ETUC RESOLUTIONS
2007

EUROPEAN TRADE UNION CONFEDERATION (ETUC)

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INTRODUCTION

On 22 November 2006, the European Commission presented a Green Paper under the title 'Modernising labour law to meet the challenges of the 21st century'. With this Green Paper, it wants to launch a debate in the EU on how labour law can evolve to support the Lisbon strategy's objective of achieving sustainable growth with more and better jobs. According to the Commission, the modernization of labour law constitutes a key element for the success of the adaptability of workers and enterprises. This objective needs to be pursued, says the Green Paper, in the light of the Community's objectives of full employment, labour productivity and social cohesion.

With this document, presenting the key points of its position as elaborated in the attached position, the ETUC is taking a position on the Green Paper.

Preliminary remark

The Commission has started an open public consultation, via a website, and has announced a Communication, in the context of the

wider topic of flexicurity that the Commission is currently developing with the Member States. The Social Partners at European level have also received an invitation to respond to the consultation.

The ETUC wants to express its **strong disagreement with the consultation procedure** followed by the Commission. There is no doubt that the subject of the consultation is clearly in the heart of the 'social policy field' as mentioned in Article 138 of the European Treaty, and therefore Social Partners at European level should be consulted in a different way, and with a clearly different weight, than the wider public, to allow them to in an early stage 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.

The ETUC's key views on the Green Paper

1. The ETUC welcomes the **recognition of the need for increased protection** of the growing proportion of workers across the EU in precarious forms of employment. The most vulnerable workers in the EU are increasingly not properly covered, in law or in practice, by labour law and social security, leading to situations of permanent insecurity and social exclusion.

This situation is not in line with one of the basic objectives of the European Union, i.e. to improve the living and working conditions of its populations, nor with the Lisbon agenda which is aiming at more and better jobs, a high road to economic growth and employment, and social inclusion, and needs to be urgently addressed.

2. However, the ETUC **strongly disagrees with the analytical framework** presented in the Green Paper. According to the Commission's analysis, the traditional model of the employment relationship is outdated, because 'overly protected', and therefore alternative models of contractual relations would have to be developed. The Green Paper states that, in order to reduce segmentation, i.e. the gap between the 'insiders' and the 'outsiders', the flexibility in standard contracts must be enhanced. In addition, it states that dismissal protection must be weakened because it would reduce the dynamism of the labour market, and thereby would worsen the prospects of women, youths and older workers. In other words, the Commission sees flexibility of labour law (contractual arrangements)

as the key instrument to promote adaptability of workers and enterprises.

According to the ETUC, this analysis is simplistic and one-sided, does not appropriately take into consideration the wealth of research that has been produced in the last few decades on these issues, and does not pay sufficient attention to all the necessary elements of policy that are related to the proper functioning of the labour market and the integration of the most disadvantaged groups.

3. For ETUC, the **assumption that the indefinite employment contract is an outdated concept** which would not be suitable anymore for the modern world of work is totally unacceptable. Not only is the great majority of employment relationships still based on this concept, also in recent times it has been re-affirmed by the European Social Partners that permanent contracts are the norm. And the ECJ has confirmed in various cases that the right to enjoy an indefinite contract of employment and the principle of equal treatment limit the scope of Member States to 'flexibilize' their labour markets and labour law. ETUC therefore does not accept that there is any need for an 'alternative contractual model'.

4. The ETUC is very concerned that the Green Paper is focussing almost exclusively on the personal scope of labour law, and gives very **little consideration to collective labour law**. For ETUC, the basic principles of labour law as it has developed in Europe over the last 200 years are still very valid. Labour law is based on the assumption of an unequal power relationship between worker and employer, and therefore provides the worker with protection either by law or collective agreement (or a combination of both). In most EU countries labour law has developed in a rich variety of forms.

Modernising labour law cannot be discussed without taking account of the overall regulatory framework in the country concerned, and without recognizing collective bargaining as an important source of labour law.

Collective bargaining should be recognized in its double role, both as an important 'regulatory force' (to regulate contractual and employment relations as well as internal and external flexibility in a broad range of areas, from working time to agency work, from work organisation to the reconciliation of work, private and family life,

etc.), as in its role to provide a democratic and participatory process for modernisation and change.

5. For ETUC it is unacceptable that the Green Paper sees the level of employment protection (or EPL) as the most decisive element of 'flexibility at work'. This totally denies developments in the last decades in most work organisations, often supported by collective agreements, in the direction of various forms of **internal flexibility** (working time arrangements, functional flexibility, etc.)

Moreover, as research has shown, and as recognized by the OECD, there is **no clear link between the level of EPL and the level of (un)employment**, whereas the decrease of employment protection could affect trust, loyalty and personal investment in the employment relation on the side of the worker, as well as affect the readiness of companies to invest in skills and training of their workforce, and therefore is counter productive to the objective of increased productivity and innovation by enterprises.

Finally, ETUC does not agree with the analysis, that the job opportunities for 'outsiders' will increase by reducing the rights and protection of insiders. In its view, there is more reason to expect that the opposite will happen. Reducing EPL/dismissal protection will **increase inequality**, and may transform 'insiders' into potential 'outsiders', while not decreasing the current number of 'outsiders'. At the same time, it will have **negative effects on economic performance** in terms of consumption and labour productivity. An adequate level of job-security is necessary in the interest of the innovative capacity of the economy.

6. ETUC and its members are very much interested to further develop arrangements that strengthen the position of workers in situations of job-to-job transitions in the labour market. They support more emphasis on active labour market policies (ALMP) combined with adequate unemployment benefit systems, promoting reintegration. There is also good reason to call for a better adaptation of social security and pension systems to a variety of labour market transitions. Measures to promote training and life long learning and to improve the reconciliation of work, private and family life are equally important. However, ETUC **does not believe that the incentives for such a transitional labour market should be sought in 'flexibilizing' labour law**.

Although the Commission is looking at the role of labour law in 'advancing a flexicurity agenda', the ETUC does not accept the concept of flexicurity as presented in the Green Paper, in which a very limited notion of flexibility (mainly focussing on contractual flexibility) and also a very limited notion of security (enhancing employability by training and active labour market policies) is used.

7. ETUC wants to remind the Commission of the **limited competence** of the EU with regard to labour law and social security, and the need to respect the autonomy of national social partners.

Moreover, it should be stressed that real 'modernisation' and genuine and balanced 'flexicurity models' wherever these have come about in Europe, have always been the outcome of negotiations between social partners at various levels, and therefore cannot and should not be introduced 'top-down' from the EU level. The Commission must clearly recognize and respect this, when trying to develop policies and strategies to steer the reform efforts of Member States.

At the same time, the Commission **can and must act**, in line with the Treaty, the Social Charter and the Charter of Fundamental rights, among other things **to ensure fair and just working conditions** to all workers on EU territory, to ensure respect for fundamental rights and combat discrimination, to prevent unfair competition at the expense of workers' health and safety, and to promote social dialogue.

8. For the ETUC, the following **developments** are **challenging labour law** in the 21-st century:

a. In many Member States, employer strategies or deliberate labour law reforms have led to a two tier labour market on which increasing amounts of workers – and often the most vulnerable groups of workers, such as women, young workers and migrants - are working under conditions of permanent precarity.

b. Also so called 'standard' workers have not escaped from the increasing pressure of globalisation and have been faced with 'flexibilisation' of working time, wages, and other contractual arrangements.

c. A shift in production methods, work organisation, the spreading of subcontracting and outsourcing, and the way firms are nowadays moving around and financial capital is taking over from

enterprise, is creating insecurity not only for the most marginal groups of workers in the periphery but increasingly also for 'standard' workers in core companies, who are faced with restructuring and redundancies.

d. In many countries, collective bargaining and the coverage of collective agreements are under pressure of erosion, adding up to the precarisation of work and workers.

e. The increasing cross border mobility of workers, enterprises and services in an enlarging European Union challenges the capacity of national social and industrial relations systems to safeguard fair and just living and working conditions for all workers on their territory in a context of level playing fields and fair competition.

