



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

# **Trade Union Memorandum**

**to the**

**Spanish Presidency**  
**of the European Union**

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**European Trade Union Confederation  
(ETUC)**

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## 1. INTRODUCTION

The Spanish Presidency will be confronted with a series of important challenges, especially with the current economic crisis with unemployment shooting up rapidly, and following up the UN Climate Change Conference in Copenhagen.

Clearly, the first challenge will be to steer Europe through the financial, economic and social crisis and implement regulation for the financial markets, so that never again will it be possible to repeat the reasons for the current situation. In its Paris Declaration, the ETUC asked for a New Social Deal to maintain existing jobs and to create the conditions for the creation of more and better jobs. Our particular worry is youth unemployment which is running at twice the rate of older workers. And we are also very concerned about governments exiting prematurely from the stimulus packages being applied in many countries.

A second major challenge is the climate change agenda. The EU is the only (extra to the nation) entity in the world having the capacity for direct and co-ordinated action; therefore, it must be a leader and not a follower. The time has come for Europe to invest, in the next three years, an annual 1% of European GDP providing for more and better jobs, the promotion of innovation, research and development and employment in key industries, investing in new, green and sustainable technologies, sustaining high quality public services, providing workers with the qualification needed for tomorrow's low carbon economy, within green technology and better qualified jobs.

A third challenge is to ensure an effective transition from the Nice Treaty to the Lisbon Treaty. This will have a highly political importance and will imply a change in the current orientations and a new political impetus: the European institutions have to stop working under the premise of a "free market economy" and to start working towards a "social market economy" which is an ambitious objective; "competition" is no longer be an end in itself but one means – amongst others - to achieve the European objectives; "full employment" and solidarity must return to the top of the agenda. Furthermore, qualified majority voting is extended and the Parliament sees its powers as co-legislator reinforced. Finally, the EU Charter of Fundamental Rights includes important social rights and the European Union must recognise and promote the role of the social partners.

In the current economic crisis, the parties of the extreme right have taken some ground. These parties have a nationalist, racist and xenophobic attitude towards migrant workers. In this context, the ETUC is concerned about the impact of the recent decisions of the ECJ which have elevated free movement above upholding collective agreements and allowed undercutting and unequal pay to develop. In order to safeguard workers' support to the EU it is urgent to reassert the social objectives of internal market rules. The ETUC expects the Spanish Presidency to correct the current silence from the Commission and the previous Presidency through the promotion of action in this respect.

- First, the ETUC appeals to the Presidency to do its utmost to promote the adoption of a Social Progress Protocol to provide a guide to the ECJ about the need to uphold fundamental social rights in the single market. This Protocol should be attached to the Treaties, with the legal status and authority needed to give clear directions on the interpretation of the articles of the Treaties.
- Secondly, the ETUC urges the Spanish Presidency to take the necessary steps with regard to the revision of the Posting of Workers Directive.

If not, the pressure on trade unions to turn against the single market will intensify; this will only add to the difficulties in the current crisis. The impression that “laissez faire” is the guiding principle on these matters is spreading and the ETUC hopes it can find enough support from Spain, a country very sympathetic to Social Europe, to correct that.

With the financial and economic crisis the growing pressure to return prematurely to a budget consolidation path is counterproductive. If such a decision is made Member States will not be able to benefit from a possible economic recovery and it will also damage public services. In a moment of crisis, social policy and public services throughout Europe must be preserved, strengthened and not be undermined by a rigid implementation of the Stability Pact, forcing premature and important cuts in budget deficits as soon as economic activity shows some signs of recovery.

Europe needs to invest, in the next three years, an annual 1% of European GDP providing for more and better jobs, the promotion of innovation, research and development and employment in key industries, investing in new, green and sustainable technologies, sustaining high quality public services, providing workers with the qualifications needed for tomorrow's low carbon economy, within green technology and better qualified jobs.

Employment in the EU has shrunk by over 4 million jobs since the start of the crisis, although the effect has been somewhat mitigated thanks to the use of short-time working and other schemes. But these short term measures, however important, are not in themselves sufficient to ensure a successful exit from the crisis. Employment policies must focus on preparing for the transition to a low-carbon economy. Young people are bearing the brunt of the employment contraction. There are already nearly 25 million unemployed people in the EU and this number is to grow further.

