more readily accept job mobility, whether linked to climate or other policies, if it is placed in the framework of a secure career. It cannot be conceived of without compliance with social legislation, without sustained social dialogue instruments, without anticipation of needs or without real social law in all European Union countries.

Historically, these elements have constituted the foundations of the European social model, foundations that are being called into question in a number of European Union states today. Yet we cannot build a

democratic social system based on increasing social inequalities, resulting among other from insecurity in employment and environment degradation.

For the ETUC, another model is possible. It is both necessary and urgent, as a means of safeguarding the European democratic social system and enabling Europe to contribute fairly and effectively to the fight against climate change and against environmental damage in general and to the drive to combat social and environmental inequalities in Europe and beyond.

A failure to move forward in this direction may not only lead to a historical weakening of Europe compared with the rest of the world, particularly on the development of promising green technologies, but could also exacerbate conflicts related to resource management due to their scarcity in certain regions of the world and cause an increase in migration that will often prove disastrous for the populations concerned.

3/ The climate change negotiations and Europe

For the ETUC, the 5 pillars of Just Transition to a low carbon Europe are:

- Consultation between Government and key stakeholders, including representatives from business, trade unions, local government and regional bodies and voluntary organisations.
- Green and decent jobs through investments in (new) low carbon technologies.
- Green skills: Government-led, active education/training and skills strategies for a low carbon, resource efficient economy.
- Respect for labour rights and human rights: democratic decision making and respect for human and labour rights are essential in order to ensure the fair representation of workers' and communities' interests at the national level.
- Strong and efficient social protection systems.

The ETUC also stresses the following points, specifically for Europe.

a/ **In the context of European policies, the European Union must:**

- put people and the planet first, as developed in the Spring Alliance Manifesto to which it contributed, and consequently attach far greater importance to the social dimension of environmental and economic policies, reconsider the European Union's sustainable development strategy to ensure that it adopts a truly transversal sustainable development approach in shaping its policies, and reconsider the **European Union's 2020 Strategy**³ ;
- stress the urgency of **protecting biodiversity**, particularly for its very strong interactions with climate change, but also in light of a general concern for public health and occupational health. For the protection of biodiversity and promotion of health at work we request the spread of the principles and methodology of REACH at global level. This should be put on the ILO's agenda.
- **implement as a matter of urgency, and in full, the potential in terms of sustainable development included in the European Treaties, namely:**
 - the pursuit of the objectives set out in Article 3.3 of the Treaty of the European Union, stipulating that *'the Union shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion, and solidarity among Member States...'*
 - the implementation of the horizontal clauses included in the Treaty on the Functioning of the European Union

3 See <http://www.springalliance.eu>

On the one hand via social mainstreaming applied across all European policies, as provided in Article 9: *'In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health'*.

On the other by also incorporating considerations to do with the environment and sustainable development provided in Article 11: *'Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development'*.

- **implement as a matter of urgency, before the end of 2010, a European recovery plan matched with a green and social New Deal equivalent to 1% of Europe's GDP** to stimulate employment, investments and growth. Europe needs massive investments in clean technologies, both in new and existing industries, particularly in the fields of energy, transport and construction, as well as new industrial policies to boost manufacturing in the Union⁴.
- **implement and strengthen the commitments made in the Energy-Climate package⁵ ;**
- **adopt climate change legislation** that includes measures such as:
 - the creation of a European agency taking over the responsibility for establishing benchmarks based on the best available technologies and ensuring carbon traceability for products, in particular for those where "carbon leakage" could result in the loss of jobs and investment to countries without similar carbon reduction commitments, on which the social partners are represented;
 - prevent price speculation and erratic fluctuations through a revised ETS⁶ ;

4 See ETUC resolution of June 2010 on «The worsening crisis – Europe at risk” at : <http://www.etuc.org/a/7373>

5 See ETUC resolution of March 2008 at : <http://www.etuc.org/a/4716>

6 See ETUC resolution of October 2009 at www.etuc.org/a/6594 and ETUC position of June 2010 at www.etuc.org/a/7395

- comprehensive coordinated initiatives in R&D and other areas⁷;
 - social and environmental quality requirements for projects conferring entitlement to CDM and JI credits⁸.
- **put in place a European low-carbon industrial policy based on a process of EU-wide industrial coordination** that transcends intra-European divisions and the negative effects of market requirements for short-term returns on industrial investments, and that particularly addresses the challenges of industrial restructuring with which the new members states are confronted⁹ ;
- **secure the conditions for a just transition**
 - by calling for the setting up of an international fund and by setting up a European fund to facilitate R&D and the development of green technologies, technology transfers to the developing countries and the development of employment policies based on social protection, the promotion of decent work and public services;
 - by developing a transition strategy for energy-intensive industries in order to prevent carbon leakage and to encourage investments that help enhance environmental protection and safeguard quality jobs;
 - by creating career crossovers to help workers from sectors that are shrinking to find quality jobs in expanding sectors, etc.;
 - by developing a European framework that would help anticipate socio-economic transitions, identify the associated qualifications and occupations, that would encourage the greening of the economy as an opportunity to promote the gender equality on the market, and ensure the reform of education and training systems accordingly, and by strengthening dialogue between the social partners and the public authorities to ensure that all the above objectives can be achieved¹⁰.
 - by ensuring, promoting and supporting social dialogue instruments, negotiations and collective agreements at all levels (European,

7 See ETUC resolution of October 2009 at www.etuc.org/a/6594 and ETUC position of June 2010 at www.etuc.org/a/7395

8 See ETUC resolution of march 2008 at <http://www.etuc.org/a/4716>

9 See ETUC resolution of October 2009 at <http://www.etuc.org/a/6594>

10 See the resolution of October 2009 at www.etuc.org/a/6594 for further details.

national, regional, sectoral, company...), as key instruments for achieving the objective of green and sustainable growth.¹¹

- **encourage contributions from all sectors of activity to the emissions reduction effort and the shaping of a development strategy**
 - by promoting energy efficiency at the workplace and the greening of workplaces, by giving new and more extensive rights to trade union representatives on matters of protection of health and the environment, by supporting (inter alia financially) their initiatives in this area and by making relevant training and skills acquisition available with that aim in view¹² ;
 - by managing green skills and jobs effectively through social dialogue at every level, and by considering that the development of a low-carbon economy will depend mainly on improving existing skills rather than on developing specialised green skills, as demonstrated by the studies conducted for the ETUC in 2007 and 2009¹³, and as recently confirmed by the CEDEFOP.¹⁴
 - by giving the necessary attention to education to environmental and sustainable development in general, the importance of which is also highlighted by the CEDEFOP.

- **release substantial funds for this development strategy, at European level as well as national and sectoral level** ¹⁵
 - by mobilising and strengthening existing financial resources, including the EU general budget, the European recovery plan; the structural funds under the European cohesion programme 2007-2013; the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD);
 - by reforming the governance of funds for combating climate change, in particular by making respect for social principles and conventions (compliance with the ILO's fundamental rights, human

11 For more details, see the ETUC's position of June 2010 www.etuc.org/a/7395

12 See ETUC resolution of October 2009 at <http://www.etuc.org/a/6594>

13 See www.etuc.org/a/3673 and www.etuc.org/a/7586

14 14 briefing note «Skills for green jobs», July 2010.

15 See ETUC position of June 2010 www.etuc.org/a/7395

- rights, etc.) and environmental principles and conventions a prerequisite for obtaining project funding;
- by using new and innovative sources of financing such as a financial transactions tax
- **give the right economic signals**, in particular a price signal that could take the form of a CO₂ tax provided that a number of conditions are met ¹⁶, including: that any CO₂ tax must form part of an environmental approach aimed at giving a price signal rather than having a budgetary logic; the enlargement of the tax to also cover energy; the revision of the ETS system; that the tax mentioned should not apply to industries already covered by the ETS and that double taxation should be avoided (in some countries there is already a tax on energy usage); the creation of a European regulator; the availability of sustainable alternatives at accessible prices (regular and outstanding public transport systems, energy-efficient housing,...); targeted compensation measures, sector by sector; the inclusion of social and environmental criteria into all public authorities' decision making processes; the spending of the revenues transparently and totally on internal investment measures to reduce emissions, on climate support for the developing countries and to finance the necessary compensating measures for low income households.
 - set in place the conditions for achieving an exact evaluation of the situation in terms of employment by Member State and by sector, under the coordination of the European Commission, with a view to climatic imperatives. In this way, the European Commission will be in a position, together with the Member States and the social players, to define the needs and resources necessary for the implementation of the Transition towards a low-carbon economy for Europe.

b/ In the context of the ongoing international negotiations:

- **On the emission reduction targets:** the European Union must take initiatives in the context of the 2010 negotiations and play its role, with a view to securing serious commitments on ambitious targets. It should

16 See ETUC resolution of June 2010 www.etuc.org/a/7395

thus be prepared to reconsider without delay, depending on how the context evolves, its current position of not increasing its emissions reduction commitments to 30% until other countries express the political will to take domestic action on the Copenhagen Accord. It should also be ready to reconsider its position in terms of and with due regard to the IPCC scenario pointing to the need for an 85% reduction in global greenhouse gas emissions by 2050 to limit global warming to 2°C at most, which necessitates interim targets, including a corresponding reduction of at least 25 to 40% in the industrialised countries by 2020 from 1990 emissions levels, as developed in the recent ITUC resolution.

- **On the international financial commitments, Europe must:**
 - help ensure that US\$30 billion in «fast-start» funds are distributed as soon as possible in 2010 among the least developed countries (while establishing criteria for transparency, participation and just transition as described above);
 - increase its contribution to funding for the global reduction of climate change and combine the fight against climate change with the drive to reduce poverty and social inequalities. The funds to be released from 2020, a total of around US\$100 billion per year, should be increased and the European Union should contribute one third of global aid (in keeping with the latest resolution of the European Parliament) by setting up appropriate mechanisms to ensure this financing (in particular through the introduction of a tax on financial transactions, etc.).

Europe must go on being one of the most important driving forces for climate change and must

- Help define at international level, as a matter of urgency, a financial system guided by economic, environmental and social principles to make possible a new model of development, especially for the poorest countries, as proposed in the state of play drawn up by the ETUC after the Copenhagen summit¹⁷

17 see http://www.etuc.org/IMG/pdf_Etude_EN.pdf , pp 30-35.

- Ensure that this system is transparent and managed through sound governance, in the interest of all, and that it leads to the creation of new financial instruments such as the taxation of financial transactions.
- Support the recommendations of the ITUC and the ETUC, and see to it that the final agreement includes the objective of guaranteeing the principles of a “just transition”, “decent work” and the engagement of stakeholders in the new UN climate change agreement.
- Help ensure that trade unions (and civil society in general) continue to participate in the UNFCCC negotiations in accordance with clear procedures and transparent mechanisms.
- Contribute to having carbon captured in wood from sustainable forests measured as holding carbon. This would increase the incentives for using and building with wood.

ETUC References

Resolutions/Positions

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EUROPEAN GOVERNANCE NEEDS TO PROMOTE STIMULUS AND FAIR WAGES, NOT AUSTERITY AND WAGE CUTS

October 2010

Ahead of the Tripartite Social Summit, the ETUC calls upon European politicians, employers and central bankers to urgently learn the lessons from the deepest economic crisis in Western Europe, at least, since the 1930s. The collapse of the economy in 2009 is not to be shrugged off by calling it 'just an incident' but should be seen as the result of years of unbalanced economic policies. 'Free markets' have been systematically elevated above democracy and 'government', profits and dividends over wages, precarious contracts over good jobs and 'cut throat' competition over cooperation. And by replacing fair wages and good jobs by debt and asset price bubbles as drivers for demand and growth, our economies have marched straight into the financial recession.

Europe is not learning these lessons. Instead of rebalancing pro short-term business policies with more long-term competitive and indeed worker friendly policies, the Commission is now pushing for a policy of massive deflation. Economic governance, as currently proposed by the Commission, is about nothing else than cuts, cuts, cuts: Cutting wages, cutting jobs, cutting protection against easy firing, cutting social benefits, cutting public services. Workers are being presented with all of the huge costs of the crisis.

The ETUC warns against repeating the policy mistakes of the past. Making workers insecure and unprotected will make it all too easy to force workers into accepting wage cuts and worse working conditions. And while workers are suffering, CEOs and large shareholders will enjoy rising bonuses and dividends. In the end, the combination of wage and fiscal

austerity together with rising inequalities will risk pushing the economy into a renewed recession, even a deflationary spiral.

For the ETUC, economic governance should not be about turning Europe into a 'punishment squad'. Economic governance, instead, is about Europe mobilizing the power of acting together. It is about coordinating a joint expansion of demand so that a multiple effect on growth and jobs can be achieved. It is about Europe teaming up to issue European growth bonds to help all member states to face the irrationality of global financial markets, and levying financial transaction taxes. It is about preventing member states from weakening each other by trying to get out of the crisis through social dumping, tax competition and unfair competition in the internal market.

ETUC RESOLUTION ON ECONOMIC AND SOCIAL GOVERNANCE

Adopted at the Executive Committee
by 13-14 October 2010

European economic governance and EU 2020: The Commission's proposals

I

A reinforced Stability Pact:

To tighten up the Stability Pact, more focus is to be put on the level of public debt: It is proposed that even Member States with a deficit lower than 3% of GDP can still be put into an 'excessive deficit' procedure in case public debt loads are over 60% of GDP and fail to reduce this debt load each year by 5% of the difference with the 60% threshold. Meanwhile, member states which are not subjected to an 'excessive deficit' procedure but who are still facing a high level of public debt are to follow an even faster pace of consolidation towards a close to zero deficit. The latter also has to be seen in connection with the proposal of taking implicit liabilities (future public pension obligations) on top of formal debt into account. Moreover, the Commission also seeks to intervene on the way member states are to achieve fiscal consolidation, with expenditure cuts being preferred over higher tax revenue.

II

Adding a new procedure: 'Excessive macroeconomic imbalances'

Current account imbalances (which reflect imbalances in aggregate savings and investments), together with persistent competitiveness problems are thought of as harming the monetary union. To remedy this, a new procedure with both a preventive as well as a corrective arm is being proposed. The procedure would work on the basis of a scoreboard, using

indicators such as current account positions, unit labor costs, public debt and private sector credits. Thresholds would be defined so as to formalize from which level imbalances are potentially harmful. Given the fact that macro economic imbalances are interconnected with a wide range of policies, this new process is giving finance ministers and DG ECFIN yet another possibility to intervene in areas where they have no competence (including collective bargaining, labour market institutions, public services,...).

III

Sanctions, fines and penalties (but for Euro Area members only).

A battery of penalties is proposed, ranging from interest and non – interest bearing deposits of 0.2% in case of non compliance with stability pact recommendations and a yearly fine of 0.1% of GDP in case of failure to act upon ‘excessive imbalance’ recommendations. Moreover, a ‘reverse voting’ mechanism is to be introduced: The fines that are proposed by the Commission can only be stopped by a qualified majority vote. Finally, the Commission is also trying to move to a system of enforcement that is linked to the EU budget: Member states in breach of stability and a (reasonable) external balance position would see their access to European structural, social and cohesion funds being cut or reduced. This measure also includes the agricultural funds but in this case the end beneficiaries would not be affected since member states would have to continue to pay the farm subsidies without being reimbursed by the EU budget.

IV

Finance ministers and EU 2020.

Behind the proposal of a European policy semester in which stability plans and national reform plans are being streamlined in the first half of the year and finalized by April 2011, is hiding the decision of finance ministers to start writing these plans already now. The aim is to politically commit to ‘growth enhancing’ structural reforms as soon as possible. Commissioner Rehn is proposing the following time table:

- a/ Bilateral meeting between the Commission (DG ECFIN) and Member states in September-October 2010.
- b/ Political commitment to accelerated key reforms and first drafts of National reform plans by Mid-November.
- c/ Commission assessment by December 2010,

- d/ Followed by ECOFIN tightening the reform plans ahead of their finalization in April 2011.

V

Reforms to be frontloaded.

To address 'bottlenecks' to growth, and in order to compensate for the contractionary effects of fiscal austerity on economic activity, DG ECOFIN (backed up by the EPC/EFC) is proposing the following policy agenda:

- a/ Pension reforms through higher tax revenue and lower public spending in future.
- b/ Reform of bargaining systems to swiftly restore cost competitiveness.
- c/ Reform of job protection systems as part of flexicurity and in order to remove impediments to job creation.
- d/ Address incentives to work
- e/ Enhance active labour market policies, public employment services and training.
- f/ Better regulation including market liberalization.

ETUC evaluation of the Commission's proposals

VI

Turning around our concept of economic governance.

European economic governance is a long standing demand from the ETUC. From the start of monetary union, the ETUC has argued that a single European currency and a European central bank needed to be complemented by a close coordination of national (macro) economic policies. However, economic governance as proposed by the ETUC had the double aim of keeping member states from resorting to wage and social dumping as an alternative to national currency devaluation as well as to exploit the fact that a joint and coordinated expansion of demand has twice the effect on growth and jobs compared to a situation in which member states are acting entirely on their own. In contrast to this, the Commission's economic governance proposals are about forcing member states to undertake a coordinated contraction of demand as well as to pursue non cooperative policies through which member states try to get out of the crisis at the expense of others.

VII

Workers to pay for the entire cost of the crisis.

What the Commission's proposals basically do is to present workers with all of the huge costs of the crisis. This is operated by questioning all institutions which provide economic security to workers. Wage cuts undermine the stability of incomes derived from wages; flexibility jeopardizes job stability and the protection offered by regular labour contracts, while cuts in unemployment benefits systems make workers feel totally insecure. All of this will substantially weaken the bargaining position of workers. Business will use this opportunity to force workers into accepting a further degradation of wages and working conditions. The overall result will be for inequalities to increase further. A rising number of workers will be experiencing difficulties to make ends meet while CEO's and shareholders at the same time enjoy rising dividends and bonuses.