The ETUC believes that these challenges show the need for urgent action to **strengthen** the capacity of labour law in all its dimensions, both at national and at EU level, to cope with the modern world of work while providing for fair and decent working conditions and labour standards to all workers on EU territory.

9. In the attached position ETUC is therefore stressing the need to, first of all, eliminate the gap between 'insiders' and 'outsiders' on the labour market by **improving the protection of precarious workers**, tackling their exclusion from proper labour law coverage and their precarious employment and working conditions.

The following actions are proposed:

a. invest in **better enforcement** of existing national and EU labour law, and where necessary **refocus the scope of labour law**, to ensure that it properly covers, both in law and in practice, all the workers in subordinate employment relationships that it is supposed to cover, as recommended by the ILO in its 2006 Recommendation on the Scope of the Employment relationship; this would include promoting transformation from 'flexible'/ precarious jobs into regular jobs;

b. address real causes for segmentation, such as gender inequality and the lack of policies to support work-life balance;

c. extend protection to new forms of (dependent) work, by considering the development of a **'core of rights'**, which is offering all working people regardless of their employment status a set of

essential rights including the right to freedom of association and collective bargaining.

10. Secondly, the ETUC calls for the active support from national and Community authorities for **modernising and strengthening the role of collective bargaining** and for strong industrial relations systems.

11. Thirdly, ETUC reiterates that **workers' capacity to face change** must be enhanced by investing in forms of protection that provide workers with **security throughout their working life**, such as active labour market policies combined with adequate unemployment benefit systems, social security and pension systems adapted to labour market transitions, training and life long learning opportunities for all workers including 'non-standard' workers, and improved reconciliation of work and private and family life. Investment in strong social partnership and commitment of governments is necessary to ensure balanced packages of measures.

12. Fourthly, in ETUC's view, the emerging European labour market(s) can no longer be managed, with regard to the social field, by relying on national rules alone, while in the meantime internal market and competition rules are increasingly interfering with national autonomy in social policies. Therefore, ETUC is asking from the EU Institutions, together with the Social Partners at EU level, to develop an **EU-wide supportive legal framework**, consisting of a combination of EU 'rules of the game' and certain EU minimum-standards. This framework must clearly also contain rules regarding respect for national social policy and industrial relations, as well as rules that ensure the right for trade unions to organise countervailing power and industrial action in transnational situations.

13. With regard to other areas for EU action, the ETUC sees the following priorities:

a. Measures to improve the possibilities for **reconciliation of work, private and family life**, as recommended in the ETUC position of December 2006, in response to the Commission's Consultation document on this issue.

b. A **strong Temporary Agency Directive** providing for European minimum standards with regard to agency work, to complement the Posting Directive. The ETUC insists that equal pay, with the user enterprise as reference, is an essential part of the Directive.

Clarifying the employment status of the agency worker should be incorporated in the next phases of this debate.
In addition, a **European instrument regulating joint and several liability** (or 'chain-responsibility') of user enterprise and intermediary in the case of agency work and subcontracting should be proposed.

c. A clear body of European minimum rules safeguarding the health and safety of workers with regard to **working time**, setting clear standards on maximum working hours and minimum rest which guarantee a bottom in competition, providing workers all over Europe with **clear and unambiguous protection without any opt-outs**. The ETUC therefore does not agree with the insertion of the issue of working time in the Green Paper.
ETUC refers to all its positions about the Working Time Directive adopted since 2003, and reiterates its support for the outcomes of the first reading in the European Parliament. Therefore, the ETUC is calling on the Commission and Member States to take the EP's position into full account when working towards a compromise on the revision of the Working Time Directive.

d. More convergent definitions of 'worker' to improve coherence and proper enforcement of EU Directives. However, this should primarily be promoted by the development of common criteria and guidelines with regard to the definition of worker and self employment, as recommended by the ILO in its 2006 Recommendation.

e. More and better enforcement of existing labour law and labour standards to combat **undeclared** work, and a stronger role of the EU in promoting more and better cooperation and coordination between national labour and social inspectorates, for instance by establishing some kind of European 'Socio-Pol'.

f. Tackling the growing informal economy and especially the **labour exploitation of (undocumented) migrant workers**,

focussing on instruments and mechanisms to prevent and combat exploitation of migrant workers, including the recognition and enforcement of fundamental human and labour rights of irregular migrants, instead of relying on repression and deportation.

Conclusion

The ETUC highly recommends that the Commission in its Communication later this year, following up on this Green Paper, revises its analytical framework and responds to ETUC's positions about all the above mentioned issues with a view to modernise and strengthen labour law to meet the challenges of the 21st Century.

ANNEXE

ETUC position on the European Commission's Green Paper

"Modernising and strengthening labour law to meet the challenges of the 21st century"

1. INTRODUCTION

On 22 November 2006, the European Commission presented a Green Paper 'to launch a debate in the EU on how labour law can evolve to support the Lisbon strategy's objective of achieving sustainable growth with more and better jobs.' According to the Commission, 'the modernization of labour law constitutes a key element for the success of the adaptability of workers and enterprises'.

The Green Paper *'looks at the role labour law might play in advancing a "flexicurity" agenda in support of a labour market which is fairer, more responsive and more inclusive, and which contributes to making Europe more competitive'*.

It seeks:

- to identify key challenges reflecting a clear deficit between the existing legal and contractual framework and the realities of the world of work. The focus of this exercise is 'mainly on the personal scope of labour law, rather than on issues of collective labour law';
- to launch a debate on how labour law can assist in promoting flexibility combined with employment security, independently of the form of contract, and thereby contribute to increase employment and reduce unemployment;
- to stimulate discussion on how different types of contractual relations together with employment rights applicable to all workers could facilitate job creation by easing labour market transitions, promoting life long learning and fostering the creativity of the whole workforce;
- to contribute to the Better Regulation agenda by promoting the modernisation of labour law, taking into account the overall

benefits and costs involved, and especially the problems SME's may face.

The Commission has started an open public consultation, via a website, and has announced a follow-up Communication, in the context of the wider topic of flexicurity that the Commission is currently developing with the Member States.

The Social Partners at European level have also received an invitation to respond to the consultation.

With this document the ETUC is taking a position on the Green Paper.

2. THE CONSULTATION PROCEDURE IS FLAWED

But before doing so, the ETUC would like to express its strong disagreement with the procedure followed by the Commission.

There is no doubt that the subject of the consultation is clearly in the heart of the 'social policy field' as mentioned in Article 138 of the European Treaty.

According to the Treaty, Social Partners at European level have a particular position when it comes to any initiatives in the social policy field that the Commission wants to take. The obligation to consult the European Social Partners is enshrined in the Treaty for several reasons, related to the recognition that the Social Partners at national and EU level have a special responsibility - in various degrees of cooperation with public authorities - for shaping and negotiating social policy. Social Partners need to be consulted in a different way, and with a different weight, than the wider public, 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.

The wider civil society is supposed to be consulted via the Economic and Social Committee and Committee of the Regions, and finally it is the European Parliament that is supposed to represent the European populations.

According to the ETUC, the method of an 'open public consultation' regarding such a complex issue, which is so much a core issue for Social Partners in general, and in particular for the trade union movement since

the very beginning of its existence, **cannot be accepted without further conditions**.

First, the Commission must clarify how it will give clear priority and preference, when following up on the consultation, to the opinions and positions of the Social Partners at EU level, and how it will further observe the letter and the spirit of the Treaty.

Secondly, if and in so far as Member States are contributing to the 'public consultation' their contributions can only be taken into account if they have come about in accordance with national rules and regulations regarding social dialogue and/or other forms of consultation of the social partners at national level.

Thirdly, the Commission must clarify how it will process the great variety of replies and responses in an objective and transparent manner.

Finally, the ETUC is very unhappy with the very short timeframe of the consultation. The Commission is addressing in its Green Paper an enormous variety of complex issues, and raising a broad range of questions, which in the ETUC's view need a thorough debate both at national as well as at European level. This is virtually impossible in the given period between the end of November 2006 and the end March 2007.