## 2. IMPACT OF THE FINANCIAL, ECONOMIC AND SOCIAL CRISIS

### THE NEW SOCIAL DEAL AND THE ECONOMIC AND SOCIAL CONSEQUENCES OF THE CRISIS

As said before, the Spanish presidency will have to manage the European response to the jobs crisis. The European Trade Union Confederation is calling for a process towards a new social deal in Europe, that will lead to more social justice and more and better jobs. This objective must be an integral part of the discussions on the 2020 exercise.. The ETUC wants to play an active part in the discussions, definition and implementation of policies affecting social and employment fields, and is calling for:

**More and better jobs: investment in an expanded European recovery plan** to mobilise a new drive for growth and jobs. The ETUC demands the European Council and Commission to draw up a European investment plan totalling an annual 1% of GDP for each of the three following years to provide more and better jobs, to promote innovation, research and development, to help employment in key industries, to invest in new, green and sustainable technologies, and to maintain vital public services.

**European solidarity as a protection against the excesses of financial capitalism:** Effective regulation of financial markets, a fair distribution of wealth, and no return to casino capitalism or to the ‘business as usual’ of the past 20 years in financial markets is crucial. The ETUC demands a major increase in European social spending enlarging the activities of the European structural funds, notably the European Social Fund and the European Globalisation Adjustment Fund. Tax competition coming from deregulated markets must also be tackled because it threatens Social

Europe.

**Stronger welfare systems to provide more security and avoid social exclusion:** the ETUC demands a meaningful and a strong European Social agenda: to maintain people in jobs with robust income and to ensure protection to workers as well as an appropriate training. Cutting benefits is not the way forward.

**Better pay and stronger collective bargaining:** the ETUC rejects wage freezes and nominal wage cuts. It is vital as demand collapses to protect purchasing power. The ETUC is therefore seeking a strengthening of collective bargaining and wage formation institutions with the European Central Bank (ECB) also committed to more and better jobs. The ECB must be involved in growth and full employment, not just price stability. The ETUC demands an advisory board of European social partners to the ECB.

**Regulation of financial markets** will have to be high on the agenda of the Spanish Presidency. So far, discussions in Council on the Alternative Investment Fund Managers Directive and the Financial Supervision Architecture have shown that not all Member States have yet understood the need to restore confidence and systemic stability in financial markets – the casino must be closed.

However financial regulation is not enough to restore social justice. Those who are responsible for the crisis through irresponsible collective behaviour will have to bear a good part of the burden that our societies will have to carry in the future. The ETUC demands the application of the ‘polluter pays’ principle to financial markets and asks the Spanish presidency to start working on a Financial Transaction Tax (FTT) model law at EU level and beyond, based on the WIFO and Spahn proposals. A Europe-wide tax on financial transactions would be applicable to all traders and not to countries and as such independent of the location of prominent financial centres. At the same time, significant tax revenue could be generated, which could be used to support social policy at European level in the aftermath of the crisis.

The ETUC believes that more needs to be done at European level to close tax heavens, prevent tax evasion and restore tax justice between capital and labour, rich and poor. The Spanish Presidency would substantially contribute to efficient cross-border taxation in advancing the work on an all-encompassing Savings Taxation Directive, with a view to closing existing loopholes and better preventing tax evasion, and covering all actors, forms of capital income as well as outreach beyond European borders.

In the field of company taxation, the Presidency should: - push for a new proposal by the European Commission for a directive on a common consolidated corporate tax base (CCCTB); - 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 on a country-by-country basis.

### 3. MAIN AREAS OF ACTION FOR THE SPANISH PRESIDENCY

#### **The priorities of the Presidency - is the social dimension viable?**

The ETUC regrets that the strengthening of the social dimension of Europe was not amongst the main priorities of the outgoing Swedish Presidency. No new initiatives or the launch of new debate areas have occurred. In our view, the European Union should be sending a clear signal of understanding and action regarding the most pressing concerns of European workers in a moment

of rising unemployment.

#### **4. SOCIAL EUROPE**

Hereunder, some of the proposals the ETUC would like to see taken up and developed during the Spanish Presidency of the EU.