VIII

Repeating the mistakes of the past.

The Commission is exactly repeating the same type of policy mistakes which have contributed to the crisis in the first place:

- a/ By shifting even more income to wealthy households with high savings rates, the economy will face a demand deficit, making growth depend once again either on asset bubbles and rising private debt loads, or alternatively on huge export surpluses.
- b/ By focusing on public finances, the Commission is forgetting the fact that public finances are the victim and not the cause of the crisis. It was private sector debt, not public debt, which exploded and was being misinvested in asset (housing) price bubbles. Public debt only increased as a result of the crisis, with automatic stabilizers keeping the economy from even worse. Weakening these social stabilizers spells disaster when the next crisis comes. Questioning the operation of public services comes down to forget the fact that these services do not represent a cost but an investment in the future of our societies.
- c By introducing the debt criterion, the pro-cyclical bias of the Stability Pact becomes worse: It is much easier to reduce debt when the economy is growing but impossible to do so when the economy is in recession.

- d/ By pursuing a supply side policy at a moment that the problem is a lack of demand, unemployment will increase even more and the downwards pressures on wages will intensify further.
- e/ By viewing current account imbalances as a problem to the extent these imbalances imply deteriorated competitiveness, the Commission is putting the entire burden of adjustment on the 'deficit' countries. The latter have to rebalance without a corresponding revival of domestic demand in the 'surplus' countries. This is not possible. In an integrated internal market, deflating one part of Europe can only work if the other part reflate so that the 'deficit' countries can enjoy some dynamism in the markets they are exporting to.
- f/ By pushing for labour market flexibility, business will obtain even more opportunities to transform what otherwise would have been 'good' or regular jobs into precarious contracts and the process of self sustained growth will be blocked.

IX

Wage cuts to organize competitive deflation.

Underlying the Commission's vision on economic governance is the idea that wages should take over the role of currency devaluations. Instead of devaluing the national currency by 20 or 30%, wage cuts are to set in motion a process of deflation. This deflationary process is then supposed to mimic the effects of a currency devaluation by rapidly improving the cost competitiveness of economies. This however will not work. There is a reason why central banks have preached for decades about the virtues of price stability: Deflation will make existing high private and public debt loads even more difficult to carry. As a result, domestic demand dynamics will be completely aborted and the gain in export competitiveness will not be able to compensate for this. If, in turn, the 'surplus' countries stick to their competitive position, regional deflation becomes euro area wide deflation.

X

The road into a double dip and depression.

All of this will have severe consequences. Fiscal austerity, wage austerity and social austerity will combine to push the economy into a renewed recession. And from the moment low inflation turns into deflation, and with nominal interest rates constrained by the zero bound, monetary contraction will be added to this tripe austerity.

Europe needs an Economic and Social government

XI

Europe needs an Economic and Social Government.

Instead of Europe and its finance lobby preaching the virtues of anti labor, anti state, anti tax policies, Europe needs to take up its role in actually providing member states with those instruments which are indispensable to tackle the crisis and the economic and social imbalances that caused the crisis. This implies:

- a/ A European organized stimulus policy in the form of investment transfers to member states, helping countries to grow out of debt instead of forcing them into a blind austerity scenario that is self defeating and will destroy many more jobs while failing to bring spiraling public debt under control.
- b/ A European Bond to help all member states face the irrationality of excessively pessimistic financial markets, and this without the brutal economic conditionalities now attached to the joint Commission-IMF loans.
- c/ A European Financial transaction tax, along with European wide cooperation in those areas of taxation where the internal market is used by banks, businesses and capital incomes in general to escape from fair taxation. The extra revenue generated this way is to finance the European Growth Bond. In this way, those that have caused the crisis will pay for the exit from the crisis.
- d/ Strengthened social level playing field, addressing unfair competition in the internal market in the form of precarious work practices and competitive wage dumping.

XII

The role of European Social Dialogue.

Economic and social governance is too important to be left to finance ministers and central banks only. The ETUC insists on the fact that the process of economic and social governance should be led by the European Council of heads of state, with social and employment ministers providing their input and being involved in the process on the same basis as finance ministers. The ETUC and its affiliates stand ready to assist in this process. In this respect, the ETUC suggests the Council of Employment

and Social ministers to invite and hear European Social partners on these matters. To back this up, the ETUC also proposes to create a standing 'EU 2020' group inside the European Social Dialogue so that all 27 countries and their social partners can be involved on a regular basis in ongoing policy discussions.

XIII

The model of trade union governance must take into account the fact that the proposals of the ECOFIN Council could trigger a serious and quick degradation of the workers' situation and of the trade unions' role and position in collective bargaining. This is why we must clearly reaffirm that the ETUC and the entire European trade unionism are not and will never be prepared to bring into question their full autonomy and their right to collective and wage bargaining nor to accept limits or, even worse, restraints, to their activities. Moreover, the proposals tabled by the ECOFIN Council should motivate us to improve and indeed strengthen our internal coordination even more to make the exchange of information easier and to intensify our cooperation so as to avoid the risk of aggravating social dumping and divisions between European workers.

ETUC RESOLUTION TOWARDS ADEQUATE PENSION SYSTEMS – THE ETUC RESPONSE TO THE EC GREEN PAPER

Adopted by the Executive Committee
on 13-14 October 2010

ETUC in principle welcomes the European debate on pensions launched by the European Commission on 7 July 2010 by publishing its Green Paper “Adequate, Sustainable and Safe European Pension Systems.”

ETUC intends to get fully involved, together with its organisations, to defend the interests of the working and retired people that it represents.

I

Common challenges

It is worth acknowledging that the 27 EU Member States are facing similar problems, albeit with nuances at times, such as:

- the (happy!) ageing of the population, which none the less has consequences for financing pensions in the long term and/or the development of services and care facilities for older or very old people;
- changes in family structures entailing changes in the calculation and attribution of pension entitlements in particular;
- the development of the market which is characterised by the fact that there are always people who retire early, i.e. before the legal pension age, and were doing so already before the crisis, but also by young people entering the world of work later and later, plus greater precariousness due to enhanced pressure on wages (significant increase in the number of working poor);
- the pressure exerted on the pension systems to make more room for private systems that depend essentially on the financial markets, to the detriment of public systems based on inter- and intra-generational solidarity; and
- the economic and financial crisis, of course.

In its Green Paper, the Commission pretends to present the debate on the future of pension systems as being purely “technical,” whereas the questions raised and answers expected are eminently “political.”

ETUC wishes in this regard to reiterate firmly that, having regard to the current treaties, the European Union has no competence to intervene in the organisation, structure and financing of the legal pension systems.

Among the issues broached in the Green Paper, three have drawn ETUC’s attention in particular.

II

Be careful not to miss the point when dealing with the impact of the demographics

For the Commission, the first challenge that the pension systems face is that of **demographic ageing**. This is a reality that must certainly be taken into account, but not be overestimated, as is often the case, because it can be anticipated (as can be seen from the fact that the Member States did not wait for the Green Paper to adapt their retirement systems) and concerted solutions can be brought to bear.

But it is worth noting above all that the Commission draws no clear distinction between the “demographic dependency ratio” and the “economic dependency ratio.” It actually addresses only the former, ignoring the latter whilst moreover relying on projections for the very long term (50 years) which are not reliable, as things can change greatly on this front.

Now, for pay-as-you-go systems, only the “economic” ratio is decisive, namely the number of people who are working, and who are therefore financing such a system, but also the increase in productivity and generated GDP, which must have positive repercussions on the quality of employment and wages.

This ultimately means that faced with this challenge, it is vital to concentrate on the struggle for “more and better jobs” and more widely on increasing the rate of employment (which now stands at only 66% in the different EU Member States).

In response to this rather biased approach, the Commission wonders (while being delighted that some Member States have already embarked on this path) whether the solution does not consist in **raising the legal pension age** and therefore keeping older people at work longer.

Such an option raises several types of questions. For instance, what is the relevance or the significance today of trying to get older workers to work longer, when at the same time, the same workers are not afforded the possibility of continuing to work until the legal age of retirement, because companies use them as variable to adjust their workforce. As the Commission itself recognises, "less than 50% of people are still in employment by the age of 60," whence the necessity of an employment policy for all ages.

Wanting to raise the legal pension age in the current context is tantamount to postponing the problem rather than solving it, i.e. going from the problem of financing pensions to that of unemployment and its financing. It is not enough therefore to decree that "people must work longer;" there must be work for them to do, which refers,

- for one, as already mentioned, to the responsibility of employers; and
- secondly, to the responsibility of the Member States, in particular for the development and town and country planning policies which they implement or fail to implement.

What is striking in this type of discussion is the tendency to cite personal responsibility and even make individuals feel guilty, when the causes and solutions actually lie elsewhere and are in fact structural. Endeavouring to keep older workers, without differentiation, working longer ignores the fact that even now, some of them started working at a very young age and have therefore amply contributed to the solidarity of funding social protection and pension systems in particular. It likewise overlooks another reality, namely that depending on the type and **onerous nature of the work** performed during their working life, not all workers have the same life expectancy when they reach retirement age.

This life expectancy (which does not take into account another element, namely the expectancy of life in "good health" upon retirement) varies depending on the socio-professional categories or the type of work performed, ranging seven years on average among the most extreme cases, namely between the most and the least onerous occupations. ETUC therefore sees a need to implement differentiated measures for entitlement to pension that take this reality into account.

Wishing to prolong the time during which workers keep working presupposes that the work exists and that the workers are fit to do it. This refers to:

- the employment development strategies and therefore the investments made by companies;
- the investments in lifelong training for workers so that they can adjust to occupational changes or retrain; but also to:
- their working conditions, and
- implementing active strategies (training, qualification, guaranteed income, etc) to help those who have lost their jobs to get back to work.

This question likewise concerns the development of a daring and concerted European employment policy.

Furthermore, focusing on active ageing as the Commission does means overlooking the dramatic situation in youth employment today. The difficulties young people have in breaking into the world of work constitute a recurrent phenomenon. Contrary to what the Commission maintains, young people join the world of work late not only because they extend their studies (as not all young people undertake lengthy degree programmes), but especially and above all because companies are not hiring young people, and when they do they offer positions without job security. For what are they offered most often when they graduate? Practical training schemes, fixed-term contracts, temporary or part-time employment.

A pertinent response can therefore not be reduced to **simply proposing** to raise the legal pension age, an option which, if it were generalised, would be untimely today. The “effective” age of retirement from the labour market must coincide with the “legal” pension age. ETUC rejects firmly any recommendation aimed at introducing an automatic mechanism to raise the legal pension age or any other uniform solution that would apply to all the Member States.



Future reductions in pensions are not necessarily inevitable

The Commission seems to postulate that public pensions will inevitably have to be reduced in future. For ETUC, such a reduction is not fated

to occur, provided that priority be given at European level and in the Member States to four directions.

- The development of employment, the quality of employment, and wages;
- The development of quality social services;
- The perpetuity of the means to finance social protection systems;
- The reconsideration of the priority given in certain Member States under the impetus of the Commission to developing private pension systems, in particular defined contribution pension schemes.

All of the foregoing in accordance with the social objectives set at European level both in the Treaty on the Functioning of the European Union, the Charter of Fundamental Social Rights or Strategy 2020, including the objective to reduce poverty.

1/ For ETUC, guaranteeing pensions and their level means guaranteeing the quality of employment and wages

For ETUC, the quality of jobs and wages is the major response needed to ensure “adequate, sustainable and safe European pension systems.” Even before the crisis, when the Commission was able to boast of the increase in the number of jobs in the Union, the fact remained that these jobs were precarious, jobs under fixed-term contract, “not chosen” part-time jobs, temporary employment jobs, or even poorly paid or unpaid practical training schemes. Such precariousness has a particularly pronounced impact on young people and women, with damaging consequences on the amount of their future pensions.

This trend was exacerbated by the crisis which caused severe job losses, with exploding unemployment rates, as the Commission itself acknowledges: *“The crisis will also have a serious impact on future pensions as many workers will have lost their jobs and have been unemployed for a certain period and others might have had to accept lower earnings or shorter working hours.”*

Whence the mobilisation of ETUC and its organisations in favour of quality jobs with decent pay to guarantee the pension rights of these future retirees, but also the current retirees. Such as they are, the financing

arrangements for public pension schemes, based on distribution, to which ETUC and its organisations are deeply attached, are based essentially on wages and earnings from work. Precarious employment or low wages are tantamount to “loss of earnings” for social protection – and particularly pension – systems, but also affect the rights of future retirees. For a poor worker will inevitably become a poor pensioner.

For ETUC, this also demands that the Member States and the social partners must take the necessary measures to validate and guarantee rights for these periods of inoccupation or unemployment, including short-time work, what we refer to as “securing/guaranteeing the periods of transition.” Similarly, measures must be taken to cover periods devoted to looking after family and/or children.

2/ Investments in quality social services are also needed in view of the ageing of the population

The Commission actually notes that “*formal care is increasingly replacing informal care*” for dependent elderly people, but does so in order to deplore “*further pressure for spending on care.*”

ETUC’s approach is completely different. Such “formal” care in the form of services of care facilities, which is the same for care for children:

- is a source of (qualified) employment, and thus contributes to social financing through the contributions generated, as well as to the development of the economy, in the same way as other types of employment; and
- its development enables parents, and women in particular, who are still the ones most concerned today, to reconcile their private/family and professional life, and to join the labour market, if so they wish, and in so doing improve the employment rate in the European Union.

3/ It also means guaranteeing and improving the financing of social protection systems

For ETUC, investing in social protection is not an expense, but a “productive investment,” as the Commission acknowledged some years ago, well before the crisis. Whence the necessity of preserving its financing. Rather than try to reduce social protection and its means, the real mobilisation

and efforts made must be geared to enhancing it and giving it the means to perform its missions. It is therefore the task of the public authorities to take measures, in particular for financing and support for the economy. The Union and the Member States concur that they have done better in coping with the crisis than other regions of the world, thanks to the efficiency of their existing social protection systems. Nevertheless, paradoxical and contradictory chatter and behaviour are emerging at this time. And the first measures being implemented consist of drastic cuts in budgets and/or social services – all in the name of budgetary rectitude which deprives them of the means of action.

ETUC cannot therefore accept the Commission's approach as spelled out in the Green Paper, which consists of implementing reforms in the pension system geared mainly to the *"sustainability of public finances,"* i.e. making the amount and quality of pensions contingent upon the financial capacities of the States. That would be "putting the cart before the horse," and reversing the terms of the "social equation." ETUC's approach, on the other hand, is to guarantee decent/adequate pensions by looking for and implementing social measures capable of meeting this objective.

Ensuring financing means first of all going over all the fiscal and/or social exemption practices implemented by the Member States which concern employment first, as they are purportedly intended to remove obstacles to employment. Yet these exemptions are granted without tangible return, and therefore commitment, on the part of companies to maintain and/or to develop employment. The upshot is windfalls for companies and a reduction in resources for the social protection systems.

As ETUC recommends, other sources of financing must also be found that impose less of a penalty on employment and companies that employ workers, whilst getting those who, in spite of their means, now manage to evade the solidarity procedures to contribute accordingly. Such new resources must, however, be allocated to social budgets in an effective and sustainable manner.

Without wishing to question existing national practices regarding tax exemptions, ETUC is not in favour of extending those practices to encourage affiliation with non-solidarity, private pension schemes. These practices are socially unfair, as most of the time they only benefit those who can afford this type of pension, whilst penalising the entire community through the lack of earnings that they represent. Furthermore, as

the Commission itself acknowledges, such exemption practices can have “considerable” negative consequences on public finances.

4/ Boosting public pension schemes based on distribution, in other words on inter- and intra-generational solidarity, and reducing and controlling the development of individual pension systems run by the financial institutions

The impact of the ageing of the population affects all pension systems, only in a different way, but when it comes to private schemes, as the Commission puts it, “*Such potentially lower returns on pension fund investments may lead to higher contributions, lower retirement benefits, increased capital outflows or greater risk taking*”, which today is no longer merely an eventuality, but a reality. And this reality is not solely the result of demographic ageing either, even if this phenomenon is not neutral.

For ETUC, the weakness of private pension schemes (in particular defined contribution – which are in fact savings schemes for retirement), lies in the very nature of those schemes, because they are primarily “financial” systems, which makes them directly dependent on developments on these markets. And even if, as the Commission proposes in its paper, an attempt must be made to reduce “*the investment risk taken by scheme members as they approach retirement,*” – with which ETUC agrees – it does not protect nor immunise them against the risk. And any crisis that occurs on this front has direct negative consequences on these schemes and on the income of the pensioners. Hence the ETUC strategy, which has always favoured pension schemes based on solidarity and not on the performances of the financial markets, and namely those based on collective agreements between social partners.

The implementation of these private systems based on the financial markets entails another risk, i.e. that of not being able to keep the promises made, in which case the disappointed beneficiaries will have to turn to the public authorities.

One way to reduce these risks would be to introduce relevant solvency rules, i.e. rules suited to the coverage of such risks. However, ETUC is opposed to having the “solvency” rules which are applied to insurance companies applied in the same way to private solidarity pensions, because they would entail financing constraints for them that are not

justified because the risk is covered for a very long period and the rules would entail a sizeable increase in contributions, which would dissuade affiliation to these schemes.

Still in the framework of risk reduction, ETUC demands a significant, decisive role for the representatives of workers and retirees in the supervisory bodies as well as those bodies in charge of defining investment policies and strategies for private pension schemes so as to promote socially responsible investments in the interest of the contributors and the beneficiaries.