Therefore, the ETUC has chosen to take a position in more general terms on the most important issues raised in the Green Paper, while also giving its own views on what issues the Commission will need to address in the follow up to this consultation.

The ETUC will develop its positions in more detail in the upcoming months.

3. LABOUR LAW IS FIRMLY ROOTED IN INTERNATIONAL LAW AND FUNDAMENTAL RIGHTS

The Declaration of Philadelphia, concerning the aims and purposes of the International Labour Organisation, adopted in May 1948, reaffirmed the fundamental principles on which the ILO is based, and in particular the fact that **labour is not a commodity**, that freedom of expression and association are essential to sustained progress, and that lasting peace can only be established if it is based on social justice.

It explicitly affirmed that (IIc) 'all national and international policies and measures, and in particular those of an economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this objective'. With these principles, the ILO and all its constituent members, including all the current member states of the EU, placed itself in a logic in which the recognition of fundamental rights and the pursuit of social justice is of a higher hierarchical order than economic and financial policies.

Article 136 of the European Treaty declares that the Community and its Member States 'having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in 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 harmonisation while improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion'. With this provision, the EU positions itself firmly in the logic of a process that has to provide its populations with improvement of living and working conditions.

4. THE GREEN PAPER IS LACKING AMBITION.

The ETUC welcomes the **recognition** in the Green Paper **of the need for increased protection** of the growing proportion of workers across the EU in precarious forms of employment. The most vulnerable workers in the EU are increasingly not properly covered, in law or in practice, by labour law and social security, leading to situations of permanent insecurity and social exclusion. This situation is not in line with one of the basic objectives of the European Union, i.e. to improve the living and working conditions of its populations, nor with the Lisbon agenda which is aiming at more and better jobs, a high road to economic growth and employment, and social inclusion, and needs to be urgently addressed.

However, if one compares all these studies and developments with the current text of the Green Paper, which is moreover lacking any

concrete proposal, one could say the Commission has reduced its ambitions to a very low level.....

The EU has a long history when it comes to addressing the need to provide 'atypical forms of work' with more and better protection.

Already in the early eighties, the Commission tried to draft Directives aiming at improving the position of part time, fixed term and agency workers, but failed to get majority support for it in the Council. Also the European Parliament took various initiatives in that regard.

The adoption of the 1989 Social Charter, which contained the specific obligation to **harmonize upwards and improve** the living and working conditions of part time, fixed term, agency and seasonal workers led to the taking up in the Social Charter Action Programme, and when the Maastricht Treaty opened the possibility for Social Partners to negotiate binding agreements, it was on that basis that, in the 1990's, framework agreements regulating minimum protection and equal treatment for part time and fixed term work came about.

In the same period, in 1996, the European Commission appointed a group of experts, that was assigned an ambitious task, namely to conduct a prospective and constructive survey on the future of work and labour law within a Community-wide, intercultural and interdisciplinary framework. Under the leadership of Alain Supiot, an extensive study "Transformation of labour and future of labour law" was produced and published in 1998.

The report addressed 6 major themes:
1. work and private power
2. work and employment status
3. work and time
4. work and collective organisation
5. work and the state
6. combating gender discrimination.

On the basis of elaborate analyses of the various themes, a series of very interesting guidelines was drawn up that is still today a very important and valuable contribution to the debate.

The ETUC therefore recommends that the Commission position itself more clearly in the follow up to the consultation on the Green Paper with regard to this body of research, to prevent the debate as it were to 'start from scratch'.

This preparatory work led in the summer of 2000 to a modest initiative of the European Commission, which sent a paper to the Social Partners at the European level: *"First Stage Consultation of social partners on modernising* ***and improving*** *employment relations"*.

The then Commission wanted to start a discussion on 'the need to review the essential elements of the system of laws and collective agreements to make sure that they are relevant to a modern organisation of work'.

Two types of action were proposed:

1) To establish the principles and a framework for action, among other things a mechanism to review the existing legislative and contractual rules governing employment relationships at all levels (European, national, regional, enterprise), with a view to allowing for adequate coverage of the diversity of new forms of work;

2) To take action in specific areas, namely: telework, and economically dependent workers who do not or may not correspond to the traditional notion of 'employee', to ensure adequate protection for these categories of workers.

The ETUC in that period welcomed the initiatives, but employers were very reluctant to discuss the wider issues, and only accepted to talk about telework. The social partners at EU-level concluded in 2002 a framework agreement on telework.

On the important issue of the inadequate coverage of new forms of work and especially 'economically dependent workers', a research document was finished already in 2003 on economically dependent workers (the Perrulli study), and an initial discussion that took place during the Dutch presidency in autumn 2004.

On the broader issue of the evolution of labour law another group of experts wrote an expert report for the Commission, published in

2005.[1] This report pointed at the increasing 'Europeanisation' of national legal systems as an undeniable reality. It also drew attention to the fact that in most EU countries there is recourse to wide forms of consultation of the social partners in view of adopting legislation. The study confirmed that as a peculiar feature of European labour law, *all forms of* ***negotiated legislation****, social pacts and 'concertation' must be referred to as* ***important resources for the evolution of labour law***. In its conclusions, the report formulates as important challenges:

- the risk of reducing the enforceability of certain rights or to exclude certain categories of workers from basic entitlements, which should be countered by expansion of fundamental rights coverage and the preservation of the autonomy of labour law;
- the necessary link with social inclusion, which demands an expansion of 'traditional labour law functions', focussing on the protection of groups rather than individuals;
- the importance of constitutional principles, anti-discrimination law, and fundamental rights as the conceptual framework at EU level to construct the new social policy agenda for coming years.

On the level of the ILO, a series of debates between 1997 and 2006 (starting with a discussion on Contract labour which then was adapted to a debate on the scope of the employment relationship, a discussion closely linked to the discussion at EU level on 'economically dependent workers') ended with the adoption of Recommendation 198 on the employment relationship in 2006.

It is unacceptable that the Commission in its Green Paper totally ignores these very relevant debates at ILO level, and does not use this opportunity to promote implementation of Recommendation 198 by EU Member States.

[1] The evolution of labour law (1992-2003), written for the European Commission by national experts of the EU-15, under the leadership of Silvana Sciarra

5. CHALLENGES FOR LABOUR LAW IN THE 21ST CENTURY.

According to the ETUC, there are several reasons for a thorough debate on the need to *modernise and improve* labour law at national as well as at European level.

In many Member States, labour law reforms have been proposed or introduced, often in the framework of a competitiveness agenda, which have not led to qualitative employment opportunities but have promoted a two tier labour market on which increasing amounts of workers – and often the most vulnerable groups of workers, such as women, young workers and migrants - are working under conditions of permanent precarity.

But also so called 'standard' workers have not escaped from the increasing pressure and have faced 'flexibilisation' of working time, wages, and other contractual arrangements.

In many countries, collective bargaining and the coverage of collective agreements are under pressure of erosion, resulting in the precarisation of work and workers.

A shift in production methods, work organisation, the spreading of subcontracting and outsourcing, and the way firms are nowadays moving around and financial capital is taking over from enterprise, is creating insecurity not only for the most marginal groups of workers on the periphery but increasingly also for 'standard' workers in core companies.

The increasing cross border mobility of workers, enterprises and services in an enlarging European Union poses serious questions regarding our ability to continue to manage emerging European labour markets in the framework of the single European market with just national labour law.

The ETUC believes that these challenges show the need for urgent action at national and at European level to **strengthen** the capacity of labour law in all its dimensions to cope with the modern world of work while providing for fair and decent working conditions and labour standards to all workers on EU territory.

According to the ETUC, the Commission should present initiatives promoting 'fair and just working conditions' to workers, as laid down in the European Charter of Fundamental Rights, showing the commitment of the European Commission to a Europe that is not only a single

market but also the workplace of so many million workers – men and women, young, old and migrant - who keep this market going. They deserve, according to the European Charter of Fundamental Rights, fair and just working conditions.