#### **MOBILITY**

##### **Social Progress Protocol**

The European Court of Justice (ECJ) judgments in the Laval, Viking, Rüffert and Commission v Luxembourg cases are a threat to workers in terms of unfair competition on pay and working conditions and of unequal treatment between migrant and local workers. Furthermore, the right to take collective action has been significantly limited while economic freedoms remain untouched. The alleged balance introduced by the ECJ rulings between economic freedoms and social fundamental rights raises serious questions as to the compatibility of the ECJ rulings with national constitutional laws and international standards (ILO, Council of Europe).

To remedy the harmful effects of these rulings, the ETUC calls for a Social Progress Protocol to be attached to the Treaties. Such a Protocol should clarify the fact that, under the European Treaties, the internal market is not an end in itself, but is meant to contribute to the improvement of living and working conditions of workers and citizens and that social progress is the guiding principle that should govern all its actions and policies. Consequently, fundamental social rights may never be regarded as hierarchically less important than economic freedoms.

The ETUC has presented a proposal for a Social Progress Protocol<sup>1</sup> and urges the Spanish Presidency to take the necessary steps to facilitate the adoption of the Social Progress Protocol without further delay. The next opportunity to adopt such a Protocol will be on the occasion of the enlargement to Croatia in 2010.

##### **Posting of workers**

The ECJ rulings mentioned above have raised major questions on how Member States and trade unions across Europe will be allowed to establish and defend labour standards in an era of globalisation. It is crucial that Member States are allowed to implement the Posted Workers Directive not only in accordance with their national traditions but also fulfilling its initial objectives, i.e. to strengthen workers' protection in the single market and to guarantee a climate of fair competition.

The ETUC urges the Spanish EU Presidency to launch a wide debate on how to restore the original aims of the Posted Workers Directive. . The ETUC will actively contribute to this debate, by developing concrete recommendations for a revision of the Directive. For the ETUC there are no doubts that, although the directive was adopted with a large majority in the European Parliament and the Council, the recent ECJ rulings challenge the original intention of the European legislator.

##### **Subcontracting**

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<sup>1</sup> Text available at : <http://www.etuc.org/a/5175>

The ETUC urges the EU institutions to take the necessary steps to clarify the rights and obligations of parties involved in subcontracting chains to avoid depriving workers of their ability to effectively assert their rights, especially where cross-border subcontracting goes on. The ETUC is thus renewing its call for a European instrument that regulates the joint and several liability of main contractors and intermediaries, at least where the payment of tax, social security contributions and wages is concerned, and asks the Spanish presidency to support this.

### **Health and safety**

Every year, about 160.000 workers die in the European Union for the lack of an adequate prevention against occupational hazards. The context of the economic crisis could play a negative role by reducing the priority given to a better quality of working conditions. With the last enlargement, the need of harmonization of the working conditions is certainly one of the biggest challenges of the European Union in the field of social policy.

The ETUC expects the Spanish presidency to call on the Commission to initiate rapidly initiatives to address the current situation resulting from the growing precarious labour market and to present the necessary legislative proposals, following the 2nd stage consultation of the social partners on musculoskeletal disorders (MSD) and the exposure to carcinogens, mutagens and substances toxic for reproduction. Those two issues were already considered as possible legislative initiatives in the EU Strategy for health and safety 2002-2006. Progresses were very slow. Considering their major impact on the health of workers, MSD is the prime source complaint of European workers. In order to support the implementation of REACH, it is urgent to have a legislative initiative expanding the scope of the present directive on carcinogens and to extend the list of mandatory occupational limit value. The Spanish presidency could also play a positive role in supporting the Commission activities for the preparation of the revision of the directive on electromagnetic fields in the work environment based on the principle of prevention defined by the Framework Directive and covering all the categories of workers exposed to such a risk.

The ETUC would also like to draw the attention of the Presidency to the need to ensure that the action programme for reducing administrative burdens in the European Union does not bring a reduction in the obligations of employers regarding risk assessment and the principles of information, consultation and participation of workers. It considers that an exemption of small companies from the obligation to have a documented risk assessment would threat the equal protection of the life and health of workers in the European Union and would not be consistent with the fundamental social right to fair and just working conditions laid down in Article 31 of the Charter of Fundamental Rights..