IV

Yes to the perpetuity and sustainability of the pension systems

ETUC agrees with the Commission's proposals to:

- Improve information for the users.
- Strengthen the regulations concerning the transparency of private pension schemes, their investment strategies and solvency.
- Remove obstacles to mobility in supplementary pensions.

ETUC would likewise be in favour of a new initiative concerning the portability of occupational pension rights, on the sole condition that it has no negative effect on the national systems.

But mobilising for "adequate, sustainable and safe European pension systems" is not reduced to implementing "technical adjustment" measures – all the more so since, when analysed, the proposed measures turn out not to be neutral and at the very least tend to confirm/reinforce underlying policy orientations already implemented in certain countries.

Past experience has always shown that successful reforms in this field require compliance with certain fundamental rules:

- the reforms undertaken must be based on shared observations and diagnoses. This entails exchanges, dialogue and consultation;
- they must involve all the stakeholders. They may not therefore stem exclusively from politicians, but must involve the trade unions in particular;
- they must be equitable and fair and concern everybody, and not just one category of people;
- they must take place over a period of time, if they are to be "socially acceptable";

- they must be assessed periodically, and here once again, there must be consensus as to whether they are pertinent or useful or whether they are to be maintained;
- they must take into account the diversity of jobs and professional careers.

A real mobilisation in favour of quality, sustainable pension systems must first of all be pursued upstream, i.e. by tackling the quality of work and pay which, in social insurance systems in particular, has a direct bearing on the amount of the future pension. And this quality of employment and pay in turn ensures financing and sustainability for all systems, be they insurance or universal schemes. No pension reform may therefore be exempt from an active and daring employment policy, all the more so in a context of rising unemployment among young people and an explosion in job insecurity.

The involvement of trade unions, which represent the interests of contributors and retired people, must be permanent and effective at all decision-making and supervisory levels. They must also be consulted and involved in the implementation of the reforms projected and/or undertaken and in their assessment.

This discussion of the type of pension systems to be implemented or encouraged/developed in the European Union is underpinned by the discussion on the values and type of society to be promoted in Europe. Are the pension systems thus advocated intended to build a European Union based on the market and the free movement of capital?

Or do we wish to build and to promote a social Europe, based on the values of solidarity and collective responsibility that can guarantee an adequate income for all at retirement age? That is ETUC's choice, which is of the utmost pertinence in 2010, the "European Year for Combating Poverty and Social Exclusion."

DECEMBER 2010

RESOLUTION ON EQUAL TREATMENT AND NON DISCRIMINATION FOR MIGRANT WORKERS

Adopted by the Executive Committee
on 1-2 December 2010

Despite the major battle won by the trade unions against the content of the Bolkestein directive, for the sake of guaranteeing posted workers the application of employment and working conditions in the country where the activity takes place, various judgments by the European Court of Justice (Laval, Viking, Ruffert, Luxembourg, Germany) have highlighted the objective that we have been seeking to achieve.

These rulings have highlighted the loopholes in our current legal framework in terms of the hierarchy between fundamental social rights and the economic freedoms allowing, de facto, social dumping.

Faced with this situation, the ETUC is demanding a Social Progress Protocol, to be included in the Treaties, to state very clearly that economic freedoms and competition rules cannot have priority over fundamental social rights and social progress, and that in case of conflict social rights shall take precedence; and to integrate this into the broader concept of social progress and upwards harmonisation of working conditions and social systems.

In addition, the ETUC has called for a revision of the Directive on posted workers.

Against that background, which is a cause of grave concern to us, the European Commission has tabled some new legislative initiatives which instead of correcting the loopholes identified; once again exacerbate the fragmentation of the labour market, this time through proposed directives devoted to immigration policy.

It is unacceptable that after the 5 well-known decisions by the ECJ, the Commission should be doggedly persisting in legislating with the desire to liberalise the single market, by favouring unfair competition,

undermining the principle of equal treatment for the different groups of workers and seeking to erode the principle of the host country. All this despite the new legal framework constituted by the Lisbon Treaty, which guarantees a social market economy and requires the European legislator to work towards social progress, and by the European Charter on Fundamental Rights, which guarantees equality (Art. 20), non-discrimination (Art. 21 par.2), collective bargaining and the right to strike (Art. 28).

The actual trend of the European institutions consists of limiting the bargaining autonomy of the social partners and recognising only collective agreements universally or generally applicable, not those concluded at regional, sectoral or company level (cf Ruffert case).

These new proposals are:

- The Directive establishing a single request procedure with a view to the issue of a single permit authorising nationals from third countries to live and work on the territory of a Member State and establishing a common floor of rights for third-country workers living legally in a Member State
- The Directive establishing conditions for entering and remaining for third-country nationals for the purposes of seasonal work
- The Directive establishing conditions for entry and residence of third-country nationals in the framework of an intra-corporate transfer

The first question ringing our alarm bells is the choice of the legal basis. The point is that the proposed directives are based only on Art. 79 TFEU (immigration), and yet they have a massive impact on the labour markets and industrial relations systems in the EU and the Member States. The texts are not simply tools to manage movements of migrant workers, but also instruments which define the rights of those workers in an employment relationship, and should furnish better protection for those workers. This should be reflected in the choice of the legal basis.

Through the choice of a single legal basis relating specifically to immigration, the Commission has avoided the consultations with the social partners laid down in Art. 154 TFEU. Directives with a strong impact on the European labour market cannot be proposed and discussed by the European legislator without consulting the social partners and without a proper debate on the consequences of such proposals for the labour market. Accordingly, the ETUC proposes adding social policy as a legal

basis and organising a hearing at the European Parliament to spotlight the consequences for the development of the labour market. How is this European labour market to be structured, and by whom? As to the legal framework for the protection of workers' rights, there is a need for greater coherence, and why are seasonal, posted and ICT workers excluded from the single permit? We need a horizontal instrument to regulate the issues of principle for workers within the EU and for workers outside migrating into the EU, on the basis of the principle of equal treatment and the struggle against discrimination.

The ETUC believes that it is vital for any initiative taken in the field of migration to be consistent with the broader policies on employment and development, and that it is essential to guarantee social inclusion and sustainable development in the home countries and the host countries.

The proposals in the field of economic migration absolutely must determine what are the real needs to promote a new increase in the number of migrant workers from third countries in the professions and sectors concerned, if it is now the time to introduce measures designed to increase the numbers of people in such migrant groups, and if adequate measures have been taken at EU and Member State level so as to create appropriate social conditions in order to support such a movement in all the social/familial aspects, and also to launch initiatives to avoid protectionist reactions and the abuses that they might trigger.

Against this background of an economic crisis and predictions of an increase in the number of jobseekers, the ETUC and its member organisations doubt very much that the Commission has properly evaluated the issues involved in this new legislation.

The ETUC therefore asks to reconsider the political expediency of now presenting an initiative on immigration with regard to seasonal work, and strongly recommends giving consideration in the first instance to the introduction of the necessary social support measures, such as:

- bolstering the legal framework, at both national and European level, for the social and professional protection of seasonal workers in general, for example via a European social policy directive on seasonal work, tackling the minimum social and labour standards applicable to seasonal work in the EU, ensuring equal treatment between seasonal workers, locals and migrants, and promoting upwards convergence of living and working conditions for all seasonal workers;

- an EU instrument relating to the respective responsibilities of the main contractors and subcontractors and intermediaries, introducing the chain of responsibility and/or joint and several responsibility on wages, working conditions (and social security and taxes);
- activities and initiatives by the EU for the sake of improving respect for wages and working conditions, reinforcing labour inspections at national level and guaranteeing better coordination at EU level;
- the implementation and enforcement of the new directive on temporary work.

Directive establishing a single request procedure with a view to the issue of a single permit authorising nationals from third countries to live and work on the territory of a Member State and establishing a common floor of rights for third-country workers living legally in a Member State

The ETUC is aware of the efforts being made by the EU to devise a global immigration policy that is fair and rights-based. However, the draft directive takes only partly account of our demand to allow all European Union citizens and third-country nationals living legally in the EU, including refugees, to have full access to the EU employment market (Art. 3.1). The ETUC believes that some aspects of this proposal are somewhat problematic given the lack of evaluation of the potential impact that some measures might have on the employment market, industrial relations and social cohesion, and above all the exclusion of certain groups from the general rights framework, specifically posted workers, physical persons in connection with commercial and investment activities, seasonal workers, asylum seekers and persons under subsidiary protection.

To break the principle of equal treatment, curb the rights and not establish any guarantees to protect working conditions and social conditions for migrant and local workers could lead to a complicated situation in our societies.

Yet more than that, it continues to open the gates to the dangerous path of the fragmentation of the labour market, and in a sense, the acceptance of social dumping in industrial relations.

We are well aware of the progress of the situation regarding the debates on the proposed directive at both European Parliament and Council

levels, but in light of the great importance that the ETUC attaches to this proposal, we want to maintain in particular the proposals by the European Parliament's Employment and Social Affairs Committee, in the sense of including all workers, without exception, in *Chapter III –The right to equality of treatment*.

We see it as fundamental that the directive should include all workers and ensure equal treatment and non-discrimination in employment and social standards in the place where the activity is carried out.

To this end, the ETUC will be getting back in to all the institutional players, and launching a campaign of information and debate within society, to get this important question being discussed right across the trade union movement, in political circles and in public opinion in general.

Directive on seasonal work

As we have already mentioned, this proposed Directive was not preceded by consultation of the social partners, since the Commission took as the legal basis Article 79 TFEU (immigration), as if this proposal had no direct impact on the labour market.

This initiative raises major questions as to its objective, the sectors, and the principles of equality of treatment and non-discrimination, especially at a time when unemployment is going from bad to worse in Europe.

We find ourselves faced with a new attempt to fragment the labour market and segment the workforce, an initiative that tends to reduce the social partners' bargaining autonomy.

We would have preferred the Commission to have started work before by clarifying

- seasonal work in general, with regard to labour and social conditions and standards;
- the joint and several liability of the main businesses and the subcontractors and intermediaries;
- a bigger guarantee of the respect for working conditions and social protection at European level.

The proposal also creates a lot of uncertainty surrounding:

- the lack of a role for the social partners in the implementation of this directive;

- the scope: there is no definition of the sectors involved. We do not know whether it is directed at stationary workers or also in production or services in general;
- the guarantees of decent work, under conditions of equality of treatment and non-discrimination based on the application of the collective agreements;
- the Member States' own preventive controls which must be rendered possible. The deadline proposed (30 days) is a joke, making any concrete control impossible. There is also a need for sufficient guarantees to ensure that the single points of contact have the equipment, resources and skills necessary to be able to carry out their control function properly;
- the liability of the main business, the subcontractors and the intermediaries;
- the lack of concrete preventive measures and sanctions for fraudulent employers and genuine protection for workers;
- and in general, the lack of measures to ensure adequate implementation, enforcement and control.

For all these reasons, we consider this proposal as it stands to be inadmissible, and we call upon the Council and the Parliament either to reject such an initiative or, as appropriate, to subject it to an in depth revision, with prior consultation of the social partners and an open and public debate.

Directive establishing conditions for entry and residence for third-country nationals in the framework of an intra-corporate transfer (ICT)

The Commission is presenting the draft directive as a statement of the commitments entered into by the European Union under the General Agreement on Trade in Services (GATS) negotiated at WTO level.

This new proposal refers to nationals of countries which do not belong to the European Union, who are employed by a company based outside the European Union and are posted temporarily into one of its units situated on European territory. This type of posting therefore needs to be distinguished from the kind covered by the 'Directive concerning the posting

of workers in the framework of the provision of services' adopted in 1996, which relates to postings within the European Union and is based upon the rules in the treaty relating to the single market, whereas the draft directive presented relies on the provisions of the treaty devoted to immigration.

The scope of the Directive is much too broad. As it stands, it is open for use in all sectors and no restriction is made on the type or size of the companies wishing to use this new tool.

The definitions of managers, and specialists need to be clearly limited to those who are highly-qualified and have particular skills and whose personal capacities are indispensable to the proper conduct of the specific activities of the company in the host country. This means that the criterion for admission must be the qualifications and the place of work within the company, not the salary. In order to avoid any unfair competition, persons transferred within the same company must benefit from equal wages and working conditions as a local worker occupying an identical or similar post.

On the other hand one essential criterion for admission is the evidence to be provided of employment within the same group of undertakings for 12 months preceding the date of the ICT. As this is not an obligation on the Member States but is left to their discretion in the transposition process. This will mean that some countries will have stricter national rules than others, which might in practice lead to forum-shopping by companies.

However, we have doubts about the need for a specific instrument on persons transferred within the same company, and we wonder why the issue of access for highly-qualified executives in multinationals could not be addressed under the 'Directive on the European Blue Card', which would likewise establish the provisions necessary in terms of **equality of treatment**.

The ETUC believes that the possible relationship with the posted workers directive is highly problematic, and urges that no stone be left unturned in an effort to avoid further complicating what is already an explosive issue. The rights of the ICTs will be aligned with the working conditions of posted workers as laid down in legislation or universally applicable collective agreements. For the ETUC the ICT workers need to have equal treatment ensured with the local workforce. The trend of the European

proposals consists of a restriction to universally applicable collective agreements (as the proposal takes over the wording of the posting of workers Directive – Rüffert case interpretation by the ECJ) this puts strain on the national collective bargaining systems.

This proposal does not foresee control mechanisms or sanctions, neither the right of trade unions to control, as might exist at national level.

Furthermore, the rights of works councils in terms of information, consultation or participation at national level need to be ensured in this directive.

As to the inclusion of **paid interns**, the ETUC believes that this is a very tricky point. Although we recognise the importance of guaranteeing mobility of skills and competences, we wish to emphasise that interns are potentially highly vulnerable to exploitation and abusive practices, a factor which can equally lead to unfair competition. The key to the success of international intern exchange programmes therefore lies in ensuring that paid interns really are being **'trained'** and are not in fact temporary workers in disguise, and that there is close monitoring to establish whether their remuneration and their treatment comply with the standards generally applied to similar workers in the host country.

RESOLUTION ON ENERGY STRATEGY FOR EUROPE 2011-2020

Adopted by the Executive Committee
on 1-2 December 2010

Preamble

This resolution aims at providing a basis for the ETUC and its federations to campaign on energy policy in the next months. This is necessary given the European agenda. The Council on Energy will indeed discuss the European energy strategy 2011-2020 on 3 December 2010. This issue will also be on the agenda of the Heads of States European Council meeting on 4 February 2011 and important strategic decisions will be made in this area in 2011. Therefore, it is crucial for the ETUC to make its concerns and proposals heard. While this resolution provides a detailed analysis and detailed proposals, the last chapter presents the 20 ETUC priorities for the EU's energy policy by 2020, to facilitate the communication by the ETUC and its federations during this campaign.

Introduction

The Energy Strategy for Europe 2011-2020 will lay out the cornerstones for the EU's future activities in this policy area, closely linked to economy, society and environment.

The ETUC sees the current debate in energy policy as an opportunity to achieve a socially and environmentally sustainable low-carbon economy¹ through democratically controlled regulators, ensuring affordable prices for all, safety and security of supply, demand side management and

1 ETUC (2010): Resolution on a Sustainable New Deal for Europe and towards Cancun: 1.

decent jobs. Our members, as workers and consumers, understand the importance for the economy of safe, reliable, sustainable and affordable energy for businesses and communities. Our jobs and our communities depend on clear policy ensuring that energy is considered as service of general interest.

From this perspective, a coherent EU energy policy is an essential condition to achieve a just transition to a low-carbon economy. Moreover, energy is both an important source of greenhouse gas emissions as well as a main production factor for European industry. Our industries compete in highly globalised markets. With a fragile economic situation, recovery from the crisis in European industry threatens to be undermined by rapidly rising electricity prices, disruptions in energy supply and exorbitant international price increases in basic raw materials. Electricity prices must be affordable for our industries to survive, whilst higher prices have promoted energy efficiency gains in European industry contributing to lower emissions and investment in innovation.

For the ETUC, competitive energy bills through regulated prices and through policies and measures allowing for improved energy efficiency are a basic factor to increase the chances of survival and transformation of the European industries towards greener production patterns and employment for manufacturing workers in Europe. Consequently, the following ETUC policy proposals aim at reconciling emission reduction and competitive energy bills.

Energy prices will inevitably go up. Large investments in energy infrastructure (replacing and updating old generation capacity, adding new (sustainable) capacity, updating infrastructures for different energy sources, taking account of the contribution of energy use to greenhouse gases as well as increased competition for energy and depletion of resources such as oil and gas drive prices up.

Therefore, there is a need to design policies and measures to improve access to energy for all as well as to avoid social negative consequences of increasing energy prices for the energy consumers, to ensure that their energy bills will be affordable to fulfill their basic needs related to heating, lighting and mobility. Regulated prices will ensure that they do not pay too much for their electricity, gas and other fuels.

The ETUC demands an effective European energy policy promoting a smart grid for European electricity and gas production and transmission

to ensure a sustainable energy mix guaranteeing security of supply and affordability for industry and household consumption. This demands a re-evaluation of the Commission's strategy on the liberalization of energy markets, an increased role for European and national public authorities in energy markets, through a European Energy Agency, and national planning and the initiation of new major energy production projects to ensure long term supply of electricity as well as investment in energy efficiency, improved energy technologies and the social anticipation and management of related industrial change.