However, the Commission has now tabled a Green Paper, which is limiting itself to the following issues.

According to the Commission, the challenges are the following:

a) The traditional model of the employment relationship, assuming a permanent full time job, regulated by labour law and dealing with a single entity employer would be outdated, or, in the words of the Green Paper *'may not prove well suited to all workers on regular permanent contracts facing the challenge of adapting to change and seizing the opportunities that globalisation offers. Overly protective terms and conditions can deter employers from hiring during economic upturns.* ***Alternative models of contractual relations*** *can enhance the capacity of enterprises to foster the creativity of their whole workforce for increased competitive advantage.'*

b) 'Since the 1990's, reform of national employment protection legislation (EPL) has focused on easing existing regulation to facilitate more contractual diversity. Reforms tended to increase flexibility 'on the margins', i.e. introducing more flexible forms of employment with lesser protection against dismissal to promote the entry of newcomers and disadvantaged job-seekers to the labour market and to allow those who so wished to have more choice over their employment. The outcome has given rise to increasingly segmented labour markets.' The share of total employment in all non-standard forms of employment is now 40 %. Non-standard contracts have allowed businesses to remain competitive, and also workers are given greater choice. But there is evidence of some detrimental effects associated with the increasing diversity of the workforce.

Therefore, 'given the increasing levels of participation in these forms of contracts, **the level of flexibility provided under standard contracts may need to be examined** to enhance their

capacity to facilitate recruitment, retention and the scope for progression within the labour market.'

c) Stringent EPL tends to reduce the dynamism of the labour market, worsening the prospects of women, youths and older workers. Workers feel better protected by a support system in case of unemployment (unemployment benefits, UB) than by EPL. Potentially vulnerable workers need to have a ladder of opportunity to improve their mobility and achieve successful labour market transitions. **'Legal frameworks sustaining the standard employment relationship may not offer sufficient scope or the incentive to those on regular employment contracts to explore opportunities for greater flexibility at work.'**

In other words, the Commission sees labour law as the key instrument to promote adaptability of workers, sees access of 'outsiders' to (regular) employment on the one hand, and job-to-job transitions for insiders on the other hand as the main challenges, and is of the opinion that labour law needs to be 'flexibilized' to address these challenges.

The ETUC **strongly disagrees with the analytical framework** presented by the Commission, and especially not with the suggestion that the problems identified could or should be solved by 'flexibilizing labour law'.

6. MODERNISING 'LABOUR LAW': RESTRICTION TO INDIVIDUAL CONTRACT LAW IS UNACCEPTABLE

The Commission in its Green Paper wants to 'identify key challenges which (...) reflect a clear deficit between the existing legal and contractual framework, on the one hand, and the realities of the world of work on the other. *The focus is mainly on the personal scope of labour law rather than on issues of collective labour law.'*

Where collective bargaining in the Green Paper is mentioned, it is mostly as a possible 'instrument' to provide for flexibilisation.

According to the ETUC, this restriction to labour law in terms of individual contractual arrangements and the scope of the employment relationship is a major mistake.

There are **basic principles of labour law** as it has developed in Europe over the last 200 years:

1) the worker (in a subordinate employment relationship), when concluding a labour contract is in an unequal power relationship to his/her employer, and therefore needs to be protected against having to accept disadvantageous working conditions, because refusing them would mean he endangers his job;

2) this protection can be given either by statutory (labour) law provisions, that protect the individual worker by setting norms and standards;

3) or by the countervailing power of the collective, i.e. by collective bargaining leading to collective agreements.

In most EU countries labour law has developed in a rich variety of forms, which has led to regions in which collective bargaining is the primary means of regulation, and other regions where legislation has provided the main thrust of protective regulation for workers.

But the majority of countries have mixed systems (with a combination of both law and collective bargaining, sometimes even giving collective agreements the force of law by procedures to make them 'generally binding').

Experience shows that especially in systems that allow ample space for collective bargaining to regulate the world of work, the norms and standards are under constant evaluation and revision and therefore very flexible.

Statutory law by its very nature is more rigid. However, in countries where collective bargaining is not very widespread and collective agreements relatively weak, the role of legislation as a safeguard for workers is much more essential than in countries where the majority of workers are somehow covered by collective arrangements. Therefore, modernising (or:'flexibilizing') labour law is a tricky exercise, if one does not take account of the overall regulatory framework in the country concerned, and if the role of collective bargaining as an important source of labour law is ignored.

The fact that this dimension is totally missing from the Green Paper leads also to a situation in which some key questions regarding 'non-standard workers' or so called outsiders are not addressed, and thereby the potential role of collective bargaining to reduce the gap between insiders and outsiders is ignored:

For instance:

- do precarious or a-typical workers have enough possibilities – in law or in practice – to exercise their freedom of association, the right to join a union, to collective bargaining and to industrial action? (Example: agency workers, economically dependent workers that encounter barriers in terms of competition law)
- do precarious or a-typical workers count for the thresholds in companies for the establishment of works councils? (agency workers, part time workers, fixed term workers, or workers below a certain age group may find themselves excluded[2])
- do precarious or a-typical workers have the right to information and consultation in the company that takes decisions regarding their working conditions or employment situation, even if they may not be directly employed by such a company (agency workers in the user enterprise)?

It should be understood, that it is exactly the lack of clarity about (or even total absence of) these rights that is one of the reasons why employers may prefer the recruitment of non-standard workers. This also sheds a different light on the reasons why there is an increasing gap between insiders and outsiders on the labour market.

In our view, the European Commission should, in developing its agenda for modernising labour law, recognize and take into account the double role of collective bargaining and social dialogue, both as an important 'regulatory force' (to regulate contractual and employment relations as well as internal and external flexibility in a broad range of areas, from working time to agency work, etc.), as in its role

[2] See ECJ case C385/05 of 18 January 2007 of the 5 French trade union federations against the French government, about the validity of the provisions in the CNE-law, that excluded workers below the age of 26 from counting for the thresholds of establishing a works council. The ECJ decided that these provisions were not in line with Directive 2002/14/CE on information and consultation, nor with Directive 98/59/CE on collective dismissal.

to provide a democratic and participatory process for modernisation and change.

It should, moreover, recognize that wherever in Europe flexicurity models have been developed, this was not coincidentally in countries with a highly developed social dialogue, where social partners have played an essential role in negotiating the balance between flexibility and security on the labour market. They played a crucial role in building the necessary trust and confidence that the adaptation of rules and regulations was taking into account workers' and employers' interests in a balanced way, thereby legitimising change.

Therefore, what is urgently needed is the **active support** from national and Community authorities **for modernising and strengthening the role of collective bargaining** and encourage a broadening of its scope, extend the parties covered and tasks involved (as also recommended by the Supiot-report).

7. LABOUR LAW AND LEVEL OF EMPLOYMENT: NO CLEAR CONNECTION

The green paper's general tendency seems to be that adapting employment

legislation of the member states, in particular the rules governing the indefinite employment contract and employment protection (protection against unfair dismissal, severance pay, notice periods) should be part of the Lisbon strategy.

It is supposed that more flexibility and mobility on the labour market is a pre-condition for enhancing the competitive power of EU-economies. This supposition may be valid in itself, it is however open to serious doubt if the aim of more flexibility and mobility on the labour market should be pursued through adapting the law on employment contracts and employment protection.

The Commission suggests that *'legal frameworks sustaining the standard employment relationship may not offer sufficient scope or the incentive to those on regular permanent contracts to explore opportunities for greater flexibility at work'*. This phrase totally denies develop-

ments in the last decades in most workplaces and work organisations, often supported by collective agreements, in the direction of various forms of internal (functional and numerical, such as working time) flexibility. The simplistic emphasis of the Commission on the level of employment protection (or EPL) as the most decisive element of 'flexibility at work' is in the ETUC's view unacceptable.