### **Active Inclusion**

Following the European Commission's presentation a year ago of its Renewed Social Agenda and subsequent recommendation on active inclusion, ETUC is renewing its call for the implementation of ambitious policies in this domain within the European Union. Active implementation is all the more important because the crisis facing us over the past 10 months and more has given rise to fresh forms of exclusion and exposed large numbers of workers to the risk of falling into poverty.

Accordingly, ETUC wants the Spanish Presidency to make a strong commitment in this domain, placing people and social issues at the heart of measures designed to combat the crisis, and move towards prioritising strong, solidarity-based public social security systems, in line with the Paris Declaration adopted by ETUC at the end of May.

ETUC also wants the Spanish Presidency to confirm and implement the recommendations adopted by the European Parliament last April in its report on the active inclusion of people who have left the labour market, and focus too on the EU Action against Poverty Year (2010).

### **Transnational collective bargaining**

Transnational collective bargaining has developed substantially in recent years, owing to the greater mobility of multinational groups in the new dimension of world trade.

The ongoing economic crisis will further accelerate this mobility, as evidenced by the fresh wave of mergers, restructuring and delocalisation in virtually all domains of European industry: the automotive sector in particular, more generally the metalworking industry, but also the banking sector, the construction industry and the textile sector.

The problems arising in the bargaining agenda concern the difficulty of following up properly at national level because the agreements in question lack any European legal status. Furthermore, neither the procedures involved in launching the bargaining process at this level, nor the identity and representativeness of the actors to obtain a mandate and to sign a transnational agreement are clear. And the same can be said of the associated appeal procedures.

The Commission included this issue in its 2005 Social Agenda, with the idea to give such agreements an optional legal status, if requested by the social partners. But since drafting a Communication as a basis for opening a consultation procedure with the social partners, it has now pared back some of its major, but less ambitious objectives, such as the aim of setting up a Group of Experts including representatives of the social partners for a two-year mandate, with a view to organising a monitoring system, arranging a way of analysing the development of transnational collective bargaining, and holding seminars twice a year.

The ETUC considers this initiative useful, but at the same time find it inadequate, bearing in mind the strategic value of this issue and the changes that are currently occurring in this domain.

The ETUC believes that a strong political initiative is needed to set the ball rolling once again in this connection.

## **NEW AND PENDING LEGISLATIVE PROPOSALS**

### **Working Time Directive**

After the recent failure of the conciliation between European Parliament and Council, the revision of the Working Time Directive is now back where it was in 2003. The ball is now in the court of the Commission again. In ETUC's view it should take action – after 9 years of postponing taking proper responsibility – to implement and enforce the current Directive, as interpreted by the ECJ. The Court has, in a series of consistent case-law since 2000, confirmed time and again that on-call work in the workplace must be considered as 'working time': this must be enforced by all available means.

In ETUC's view, there is no good reason for rushing to a new proposal for revision. In any case, any new proposals should at least ensure that the individual opt-out will be abolished and that balanced solutions are developed to deal with on-call time in the workplace while respecting ECJ decisions. Also, it should be impossible to annualize working hours without proper safeguards regarding the health and safety of workers and their rights to information and consultation.



Furthermore, it is of the essence that the Working Time Directive is also capable of dealing with the challenges of the 21-st century, including the increased labour market participation of women and demographic ageing, and the need to adapt working time arrangements to the needs of workers with care responsibilities and older workers.

The Working Time Directive is an important cornerstone of Social Europe, and also in the 21-st century a key instrument to protect workers against the health and safety risks arising from long and irregular working hours. This Directive should not become an instrument of regime-competition between Member States, but guarantee minimum standards that provide a level playing field throughout the EU. The Spanish Presidency will have an important role to play to ensure that no simplistic, unbalanced or piecemeal solutions are put on the table.

### **Directive on the portability of occupational pension rights**

Under the last two EU presidencies, no initiative was taken in this area. Nonetheless, problems remain, and these require swift solutions if we want to see effective mobility of workers within the European Union.

According to the ETUC, the solutions in question should cover at least three points: (i) to scale back the provisions governing minimal periods for acquiring rights (i.e. a maximum period of 2 years); (ii) and the age of inclusion in schemes (under 21 years of age); (iii) and facilitate the social partners' involvement in monitoring occupational pension schemes (irrespective of the body managing them).