Increase energy savings and efficiency

In its Stock taking document "Towards a new Energy Strategy for Europe 2011-2020", the Commission identifies underutilized energy savings potential as one of the major shortcomings of the implemented 2007 Energy Action Plan.²

Against this background, the ETUC calls for the establishment of a binding energy saving target for each member state³, to achieve a reduction of overall primary energy consumption by at least 20% in the coming decade, with separate targets for each member state.⁴ Likewise, a recently published study, carried out by German and Dutch research cooperation supports this position. This analysis identified obligatory savings targets as a crucial measure to achieve the aim of saving 20% of its consumed primary energy by 2020.

A reduced energy consumption and an increased energy efficiency can be further fostered through a transformative program, as included in the Spring Alliance Manifesto. A shift of structural funds and the allocation focus of the European Investment Bank (EIB) as well as the use of revenues from auctioned emission allowances would increase considerably the financial basis for energy savings in all sectors of activity.

2 European Commission (2010): Stock taking document: Towards a new Energy Strategy for Europe 2011-2020, http://ec.europa.eu/energy/strategies/consultations/doc/2010_07_02/2010_07_02_energy_strategy.pdf: 5.

3 ETUC Position on the climate change and energy package (2008): 3.

4 Spring Alliance Manifesto: 11.

The ETUC also proposes a European financial initiative for sustainable growth. Accordingly, the European Investment Bank could raise funds on the international bond market and lend them in combination with subsidies to governments to promote investments in climate change protection and energy savings. This initiative would lead to higher temporary public deficits, but it would also provide a wide range of benefits, such as job creation, economic stabilization and an increase of peoples' purchasing power and quality of life.⁵

Moreover, establishing and enforcing dynamic EU-wide minimum energy efficiency requirements for heating and cooling equipment, and for all electronic appliances, as well as applying the top runner approach and stimulating sustainable production and consumption patterns would create a promoting framework for energy savings.⁶ The ETUC has supported environmental and social criteria in public procurement (works, goods and services) and urges the European Commission to develop with the social partners a framework how such criteria including energy and energy efficiency ones can be used in public contracts.

Energy and industry

The energy price is an important production factor for Europe's industries and must be considered, taking into account that today, several industrial sectors (such as steel, aluminum and paper) located outside of Europe benefit from energy prices which are lower than in Europe.

A considerable energy price increase in Europe could therefore lead to a major loss of competitiveness and further negative consequences for employment. Therefore, competitive energy bills should be provided through

- regulation, as regulators have to control prices and ensure an appropriate return on investment reflecting costs and avoiding excessive profit taking,

5 ETUC's position on the climate and energy package (2008): 2.

6 Spring Alliance Manifesto: 11.

- policies and measures ensuring that the necessary investments in energy efficiency take place in industrial sectors, allowing for lower energy bills through decreased energy volumes needed by industries
- policies and measures helping industries develop combined heat and power utilities, as well as have access to dedicated energy sources and decentralized electricity production units, especially since the liberalization process has not led to competitive prices.⁷ Therefore, the ETUC endorses a European and regulated social energy market economy.

Moreover, before closing enterprises threatened by the challenges of the low-carbon transition, a triple analysis should be conducted. This analysis should include social, energy, technological and environmental aspects, to find out which technological adaptations are necessary for the threatened companies and sectors. This information must be used to increase the knowledge on the requirements of the low-carbon transition for businesses, to enable the protection of jobs (including social protection and income) during this process, as well as creation of quality jobs in Europe and reduction of poverty and inequalities.

A major challenge of the low-carbon transition is the reduction of short term loss of competitiveness due to, for example, higher energy prices as a result of an imposed domestic carbon price. In order to avoid negative effects for European growth and employment through “carbon leakage”, climate change provision must contain strong provisions addressing international competitiveness.

Such provisions must include social dialogue between government, industry and trade unions at national and EU levels and investment in low-carbon production technology as well as education and training. The search for international sectoral agreements is the main solution, but carbon traceability constitutes a technical condition for their establishment and a powerful incentive for their implementation.⁸

7 ETUC et al.: Climate change, the new industrial policies and ways out of the crisis: 15.

8 ETUC (2009): Resolution on The climate change, the new industrial policies: 5-6.

In coordination with the European Recovery Plans and with a revised European emission trading system, a transformation program must encourage investments in new industrial policies. It must support industries which

- develop low carbon alternatives based on best available technologies, reduce their energy needs, thereby reducing their energy bills and their greenhouse gasses emissions,
- preserve their competitiveness as a consequence,
- invest in R&D related to development of sustainable technologies,
- invest in training programs for workers to adapt their skills to technological changes,
- create new and quality jobs and services contributing to sustainable development.⁹

Energy and the building sector

Another important step can be made through an increase of investments in energy saving measures such as building insulation. Accordingly, a study by the European Climate Foundation demonstrated for Hungary that the need of heating energy can be reduced by 85% through a consistent and broad retrofit programme for houses.¹⁰ This result reveals the potential to reduce energy costs of vulnerable households through energy efficiency measures targeted at social housing.

Moreover, the German Alliance for Work and Environment provides an example of effective implementation of energy efficiency measures in the building sector. This alliance brought together government representatives, environmental NGO's, trade unions and employers' federations, who analyzed potential and requirements in terms of technology and skills for the retrofiting of buildings. "The programme helped to retrofit 342,000 apartments with improved insulation of roofs, windows and walls, along with advanced heating and ventilation systems and

9 Spring Alliance Manifesto: 8.

10 European Climate Foundation (ECF) (2010): Employment Impacts of a Large-Scale Deep Building Retrofit Programme in Hungary. Executive Summary: 3.

installation of renewable energy equipment. Over the period 2001–2006, \$5.2 billion of public subsidies stimulated a total investment of \$20.9 billion, creating or maintaining about 140,000 jobs. The scheme reduced the annual emissions from buildings by 2 per cent. About \$4 billion of the government input was recovered through tax and the need for unemployment benefits was averted. In 2005, the Government increased funding for the programme to almost \$2 billion annually. This led to an estimated 145,000 additional full-time-equivalent jobs in 2006. Retrofitting of buildings has become one of the key elements of the strategy by the German Government to reduce emissions by 40 per cent by 2020”.¹¹

The ETUC calls for such a renovation program for the complete European housing stock, to achieve a rapid and significant reduction of energy consumption in heating and cooling while providing targeted support to housing for people in poverty and promoting compact cities.¹² These measures should be supported by services promoting energy efficient behavior among customers under the responsibility of municipalities.¹³ They should also be supported and accompanied by social dialogue, bargaining and collective agreements to develop quality jobs in the sectors involved.

The ETUC also reaffirms its position already stated as a member of the Spring Alliance to “set an EU-wide minimum standard for all new housing to be energy passive or positive by 2015”. Moreover, the energy efficiency of buildings directive, which sets minimum requirements for new buildings from 2020 onwards, needs to be extended to cover existing buildings too, as had been proposed by the European Parliament on its position on the draft directive.

11 Green Jobs: Towards decent Work in a sustainable, low-carbon world. Policy messages and main findings for decision makers, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_098487.pdf: 23.

12 Spring Alliance Manifesto: 11.

13 Dupressior (2010): Impact of climate change on public services in Europe. EPSU Project (Final Draft): 37, Spring Alliance Manifesto: 21.

Energy and mobility

Mobility and transport need to be considered as a coherent system, organized to meet specific needs. Urban and rural areas have different mobility requirements. This implies that costs for mobility must not become prohibitive due to energy prices. Both individual and collective transportation systems need to be reconsidered taking into account this aspect. Both investments in mobility and in further improvement of internal combustion engines' efficiency is needed.

Furthermore, an increase of investment in public transport is necessary to reduce energy bills of lower income households.¹⁴ Costs of mobility for workers who have to use their car due to their working time or infrastructural shortcomings can be reduced through the promotion of ride sharing.

From the ETUC's perspective, a Trans-European Transport Network must be created, to promote projects aiming at climate protection, such as combined road-rail transport and waterway connections. A new tax on heavy tonnage maritime shipments and kerosene used in civil aviation provide an opportunity for funding the aforementioned projects.¹⁵

The provision of collective transport through public companies must be prioritized to guarantee broad access and quality for consumers, as well as to reduce energy bills of lower income households.¹⁶

Public investments into new grid technologies are necessary in order to guarantee that electrified road and rail transport contributes effectively to emission reduction.¹⁷

14 ETUC's position on the climate and energy package (2008): 5.

15 ETUC Resolution (2006): Tackling Climate Change: A Social Priority – Avenues for Action: 111.

16 ETUC's position on the climate and energy package (2008): 4.

17 International Transport Workers' Federation: Transport Workers and Climate Change: Towards Sustainable Low-Carbon Mobility. Discussion Document, <http://www.itfcongress2010.org/files/extranet/-2/24239/ITF%20Climate%20Change%20Conference%20Discussion%20Document%202010.pdf>, p. 45.

These ambitious measures in the transport sector must be included in EU legislation through a directive on sustainable mobility.¹⁸



Protect vulnerable energy consumers

The ETUC calls for measures to prevent negative social impacts of rising energy prices, the priority being to reduce energy needs by investing in energy efficiency of social housing and affordable low-energy alternatives for vulnerable consumers.

The ETUC urges the Commission to assess the social consequences of the climate change package in a context of opening up of the electricity and gas market, addressing in particular the impact on vulnerable consumers and electricity public service obligations.¹⁹ Especially, due to the possible increase of 15 to 20% in electricity prices by 2020 as a consequence of the climate change package.²⁰

A universal access to essential energy services needs to be secured to all people living in Europe notably through the provision of social tariffs and through public services. Therefore, enforcing the implementation of the requirement for universal and affordable access to services in existing EU sectoral directives is required, such as through additional provisions on access to a minimum supply of energy, to secure the energy provision of the poor and protect them from power disconnection through establishing a right for energy supply.

In order to ensure service quality, it is necessary to amend EU public procurement rules to include obligatory quality criteria for the public tendering of services. Furthermore, the ETUC calls for an implementation of the European Parliament's request to assess the influences of liberalization and privatization on essential services. This analysis should include all stakeholders, especially users.²¹

18 ETUC Resolution (2009): 10.

19 ETUC (2008): ETUC's position on the Climate change and energy package: 5.

20 Ibid: 5.

21 Spring Alliance Manifesto: 17.

Moreover, the National Energy Actions Plans should focus more on measures to reduce “energy poverty”, concept that must get a common European definition. The effectiveness of these measures could be increased through a better coordination with the National Action Plans for social inclusion and social protection.²²



Grid modernization

The ETUC reaffirms the position laid down in the Spring Alliance Manifesto to establish “a regulatory and financial framework to promote the development of smart grid capacity to save energy and for the optimal integration of renewable energy, decentralised production and combined heat and power”.²³ The ETUC also advocates a strong role for public ownership of electricity networks. In fact, since the 19th century, we have learned that in the context of increasing benefits, medium and long-term investments favor oligopolistic groups.

In addition to enhanced investments in central and decentralized grids, increased investment is also required in energy storage, to allow the grid to cope with fluctuations stemming from the increased feed-in of renewable energy in the grid. A strengthened focus on the promotion of production from gas as well as combined heat and power generation would also enable to improve the adjustment of electricity production to the aforementioned deviations, enhancing the security of supply. Adjustment of electricity production between national markets must be promoted to use the most sustainable production capacity during peak demand.

Smart meters, associated to smart grids, are often presented as a necessary tool to foster energy savings in private households. For the ETUC, consumers should not bear the costs of this investment either directly

22 Spring Alliance Manifesto: 18.

23 Spring Alliance Manifesto: 12.

or indirectly, and measures should guarantee protection of consumers' privacy. Furthermore, the ETUC calls for a thorough assessment of the impact of smart meters, including the effect on employment, energy efficiency and universal accessibility.

IV

Diversify energy sources and guarantee a secure supply

Europe must aim at ensuring its energy independence and diversify its energy supply, through strategic planning and by means of an ambitious adjustment in favour of renewable energy to the detriment of fossil fuels.²⁴ In this context, the EU must commit itself to the challenges with which the new member states are confronted.

The Spring Alliance called for an obligatory share of at least 35 % of renewable in electricity supply EU-wide by 2020 and for a promotion of decentralized production and consumption of electricity, heating and cooling.²⁵

The ETUC emphasizes that enormous and immediate public as well private investments are required to achieve this renewable energy target involving investments not only in supply of electricity produced with renewable but also huge investments in smart grids, in energy storage, and in production capacities that can be started quickly (mainly with natural gas, including through combined heat and power) when production with renewable sources is insufficient. Likewise, negative impacts on employment, such as through a loss of competitiveness due to increased energy bills, have to be avoided.

Increasing the use of wood biomass for energy production runs the double risk of both job losses and of actually producing net CO₂ emissions. Energy use of wood and the public subsidies for promoting it contribute to the wood industry paying higher prices for its raw materials and can also lead to shortages of these materials, leading to loss of employment in the whole chain of production related to the industrial use of wood. Meanwhile, the amount of related new jobs in energy production is very

24 ETUC Resolution (2006): 6.

25 Spring Alliance Manifesto: 12.

limited due to the chain of production being considerably shorter in the case of the energy use of wood.

From climate change point of view, burning wood raw material rather than using it to produce building products, creates net emissions of CO₂. In buildings CO₂ remains stored in wood products for a very long time, after which the wood can often still be recycled for use in the furniture industry, for instance, thus continuing the storing of carbon. Only when recycling is no longer possible should the wood be finally burnt into energy. On the basis of wood's unique qualities, the IPCC too has argued for increasing the use of wood as a building material.²⁶ From the ETUC's perspective, public subsidies for increasing the energy use of wood need to be very limited and so designed that the negative effects on the industrial use of wood is minimized.

A European regulation authority should ensure an adequate renewable energy target for each member state, taking into account indicators, such as the level of economic development and the potential for an increase of renewable energy production.

In this perspective, a political decision should be promoted at the forthcoming Energy Summit for the development of a **European energy solidarity pact**. Such a pact would respond to the inclusion of 'solidarity' and energy policy in the Lisbon Treaty, as well as ensure a basis for common and ambitious European energy policies. It would not simply be related to financial transfers between countries, but to collective development of the renewable potential around Europe's regions, a sustainable energy mix and building infrastructure links and trust between countries on energy supply questions. It would contribute to greater European cooperation which would go beyond merely coordinated but fragmented national markets, with a strong role for public authorities.

However, energy from renewable resources will not be able on its own to reduce the risks of energy shortages.

26 IPCC (Intergovernmental Panel on Climate Change) (2007) Climate change 2007: mitigation of climate change. Contribution of Working Group III to the Fourth Assessment Report. <http://www.ipcc.ch>

Provided that technologies for clean-burning and carbon capture and storage are put to use, coal can be part of the solution. Coal is distributed in a more diversified way than gas and oil, and resources are available. Clean coal technology offers significant export opportunities in the emerging countries, provided that workers' health and safety requirements are put in place, in particular in China and, closer to home, Ukraine.²⁷

Turning to nuclear energy, decision-making and implementation must be conducted in a fully transparent and democratic climate with a contribution of independent experts and scientists. That will require better protection of workers in the nuclear industry and adoption of strict rules for security and waste treatment as well as rigorous monitoring mechanisms, also taking into account the limited natural resources and specific problems linked to the use of nuclear energy, such as nuclear waste management. Furthermore, it must be examined how liberalized markets can help to meet these requirements²⁸ and be decided on policies and measures required if they don't, in order to ensure that these requirements are fulfilled.

The EU should consider the implications of constrained supply of in particular oil, its increasing price and dwindling reserves, also called peak oil, for the European economy. The social partners are to be fully involved in such research.

In order to secure its energy supply, Europe must stand united in its relations with outside energy suppliers and must promote, via these dialogues, a social dimension including respect for human and trade union rights and democracy.²⁹ Energy Treaties and energy dialogues must contain a chapter on the social aspects based on the Memorandum of Understanding on the social aspects of the Energy Community. The European Commission and country concerned should also provide for discussion between the trade unions of the EU and the country concerned.

Moreover, an effective European energy policy cannot overlook the importance of a sound management of strategic stocks. Such management would ensure regular supplies of oil and natural gas, including in the event of a complete shutdown of outside supplies, and would discourage the use

27 ETUC Resolution (2006): 7.

28 ETUC Resolution (2006): 7.

29 ETUC Resolution (2006): 5.

of oil and natural gas supplies for political purposes. In respect to oil, this could require criteria for the exploitation of oil fields located in Europe, which in turn would call for a careful management of resources, along with a minimum European refining capacity. In the case of natural gas, effective action requires planning for the compulsory accumulation of strategic stocks in keeping with the principle of “reciprocal assistance” among member states.³⁰

V

Create a European Energy Agency to promote a common European energy policy and improve energy market regulation

A democratically controlled European Energy Agency must be established to promote a coherent European energy policy through coordination, support and monitoring. Increased policy coherence is especially crucial in the areas of grid investments, R&D and innovation, energy import contracts, investments in production infrastructures, and energy services dedicated to improving energy efficiency and energy savings. Such an institution should have involvement of the social partners, representatives of low income households, environmental organizations for example in the Board or through an advisory council.

A full evaluation of the internal market for electricity and gas is needed. The ETUC supports the idea of a regulated and social European energy market economy, but rejects the proposals of the Commission to move forward with further liberalization without being clear what the implications are for employment, investment, prices and reductions of greenhouse gas emissions. The social partners should be involved in all stages of this evaluation as well as in the definition of further steps. The above mentioned institution must evaluate the liberalization process which has neither contributed to ensure competitive prices³¹ nor investments in necessary production capacities in Europe. It should adopt the necessary policies and measures to reach these objectives, including long term contracts for energy imports, and provisions for strategic planning and investments.

