



A SINGLE MARKET FOR THE 21ST CENTURY EUROPE

ETUC Statement

ETUC Executive Committee, 4-5 March 2008

1. The Commission in its Communication on the single market for the 21st century¹ presents the single market as a huge success story and refers to its “untapped potential and the need to adapt to new realities”, pointing also to the need for “maximising the potential of services”. The liberalisation of telecommunications, transport, energy, postal services is seen as major progress. There is not the smallest self-critical remark on liberalisations nor on privatisations which are their consequences. The internal market is regarded as an objective, not as a tool to achieve sustainable growth and full employment.
2. There are clearly concerns about the impact of the internal market on Europe’s social model. Even if the internal market has brought employment opportunities and advantages for consumers, many workers have little confidence in its social benefits and large groups like working poor, precarious workers and other excluded groups still have not reaped its benefits.
3. The recent debate on the Services Directive pointed to the challenge of combining internal market rules with high social standards, social protection, public services and fair competition. Answering these legitimate concerns should be a priority of any strategic reflection on the internal market.

The internal market and the social dimension

4. When the ETUC in the late 80s accepted the internal market as the EU’s pivotal project, the Commission promised and delivered a strong social dimension: an ambitious Social Policy Agenda, lists of legislative initiatives in the social field, on health and safety at work and gender equality, as well as promotion of social dialogue. The internal market strategy did not concern competition alone, but was

¹ Communication from the Commission, COM(2007) 724 Final.

strategically based on a balanced approach. From the mid 90s on, the Commission focused only on efforts to complete the internal market by promoting liberalisation. Less or even no importance was attached to the social dimension. The strategy moved away from the Delors approach of harmonising and establishing minimum standards for the circulation of goods and services.

5. In its new Communication of 2007 the Commission has turned once again to the social dimension, announcing a renewed Social Agenda. The recent Social (Policy) Agendas were characterised by their lack of political will and ambition. They are a long enumeration of soft law proposals, while the few legislative proposals are for deregulatory revision of existing Directives like the one on working time, or for codification and simplification. Another trend is the increase in proposals for internal market legislation with potentially devastating effects in the social area, such as the initial Bolkestein proposal for the Services Directive.

Services of general interest and the Social Agenda

6. When the Commission refers to the European Social Agenda, it paints a rosy and harmonious picture: "The development of the single market has gone hand in hand with the European social agenda". This is definitely not true for the last decade. The social dimension is taken as an external factor and even if solidarity and social cohesion are addressed, this is done in terms of general "opportunities". The content of these concepts is vague and restricts itself to nice objectives and slogans without much substance. Where labour market policies are briefly addressed, the agenda is along the lines of the Commission's flexicurity interpretation.
7. The strategy the Commission unveils for services of general interest is also unsatisfactory to the ETUC because it does not address transversal horizontal issues. The ETUC expects the Commission to move in the right direction of more legal clarity and security for services of general (economic) interest.²
8. The ETUC believes that the EU should take action where markets can or do not deliver. The ETUC expects the Commission to take action and not just to pay lip service to the social dimension. Particularly unsatisfactory is the apparent drive to "liberalise" virtually all public services. The internal market is not sustainable if it brings benefits for business alone, not serving workers. The ETUC fears that the vague Commission proposals for concrete action in the social field remain wishful thinking.

² Declaration of the ETUC Executive Committee, 5-6 December 2007.

A single market not only for business and consumers

9. The underlying assumption of the Communication is that the single market should deliver more to citizens, consumers and SMEs. The Commission says impacts on consumers have varied from country to country: in the UK and Ireland textile and clothing prices fell by 50%, whereas prices in Spain and Italy did not change. Nevertheless more single market and more openness to globalisation are seen as beneficial to consumers, creating more jobs and growth. This approach is not new, as claimed, but corresponds to the traditional neo-liberal agenda. The single market project does not address, however, the impact on workers, not even where consumer interests (in lower prices) must be reconciled with workers' interests (such as employment security, labour standards, working conditions).
10. Workers and the social impacts (of both market integration and globalisation) are seen as residual, marginal issues. Workers appear only indirectly, as consumers, and their interests are addressed via the indirect effects of higher growth through job creation. But consumers' and workers' interests overlap, and can be contradictory. The Commission does not deliver an impact assessment of what happened to the workers in the industries referred to and whether they also benefit from lower prices, when losing their jobs. Moreover, job creation in services leads often to precarious jobs, reducing workers' living standards and increasing the number of "working poor". This shows clearly that consumers' interests are not automatically the same as workers'. These interests should also be taken into account.
11. When addressing the social, environmental and cohesion dimensions of the single market, the Commission says these aspects should be "factored in". This is characteristic of the general approach of regarding these aspects as marginal issues to be dealt with in a technical manner. The underlying principle can be welcomed: it implies getting market prices to reflect their real costs for society and the environment, as well as making citizens more aware of the social and environmental impacts of their consumer choices. This sounds well and good, but is not much more than an empty statement because the programme for the social dimension is not delivered.