### **Reconciliation of work, private and family life**

The issue of reconciliation of work, private and family life is of major importance in the context of the demographic and economic challenges facing the EU. The Spanish Presidency is urged to play a proactive role, in line with its wide experiences and achievements in this area, to support strong policies and measures aiming at improving work-life balance for women and men. Social partners have finalized their negotiations on the revision of the parental leave agreement to strengthen its provisions. This agreement needs to be transposed in a revised EU Directive and then implemented in Member States. The ETUC expects the Spanish Presidency to play an active and supportive role in this process.

In the framework of its package on reconciliation presented in October 2008, the Commission has proposed to revise the pregnant workers Directive, to improve its provisions on length and payment of the leave. The revision is currently stuck in the European Parliament, and there are significant problems with some proposals of the Commission in Council as well. The Spanish Presidency should support the legislative process and help find appropriate solutions where necessary taking into account the need for an effective implementation of the fundamental social right aiming at the reconciliation of family and professional life laid down in Article 32 para. 2 of the EU Charter of Fundamental Rights. In other areas of reconciliation policies, such as the provision of childcare and eldercare, Commission and social partners agree that more action is needed at EU and national level, which should be supported by the Council. Investment in care infrastructures is especially important in this period of economic crisis, to maintain women's jobs in public and private services, as well as continue to support working parents to combine work and care.

### **Non-discrimination outside employment**

The draft Directive to prevent and combat discrimination outside employment, covering discrimination on grounds of age, sexual orientation and religion is currently discussed by the EU institutions. The ETUC supports this initiative because it will avoid different rules governing different grounds of discrimination that may give rise to legal and practical inconsistencies or could cause problems in situations of multiple discriminations. A broad directive covering all the grounds mentioned in Article 19 of the Treaty on the Functioning of the European Union will give a strong message to the Member States of the EU and their citizens that a modern and cohesive society cannot be built based on discrimination. With the ageing of the population, the growing diversity of our societies in terms of ethnic origin and religion and the increasing intolerance against people because of their different sexual orientations, a strong and coherent body of law - protecting citizens from discrimination wherever they are in the EU – should be the priority target. The ETUC strongly disagrees with those, namely employers, who say that this Directive is a ‘luxury’ that business cannot afford because of the economic crisis. Equality and diversity are not just a cost or administrative burden, but also a potential asset helping companies to remain or become more sustainable and competitive. The Spanish Presidency should develop efforts in order to gain the support of Member States to this initiative.

## **Migration**

The ETUC is in favour of a comprehensive policy at EU level on migration, integration and development, offering legal channels for migration while at the same time rigorously applying and enforcing labour standards and guaranteeing equal treatment with local workers.

The Stockholm program and its action plan, to be adopted under the Spanish Presidency, will set the priorities for migration policies in the next five years. The new institutional framework introduced by the Lisbon Treaty can provide the necessary tools to develop a fair and ambitious migration policy. The ETUC urges the Spanish Presidency to promote an ambitious and coherent EU migration policy. In particular:

- the proposed immigration code should offer the opportunity to reassess the existing achievements, with a view to reinforce and complete them. The ETUC is very much in favour of a uniform level of rights for all groups of migrants. A simple codification of existing instruments would not be satisfactory as it would reinforce the current two tier migration policy approach
- the ETUC would strongly regret if the implementation of the Stockholm agenda would focus on repressive measures regarding irregular migration and neglect to develop proactive migration policies, offering legal channels for migration and promoting proper integration policies.

Regarding economic migration, ETUC draws attention to the following priorities.

- The draft ‘Rights’ Directive should be urgently adopted.
- To encourage Member States to implement measures to protect and assist third country nationals on the territory where they were employed, and prevent a one-sided focus on attempts to send home all those who have lost their jobs. The rise in unemployment levels will not only reduce possibilities for regular immigration but also increase the numbers of third-country nationals who will lose their jobs and often the related work- and residence permits. Often, migrants are not entitled to adequate social protection to the same extent as local workers and thus it is necessary not to underestimate the impact of the crisis on immigrants. There is a real risk of generating higher numbers of irregular migrants and an

increase of poverty among them, undermining social cohesion in certain regions with high unemployment and a high presence of migrants.