30 ETUC Resolution (2006): 6.

31 ETUC et al.: Climate change, the new industrial policies and ways out of the crisis: 15.

Simultaneously, the authority must ensure high safety standards in nuclear electricity production and waste management, and more specifically avoid their erosion in the face of increasing competition, to protect workers and citizens. Thus, special controlling measures are necessary for workers in contracting companies to prevent circumvention of high standards.

Moreover, the energy price should be calculated on its costs, taking into account the whole life cycle of each source. This should include energy production, distribution, recycling, deconstruction of the production facilities, energy storage and waste storage.

Furthermore, a “carbon balance” of every transport and energy system (such as nuclear, solar and biomass energy) should be elaborated through independent expertise. This analysis must take into account energy sources’ complete life cycle, including the stages of production, transport, waste treatment, recycling and deconstruction of production facilities.

A round table with the social partners must be established in this framework to discuss these issues and to promote social progress in Europe and out of Europe, through energy provisions including the need to respect human and labour rights, and democracy.

VI

Give the right economic signals to reduce greenhouse gases emissions through energy policies

For the ETUC, the European Union must give the right economic signals, in particular a price signal that could take the form of a CO₂ tax (also taking into account that China is about to adopt one) provided that a number of conditions are met³² including:

- that any CO₂ tax must form part of an environmental approach aimed at giving a price signal rather than having a budgetary logic;
- the enlargement of the tax to also cover energy;
- the revision of the ETS system; that the tax mentioned should not apply to industries already covered by the ETS and that double

32 See ETUC resolution of June 2010 www.etuc.org/a/7395.

taxation should be avoided (in some countries there is already a tax on energy usage);

- the creation of a European regulator;
- the availability of sustainable alternatives at accessible prices (regular and outstanding public transport systems, energy-efficient housing, ...);
- targeted compensation measures, sector by sector;
- the inclusion of social and environmental criteria into all public authorities' decision making processes;
- the spending of the revenues transparently and totally on internal investment measures to reduce emissions, on climate support for the developing countries and to finance the necessary compensating measures for low income households.³³

In the automobile sector, an economic signal was given by announcing a tax in the case a fixed ceiling of CO₂ emissions / km would not be respected. This could be looked at as a positive example to be used in other sectors as well, also in the perspective of worldwide sectoral agreements to be negotiated in the future.

Moreover, institutional mechanisms to avoid financial speculation, which also have an increasing impact on energy prices, should be developed. The aim is to ensure that speculations, mostly stemming from off-shore market agents, do not affect energy prices in the future.

VII

Establish funding, regulation and effectiveness of research and development (R+D)

From the perspective of funding, public financial support for research plays a crucial role in the transition to a low carbon society, especially in the area of green technologies and services, such as renewable energy and energy advisory and efficiency services. Public monetary assistance enhances innovation and simultaneously contributes to enhance investments and employment in this sector.³⁴ Likewise, barriers to the

33 ETUC resolution (October 2010): 13.

34 European Centre for the Development of Vocational Training (CEDEFOP) (2010): Skills for Green Jobs – European Synthesis Report, <http://www.cedefop.europa.eu/EN/publications/16439.aspx>: 6.

development of renewable energy production, such as solar, wind, sustainable biofuels, tidal, wave and geothermal, including market operation practices, should be removed. Moreover, especially local production and use of these energy sources, including “net metering” and merits promotion should be encouraged.

Additionally, strategic planning is a valuable tool to avoid negative impacts on environment and society.³⁵

Public investment, redirection of financial flows and regulation are also essential aspects in relation to R&D for the carbon capture and storage (CCS) technology. CCS is indeed unavoidable in the transitional phase, both in connection with the production of electricity, which will remain partly dependent upon coal and gas, and in connection with the conditions for the survival of and ensuring adequate access to high voltage electricity for many sectors of industry. The deployment of carbon capture and storage depends on certain conditions: coordinated

European investment in R&D and demonstration programmes, specific worker training programmes, and initiatives to promote public awareness and confidence, which will be best ensured through public regulation of carbon transport and storage facilities.³⁶

Agreeing with the Commission’s position articulated in a communication on the SET Plan that public intervention is “fully justified to achieve public policy goals and help overcome market failures”³⁷, the ETUC calls for an increase of public funding at the European, national and sectoral level. It can be implemented by strengthened member states’ commitments to spend 3% of GDP on research and development, with at least one third of this amount coming from public sources.³⁸

Furthermore, a European fund³⁹ should be created to promote R+D and to improve technology transfer policies fostering development and

35 Spring Alliance Manifesto: 12.

36 ETUC Resolution (2009): 7, Brochure 2010: 24.

37 European Commission (2009): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, http://ec.europa.eu/energy/technology/set_plan/doc/2009_comm_investing_development_low_carbon_technologies_en.pdf, p. 10.

38 Spring Alliance Position Paper: 21.

39 Draft of ETUC Resolution (2010): 6.

diffusion of technologies. Technology platforms at the European level and intensified cooperation between industries and research centres are examples of instruments to improve the effectiveness of R+D. Trade union participation should be guaranteed. The conclusions of such European cooperative R&D platforms should be better implemented and adequately resourced.

In order to increase R+D efforts, the allocation of emission allowances should be linked to businesses' R+D expenditure on green technologies. Moreover, the implementation of new financing instruments, such as the financial transaction tax should be taken into account.⁴⁰

The Belgian EU Presidency and the European Commission currently prepare the launch of an Energy Industrial Roundtable, which aims at bringing together key European industrial agents to single out how technological challenges and crucial financial needs can be met. The ETUC supports this initiative and calls for an important role for the trade unions on this table. The workers are the main agents of this technological transformation and the first who will be confronted to the changes in competences and skills. Likewise, workers will be the first concerned with issues on health and safety at the workplace as well as job quality related to these technologies.

VIII

Sustainable and quality employment programs to anticipate structural changes in employment patterns benefit from employment creation and avoid negative economic and social consequences for workers from the shift towards a low carbon economy

Income, jobs and working conditions are likely to change most profoundly in sectors which emit the highest levels of greenhouse gases and in which these emissions are difficult to convert.⁴¹ Specifically, the electricity, automobile as well as the iron and steel sector, play an important

40 Draft of ETUC Resolution (2010): 7.

41 ETUC et al. (2007): Climate Change and Employment: Impact on employment in the European Union-25 of climate change and CO2 emission reduction measures by 2030: 169.

role in regards to climate change mitigation measures. The ETUC demands that the European Commission mainstreams employment, vocational education and training issues in its sectoral policies. Several sectors, such as electricity and gas, are experiencing an aging workforce, which can have a negative effect on realizing many of the ambitious objectives the EU sets itself. The lack of this dimension in the recently published Energy Strategy 2020 is unacceptable. Without qualified men and women Europe's energy future will not be realized.

According to the 2007 ETUC study on "climate and employment", in the electricity sector, income and training policies should enable employees of fossil energy production facilities, to find work in the growing renewable energy sector, in particular in the field of maintenance. However, the creation of new jobs in the renewable energy sector contains the more general risk that this newly created employment is less well-paid and less secure than in the established sectors. Therefore, the ETUC stresses the importance of closely monitoring the quality of the created jobs.⁴²

According to a study on the employment impact of climate change mitigation, CCS technology, which could be available from 2030 on, could play a crucial role for the future development of the electricity sector. CCS could reduce the greenhouse gases emitted into the atmosphere through electricity production from fossil fuels and also limit job losses.⁴³ An analysis of the automobile sector's future challenges reveals that, adaptation to climate change will have a limited employment impact on the engine assembly sector by 2030. This is because due to the hybrid transition a considerable share of the future engines will be still be conventional. By 2030, the shift from conventional to electric engines may cause job losses, which may be compensated by employment effects in sectors such as equipment manufacturing. The main challenges in the automobile sector's adaptation to climate change, including engine downsizing and hybridization and electrification of vehicles, provides potential to create jobs. However, in order to benefit from this impact, restructuring the thermal engine production process will be necessary.

42 ETUC et al. (2007): Climate Change and employment: 73.

43 ETUC et al. (2007): Climate Change and Employment: Impact on employment in the European Union-25 of climate change and CO2 emission reduction measures by 2030: 169.

The employment effects of this transition depend crucially on support policies adopted at the European, national and sectoral level, based on adequate financial resources.⁴⁴

Due to its energy intensive production process and its exposition to international competition, the iron and steel sector is particularly prone to carbon leakage. Accordingly, free emission allowances until 2020 and investments in new technologies (such as ULCOS and CCS) must enable to protect the jobs of this industry and adapt it to the necessities of climate protection.⁴⁵

Moreover, the data available on companies' emissions should enable to benchmark these against the best low-carbon technologies, providing a framework for ambitious and economically sensible climate change adaptation efforts by the industry.⁴⁶

According to ECF, an increase of the employment effects related to the transition and the creation of quality jobs requires training programmes to enable the development of new sustainable industries and services. Important areas are renewable energy, energy efficiency (inter alia in labour intensive sectors, such as building refurbishment⁴⁷) and public transport.

Therefore, the ETUC emphasizes its claim, articulated through the Spring Alliance, "to develop transition programs to anticipated changes in employment patterns, together with stakeholders". Likewise, a European framework should be developed by 2011 to guarantee an adjustment of education curricula and programs to future environmental and social changes. This framework should provide training for the complete chain of providers, installers as well as suppliers in the fields of renewable energy and energy efficiency.⁴⁸

Therefore, the ETUC calls to set in place the conditions for achieving an exact evaluation of the situation in terms of employment by Member State and by sector, under the coordination of the European Commission,

44 Syndex et al: Climate disturbances, the new industrial policies and ways out of the crisis: 51-52.

45 ETUC: Employment and climate policies in Europe : 7.

46 Sandbag (September 2010): Cap or trap? How the EU ETS risks locking-in carbon emissions: 11.

47 ECF (2010): 6.

48 Spring Alliance Manifesto: 21.

with a view to climate imperatives. In this way, the European Commission will be in a position, together with the Member States and the social players, to define the needs and resources necessary for the implementation of the transition towards a low carbon economy for Europe. An example of a key qualification allowing an effective promoting of energy efficiency in buildings, is to provide specific training for construction workers to provide them with new professional opportunities, such as “energy advisor”.

According to the CEDEFOP, these publicly provided measures should refer especially to small and medium sized enterprises (SMEs), since the current economic downturn has even enhanced their difficulties in accessing finance.⁴⁹ Achieving a low-carbon economy rather depends on adapting and improving existing skills base, than on developing specific green skills as ETUC studies from 2007 and 2009 and the recently published CEDEFOP analysis pointed out⁵⁰. The latter also emphasized the crucial role of mainstreaming environmental education into education and training systems.⁵¹

Moreover, the ETUC points out the crucial role of the early provision of education on sustainable development and on energy efficiency, such as through primary school teaching and in adolescents’ initial vocational training.

It must be taken advantage of the transition towards a low-carbon economy to create quality jobs,⁵² in this respect the Europe 2020 flagship initiative is not enough.⁵³ In order to create sustainable green jobs, the climate protection policies, such as insulation programmes for housing, should be consistent and of long-term character.⁵⁴

Quality jobs should also be promoted through making an adherence to social and environmental standards a condition for benefitting from

49 CEDEFOP (2010): 6.

50 CEDEFOP (2010): 8.

51 CEDEFOP (2010): 15.

52 Spring Alliance Manifesto: 21.

53 ETUC Position on the financing and managing of climate policies (2010): 4.

54 European Climate Foundation (ECF) (2010): Employment Impacts of a Large-Scale Deep Building Retrofit Programme in Hungary. Executive Summary: 7.

public financial support.⁵⁵ Ecological and social criteria in public transport contracts foster the implementation of sustainability in this sector.⁵⁶ Due to companies' tendency to lower labour costs as a reaction to competition, social standards negotiated through the social dialogue should be implemented to avoid social dumping.⁵⁷

Likewise, an enlargement of the Globalization Adjustment Fund to finance measures for workers affected by climate protection measures would reduce negative socioeconomic consequences for them, providing alternative employment and income protection.⁵⁸

IX

Establish permanent consultation of social partners on social and economic impacts of climate change policies⁵⁹

Drawing on the experience of the social partners, the social dialogue can effectively identify opportunities of the transition process, encourage vocational changes and ensure societal support to climate change policies. An example is possible redeployment of older construction workers in energy auditing. The social dialogue enables workers and employers to benefit from the positive potential, the necessary adaptation to climate change provides.⁶⁰

The ETUC calls for ensuring and promoting of social dialogue instruments as well as collective agreements at all levels (European, national, regional, sectoral, companies, ...) to implement green and social growth effectively.⁶¹

55 ETUC Position on the financing and management of climate policies (2010): 3.

56 European Transport Workers' Federation (ETF) (2010): Trade Union Vision on Sustainable Transport, http://www.itfglobal.org/files/extranet/-75/9205/Brochure_TRUST_EN.pdf: 17.

57 ETF (2010): 19.

58 ETUC Position on the climate change and energy package (2008): 2, Spring Alliance Manifesto: 21.

59 ETUC's position on the climate and energy package (2008): 2.

60 ETUC et al.: Climate Change and Employment: Impact on employment in the European Union-25 of climate change and CO2 emission reduction measures by 2030 - Synthesis: 9.

61 ETUC (2009): Resolution on The climate change, the new industrial policies and the ways out of the crisis adopted by the Executive Committee: 12.

In order to anticipate structural employment changes resulting from climate protection and consequently from increased energy efficiency and implementation of (new) technologies relating to energy production and consumption, the conditions for a precise evaluation of the transition's impact on employment in the different member states and sectors under the guidance of the Commission should be secured.

A European framework should therefore be created to foster the discussion and definition of necessities and measures for a just transition towards a low-carbon economy between Commission, member states and social partners.⁶² Specifically, this social dialogue would enable to identify and manage upcoming changes in employment and skills⁶³.

Moreover, a European Agency should ensure carbon traceability for products, specifically for those which are likely to be affected by "carbon leakage" and thus could lead to the loss of jobs and investment to countries with lower carbon reduction commitments⁶⁴, and organize a roundtable for the discussion of this "carbon leakage" issue, involving trade unions and other relevant stakeholders. Effectively addressing the issue of carbon leakage is a precondition for the ambitious tackling of climate change in the European Union.

From the ETUC's perspective, the points of this resolution are crucial to allow all people, as workers and consumers, to benefit from Europe's energy policy and to contribute effectively to the aim of a low-carbon society.

20 The ETUC's 20 priorities for the EU energy policy by 2020

1. Develop a European energy solidarity pact
2. Guarantee a secure supply
3. Create a democratic European Energy Agency to promote a common European energy policy of general interest and improve energy market regulation
4. Ensure energy bills reflect just prices (socially fair, affordable, based on fair rate of return and not on excessive profit taking)

62 Draft of ETUC Resolution (2010): 8.

63 ETUC Position on the Climate and Energy Package (2008): 2-3.

64 ETUC Resolution (October 2010): 6.

5. Protect vulnerable energy consumers and reduce the energy bill of low- and medium income households
6. Give the right economic signals to reduce greenhouse gases emissions through energy policies
7. Establish funding, regulation and effectiveness of R&D
8. Integrate social and environmental criteria in public contracts for energy infrastructure and award EU funding only to companies with a solid CSR policy
9. Modernize grids adopting a regulatory and financial framework to promote the increase of smart grid capacity, to foster energy savings and to allow an optimal contribution of renewable, decentralized production as well as combined heat and power generation
10. Increase energy savings and energy efficiency in the industry, building and transport sectors and achieve a reduction of overall primary energy consumption by at least 20% in the coming decade through a binding energy saving target for each Member State
11. Establish a transformation program encouraging investments in new industrial policies based on low-carbon emission
12. Establish a renovation program for the complete housing stock
13. Provide sustainable and affordable public transport
14. Diversify energy sources by developing renewable energies and other low CO₂ emitting alternatives such as combined heat and power
15. Establish a directive on sustainable mobility ensuring an improved coordination of transport units as well as production and distribution systems
16. Take advantage of the transition towards a low carbon economy to create quality jobs
17. Ensure sustainable and quality employment programs anticipating structural changes and avoiding negative social consequences from the shift towards a low carbon economy
18. Establish permanent consultation of social partners on social and economic impacts of climate change policies
19. Promote human, trade union rights and democracy by using them as criteria conditioning public funding and when establishing energy dialogues and cooperation
20. Ensure high health and safety standards in the energy sector and in all sectors of energy use and efficiency to protect workers and citizens

ETUC RESOLUTION: MORE INVESTMENT IN LIFELONG LEARNING FOR QUALITY JOBS

Adopted by the Executive Committee
on 1-2 December 2010

The European Union needs a paradigm shift. The model of 'free and deregulated' markets pushed forwards by Member States competing with each other in the European internal market place has failed us. What we need instead is a greater emphasis on European cooperation on quality jobs, common sustainable industrial policies, a more substantial European budget, moves towards an economic union alongside a monetary union, and common European approaches to financial regulation. In order to contribute to a greater emphasis on European cooperation on quality jobs for both working men and women, the ETUC supports the goals of European education and training policies which promote flexibility between academic and vocational pathways. **The ETUC is convinced that learning without setting appropriate socio-political objectives will ultimately fail and so calls on the EU, Member States and employers throughout Europe to invest more in lifelong learning.**

I

Context

Europe's social and economic well-being is dependent on having a well educated and highly skilled population, and education and training play an essential role in giving citizens the knowledge, skills and competences they need to participate fully in society and the economy.

Global competition, demographic developments, technological progress, climate change obligations and shifts in patterns of employment individually

and collectively are having a dramatic impact on labour markets and the need for new knowledge, skills and competences. If the EU is to meet these challenges, it will need to create more and better jobs and enable working men and women to improve their skills and more specifically match them to short-term and long-term labour market demand.