12. The Commission avoids addressing tax competition in its Communication. The ETUC supports the Council aiming to “eliminate harmful tax competition” and strengthen cooperation on taxation between Member States and at European level.³ “The ETUC has long been in favour of moving to majority voting on corporation tax, capital tax and taxes on activities that have an impact on the environment, believing that tax harmonisation is important to avoid competitive distortions and avoid ‘race to the bottom’ dynamics.”.⁴
13. The most strident aspect of the package is that the Commission does not propose a *new vision* for the internal market. The dominant EU policy paradigm continues to be liberalisation and unbundling of network industries wherever possible. The social dimension is merely regarded as a secondary marginal issue along with environmental sustainability. The ETUC asks the Commission to deliver a new, balanced and ambitious approach to the internal market which is socially and environmentally sustainable.

Protection of fundamental rights and the social acquis

14. The Commission acknowledges, “Some workers have difficulty adapting and see these wider processes as a threat...”, but this view is regarded as mostly a perception problem and concessions would be made to these “problematic workers” in “addressing their legitimate concerns”. This approach does not sound as if “managing change” would be a core element of the single market project. When talking about workers' rights in this context, the “correct application of EU labour law” is referred to, whereas the need to improve, adapt and strengthen EU labour law in line with the new challenges is not on their agenda.
15. The ETUC appeals for the single market to be shaped to respect workers and trade union rights. After the disappointing and unexpected decisions of the European Court of Justice (ECJ) on Viking and Laval eroding the social dimension and the established industrial relation systems, this question should be higher on the agenda, not lower. The effect of the recent decisions of the European Court of Justice particularly in the Laval case has been to subordinate workers' fundamental rights to bargain and to strike to the unimpeded free movement of services. This situation is intolerable for Europe's trade unions. The ETUC will campaign to secure a proper balance between the single market and worker and trade union rights, and not allow the single market to swamp hard-won gains by Europe's trade unions. In particular, the unions' ability to guarantee and to promote equal treatment and protection of

³ Council Conclusions on the Single Market Review: A single market for 21st century Europe; 22 January 2008.

⁴ ETUC Strategy and Action plan (Seville).

workers regardless of nationality should not be threatened by the free movement of services principle.

16. The ECJ seems to confirm a hierarchy of norms with market freedoms highest in the hierarchy – in opposition to the one proposed previously in the European Constitution and supported by the ETUC, where fundamental rights (in Part II of the Constitution) took a higher place in the hierarchy than policy rules (in Part III). Collective bargaining and collective action are recognised as fundamental rights by the Charter but the European Commission and the ECJ deem these rights to be an obstacle to free movement unless justified for overriding reasons and “proportional” in the view of the ECJ. That is why the ETUC seeks a social progress clause that would clearly restore this hierarchy and prevent any challenge to fundamental rights.

The ETUC demands for the internal market

17. The single market should not allow businesses to avoid social, environmental and public health standards by migrating to the least-regulated Member States. The upwards harmonisation of regulations and standards as far as possible must therefore continue to be a policy instrument. The European institutions have to provide for better protection against disruptive invasion by internal market and competition rules. Unfair competition at the expense of wages and workers must be banned. Economic freedoms were not created to undermine the social acquis.
18. The ETUC asks the Commission to draw up a transparent and pluralistic assessment of the social impact of the single market and introduce binding social impact assessments of single market legislation.
19. The Lisbon Treaty stipulates on the one hand: “The Union shall establish an internal market”, and on the other: “It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men.” (Article 2). Furthermore, a horizontal social clause asks clearly: “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.” (Article 5a). The ETUC asks the Commission to come up with a more balanced and more social position taking into account the terms of the new Treaty.

20. As a lesson from the battle on the Services Directive, the ETUC insists on including the Monti clause⁵ in all legislation on the single market. This would ensure that the implementation of the four fundamental freedoms of the single market does not impede collective bargaining rights and the right to strike as defined by national legislation. Moreover, bearing in mind progress made by the Treaty of Lisbon, a reference to the Charter of Fundamental Rights should be included. The solution found in the Services Directive, not totally satisfactory was the step in this direction.⁶
21. Furthermore, the single market strategy should strengthen social welfare, workers' rights and ensure fair working conditions. The new horizontal social clause introduced into the Lisbon Treaty has to be visible in the proposals of the Commission. Therefore, the ETUC asks for all Single Market legislation to include a social clause to protect social standards, specifying that the legislation should not affect social security rules, social welfare systems and working conditions. For instance in the Services Directive, the ETUC has fought with success for the insertion of a clause to protect labour law and social security⁷ which needs to be further developed.

⁵ "This Directive may not be interpreted as affecting in any way the exercise of fundamental rights as recognised in Member States, including the right or freedom to strike. These rights may also include the right to take other action covered by the specific industrial relations systems in Member States."; EC Reg. 2679/98

⁶ Article 1.7 "This Directive does not affect the exercise of fundamental rights as recognised in the Member States and by Community law. Nor does it affect the right to negotiate, conclude and enforce collective agreements and to take industrial action in accordance with national law and practices which respect Community law."

⁷ Article 1.6: "This Directive does not affect labour law, that is any legal or contractual provision concerning employment conditions, working conditions, including health and safety at work and the relationship between employers and workers, which Member States apply in accordance with national law which respects Community law. Equally, this Directive does not affect the social security legislation of the Member States."