- On the European Commission, three new proposals for directives: temporary admission of Seasonal Workers, Intra Corporate Transferees (ICT) and Remunerated trainees. ETUC asks the Spanish presidency to take into account the following trade union concerns:
  - these new legal proposals should not divert the attention from the adoption of the 'Rights' Directive
  - in the absence of a more comprehensive policy on legal migration, these Directives can have a negative impact on labour markets and a fair management of labour mobility. Therefore, ETUC asks the Spanish Presidency to consult and involve the social partners in the further development of these proposals.
  - taking into account the strong concerns trade unions have about the directive on seasonal workers, which would allow third country nationals to come and work in the EU for periods up to 9 months per year (!), ETUC urges the Spanish presidency to carefully check if and in what form such a directive should be developed at all.
  - concerning ICT's and remunerated trainees, and taking into account the already existing problems with the implementation of the Posting Directive within the internal market context, the ETUC invites the Spanish EU Presidency to critically assess the proposed scope of the Directive and demand that the conditions of employment of transferred workers should be governed by host country laws and collective agreements.

## 5. CLIMATE CHANGE AND ENERGY

### **EU climate change policy**

The ETUC stresses once again its support for an environmentally ambitious and socially sustainable European climate policy contributing to the reduction of up to 30% of emissions by 2020. The EU's Climate Change Package represents a significant step forward. However, new employment-related and social measures will be required to realise full employment and positive social benefits. The ETUC is calling on the Spanish EU Presidency to consider matching the Climate Change Package with a 'Just Employment Transition Package', which would include the following:

- A White Paper on climate change, skills and jobs, setting out practical proposals for promoting coordinated action by the Member States in support of training in new skills in sectors such as energy efficiency and renewable energy.
- The creation of a European 'low-carbon-adjustment fund' for switching to a low-carbon economy to provide measures supporting the adjustments to be made by workers affected by climate change measures. This fund would be partly financed by the revenues earned from auctioning of permits.
- A comprehensive assessment of the impact of the Climate Change Package on energy prices and employment, on a sector-by-sector basis, with particular attention paid to the most vulnerable categories of workers and households.

- The creation of a permanent instrument to ensure the anticipation of socio-economic transition, to coordinate existing instruments such as sectoral councils, and to reinforce dialogue between the social partners and public authorities.
- The development of means of negotiations, in particular at the territorial level, in order to design new industrial policies contributing to a low carbon economy.

### **Copenhagen Conference**

The ETUC urges the Spanish and the following Belgian EU Presidencies to work intensively towards achieving a fair, ambitious and inclusive agreement in Copenhagen that paves the way for cutting global emissions by 85% by 2050 (compared to 1990 levels). Developed countries must take the lead in reducing emissions and commit to firm targets of at least 25%-40% below 1990 levels by 2020, in line with the recommendation made by the IPCC. The fastest-developing emerging countries should undertake to control their emissions. In addition, the industrialised countries must pledge to provide funds, clean technologies and training to help developing countries meet their new commitments. The new global agreement should explicitly recognise and develop 'Just Employment Transition' measures – retraining, compensation, unemployment benefits, social protection and labour rights – as essential for attaining agreed targets. Fiscal reorientation needs to take place within a fair, redistributive tax system to ensure sustainable development and provide funding for adaptation and mitigation strategies.

### **Adaptation to climate change**

Europe needs a strategy for adapting to the unavoidable impact of climate change. The Spanish Presidency should urge the European Commission to come up with strong proposals for mainstreaming adaptation, including it in all European policies and programmes, including the recovery package. We need Social Plans at sectoral level to handle the inevitable disruption for many workers, plans in which the Social Partners are fully informed.

### **The European Energy Policy**

Little progress has been made in moving the European Energy Policy forward. The ETUC reiterates that energy must not be left to market forces alone. A genuine European industrial energy policy is needed that encourages investment in smart grid infrastructure, secures high-quality jobs, protects vulnerable consumers against energy poverty and ensures stakeholders' democratic participation in national regulators and the Agency for the Cooperation of Energy Regulators (ACER).