Moreover, as research has shown, and has also been recognized in recent times by the OECD, there is **no clear link between the level of EPL and the level of (un)employment**, whereas the decrease of employment protection could affect trust, loyalty and personal investment in the employment relationship, as well as being counterproductive to the innovative strength of companies.

This is increasingly recognized by economists. However, the new argument for relaxing dismissal regulation is, that even if it would not contribute to the reduction of the level of unemployment in general, it would serve another aim namely to enhance the dynamic on the labour market, and thereby help spread the risk of unemployment more evenly over the more and less vulnerable groups on the labour market (i.e. the insiders and outsiders).

The line of argument is as follows: when dismissal is easier, 'insiders' with a permanent job will be under more pressure to change job, this will promote more moving around on the labour market, which will lead to more job opportunities for the outsiders. At the same time, everybody will keep the same job for a shorter time, because their risk of being dismissed will increase.

The important question is, whether the job opportunities for outsiders will really increase by reducing the rights and protection of insiders. Several economists have recently raised strong doubts about this.[3] In their view, there is more reason to expect the opposite effect. The group of outsiders that everybody is concerned about is mostly young people, women and immigrants, most of them with low qualifications and little work experience. With which 'insiders' will

3 Vergeer en Dekker, University of Delft, see Dutch magazine Economische en Statistische Berichten ESB 23-2-07; idem Veenman, University of Rotterdam

they compete for jobs? Mostly those insiders that have a similarly low level of 'human capital'. By reducing EPL, both groups together will be the new, bigger group at the bottom of the ladder. Together, they will be faced with short term and 'flexible' jobs and periods of unemployment, i.e. with increased insecurity. The 'stronger' ones among them (white males?) will still have the best chances. But all in all the amount of people faced with insecurity about job and income will increase. From an economic point of view, this will be detrimental for consumption. It will also lead to an increase in income-inequality.

In short:

- The ETUC does not agree with the analysis that job opportunities for 'outsiders' will increase by reducing the rights and protection of 'insiders'.
- Reducing EPL/dismissal protection will **increase inequality and increase the amount of outsiders**, while having **negative effects on economic performance** in terms of consumption and labour productivity.
- A sufficient level of job-security is necessary in the interest of the innovative capacity of the economy.
- The economic dynamic is better served with high investment in education, training and life long learning and promoting exits and transformation from 'flexible'/precarious jobs into regular jobs, than by reducing job security of workers with a permanent contract.

The ETUC would welcome a genuine European debate on how a broad variety of measures and policies, including labour law – in its widest sense, i.e. also collective labour law - can evolve to support the Lisbon strategy's objective of achieving sustainable growth with not only more **but also better jobs**. It is important that the Commission and the Member States take concrete initiatives to promote the right balance between competitiveness of businesses and the interests and well-being of standard and non-standard workers, **focussing on improving the quality of jobs**.

8. PROMOTING TRANSITIONS ON THE LABOUR MARKET: A WIDE RANGE OF POLICIES IS NECESSARY

A general element in the Commission's approach is the 'slogan', in recent times often quoted, from Commissioner Spidla, saying that if a ship is sinking it is much more logical to save the people on board the ship and not the ship itself, leading to the assumption that modern labour law should focus on the employability of the worker instead of protecting him/her against losing his/her job.

It is in this context that the Danish model is always quoted as best practice, showing high levels of unemployment benefits (UB) and active labour market policies (ALMP), instead of 'strict' dismissal protection (EPL).

However, there are several important comments to make on this approach:

a) also in the Danish model, workers are protected against dismissal for economic reasons, because they have rather long notice-periods, to give them time to find another job before loosing the previous one. Secondly, they are clearly protected against unfair dismissal (for other reasons). Thirdly, the Danish model is developed in a long historic process (which started in 1898!), where the 'light touch' protection is part of a strong social partnership model, primacy of collective bargaining and strong trade unions, a combination of elements that not every EU Member State is ready to adopt or promote!

b) the slogan of Spidla totally overlooks the fact that **most companies that dismiss workers for economic reasons are not necessarily sinking ships.....** There is no reason to exempt capital and business from a certain societal responsibility for employment creation and retention, nor from paying a certain price for making workers redundant. At the same time, the fact that this is done in various different ways in different Member States can of course lead to comparisons about more and less effective, costly and fair procedures and outcomes. With increased mobility of workers and enterprises cross border such differences may lead to distortion of competition, and may become push or pull factors for relocation.

However, to which extent this is really the case is not only dependent on dismissal protection, length of notice periods etc., but on the total of regulations and cost factors that are in place in a certain country (social security, taxes, etc.), and how companies are charged (direct on labour, indirect via VAT or other taxes, etc.). A genuine shift from dismissal protection to unemployment benefits and ALMP would not necessarily mean that all in all there are fewer costs involved; however, there may be shifts from costs for businesses to cost for states or costs for workers. The first question is if such a genuine shift is what the Commission is seeking, the second question is who they want to bear the burden. It currently seems as if they want to make the total outcome cheaper indeed, with less dismissal protection, less benefits, and a little ALMP, shifting the burden of adjustment to the individual worker.

c) the approach of the Commission reduces the debate about modernising labour law to a debate about dismissal law, and reduces dismissal protection to protection against dismissal for economic reasons. It is very **important to reclaim the autonomy, basic principles and intrinsic values of labour law** in the widest sense, showing also that a proper protection against unfair dismissal is the basis for the ability of the worker to complain about bad working conditions, raise his or her voice against the employer's arbitrary or unreasonable behaviour, organise in a trade union etc. It is precisely the fact that fixed term and precarious workers are not protected in the same way, that is mentioned by many ETUC affiliates as a reason for those workers being more easily exploitable, falling trade union membership and difficulties in representing the interests of those workers.

The ETUC and its members are very interested in further developing arrangements that strengthen the position of workers in situations of job-to-job transitions in the labour market, and agree that it is worth investigating which models in EU Member States have the best results in that regard.

They could support more emphasis on ALMP as long as it is combined with adequate unemployment benefit systems, promoting reintegration.

There is also good reason to call for a better adaptation of social security and pension systems to a variety of labour market transitions (from job to job, from agency work to working directly for the user enterprise, from full time to part time and vice versa, from work to leave and vice versa, from employment to self-employment and vice versa).

However, the ETUC wants to stress again, that it does **not believe that the incentives for such a transitional labour market should be sought in 'flexibilizing' labour law**, or more precisely EPL.

In the ETUC's view, the coming about of a 'transitional' (job-to-job) labour market should rather be advanced through positive measures of a facilitating, enabling nature regarding for instance education, work-to-work and reintegration arrangements, measures to improve the reconciliation of work and private life and adapting social security to transitions. This could provide security throughout working lives and careers ('securiser le parcours professionelle').

9. TWO-TIER LABOUR MARKETS: REDUCING THE GAP BY IMPROVING THE PROTECTION OF 'OUTSIDERS'.

Another general element in the Commission's analysis is the insider-outsider paradigm, the argument being that the employment protection of 'normal/standard' indefinite employment contracts (kept in place by 'protectionist' trade unions), is an obstacle to the access to employment of vulnerable groups of workers.

The ETUC welcomes a debate on the need to address the fact that groups of especially vulnerable workers are increasingly falling, either in law or in practice, outside the scope and protection of labour law (and/or social security!).

We strongly agree with the concerns expressed in the Green Paper about the increasing segmentation and precarity and the two-tier labour markets everywhere. We also admit that this is an issue that urgently needs to be addressed by trade unions themselves, in terms of recruiting and organising the workers concerned. However, we strongly disagree with the analysis of the causes in the Green Paper, and therefore also with the proposed solutions.

There is a persistent red line through the analytical paragraphs which is very problematic and prejudicial, which is that standard

workers/employment contracts have too much protection, and *therefore* there is recourse to flexible contracts which offer too little protection, and *therefore* there is segmentation on the labour market.

We have great problems with the seemingly 'factual' statements around rigidities in employment protection being the cause of flexibilisation of contracts.