The alarming nature of the financial and economic crisis has led many Member States to introduce a series of austerity measures and reduce public sector funding, which in turn has led to the further loss of jobs and insecurity for millions of men and women, particularly those on temporary or part-time contracts and engaged in seasonal work, adds a formidable supplementary challenge.

Global competition and company restructuring have led to the loss of employment in manufacturing industries in the European Union, particularly amongst the low skilled. The situation is evolving dramatically however, and emerging countries have recognised the need to invest heavily in upgrading their own skills base. China, for example, is putting a priority on the development of the highly skilled and is producing significantly more researchers per year than the EU (+9.9 % per annum for China and +3.1 % per annum for the EU over the period 2000 to 2006), and coincidentally it has become the largest exporter of high-tech products in the world due to the growth of its computers and office machinery exports. (A more research-intensive and integrated European Research Area - Science, Technology and Competitiveness - key figures report 2008/2009).

Significant demographic developments are taking place. According to Cedefop figures, the workforce will be getting older in the decade leading up to 2020, and 'only the number of 45-54 and 55-64 year olds will increase... Continuous efforts to increase labour market participation, in particular of women and older people, are needed to keep the decline in the labour force lower than that of the population'. (Skills supply and demand in Europe – Medium term forecast up to 2020).

Technological progress, particularly in the form of new information and communication technologies, biotechnologies and nanotechnologies, has already led to the redundancy of certain skills and the launching of new knowledge-based industries that require a highly skilled work force.

Meeting climate change obligations through sustainable development has significant potential for the creation of new jobs, which in turn will require the improvement of existing skills, requiring workers to become familiar with new practices and techniques that will enable them to work in a low-carbon economy.

Patterns of employment are continually changing, with the gradual but constant decline of employment in the primary sector and manufacturing and the constant increase in employment in the service sector. Cedefop figures show that by 2020 a further 2.5 million jobs will be lost in the primary sector and a further 2 million in manufacturing and production industries. Growth in employment will lie in the service sector, and there will be a shift in demand towards more skilled workers. 'As a result, demand for highly-qualified people is projected to rise by almost 16 million. Demand for people with medium-level qualifications is projected to rise by more than 3.5 million. Conversely, demand for low-skilled workers is expected to decrease by around 12 million'.

All these changes are taking place at a time of great economic uncertainty and at a time of high unemployment. The latest Eurostat figures (31 August 2010) show that just over 23 million men and women were now formally recognised as unemployed within the EU, an increase of just over a million compared with July 2009 figures – that is 10% of the working population in 2010 as compared with 9.6% the previous year. The lowest employment rate was to be found in Austria (3.8%) and the Netherlands (4.4%) and the highest in Spain (20.3%). The unemployment rate for men rose from 9.2% to 9.6% during this period and for women from 9.0% to 9.6%. The most shocking figures relate to the unemployment rate of young people (under 25s) - 20.2%, with a figure of 8.1% in the Netherlands and 41.5% in Spain. As in previous downturns, young people are the hardest hit, and the NEET group (not in education, employment or training) is set to grow, and their employment must be a priority.

Because of the alarming financial and economic crisis, the potential for job growth over the next ten years is poor at best. Cedefop figures forecast that the situation will only marginally improve over the next ten years. Demand for labour should increase by 0.3% per annum over the next ten years, but the 2008 figure will most likely not be reached.

II

The EU response

The EU response to this financial and economic crisis has been to move from the Lisbon Strategy, whose professed aim was for the EU 'to become the most dynamic and competitive knowledge-based economy in the world by 2010 capable of sustainable economic growth with more and better jobs and greater social cohesion and respect for the environment', to another 10-year initiative *Europe 2020 – A European strategy for smart, sustainable and inclusive growth*. It proposes 5 headline targets for 2020, two of which are directly linked to education and training and labour market policy:

- 75% of the population aged 20-64 should be employed
- The share of early school leavers should be under 10% and at least 40% of the younger generation should have a tertiary degree.

As things stand at the moment the EU average figures for 2009 were, as follows:

- 69.1% of the population aged 20-64 is employed (75.8% of men and 62.5% of women)
- The share of early school leavers is 14.4% (16.3% men and 10.7% women), and 32.3% of the younger generation has a tertiary degree (28.9% men and 35.2% women).

Some countries are already hitting these targets, but for others a vast effort will be required.

In order to meet these global targets the EU is proposing seven flagship initiatives, two of which are directly linked to education and training and the labour market, 'An Agenda for New Skills and Jobs' and 'Youth on the Move'.

The professed aim of 'An Agenda for new skills and jobs' is 'to create conditions for modernising labour markets with a view to raising employment levels and ensuring the sustainability of our social models. This means empowering people through the acquisition of new skills to enable our current and future workforce to adapt to new conditions and potential career shifts, reduce unemployment and raise labour productivity'.

One element will be the launching of the European Taxonomy of Skills, Competences and Occupations (ESCO).

The professed aim of 'Youth on the Move' is 'to enhance the performance and international attractiveness of Europe's higher education institutions and raise the overall quality of all levels of education and training in the EU, combining both excellence and equity, by promoting student mobility and trainees' mobility, and improve the employment situation of young people'.

The EU has entered a new stage of the Copenhagen Process, whose aim has been to encourage more citizens to make wider use of vocational learning opportunities, whether at school, in higher education, in the workplace, or through private courses. From Copenhagen to Maastricht, Helsinki and Bordeaux, a European vocational and education training area has been built. The next step will be the adoption in December 2010 of the Bruges Communiqué on the future priorities for enhanced European cooperation in vocational education and training. The EU has also produced a Communication 'A New Impetus for European Cooperation in Vocational Education and Training to support the Europe 2020 Strategy'.

The EU has moved from a 'learning process' approach to a 'learning outcomes' approach, based on what learners are expected to know, understand and be able to do, and has moved forward with the implementation of the European Qualifications Framework (EQF) http://ec.europa.eu/education/lifelong-learning-policy/doc44_en.htm, EUROPASS <http://europass.cedefop.europa.eu/>, the European Credit Transfer and Accumulation System (ECTS) http://ec.europa.eu/education/lifelong-learning-policy/doc48_en.htm, the European Credit System for Vocational Education and Training (ECVET) http://ec.europa.eu/education/lifelong-learning-policy/doc50_en.htm and the European Quality Assurance Reference Framework for Vocational Education and Training (EQAVET) <http://www.eqavet.eu/gns/home.aspx>. The EU is also in the process of modernising the Professional Qualifications Directive (2005/36/EC).

In parallel EU Member States, in conjunction with another 20 countries, have launched the European Higher Education Area (EHEA), previously known as the 'Bologna Process', in March 2010, to ensure more comparable, compatible and coherent systems of higher education in Europe.



The ETUC response

The Worsening Crisis – Europe at Risk was the subject of a resolution adopted at the ETUC Executive Committee in June 2010. <http://www.etuc.org/a/7373>

The Europe 2020 strategy has also been the subject of a joint statement with BUSINESSEUROPE, CEEP and UEAPME. In this statement the ETUC and the employers' organisations underline, inter alia, the importance of promoting the knowledge triangle (education, research, innovation). <http://www.etuc.org/a/7327>

Europe must further strengthen its potential in terms of skilled workers, science, research and technology and thus its capacity to innovate as a key element of competitiveness. In any case, the knowledge triangle must remain at the heart of the EU2020 strategy. In this context the notion of innovation has to be widened to all kind of non-technological innovation including "social innovation" in order to increase social capital which is important for both competitiveness and social cohesion. Insufficient investment in innovation and further education is exacerbating economic problems and affecting labour productivity.

Looking ahead, our work patterns are changing. So are employers' needs for skills in the work force and the needs of workers to combine productive employment with family life and personal development. Europe must not only upgrade and update skills levels; it must also make sure that workers have the skills that are needed on the labour market and that these skills are fully used in high-quality jobs.

Comprehensive lifelong learning strategies are required to ensure employability of workers. It is important to establish effective concepts for initial and further training, create jobs, not least for those who are excluded from the labour market due to, for example, shortcomings in their education, and to take effective steps to remove discrimination as far as access to and remaining in the labour market are concerned. Well educated workers and the capacity to innovate are key elements of competition and a prerequisite for prosperity. This is indispensable for the creation of productive and highly-skilled jobs.

Prior to this, the ETUC Executive Committee passed a resolution in March 2009 on initial and continuous vocational training for a European employment strategy. <http://www.etuc.org/a/6078>

The ETUC also signed a Framework Agreement on Inclusive Labour Markets with BUSINESSEUROPE, CEEP and UEAPME in March 2010. <http://www.etuc.org/a/7076>

In this agreement the ETUC and the employers' organisations agree that *'labour market inclusion is an essential condition for cohesion, including the fight against poverty, and economic success'*. They recognise, inter alia, that *'they have a responsibility to deepen their reflections and engage themselves to find solutions and mobilise their members.'* An emphasis was put upon the following, inter alia:

- *'cooperating with education and training systems in order to better match the needs of the individual and those of the labour market, including by tackling the problems of basic skills (literacy and numeracy), promoting vocational education and training and measures to ease the transition between education and the labour market'*
- *introducing individual competence development plans (in line with the framework of actions for the lifelong development of competences and qualifications) jointly elaborated by the employer and the worker, taking into account the specific situation of the employer, particularly SMEs, and worker. These plans identify the required competences of the worker in a given work situation; and, with shared responsibilities according to the individual situation, actions to develop the worker's competences*
- *improving transparency and transferability, both for the worker and for the enterprise, in order to facilitate geographical and occupational mobility and to increase the efficiency of labour markets*
 - *by promoting the development of means of recognition and validation of competences*
 - *by improving the transferability of qualifications to ensure transitions to employment*
- *promoting more and better apprenticeship and traineeship contracts'.*

IV

The ETUC lifelong learning agenda

The ETUC lifelong learning agenda has the following key points:

1/ Supporting top quality initial education

Education is a fundamental human right and essential for the exercise of all other human rights. Initial education is not only important for personal development but it also lays the basis for active citizenship, for social inclusion and for success in the labour market. The latest OECD survey notes that 'education plays a major role in keeping individuals in the labour force longer' and that 'people with higher levels of education have a better chance of finding and keeping a job' (Education at a Glance 2010). Educational attainment is even positively associated with self-reported good health.

Top quality initial education provides a fundamental start in life, and the ETUC calls on Member States to support publicly funded and properly regulated institutions of initial education, covering pre-primary, primary and secondary schools, vocational training and tertiary education, with well qualified and well trained teaching and support staff on good pay and conditions.

In the light of the Europe 2020 strategy the ETUC calls on the EU to propose a Recommendation for reducing the numbers of early school leavers based on prevention, intervention and compensation and also a Recommendation for achieving the 40% figure for the younger generation with a tertiary degree.

2/ Enabling equal access to education and training

Equal access to initial education and training is essential to launch citizens on their way, but equal access to continuing education and training is essential to respond to citizens' changing circumstances and aspirations on the one hand and the needs of the labour market on the other.

The ETUC considers that all workers should have equal access to education and training at all levels, regardless of their age, gender,

employment status, or nationality, and particularly groups with low participation, such as the low-skilled, older workers and workers on temporary or part-time contracts, so that they are able to acquire, update and develop their knowledge, skills and competences throughout their lifetime. Those that need training the most should not be the least likely to obtain it.

The ETUC calls on the EU to underpin this access with a workers' right to training.

The ETUC considers that employers, and particularly SMEs, should support lifelong learning initiatives by making learning more accessible during working hours, and better suited to workers' needs, either through the individualisation of learning plans, the shift to competence-based training, the move to modularisation or the use of distance learning.

3/ Recognising and validating non-formal and informal learning

Participation in non-formal and informal learning after leaving initial education is essential for citizens, both men and women, to improve their knowledge, skills and competences. The validation of non-formal and informal learning provides opportunities for integration into society in general and into the labour market in particular. It helps reduce the possibility of unemployment for those that have the skills but not the paper qualifications. It avoids repetition of learning which has already been done.

The ETUC calls on the EU to put forward a Recommendation, with full involvement of the social partners at European and national level, on the validation of non-formal and informal learning which improves validation practices, where they exist, and which introduces new legal structures and policy frameworks to support non-formal and informal learning, where they do not.

The ETUC calls on Member States to consider ways in which the validation of non-formal and informal learning can be integrated into National Qualification Frameworks and to establish rigorous

and credible instruments with social partners for the recognition and transferability of skills obtained via non-formal and informal learning.

The ETUC calls on employers to examine ways of recognising the validation of non-formal and informal in the workplace, by means of career development and salary increases.

4/ Easing the transition from initial education to working life

If working men and women are to take advantage of employment opportunities, both nationally and Europe-wide, they need to have the right knowledge, skills and competences and to match them to labour market needs. They need a combination of transversal core skills with the specific skills needed for a job on the basis of initial education and vocational training and they need to develop them further throughout their working lives on the basis of continuing vocational training and adult education. For this they need to be able to move flexibly between academic and vocational pathways. They also need to know which jobs are available and what skills are needed, or will be needed and recognised to carry them out.

The ETUC calls on the EU and Member States to continue to invest in socio-economic research and to develop more reliable systems for the anticipation of future skill needs and skill shortages, with the active participation of social partners. The fruits of this research need to be disseminated in a clear and user-friendly way.

The ETUC calls on Member States and employers to make greater provision for fully-funded on-the-job training and apprenticeships.

The ETUC calls on Member States to develop greater permeability and mobility between academic and vocational education systems within the context of National Qualifications Frameworks.

Finally the ETUC calls on Member States to establish integrated guidance and counselling services and efficient job placement services which are closely linked to the needs of the labour market.

5/ Providing adequate and targeted funding for top quality education and training

Europe's social and economic well-being is dependent on having a population that is highly qualified and able to understand the world in which we live, and this requires adequate and targeted funding. It is counter-productive for European governments to cut funding for education and training during the financial and economic crisis, as a growing economy is dependent on the supply of highly skilled workers and on the mobilisation of the skills and competences of the unemployed. Employers are constantly on the lookout for skilled working men and women, and they need to recognise their own responsibilities and treat continuing vocational training as an investment for development in the long term.

The ETUC demands that Member States do not take advantage of the financial and economic crisis to make public spending cuts which will have a deleterious impact on the provision of top quality education and training.

The ETUC calls on Member States and employers to invest in working men and women and to increase expenditure per employee for continuing vocational training.

6/ Participating in social dialogue on lifelong learning

Trade union participation in social dialogue on lifelong learning is a key element for the successful design, management, monitoring and assessment of public policies and of national and EU vocational training systems. In this way training programmes that emanate from this process correspond to the needs of the labour market but also to the needs of working men and women.

The ETUC calls on the EU and Member States to support the participation of trade unions in this process of tri-partite social dialogue on lifelong learning at all levels.

The ETUC calls on the European Commission to set up European sector skills councils within the context of the 'An Agenda for new skills and jobs' as a means of support for European Social Dialogue.

The ETUC calls on employers at all levels (European, national, regional and workplace) to recognise that trade union organisations and employers have shared interests in terms of the development of a highly skilled work force and to engage in a process of collective bargaining and/or social dialogue with trade unions, particularly at the workplace with union representatives and union learning representatives, on the subject of continuing vocational training.

7/ Making the best of European education and training initiatives and instruments

The EU is in the process of implementing a series of initiatives, the European Qualifications Framework (EQF), EUROPASS, the European Credit Transfer and Accumulation System (ECTS), the European Credit System for Vocational Education and Training (ECVET) and the European Quality Assurance Reference Framework for Vocational Education and Training (EQAVET), and in the process of modernising the Professional Qualifications Directive (2005/36/EC)

The EU has a number of instruments for supporting education and training activities. On the one hand there is the European Centre for the Development of Vocational Training (CEDEFOP) which is working to strengthen European cooperation in vocational education and training by providing information on and analyses of vocational education and training systems, policies, research and practice. On the other there are funds and/or programmes which can be used to support the development of education and training activities:

- the European Social Fund, which contributes to the integration into working life of the unemployed and disadvantaged sections of the population, mainly by funding training measures (with a budget of ca. 75 billion euros for the period 2007 to 2013). http://ec.europa.eu/employment_social/esf/
- the Lifelong Learning Programme, with its four sub-programmes which fund projects at different levels of education and training -Comenius for schools, Erasmus for higher education, Leonardo da Vinci for vocational education and training, Grundtvig for adult education (with a budget of ca. 7 billion euros for the period 2007 to 2013). http://ec.europa.eu/education/lifelong-learning-programme/doc78_en.htm

The ETUC calls on the EU and Member States to ensure that these European initiatives, which have been designed to facilitate transparency, to encourage mobility and to improve overall quality, follow a similar 'learning outcomes' approach and are successfully implemented so as to respond to workers' education and training needs, with social partner involvement at the European and national level.

The ETUC calls on the EU and Member States to ensure that these European instruments are safeguarded and developed further in the next EU funding period (2014-2020).

8/ Training the next generation of trade union members, representatives and officers

If European trade unions are to succeed in facing the challenges caused by global competition, demographic developments, technological progress, climate change obligations and shifts in patterns of employment, they will need competent and effective trade union members, representatives and officers.

The ETUC supports the provision of trade union education programmes and initiatives which will then ensure that trade union officers and representatives have the appropriate knowledge, skills and competences to defend the interests of their trade union members.

In order to contribute to a greater emphasis on European cooperation on quality jobs for working men and women, the ETUC calls on the EU, Member States and employers throughout Europe to invest more in lifelong learning.