## **6. THE SOCIAL DIMENSION OF THE INTERNAL MARKET**

### **The internal market strategy**

The last Commission communication on the single market in the 21st century promised once again to take seriously its social dimension, announcing a strategy for Services of General Interest. The strategy it unveiled for services of general interest, for example, was unsatisfactory. The preference was given to a sectoral approach, which can create serious problems, notably in terms of equal access to services fundamental for social cohesion like health or social services. It is high time to come back to a balanced approach.

When the ETUC accepted the internal market as the EU's pivotal project, the Commission promised and delivered a strong social dimension: an ambitious social policy agenda, a series of

legislative initiatives on health and safety at work and gender equality, as well as promotion of social dialogue. The internal market strategy did not concern competition alone, but was a balanced approach. The social agenda was considered as part of the internal market, not as a marginal, external factor.

In the late 90ties the Commission changed its strategy: The Commission focused only on efforts to complete the internal market by promoting liberalisation and privatisation. Little or no importance was attached to the social dimension. There is no self-criticism of liberalisation and privatisations.

The ETUC expects the new European Parliament, the new Commission and the incoming Spanish Presidency to push strongly for action. The internal market cannot bring benefits for business alone, but must also serve workers. The ETUC expects the European institutions to stir in the right direction of more legal clarity and security for public services. As a lesson from the battle on the services directive, the ETUC insists to include the Monti clause (EC Reg. 2679/98)<sup>2</sup> in all legislation of the Single Market. This would ensure that the implementation of the four fundamental freedoms of the Single Market does not impede collective bargaining rights and the right to strike as defined by national legislation. Already appearing in some sector related legislation, the Monti clause is an effective instrument to guarantee a balance between the completion of the Internal Market and the maintenance of a high level of social welfare.

The ETUC expects the upcoming “Altmark package” on state aid and initiatives on institutionalised public-private partnerships, concessions and public procurement to take into account the new treaty rules.

Former commissioner Mario Monti has been asked by Barroso in October 2009 to draw up a report on how the EU should re-launch its single market and to outline measures to complete the currently unbalanced single market. The report is expected before the end of April 2010. The forgotten social dimension and public services must be part of the picture.

## **Health and Social Services**

### ***Social Services***

The issue of the legal security of social services remains open. ETUC believes it is important that such security is guaranteed, especially at this particular time when providers of such services are in such high demand. In actual fact, these services are primarily aimed at people and have a clearly defined social dimension. On the one hand, they pave the way for the application of social rights enshrined in the Charter of Fundamental Social Rights; on the other, they enable very specific answers to be given to those individuals within the Union who are particularly socially vulnerable today. This is why it is inconceivable that they should be governed by the law of the market and competition, and any limits on their application must be clearly defined at EU level. The Spanish Presidency should take this matter in its hands.

### ***Healthcare***

Regarding healthcare, ETUC duly noted the proposal for a directive on cross-border healthcare dating from 2 July 2008 and the improvements made to it when it was adopted at the first reading by the European parliament last April. The ball is now in the court of the Council.

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

Consequently, ETUC expects the Spanish Presidency first and foremost to confirm the headway made in Parliament's debate, especially with respect to:

- confirming the skills of Member States in organising their health system and defining and setting conditions for gaining access to healthcare;
- limiting cross-border mobility to that of patients;
- maintaining equal treatment for national patients compared with migrant patients.

These improvements are actually capable of shoring up and safeguarding national healthcare systems, whilst at the same time permitting patients to make use of their right to move about freely and at guaranteeing them maximum healthcare.

Nonetheless, ETUC is intent on securing another two substantial improvements: (i) the first concerns the issue of prior authorisation. ETUC believes this must remain the rule when it is required, because it is a legitimate instrument for regulating access to national healthcare systems whilst also maintaining their financial balance. In other words, ETUC wants the wording of Article 8 paragraph 3 of the draft directive to be reviewed; (ii) The second improvement eyed up by ETUC concerns the directive's legal basis, which we believe should be completed by adding a reference to Article 168 of the Treaty on the Functioning of the European Union, as this would unequivocally shore up the social dimension underlying healthcare systems and not confine them solely to internal market considerations.