First of all, it is not true for most EU countries that standard workers have not been bearing already quite a heavy burden in terms of adaptation to restructuring, changes in employment protection and social security, not to mention increasing internal flexibility (with regard to working hours etc).

Secondly, even although it is true that vulnerable groups of workers are bearing an even higher burden, which in our view is very problematic and will indeed have to be addressed, there is no logic in expecting that lowering the level of protection of 'standard' workers will have a rebalancing effect.

In that situation, the 'fittest' will have even more scope for survival at the expense of the weak, and therefore the more vulnerable groups of workers will be even worse off! Moreover, if the problem is the gap between the various segments, one does not necessarily offer the best solution when **generalising a state of precariousness** and lack of protection to all workers. Insecure employment conditions will generate low training, low productivity, low innovation for all workers, not only for the atypical ones.

Thirdly, there is a too easy and one sided analysis of why companies resort to 'flexible contracts'. From all the various experiences in Europe we can learn that it is more a combination of lower costs and no protection than 'flexibility' as such that they are seeking. And as the water is always goes to the lowest point, the more possibilities there are for avoiding and evading costs of labour protection, social security coverage etc., the more they will be used especially for vulnerable groups who have little choice. When the exit option is near and easy, every employer will use it.....

An important part of the Commission's analysis focuses on the development (by deliberate policy reforms, often under the pressure of OECD reports, or international financial institutions requiring struc-

tural change programmes!) of flexibility 'on the margins', introducing more contractual diversity to accommodate perceived needs of business to hire workers at lower cost with less protection against dismissal (fixed term, agency work, etc.), or to promote the entry of newcomers and disadvantaged jobseekers, or to be able to only hire workers when needed (on call, part time work).

In the Commission's analysis, rather than concluding that this development has gone too far or has not been properly accompanied by 'updating' labour law, the argument is that this did unfortunately not touch the *'overly protective terms and conditions' of the standard workers, and that it is high time to evaluate if 'the traditional model of the employment relationship may not prove well suited to all workers on regular permanent contracts facing the challenge of adapting to change and seizing the opportunities that globalisation offers'*. 'Alternative models of contractual relations' should therefore be developed.

According to the ETUC, the current situation in many countries, where an increasing number of workers are working in precarious conditions under a whole range of contractual forms is indeed very worrying. This is not only threatening the workers involved, but also the 'standard' workforce, the coverage of collective agreements and the strength of trade unions. It is therefore high time to take appropriate action at various levels, but instead of reducing the protection of so called standard workers these actions should focus on extending protection to precarious workers

Rebalancing and refocusing the scope of labour law

It should be recognized that a lot of these contractual forms do not serve 'flexibility' needs, but are mainly developed to provide employers with a low cost and low risk workforce. Several of them are moreover 'sham' contracts, meant to contract away or hide a different reality (zero-hour contracts are never meant, neither by the employer nor by the worker, to really mean that there will be no hours worked! many so called self employed workers are in reality working in situations of great dependency and subordination; in a lot of situations workers are hired via chains of subcontractors to avoid tax or other obligations, or evade collective agreements).

To address this situation, we need first of all to address the fact that not all non-standard contracts are acceptable contractual arrangements, as their terms and conditions may be totally out of balance, putting the full burden of risks on the worker, which is against the basic principles of labour law. This is why in many countries, mechanisms have been developed to 'look through' the formal contractual arrangements, and decide in favour of the worker for instance that a so called zero hour contract is in fact a part time contract. Therefore, the Commission should clarify its position on this issue, and not too simplistically advocate that all forms of contracts should be possible.

Secondly, we need the political will to invest in better enforcement, and to develop and implement mechanisms to refocus labour law, such as proposed by the ILO in its recent recommendation. (NB: Such a proposal was already part of the Commission's consultation document in 2000!)

For this, existing labour law as such, which in most countries is geared towards judging the facts as more important than the form of the contract, is already 'flexible and modern' enough. However, it may be necessary to develop better procedures and mechanisms (such as presumptions of law, that have been introduced in some Member States to reverse the burden of proof, presuming that a worker has employment status unless the employer proves otherwise, etc.). Such an approach should clearly be distinguished from the legal distinction in the UK between 'employees' who qualify for all employment protections and 'workers' who are entitled to very limited rights, which has contributed to increased labour market segmentation with the most vulnerable workers to be found in the group of 'workers' or not even qualifying as workers.

Address real causes for segmentation, such as gender patterns and lacking policies to support work-life balance

To prevent confusion, it is important to state that 'non-standard' forms of work are not necessarily precarious forms of work, and some may well be framed in the form of a 'standard/permanent contract'. A good example is part time work, that in some Member States is still synonymous with precarious work, whereas in other Member States it has evolved to a form of work that is embedded in 'standard' labour

law and social security regulation, and largely taking place in mainstream employment under normal indefinite employment contracts. The Commission too easily adds up every kind of non-standard work, arguing that the total percentage is now so enormous, that therefore the level of flexibility under standard contracts needs to be addressed. In our view this approach is turning the world upside down. Moreover, this approach is not in line with more than a decade of activity by the Commission and the European Social Partners in Directives and Framework Agreements, aiming at providing these forms of work with equal treatment and protection.

At the same time, it is clear that there are persistent problems with regard to the sectoral and professional segmentation linked to the gender dimension of part time work. Rather than blaming contract law for this situation, it is high time to address the real causes for this segmentation, and develop measures and policies to support reconciliation of work and family life for men and women also in standard employment, which is a totally different dimension of flexibility. The ETUC has recently responded to the Commission's Consultation of the European Social Partners on the Reconciliation of Professional, Private and Family life.

In this position it has indicated that there are a number of areas in which action at EU level by EU institutions and/or Social Partners would be beneficial for working men and women as well as economies and societies at large, and would contribute to reducing segmentation in the labour market.[4]

One of the challenges is, to increase possibilities for influence and control over the organisation of work and working time, i.e. 'active' flexibility for workers, as has also been demanded by the ETUC and supported by the European Parliament with regard to the revision of the Working Time Directive.

Extend protection to new forms of (dependent) work

Where there are genuine new working realities, which are difficult to grasp in the concept of the employment contract, it maybe necessary to develop additional forms of protection. 'Economically

4 ETUC position of December 2006 on Reconciliation of work and private and family life.

dependent workers', freelancers and self-employed workers may greatly benefit from extension of social security protection and other forms of protection and rights. This could also contribute to diminishing the gap between workers with an employment contract and self-employed workers, thereby taking away some of the incentives for employers to manipulate with fraudulent self employment. (This should however not be confused with the introduction of a 'third category of worker' between employees and self-employed workers, which is something the ETUC is not at all in favour of.)

Certain forms of protection are already now afforded to 'working people' in a broader sense which is not necessarily linked to the civil law status of the contract. When it comes to health and safety in the workplace, in several countries the obligations of the employer extend to everybody who is working on his working site, being either directly employed by him, or sent by an agency, or self-employed. Similar debates are taking place with regard to the coverage of working time regulation (see the Directive on working time for truck drivers, in which the EP succeeded to include the obligation to extend the regulations to self employed truck drivers).

The challenge is, to develop not so much a 'floor' of rights' but a 'core' of rights (in French a 'socle de droits'), which is offering all working people regardless of their precise employment status a set of essential rights, such as the right to organise in trade unions, health and safety protection, social security coverage, maternity protection and parental rights, a right to life long learning, etc. (see similar ideas developed in the Supiot report). Such an approach should clearly be distinguished from the legal distinction in the UK between 'employees' who qualify for all employment protections and 'workers' who are entitled to very limited rights, which has contributed to increased labour market segmentation with the most vulnerable workers to be found in the group of 'workers' or not even qualifying as workers.

10. THE INDEFINITE CONTRACT: A MODERN AND ADEQUATE CONCEPT

In the view of the Commission, the 'traditional' regulation of the employment contract, based on the assumptions of a 'permanent full time contract between a single employer and worker, regulated by

labour law', is outdated and no longer suitable for the modern world of work. It is argued that there is a need for an 'alternative model of contractual relations', although the Green Paper does not explain what kind of alternative model is envisaged.