ETUC RESOLUTION (DEFENDING THE AUTONOMY OF COLLECTIVE BARGAINING IN EUROPE)

Adopted by the Executive Committee
on 1-2 December 2010

Defending the autonomy of collective bargaining in Europe

ETUC resolution on common guidelines for the coordination of collective bargaining strategies in 2011.

A year of wage austerity

I
Over the past year, the economic crisis together with high and rising unemployment has substantially weakened collectively bargained wage dynamics all over Europe. Whereas the deceleration of wage growth remained limited in the Nordic countries, collectively bargained wages fell back to a rate of no more than 1 to 1.5% in Western Europe. Meanwhile, and under joint pressure from the IMF, DGEFIN and the ECB, wages were cut in Ireland, Greece and in certain countries of Central and Eastern Europe (Baltics, Roumania ...), with public sector wages taking particularly vicious blows.

II
The ETUC, when setting out its guidelines for collective bargaining in 2010, anticipated this difficult context by insisting upon the need to avoid a generalization of wage freezes and wage cuts. Instead, collectively bargained wages were to remain in positive territory and collective bargainers were asked to promote and defend good jobs without however seeking to poach jobs from other regions or countries. The broad picture, based on the ETUC's annual report on collective bargaining, is

that affiliates broadly respected this framework: With the possible exception of three national level bargaining agreements and two sector level agreements, trade unions did not accept to freeze or to cut wages while agreements to maintain jobs mostly took the form of reducing and redistributing working time.

III

The crisis also reduced the possibilities for affiliates to develop policy initiatives and campaigns that would extend the coverage of collective bargaining and establish minimum wage floors for low paid workers. The 2010 ETUC resolution called for affiliates to do so but reporting on this has been scarce while the actual trend is going in the wrong direction in several countries where coverage rates are falling and minimum wages are stagnating).

The attack on wages and collective bargaining is continuing

IV

The proposals on European economic governance now on the table are basically asking workers to save the euro by replacing the former instrument of a devaluation of the national currency with a strategy of devaluation of wages. A 'European law on wage competitiveness', with a complete set of wage indicators, recommendations to cut wages and sanctions decided by minority vote, is in the making.

V

Financial markets' speculation against the periphery's sovereign debt is continuing and this will continue to be the case unless the ECB convincingly signals the markets that it is prepared to take up the role of 'buyer of last resort'. To calm the markets, many governments will continue to resort to desperate attempts of cutting public sector wages and public sector jobs along with social benefits. Meanwhile, even governments even favored by financial markets' favorite use the financial turmoil of the periphery as an excuse to push through similar and, in some cases, even more drastic cuts.

VI

Furthermore, the 'period of grace' that the European economy has been enjoying thanks to rising export demand from the rest of the world as well as the extra demand coming from stock rebuilding is coming to an end. This, together with savage fiscal austerity and monetary tightening, will work to produce a renewed economic slowdown. In the absence of a European demand strategy, member states will be even more tempted to go for 'beggar-thy-neighbour' policy, particularly by weakening collective bargaining.

ETUC position and guidelines for 2011

VII

The ETUC calls upon affiliates to put central in coming bargaining rounds the key principles of autonomy, coordination and solidarity:

- a/ **Defend the autonomy of social partners to bargain.** The ETUC rejects the false trade-off between 'saving the euro' and 'saving wages'. A strategy of wage devaluation will fail to rebalance the Euro Area. Instead, such a strategy will transform the single currency into a mechanism to boost profits, dividends and bonuses. In this context, the ETUC calls affiliates to strongly insist with their government and in the public debate upon the autonomy of social partners to bargain. It is of the utmost importance to resist a European 'law on competitiveness' which is nothing else but a straightjacket for wages and trade unions. Here, good use needs to be made of the fact that article 153 (ter) of the Lisbon Treaty excludes European competence on wages, whereas the charter on fundamental rights (article 28) secures the right to negotiate, to conclude collective agreements and to undertake collective action.

- b/ **Reject 'beggar thy neighbour' bargaining, in particular wage cuts and wage freezes.** Wage cuts and wage freezes are not acceptable. Trade unions should strive to ensure wage increases that, in any case, maintain the purchasing power of wages of all workers.

c/ **Put solidarity central.** The ETUC also urges affiliates to go for bargaining in solidarity. Special importance is to be given to arrangements and policies to increase wages at the bottom of the wage scale, to limit precarious work practices in particular fixed term work, to reduce the gender pay gap and to negotiate new jobs and defend existing jobs, the latter however without resorting to measures having the effect of poaching jobs from other countries and regions. Negotiating margins, resulting from robust trend productivity growth and/or excessively high profit rates, are to be used to this purpose.

ETUC 2ND RESOLUTION ON NANOTECHNOLOGIES AND NANOMATERIALS

Adopted by the Executive Committee
on 1-2 December 2010

Introduction

Recalling the previous ETUC Resolution on Nanosciences and Nanotechnologies of 25 June 2008, the ETUC confirms its previous analysis, namely that nanotechnologies might be the *'driver of the next industrial revolution'* and a paradigm shift. Nanotechnologies have been considered a priority for the European Commission as a key emerging technology in Europe.

In its first contribution to the debate, the ETUC pointed out elements of the European policy that it sees as essential to responsible development of this emerging technology. However, from the first ETUC resolution up to the present time, there have been a number of changes. On the matter of the technology itself, for example, the development of nanotechnologies in a number of areas has taken considerably longer than initially claimed by its proponents.

In relation to the issue of potential employment, the scenario of the multiplication of new jobs has changed. Now the concerns are to deal with a shift of employment and to cope with the introduction of the new technology and any significant changes in work processes and working conditions that could disrupt the working environment.

The ETUC stated unequivocally that changes resulting from the introduction of nanotechnologies in the workplace should not create further inequalities between workers. The development of nanotechnologies will depend on the skills of people with different backgrounds who will require an interdisciplinary perspective. It has already been recognised that there is a need to upgrade a range of skills, and that it will also be

necessary to create new ones, and to educate and train workers in a wide range of sectors.

The number of products on the market containing nanomaterials has been growing substantially¹ and yet there are no updated figures on the risks to human health and the environment. The ETUC called for transparency and traceability of nano-articles placed on the market, which in effect means that there is a need to know whether nanoparticles are contained in products and materials, and if so, what type.

In the area of regulation, international bodies are taking action in different areas and bringing about positive changes. In addition, the new Cosmetic Products Regulation² is the first EU legislative instrument which incorporates a definition and rules concerning the use of nanomaterials in cosmetic products.

In the food sector, the Council has approved a political agreement on a draft regulation concerning novel foods. The proposal includes a definition of engineered nanomaterials and provisions on food containing or consisting of them.

It is important to note that the European Parliament Report³ of 2009 clearly calls on the Commission to review within two years all relevant legislation concerning nanotechnology in particular with respect to chemicals, food, waste, and protection of workers, in order to implement the 'no data, no market' principle, which the ETUC fully supports.

Considering that the Commission should also '*promote the adoption of a harmonised definition of nanomaterials at the international level and adapt the relevant European legislative framework accordingly*', and if needed, propose regulatory changes, the ETUC wants to make sure such definition and regulatory arrangements will serve to protect workers' health and safety and the environment.

Since the need for a definition is a major concern for regulatory purposes, scientific bodies within the European Commission, namely the Scientific Committee on Emerging and Newly Identified Risks (SCENIHR) and the Joint Research Centre⁴ (JRC), published reports with their contributions. The ETUC has reviewed and commented on these reports.

1 PEN Inventory (2010) <http://www.nanotech>

2 COM (2009) EU Regulation 123/2009 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:342:0059:0209:en:PDF>

3 EP (2009) Report on regulatory aspects of nanomaterials. A6-0255-2009.

4 JRC (2010) Considerations on a definition of nanomaterial for regulatory purposes.

This ETUC resolution is part of the continuing debate and a contribution to reaffirm the principles set out in the first ETUC resolution. In view of major technical and regulatory developments related to the definition of nanomaterials and the need to adjust the legislative framework to incorporate the principles of hygiene and traceability, the role of standardisation and the need to address the social and ethical issues are given limited priority only for the time being.

Taking into account the above, the ETUC, with its member federations and confederations, endorses this second Resolution with the following recommendations.

Resolution

I

Inclusion of the societal dimension of nanotechnologies

The ETUC is concerned that little emphasis is being placed on the social and ethical issues related to nanotechnologies and how they should be used to contribute to human well-being and the development of socially just societies. Despite the novel properties of nanomaterials and the substantial advantages they offer, they might change the structure of society in the face of challenges such as personal and collective liberties, equity between citizens, social rights, as well as acute, short and long-term health and environmental effects.

For instance, since certain nanomaterials could be introduced in the human body, this could cause unwanted changes to health, for which no healing processes would be available, resulting in a substantial change to human nature, life expectancy and humanity itself. The ETUC calls for the protection and respect of each person and their fundamental rights and human dignity and caution when it comes to interfering with the living body.

The ETUC finds that it is crucial not to undermine or transform social rights and is extremely reserved with regard to developments such as human enhancement and artificial intelligence, for present and future generations. The ETUC emphasises that to achieve sustainable growth, the innovation resulting from nanotechnologies should include social equity, environmental protection and economic efficiency, while ensuring full protection of health and safety and the environment.

Past European programmes have provided funding for research and development in nanotechnology, at levels which have increased significantly over the years. The ETUC has criticised the failure to fund research on health and safety, ethical, social and environmental issues at the same level as research and development of nanotechnologies.⁵

The ETUC therefore requests the Commission to set a percentage commitment to allocate sufficient funding for societal and ethical concerns, in particular those relating to social justice, privacy, human dignity, environment, and responsibility towards future generations.

At the same time, the ETUC encourages Member States to allocate portions of their national nanotechnology budgets to ethical and social implications in order to address specific national concerns.

Furthermore, the ETUC strongly recommends that countries with different levels of development in the field of nanotechnologies should be involved and their voice included in the European dialogue.

The development and application of nanotechnology requires a long-term vision. Predicting its consequences is uncertain. The ETUC therefore considers that it will take a long time to discover the full potential of this emerging technology and its impact on society. The results tend to be highly unpredictable and extremely complex.

II

Implementation of the precautionary principle

The precautionary principle serves to guide risk assessment and decision-making to deal with issues presenting an uncertain level of risk in an attentive, careful, reasonable and transparent manner⁶. The ETUC recommends application of the precautionary principle which can take the form of a number of proactive initiatives including risk reduction measures,

5 ELSA (2008) p. 10 ftp://ftp.cordis.europa.eu/pub/nanotechnology/docs/elsa_governance_nano.pdf
“Although the FP6-NMP Programme focused on scientific and technological research, it explicitly included topics related to ELSA of nanotechnology, mostly in form of specific support actions aiming at communicating with the public and networking between stakeholders”.

6 -Health Council of the Netherlands (2008) Prudent precaution, The Hague. -The Social and Economic Council of the Netherlands (2009). Nanoparticles in the workplace: Health and safety precautions. Advisory report. Working Conditions Committee. The Hague.

early warning actions with specific attention to health monitoring, and the registration of workers exposed.

Where technological developments are certain to cause harm, there is a duty to prevent or mitigate such harm and avoid risks. In case of uncertainty, precautionary measures must be applied, meaning there is the duty to apply additional measures at an early stage, aiming to avoid all occupational exposure to nanomaterials.

This imposes an obligation on trade unions to include nanomaterials as an issue in their occupational health and safety strategies and continue to demand scientific evidence on potential adverse effects and a high level of protection for workers involved in manufacturing or use of nanomaterials in articles until uncertainties are resolved.

The ETUC supports application of the 'no data, no exposure' principle, meaning that where no data on risks are available, workers must not be exposed and processes have to be performed in closed systems.



The applicability and revision of existing regulations

Nanotechnologies confront society with policy issues and open a unique governance challenge for the European Union, namely the adequacy of existing legal instruments for regulating nanotechnologies.

It is the ETUC's position that existing directives and regulations are not addressing nanotechnologies adequately. The current legislative framework should therefore be updated and must be effectively implemented in each Member State. Legislation in at least the following areas should be addressed: chemicals (REACH, biocides), food (foodstuffs, food additives, food and feed products from genetically modified organisms), relevant legislation on worker protection (i.e. the Chemical Agents Directive) and on air quality, water quality and waste.

In line with the European Commission's recommendation for a 'safe, integrated and responsible' approach to nanotechnology⁷, the ETUC demands transparent regulation on protection against potential risks related to nanomaterials. This provides an opportunity for society to participate in key decisions on development of the uses of nanotechnologies, which will move them forward but also provide certainty and predictability to economic operators as well as public confidence.

The ETUC welcomes the Strategic Nanotechnology Action Plan (SNAP) for 2010-2015, as a mean to establish a permanent and effective dialogue with stakeholders. In particular, the ETUC welcomes the proposal for a definition of the term '*nanomaterial*' that the European Commission intends to use as an overarching, broadly applicable reference term for any European Union communication and legislation addressing nanomaterials⁸.

IV

REACH and its use of the term 'nanomaterial'

REACH, the new EU regulation on chemical substances, puts the onus of proof on manufacturers. The ETUC finds it unacceptable that substances in nanoform should now be manufactured, placed on the market or used without requiring manufacturers to demonstrate that their products (*alternatively*: those substances) do not adversely affect human health, in particular the health and safety of workers, or the environment at all stages of their life cycle.

The ETUC therefore demands full compliance with the '*no data, no market*' principle laid down in REACH. It calls on the European Chemicals Agency (ECHA) to ensure that all registration applications for substances in nanoform are identified and prioritised for both dossier and substance evaluation.

As the scope of REACH is to be reviewed in 2012, the ETUC calls on the Commission to amend the regulation so as to introduce provisions referring specifically to nanomaterials.

7 COM (2004) 338 final "European Strategy for Nanotechnology".

COM (2005) 243 final "Towards" and the "N&N Action Plan for Europe 2005-2009".

COM (2009)607 final; SEC(2009)1468.

8 <http://ec.europa.eu/environment/consultations/nanomaterials.htm>

The definition of nanomaterials recently recommended by the Commission⁹ should be adapted for REACH to allow for a clear distinction between a substance in the nanoform and a substance in the bulk form. The use of the decision tree proposed by the ETUC¹⁰ in the framework of the REACH Implementation Project is highly recommended both for drawing such a distinction and for deciding in which respect a nanomaterial consisting of layers of different chemicals should be considered as a substance or a mixture.

The ETUC recommends that all engineered substances in the nanoform be considered as new substances¹¹ and registered accordingly under REACH regardless of the volume in which they are manufactured or imported. The information requirements for substances at the nanoscale must be sufficient¹² to allow registrants to perform a meaningful chemical safety assessment (CSA) and to provide a chemical safety report (CSR) in each registration application.

Data from existing test methods proven to be inadequate for nanomaterials should be regarded as missing, and the ECHA should consider the related registration application as non-compliant. Strict application of this principle must be used to oblige manufacturers to fill the gaps in scientific knowledge about the safety of engineered nanomaterials, especially the fate and persistence of nanoparticles in human beings and the environment.

The ETUC considers that the definition of nanomaterials and the way it is used should enable and support the generation of information and its dissemination in the supply chain in such a way that workers and consumers are informed when nanomaterials constitute an integral part of a substance or a mixture and whether nanomaterials can be released from related products (e.g. articles). Information on the physico-chemical characteristics and hazards of nanomaterials provided to users must be

9 COM (2010) Proposal for a definition of the term 'nanomaterial' that the European Commission intends to use as an overarching, broadly applicable reference term for any European Union communication or legislation addressing nanomaterials. <http://ec.europa.eu/environment/consultations/nanomaterials.htm>

10 ETUC (2010) <http://www.etuc.org/a/7817>

11 Non phase-in substances to be registered under REACH before manufacturing or importing.

12 As a minimum the current Annex VIII of REACH. .

sufficient for relevant risk assessment under the Chemical Agents Directive and the REACH regulation.

V

Transparency and traceability of nanomaterials

Acknowledging that competitiveness and innovation need the support of workers and employers, the ETUC is convinced that there cannot be successful innovations and development of emerging technologies without the full acceptance of those using them. Accordingly, civil society must have access to information on both the benefits and the potential health, environmental and safety aspects related to their uses.

The ETUC transparency and traceability of nanomaterials to help anticipate possible problems. Society cannot afford to wait for a disaster, a failure or the unforeseen effects of nanomaterials. Nanotechnology products and processes are already interacting with society and with workers in particular, in the absence of sufficient knowledge of the detrimental effects to people. Further, history has shown that the misuse of technology can escape all control.

Taking into consideration the implementation of the Grenelle I and II legislations in France and the initiative of the Belgian Presidency of the EU Council on a regulatory framework for the traceability of nanomaterials, the ETUC considers that Member States must develop harmonised mandatory registers of articles containing nanomaterials, including a life-cycle assessment of the articles. Those registers should be the base for traceability, market surveillance and securing knowledge for better risk prevention and for improvement of the legislative framework.

The ETUC acknowledges the role of standardisation to support and harmonize the implementation of European policy. The impact of standards is influential for the regulatory process on nanotechnology, mainly in the absence of specific regulation, bearing in mind that standardisation is not a substitute for regulation.

In view of the Mandate from the Commission addressed to the European standardisation bodies with respect to activities relating to nanotechnologies

and nanomaterials¹³, the ETUC points out that standardisation should only be reserved for technical specifications and should not extend to health and safety, risk assessment methodology, risk management or any other societal issues.

VI

Occupational health and safety issues

Workers might be exposed to dispersive nanomaterials throughout the life cycle of nanomaterials (manufacture, production, use, maintenance and disposal). In the coming years millions of employees might be impacted. The ETUC demands the development of concrete measures at the workplace in order to know who is exposed, to what extent and to what type of nanomaterials, and which prevention measures to install to avoid exposure.