### **Company law: The European Private Company (SPE)**

Whilst the ETUC encourages initiatives that improve market conditions for businesses and welcomes any proposals designed to improve the market performance of SMEs, it is adamant that the flexibility of SMEs must not be enhanced to the detriment of workers' rights to sit on the Boards of their companies. The ETUC has therefore been calling for vital modifications to be made to the proposed Statute for a European Private Company. In particular, it is crucial that the SPE Statute be accompanied by rules governing minimum standards on workers' involvement. It is also essential 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 supports the position of the European Parliament adopted with an overwhelming majority on 10 March 2009 and urges the Spanish Presidency this position as a basis for further discussions in Council. The ETUC has expressed its strong opposition to the proposed Swedish Presidency compromise, which was last discussed in the Competitiveness Council of 4 December. Such a text would indeed constitute unacceptable regression for workers' rights both at European and national level. The ETUC warns the Spanish Presidency against rushing into an immature compromise and reiterates its calls for a thorough rethink of the proposed SPE Statute

### **Cross border transfer of registered seats**

The discussions on the proposed SPE Statute have further highlighted 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. Accordingly, the ETUC is renewing its call for the urgent adoption of a 14th Company Law Directive on cross-border transfers of registered offices, with a view to preventing 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.

## 7. ENLARGEMENT

The ETUC supports current EU enlargement negotiations as a unique opportunity for disseminating our values. However, this must not serve to undermine our social model, and we demand full compliance with Union laws and practices, particularly in the area of social dialogue. Candidate countries must meet accession criteria of democracy, human rights and respect for and protection of minorities. The ETUC expects to be consulted when the social chapter is opened in the negotiations.

We would underline that, in relation to Turkey, the Commission's assessment pointed out that the serious violations of trade union rights must be stopped if Turkey is to join the EU.

## 8. TRADE AND EXTERNAL RELATIONS

The ETUC believes that EU trade and external relations policies should contribute worldwide towards sustainable growth, the development of social partnership and decent work, the promotion of values such as those set out in the EU Charter of Fundamental Rights, and universal respect of international conventions, notably those adopted by the ILO. The EU Presidency must react swiftly and robustly on our behalf against any violations of human and trade union rights, wherever they occur.

The entry into force of the Lisbon Treaty has major implications for EU foreign policy. The creation of the post of the High Representative for foreign affairs – with an extensive diplomatic representation abroad through the European External Action Service – present opportunities to advance those ETUC objectives. In discussions that will take place about the role of the High Representative and the EEAS, and their relationship with the Commission and the Council, the ETUC would stress that these innovations must serve the EU as a whole and not reflect intergovernmental approaches. In particular, the ETUC calls for the inclusion of labour and employment counsellors in key EU representations worldwide, responsible to the Commission.

The Lisbon Treaty brings trade policy under the same EU external action heading as other elements of EU external policy; and extends significant new powers to the European Parliament in relation to trade. These advances should lead to improved coherence between the EU's trade and foreign, development and employment policies with a view to meeting our wider objectives, notably the inclusion of strong chapters on sustainable development, including social and environmental standards, in all EU trade and association agreements, with effective provisions to ensure implementation and social partners' involvement.

The ETUC looks forward to a strong trade union participation in events surrounding the EU-LAC Summit in May. The ETUC supports the promotion of regional integration, linked to social guarantees, in association agreements notably with Central America and the Andean Community. We are concerned that in the latter case bilateral negotiations towards Free Trade Agreements have been undertaken following the failure of unified negotiations with the Community. We strongly oppose such an FTA being reached with Colombia and call for a suspension of the negotiations pending the outcome of an investigation into Colombia's human and trade union rights record under GSP+.

We look forward to the EU deepening and widening its relations with the US Administration,

notably to seek to develop robust positions on climate change as well as in relation to the financial crisis. We welcome recent steps towards the ETUC and the American Federation of Labor-Congress of Industrial Organizations being given equivalent status to that enjoyed by employers in relation to the Transatlantic Economic Council – the agenda of which should be widened and made more strategic. The ETUC, together with the Canadian Labour Congress, insists that we be informed and consulted in the context of ongoing discussions on a closer economic partnership.

If the Doha Round negotiations are resumed, we insist that the final WTO Ministerial Statement mandates a WTO follow-up work programme on trade and employment that covers the links between trade, decent work, core labour standards and development, to be monitored by a WTO committee or working group.

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