In recent times, the European Court of Justice (ECJ) has been called upon several times to judge cases in which national labour market policy regarding 'flexible forms of work' was at stake. In those cases, **the ECJ explicitly referred to the right to enjoy an indefinite contract of employment** and the principle of equal treatment as principles of European workers' protection, that limit the autonomous scope of Member States to flexibilize their labour markets and labour law.

For the ECJ, the importance of job-security and the protection of the permanent contract are not outdated at all.

In the *Adeneler* case (ECJ 4 July 2006, about fixed term work in the Greek public sector) the ECJ had to interpret the aims of the Directive on Fixed Term work, based on a framework agreement of the Social Partners at EU level. According to the ECJ, Member States are obliged to guarantee the effect as envisaged by the Directive. This effect is that permanent contracts are the regular situation, and that fixed term contracts are the exception. The regulations to limit the consecutive use of fixed term contracts must therefore be interpreted as means to prevent fixed term contracts being used for permanent needs. And the measures taken by the Member State in this regard must be effective to reach that result.

In the *Mangold* case (ECJ 22 November 2005, about a specific regulation for older workers in the Hartz package in Germany) the Court decided that a regulation which allowed employers to give workers over 52 years old an unlimited series of fixed term contracts constituted discrimination on the grounds of age, and was against the principle of equal treatment, as laid down in the Framework Directive on equal treatment in employment (2002/78/EG), and as guaranteed by a variety of international instruments and national constitutional traditions. According to the Court, making an exception to the principle of equal treatment demanded strict proportionality, and the simple setting of an age-threshold was not sufficient. The policy measure would have as an effect that a

substantial part of the working population would be excluded for a considerable part of their working life from the right to enjoy a permanent job.

In a very recent case, CGT a.o. v *French Prime Minister* (ECJ 18 January 2007), regarding the exclusion of young workers under 26 years of the right to information and consultation in SME's, in the framework of measures said to promote their employment opportunities, the Court decided that the Directives on information and consultation and on collective dismissal do not allow for an exception to the personal scope.

These cases confirm the fact that there are principles in European law and jurisprudence, which limit the scope for Member States to reduce the job protection of certain groups of workers in order to improve their chances of labour market access.

The ETUC welcomes this jurisprudence. It is those policies that have increased segmentation on the labour market, leading to traps and ghettos of precarious jobs for vulnerable groups of workers, rather than providing them with genuine quality job opportunities.

No need for an 'alternative model of contractual relations'

The world of work, even in the globalised 21st century, can be managed very well with a limited amount of contract forms, which are regulated in a transparent and enforceable manner, and countries should be stimulated to go in that direction.

It would be worthwhile to investigate good practices in different countries in this regard. The 'indefinite' employment contract may well turn out to be a very modern and flexible concept, capable of offering the most adequate contractual framework to employers and workers.

The ETUC is therefore strongly against any suggested 'alternative model of contractual relations' as suggested (without any further explanation.....) by the Commission.

11. LABOUR LAW AND FLEXICURITY: THE AIM IS MORE AND BETTER JOBS

The Commission is looking at the role of labour law in 'advancing a flexicurity agenda'. Although in a footnote (!) it is recognized that labour law is not the only relevant factor in this context, it is amazing how the Commission reduces the flexicurity agenda in this Green Paper to a matter of labour law, and reduces labour law to the issue of external contractual flexibility, i.e. dismissal regulation and non-standard contractual arrangements.

It focuses on the need for 'more flexible employment protection', i.e. relaxing the 'overly protective terms and conditions' linked to the traditional employment relationship, such as dismissal regulation, as a panacea for all diseases, i.e. to ease transitions for standard workers from one job to another job, and to ease access for outsiders/non-standard workers to more regular employment.

The argument – with Denmark as the guiding example - is that 'unemployment benefit systems and active labour market policies are better insurances against labour market risks' than EPL.

The Commission's Green Paper uses a very limited notion of flexibility (mainly focussing on contractual flexibility, i.e. external/numerical flexibility) and also a very limited notion of security (focussing on increasing employability by training, active labour market policies etc.).

According to the ETUC 'flexicurity', if taken seriously, is **not** about **one** model of labour market regulation and organisation, nor one recipe for economic performance, and not about a simple trade off between job protection and policies to support the employability of the worker. If anything, it is about finding a balance between the - sometimes conflicting - needs and interests of enterprises/workplaces and workers with regard to both flexibility and security, with the long term objective of contributing to a high performing and sustainable EU both from an economic, a social and an environmental perspective.

Looking at the objectives for the labour market and the role of labour law, it is about the objective of **both more and better jobs**.

This would mean that 'flexicurity' is also about the balance

between flexibility and security within all the constituting elements of flexicurity, as defined by the Commission in various documents: employment protection legislation (EPL), unemployment benefits and social security (UB), active labour market policy (ALMP) and training and lifelong learning (LLL).

Labour contracts need to provide the worker with both flexibility and security. A sufficient level of job protection and protection against arbitrary behaviour of the employer, allowing the worker and his representatives to have influence on the workplace and the organisation of work and negotiate about his/her needs for flexibility and security, is part and parcel of that, taking into account that the EU has as one of its essential obligations to strive for fair and just working conditions.

Therefore, and in line with the 1989 Social Charter, the first objective of any 'flexicurity' agenda should be to improve living and working conditions as regards non-standard forms of work, and **reduce the level of precarity and lack of rights and protection** in those contracts. Ensuring more and better implementation and enforcement of existing labour regulations and standards, clarifying the employment status of those contracts, reduce the imbalance inherent in some of these contracts between the parties to the contract, extending labour law protection and equal treatment, are among the policies and measures to be taken urgently.

As argued in previous paragraphs of this document, this objective is not served with reducing the level of employment protection in regular/standard employment.

The second objective is to **improve the quality of jobs** in terms of work organisation and the **level of flexibility available for workers**. Many workers experience a rigid, controlled working life, where their knowledge and capacities are not used or developed, where they have little or no influence on the direction or organisation of their work, and have no possibilities to adjust working times and schedules – that are increasingly geared towards the flexibility needs of employers - to their own needs.

Increasing options for life long learning - for both standard and non-standard workers - is an important element, including the need to develop work organisations towards more sustainable learning workplaces. Enhancing positive and active flexibility for workers is in

the interest of both workers and companies, as it contributes to the motivation, loyalty and productivity of workers.

The third objective is to **improve social welfare systems** to support and facilitate increased labour market flexibility and transitions. Focussing on employability is not enough. If the focus is too much on a trade off that reduces job protection while giving the worker some vague promises of employability when he/she invests in her own level of education and is subject to some activation policies, this puts the burden of adjustment and adaptation in an unacceptable way on the individual and increases the level of insecurity especially for the more vulnerable groups on the labour market.

There is strong evidence that a high level of ALMP combined with high levels of social security benefits encourage labour market participation and the dynamic on the labour market. Those groups that are most exposed to the increasing insecurity that is accompanying globalization and the many changes on the labour market should especially be properly be covered by the social security system.

The fourth objective is to **safeguard the principle of job protection** and protection against unfair dismissal as a basic principle of national and international law, and the **autonomy of labour law** as not being a mere function and instrument to economic and market rationales.

Whereas there may be valid discussions possible about the design of employment protection regulations, which may be more or less geared towards supporting workers in coping with transitions and change, there is clear evidence that only systems that provide workers with strong support in terms of ALMP and high levels of unemployment benefits, in a framework of high trade union density and/or a highly developed social dialogue, allow workers and their representatives to be confident enough to accept a different design of EPL, taking into account that they have been actively participating in negotiating the modalities of the changes.

Experiences in several Member States show that social partners are increasingly taking up the challenge of negotiating forward-looking packages of measures promoting 'security in change'.