The ETUC invites Member States to set up a register of workers' exposure to nanoparticles in association with health surveillance programmes. The register should list which workers have been exposed, the circumstances, duration and levels of the exposure, the personal protective measures applied, and the concentration of nanoparticles. The ETUC invites Member States to draw up strategies to ensure that the authorities provide nano guidelines on collective and individual prevention measures.

At the national level, the ETUC expresses its appreciation for the actions put in place by some Member States to control occupational exposure to manufactured nanomaterials throughout the life cycle, and insists that the States harmonise and upgrade their national activities towards a high level of protection in a European perspective which is based on the precautionary principle.

This is essential information that would be useful for future epidemiological studies and for the prevention of occupational diseases, since chronic effects of engineered nanomaterials in the human body might become visible only in the long term.

13 COM (2010) M/461. Bruxelles, le 2 février 2010.

ETUC RESOLUTION TOWARDS A SINGLE MARKET ACT – ETUC PROPOSALS

Adopted by the Executive Committee
on 1-2 December 2010

Introduction

I On 27 October, the European Commission published its communication “Towards a Single Market Act – For a highly competitive social market economy”. The aim of this communication is to relaunch the single market by opening up new opportunities and by promoting a highly competitive social market policy, regain confidence, propose a new global approach to the single market that embraces all of the players in the market, and increase understanding of, and respect for, single market rules. The communication follows President Barroso’s September 2009 guidelines for the incoming Commission which identified the single market as an essential element in achieving the growth and competitiveness objectives of the EU 2020 strategy; and, also, ex-Commissioner Monti’s May 2010 report which outlined key policy recommendations for the relaunch of the Single Market. The narrative of the Commission’s Communication hints at the history of the EU which is described around the progress of the “four big market freedoms”. The conclusion is that the internal market is more necessary than ever. However, it is as less popular than ever. The Commission concludes that new ambition is necessary to put the politics of internal market at the service of a “highly competitive social market economy”.

II

“Towards a Single Market Act” consists of 50 proposals, about half of which are actual legislative proposals. The proposals are divided into three subject areas: sustainable and equitable growth for business; restoring confidence by putting Europeans at the heart of the single market; and dialogue, partnership, evaluation – keys to good governance of the single market.

III

The Commission invites a debate on these proposals and has opened an on-line consultation which will end on 28 February 2011. Following the consultation and discussions with the other EU institutions, the Commission intends to adopt a final work programme of the Single Market Act in early spring 2011.

What was in the Monti report for the European trade union movement?

IV

The ETUC welcomed the report of former commissioner Mario Monti on how the EU should re-launch its single market and on measures to complete the currently unbalanced single market. Monti saw that the single market is at a critical juncture as “integration fatigue” and “market fatigue” develop, while the political and social support is eroding giving way to suspicion and open hostility. Monti’s efforts to address the challenges raised by the ECJ cases are useful in the general context of hostility to ETUC concerns about recent decisions of the European Court of Justice. The ETUC welcomed in particular the recognition that a clarification on the issues raised by the judgments ‘should not be left to future occasional litigation’ and that ‘political forces have to engage in a search for a solution, in line with the Treaty objective of a social market economy’. A central message of the report is that the tensions between market integration and social objectives have to be addressed. These recommendations do not appear by pure accident: Monti was the author of the so-called “Monti Clause” in the Monti-Regulation (1999, no 2679/98) which upheld the right to strike in the context of the free movement of goods (and which has inspired the ETUC proposal for a Social Progress Protocol to be attached to the Treaties).

ETUC assessment

V

For many years, the ETUC has been calling for a stronger social dimension for the internal market but the response has been inadequate. Today a visionary and less market oriented approach is necessary to overcome the current concerns about the impact of the internal market on Europe's social model. The Commission's proposals as they stand are insufficient, and, taken together with an unambitious EU2020 strategy and the lack of a new social policy agenda for the next five years, give a worrying picture of the low priority given to Social Europe by some in the Commission and many in the Council of Ministers. If Europe fails to make internal market respect workers' and citizens' rights, and if it is perceived as a tool for the social dumping and unfair competition, the basis of the consensus around European integration will erode quickly and the integration process will become harder. Protectionist instincts will become more prominent and the single market will meet more interference.

VI

The Monti report was a welcome step forward in recognising the concerns of the ETUC, but its recommendations did not go far enough. In addition to a "Monti regulation" covering all relevant laws on the Internal market there needs to be a Social Progress Protocol to the Treaties, so that the Directives are interpreted in line with social rights, and in addition, the Posted Workers Directive needs to be revised rather than simply accompanied by a Regulation. However, The ETUC supports the recommendations of Monti to address the concerns pro-actively and to adjust the single market rules, to make them sustainable and compatible with fundamental rights. The ETUC regrets the lack of a new vision of the internal market in the communication. We need to tackle the new challenges: respect social rights and fight the ecological crisis by delivering on sustainability. There is ambiguous wording on social rights and no proposals on internalisation of external costs to the environment.

VII

The communication claims that the internal market can offer "more growth and more jobs". The Commission calculates that exploiting fully the potential of the internal market could deliver extra growth of 4% in

the next ten years. This promise remains vague, the maths are speculative and it remains open if there will be “jobless growth” or enough employment to reabsorb the current EU unemployment figure of 23 million.

Make the social market economy become a reality – ETUC demands

VIII

The ETUC reminds the Commission of the fact that the Lisbon Treaty is today the legal framework of the EU. Therefore the proposals of the Commission have to reflect this framework of a social market economy aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote social justice and protection. Fundamental rights as laid down in the Charter are now legally binding and fundamental rights constitute general principles of the Union’s law. When defining and implementing its policies and activities the Union needs to take into account requirements linked to the guarantee of adequate social protection. Therefore the proposals in the communication being of purely economic nature must be checked concerning the social consequences.

The ETUC is of the opinion that fundamental rights have to be seen as a whole, not only involving the Charter of Fundamental Rights, but also ensuring compliance with ILO and Council of Europe standards.

IX

Six main areas are of particular interest to the ETUC.

X

First, fundamental rights and the social progress protocol, the revision of the Posting Directive, the Monti II regulation and a special Labour Court at the ECJ: the ETUC continues to attach a very high priority to the introduction of a social progress protocol in the Treaties and for the necessary instruments in secondary law to balance the movement of workers and services, to make the economic freedoms respect fundamental rights. The ETUC also asks for a revision of the Posting of Workers Directive and the creation of a special social chamber of the ECJ. This is in order to have judges, who are specialised in labour

and social law and bring a certain knowledge into the court of industrial relations systems in the different national contexts. (Under the Lisbon Treaty the creation of specialised courts is feasible, as it now falls under the “ordinary legislative procedure”.)

XI

Two proposals have been brought forward by the Commission concerning fundamental rights and the Posting of Workers Directive (proposal no. 29 and 30).

- No 29 on ensuring that the rights guaranteed in the Charter of Fundamental Rights, including the right to take collective action, are taken into account; conducting an in-depth analysis of the social impact of all proposed legislation concerning the single market;
- No 30 on adopting, in 2011, a legislative proposal aimed at improving the implementation of the Posting of Workers Directive “which is likely to include or be supplemented by a clarification of the exercise of fundamental social rights within the context of the economic freedoms of the single market”.

XII

The proposal no 29 of the Commission that fundamental rights are taken into account reaffirms duties placed on the European institutions by the Lisbon Treaty, and the fact that the Charter of Fundamental Rights has become legally binding. Missing is an instrument which explicitly makes economic freedoms respect the fundamental social rights, gives priority to fundamental social rights in case of conflict and protects and upholds the right to collective action and the right to strike as proposed in the social progress protocol or a Monti-style regulation. The Monti report recognised the opinion of the ETUC about the Laval, Viking and other ECJ cases, and aimed to re-balance the single market with fundamental trade union rights. He did not support the ETUC’s proposal for a Social Progress Protocol in the Treaty, mainly because, at that stage, he did not believe an early revision of the Treaties was likely, nor would a Social Progress Protocol be acceptable to all Member States. With forthcoming treaty changes likely on economic governance and new accessions, the ETUC will press the Commission to take proactive steps to protect the exercise

of fundamental rights, initially by adopting a Monti II regulation and then a Social Progress Protocol in the Treaties.

XIII

Last minute changes in the communication, after what we understand as protracted internal battle among Commissioners, deleted the specific references to the proposal of a social clause or regulation guaranteeing the right to collective action and the right to strike, and the current wording shows signs of a compromise in the Commission. We want such a guarantee in the Single Market Act to:

- confirm that the single market is not an end in itself, but is established to achieve social progress for the people in the EU;
- clarify that economic freedoms and competition rules cannot have priority over fundamental social rights and social progress, and – indeed that in case of conflict social rights shall take precedence and;
- that economic freedoms cannot be interpreted as granting undertakings the right to evade or circumvent national social and employment laws and practices or for unfair competition on wages and working conditions.

XIV

The legislator has to end the policy that has led to the situation where the ECJ is given competence to prioritize the economic freedoms over the protection of collective bargaining and collective action. National social models and industrial relations have to be protected as long as these are not discriminatory. Industrial disputes originating from economic conflicts have to be judged in consistency with the exercise of fundamental social rights. It will be essential to press the Commission to realise their promise to “include or supplement by a clarification of the exercise of fundamental social rights within the context of the economic freedoms”; a minimalist way is not acceptable.

XV

The proposal No 30 on the Posting of Workers Directive does not, we note, propose a revision, but suggests another legal act on the improved implementation of the Posting of Workers Directive. What is needed is

a strong legal instrument to repair the damage done by the ECJ and to provide for member states to be able to keep intact their labour standards and industrial relations systems including the crucial role of collective bargaining in its different forms. It is also important that the principle of equal treatment is upheld. The ETUC made very clear that the shortcomings in implementation of the Posting of Workers Directive are part of the problem and that a legislative act next to the Posting of Workers Directive cannot remedy all problems created by the ECJ judgments.

XVI

Second, coordination of taxation (proposal No 19 on improving fiscal coordination). The ETUC favours the application of the 'polluter pays' principle to financial markets and asks the European institutions to work further on a Financial Transaction Tax (FTT) model law at EU level and beyond. In the absence of wider agreement, a Europe-wide tax on financial transactions should be applicable to all traders and as such independent of the location of prominent financial centres. At the same time, significant tax revenues could be generated, which could be used to support social policy at European level in the aftermath of the crisis and also wider development agendas.

XVII

The ETUC believes that more needs to be done at European level to close tax havens, prevent tax evasion and restore tax justice between capital and labour, and rich and poor. The Commission should work on an all encompassing Savings Taxation Directive, with a view to closing existing loopholes and better prevention of tax evasion, and covering all actors, forms of capital income as well as outreach beyond European borders. In the field of company taxation, the Commission should:

- push for a new proposal by the European Commission for a directive on a common consolidated corporate tax base (CCCTB). It is, however, essential to open the debate on the tax rates together with the introduction of the CCCTB. And a CCCTB should be compulsory for all legal forms of enterprises. Otherwise the possibilities for tax competition would simply be extended. Not only would 27 member state tax

systems be in competition with each other, but there would also be a 28th system;

- reinforce the current Code of conduct for business taxation;
- and work towards improved accounting standards that would capture the whole potential corporate tax base by introducing a European reporting system for trans-border companies.

XVIII

Third, Social dialogue and participation of social partners: (referred to in proposals: No 32 on launching a consultation of the social partners on a European framework for industrial restructuring, No 44 on the Top 20 of single market actors' wishes, No 48 on consultation and dialogue with civil society, consumers, NGOs, trade unions, enterprises ...).

The ETUC welcomes both the Single Market Act and the Communication on industrial policy reference to a forthcoming consultation of social partners on a European framework for restructuring. This framework should also apply to the public sector and should include sustainability issues.

XIX

Concerning proposal No 48 the Commission should consider the specific role given to the social partners, and therefore to ETUC, by the Treaties and the obligation of the Commission to consult the social partners. Social Partners at European level should be consulted in a different way, and with a clearly different weight, to allow them at an early stage to influence the direction of the initiatives to be taken, and to allow them to express their interest to take up the issue themselves for negotiation.

XX

Again the Lisbon Treaty brought new developments in this field: "The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems" (Art. 152). Art. 152 is a legal obligation on the Union; it goes further than the consultation obligation on the Commission of Art. 154 and is not restricted to the social policy field only. Therefore the ETUC insists that the Commission needs to respect the specific role of the social partners in such a political fundamental question as the future orientation of the internal market.

XXI

Fourth, improving European framework for Public Services (proposal No 25 on adoption of a Communication and other measures on Services of General Interest by 2011). The ETUC welcomes in particular the initiatives to support the evaluation of public services and to remove obstacles to universal access. The ETUC expects the Commission to take into account the new Treaty provisions and Protocol on SIG (see ETUC resolution "*Towards a new impetus for public services*"). In particular:

- The aim of the Communication and 'other measures' on public services should be to support Member States develop and improve their public services, in line with the SGI Protocol. The Commission should fully respect the recent ECJ rulings on public-public cooperation.
- The evaluation of public services should include **a critical, in-depth assessment** of previous liberalisations and privatisations, and be carried out with the participation of all major stakeholders. The ETUC maintains its demand for a **moratorium in relation to** liberalisation.

More generally, the EU should develop expertise in its ability to assess the impact of all the Single Market (and other EU) initiatives on public services, in conformity with the SGI Protocol.

XXII

Fifth, the ETUC welcomes the Commission's commitment to enhance corporate governance with the specific goal of increasing employee involvement and improving the transparency of information provided by businesses (proposal 38). In particular, the Commission should adopt a coherent approach setting high minimum standards and promoting information and consultation rights for employees and their representatives as well as participation rights in board rooms.

XXIII

Any initiatives for a European Private Company Statute (SPE) should ensure that this company form is not used as a mechanism to circumvent participation rights defined at the national level. As a minimum, the SPE Statute should guarantee the same worker participation rights as the standards set in the European Company Statute (SE). The operative headquarters and the seat of registration must be in the same country and the

SPE must have a high minimum capital and genuine cross-border dimension. A European register for the SPE (as well as the SE and SCE) should be established and negotiations on the form of worker participation must be completed before the SPE is allowed to register.

XXIV

Furthermore, the Commission has recently published a report and staff working document on the application of the SE Statute and is currently reflecting on potential amendments with a view to making proposals in 2012. Any such amendments should not undermine employee rights and should be accompanied by a revision of the SE Directive on worker involvement to strengthen worker participation rights.

XXV

Sixth, public procurement (proposals No 17 on legislative proposals relating to public procurement based on the ongoing assessment of EU public procurement legislation, and No 24 on an instrument for external public procurement).

XXVI

Since the start of the single market project in the mid 1980s the ETUC has taken a strong stand for the integration of a fundamental social clause in the rules. Our demands have been met during the revision of the procurement rules in 2004. However, recent ECJ rulings have watered down the applicable social legislation and the possibilities to control contract compliance by the Member States, notably the competence for Member States to formulate mandatory labour standards and provisions to be respected by all undertakings and for all those that are pursuing paid work within the territory. There have been ruled out by the Ruffert and the Luxemburg cases. In addition, parts of the national regulatory frame (of labour standards and working conditions), based on labour legislation and collective bargaining, are unilaterally ruled out by the ECJ.

XXVII

The recent ECJ judgments create a situation whereby foreign services providers do not have to comply with mandatory rules that are imperative provisions of national law and that therefore have to be respected by domestic services providers. This policy has also led to a selective

and partial applicability of ILO Conventions. In a footnote of the guide “Buying Social: a guide to taking account of social considerations” the European Commission limits the applicability of ILO Conventions for work pursued with posted workers in the public procurement area to eight core ILO Conventions that have been ratified by all 27 EU Member States. As a consequence, ILO Convention 94, formulated and concluded as early as 1949 and ratified by several Member States (but not all MS), and of a high relevance for fair public procurement procedures, is brought into question.

XXVIII

The ETUC strongly opposes this primacy of economic principles over fundamental social rights. The review the EU public procurement directives should improve the current framework for the strengthening of social criteria in public contracts, which are lagging behind and indeed called into question.

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In addition, we have an interest in external trade issues (No 23, 24):

- No 23 aims at promoting regulatory convergence with third countries and to push for wider adoption of international standards. In that context, the ETUC insists that all bilateral and inter-regional trade and investment agreements should include robust and actionable sustainable development chapters promoting in particular the effective implementation of ILO standards the Decent Work Agenda as well as other codes such as the OECD Code of Conduct for Multi National Enterprises, as well as the best environmental and sanitary and phytosanitary (SPS) standards.
- No 24 proposes to enhance the Community’s capacity to ensure symmetry in access to public procurement in the industrial nations and the major emerging economies. The ETUC supports the objective of obtaining an even playing field and fair competition across the board with those groups of countries, including through the maintenance of strong Trade Defence Instruments, while bearing in mind the need to assist and promote development in the poorest.

Conclusion

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Action is needed to advance Europe's social objectives, in particular through an ambitious social policy agenda providing amongst others for equal treatment in terms of wages and working conditions applying to the place where the work is done. Our main claims are:

- The introduction of a Social Progress Protocol in the Treaties.
- The revision of the Posting of Workers Directive.
- A vigorous follow up of the ideas in the Monti report on a
 - Monti II regulation;
 - further European tax coordination/harmonization to prevent tax competition.
- The respect of the specific role of the social partners and the enhancement of corporate governance with the specific goal of increasing employee involvement.
- The improvement of the European framework for Public services.
- The improvement of the current framework of public procurement for the strengthening of social and environmental criteria in public contracts.



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