A top-down and simplistic attack on the level of EPL itself will cause enormous unrest and – if promoted by the EU institutions – be seen as another signal of the failure of the EU to address the concerns of its citizens.

The fifth objective is to **improve the capacity of social dialogue and collective bargaining** to negotiate modalities of adaptability, flexibility and change. Where in Europe flexicurity models have come about, they all were in one way or the other based on negotiations between social partners at various levels (see not only Denmark, but also Netherlands, Austria, Spain, etc.).

Social partners in principle are best placed to discuss and negotiate balanced approaches, in line with the industrial relations traditions in their country and sectors. Where in Member States social dialogue is inadequate, social partners weak, and collective bargaining not well developed, this reduces the ability of Member States to adapt to change in a way that is accepted by their populations.

Therefore, promoting social dialogue and collective bargaining, and strengthening the capacity of social partners at various levels to represent the interests of all working people (insiders and outsiders) and all kinds of business (multinationals as well as SME's) is of key importance to pursue a flexicurity agenda.

12. THE EU MUST SUPPORT MOBILITY AND CHANGE BY A PROPER LEGAL FRAMEWORK

The ETUC would like to use this Green Paper as an opportunity to discuss the need to re-balance in several countries the over-emphasis on flexibility and deregulation[5], partly legitimized by previous rounds of OECD and EU recommendations and guidelines, and have a genuine and open debate on flexibility needs, not only of employers but also of workers, and on the security dimension of flexibility. Many of the questions raised in the Green Paper contain openings for such debate.

However, it is significant that the Commission in the Green Paper does not come up with any concrete proposals or even ideas on what should or could be done, and only refers in a footnote to the recent ILO recommendations that were adopted in 2006 on the scope of the employment relationship[6]

5 example: Spain, where recently a tripartite agreement was reached, to limit the use of fixed term contracts as being harmful for the qualitative development of the Spanish economy

6 ILO Recommendation 198, 2006

So, it remains to be seen if there is a genuine political will of the Commission to take any meaningful actions on the basis of the consultation....

The purpose of the Green Paper, as expressed by the Commission, is 'to launch a public debate in the EU on how labour law can evolve to support the Lisbon strategy's objective of achieving sustainable growth with more and better jobs.' The Commission sees its initiative in the context of a range of initiatives on the wider topic of flexicurity, that the Commission is developing in collaboration with Member States, 'to help steer their reform efforts'.

This means that the Commission is mainly acting within the scope of employment policy and guidelines etc. However, this can become a very far reaching political activity, providing Member States with arguments for certain kinds of reform. The ETUC has therefore major questions as to what kind of guidance can or cannot be seen as appropriate, taking into account the limited competence of the EU with regard to labour law and social security, and the need to respect the autonomy of national social partners.

Moreover, real 'modernisation' and genuine and balanced 'flexicurity' models, wherever these have come about in Europe, have always been the outcome of negotiations between social partners at various levels, and cannot and should not be introduced 'top-down' from the EU level.

At the same time, the ETUC is of the opinion that there is an urgent need for a debate about if and how the capacity of labour law in all its dimensions should be strengthened to cope with the modern world of work while providing for fair and decent working conditions and labour standards to all workers on EU territory.

According to the European Treaties, the Social Charter and the Charter of Fundamental Rights, the EU has a whole range of obligations and competences to act, such as:

- it should work towards the upward harmonisation of living and working conditions of non-standard workers;
- it should provide for fair and just working conditions to all EU workers;
- it should adopt minimum rules and regulation to safeguard the health and safety of workers including in the area of working

time, and ensure that there is no unfair competition in the EU at the expense of the health and safety of workers;

- it should guarantee equal pay and treatment between men and women, and ensure non-discrimination in employment and other areas on grounds of race and ethnic origin, religion, age, handicap and sexual orientation;
- it should ensure proper implementation and enforcement of existing EU rules and regulations;
- it should guarantee free movement of workers, services, goods and capital, in a framework of equal treatment and fair competition;
- it should develop employment and other policies to promote more and better jobs;
- it should promote social dialogue.

The ETUC and its affiliates are increasingly aware that the 'emerging European labour market(s)' cannot be managed, with regard to the social field, by relying on national rules alone, while in the meantime internal market and competition rules are increasingly interfering with national autonomy in the social field. Therefore, we have recently made the case for a **combination of some EU 'rules of the game', certain EU minimum standards, and respect for national social policy and industrial relations.**[7]

In the ETUC's view, the European Commission, supported by the Council, and where appropriate in cooperation with the European Parliament, and in consultation with the Social Partners, should further develop an EU-wide supportive legal framework supporting the emerging EU labour market(s) and cross border mobility of workers (both in the framework of free movement of services and free movement of workers).

Such a supportive framework should consist of:

- a set of minimum standards established at EU level, as a bottom in competition (regarding for instance working time and the protection of non-standard forms of work such as agency work);

7 See ETUC position December 2005 on transitional measures for free movement.

- guidelines and mechanisms to clarify who is covered by the European standards: who qualifies as a worker; in which cases also self-employed workers are covered;
- the establishment of clear principles of equal treatment in wages and working conditions applying to the place where the work is done,
- equal access to social support systems;
- providing for a better shield for national labour law and social protection systems against disruptive invasion by EU market and competition rules
- the obligation to respect the host country's industrial relations systems, i.e. the rules and regulations with regard to collective bargaining and industrial action;
- mechanisms and instruments, including liability of principal contractors, for cross border monitoring and enforcement of working conditions and labour standards;
- more proactive and rational migration policies, which focus on combating labour exploitation instead of deportation of irregular migrants, providing those workers with protection of their human rights and bridges out of illegality;
- embedding free trade in wider social values, through the development of European social policy and rights;
- developing forms of countervailing power of organized labour at transnational level.

13. ON THE QUESTIONS RAISED IN THE GREEN PAPER: OTHER AREAS FOR EU ACTION

Only in a few areas does the Commission mention possible Community action: temporary agency work (mentioning the deadlock on the Draft Directive), the organisation of working time (trying to get new guidance on how to get out of the deadlock on the revision), mobility of workers, and undeclared work.

Furthermore, the question is raised concerning if and how to take action on new forms of work that are not covered clearly, in law or in practice, by labour law, such as disguised employment relationships, economically dependent workers and self-employment.

Temporary agency work

With regard to temporary agency work, the ETUC is already for many years making a clear case for a strong Temporary Agency Directive providing for European minimum standards with regard to agency work, to complement the Posting Directive (which only regulates which law applies in case of cross border agency work, namely the law of the host country).

In the meantime, in most EU countries equal pay with the user enterprise (including the possibility to derogate by collective agreement) is part of the legal framework. The ETUC therefore insists that this should remain an essential part of the Directive.

Clarifying the employment status of the agency worker (especially important for the UK and Ireland where agency workers are still not having unambiguous employee-status) should be incorporated in the next phases of this debate.

Also, in recent times we have argued in favour of a European instrument regulating joint and several liability (or 'chain-responsibility') of user enterprise and intermediary in case of agency work and subcontracting, not only for the payment of taxes and social security contributions, but also for wages (see the ETUC position on the Posting Directive as adopted in March 2006[8]).

The European Commission should encourage the Member States that have not yet done so to take initiatives to introduce so called systems of 'client liability', 'chain responsibility' or 'joint and several liability', bring together the various practices in Member States, and consider the proposal of a Community initiative on this matter.

Working Time

With regard to working time, it is surprising and also worrying that the Commission has inserted this issue in the Green Paper, with an ambiguous question that gives the impression as if the Commission wants to start a new debate about the need for having any Working Time Directive at all. For the ETUC, this is not accept-

8 ETUC position Posting Directive 2006, and recent letter on implementation

9 First and second stage consultation etc.

able. ETUC refers to all its positions about the Working Time Directive adopted since 2003[9], and reiterates its support for the outcomes of the first reading in the European Parliament, which voted with a convincing majority in favour of the Cercas report.

In the ETUC's view, the EP adopted a clear 'flexicurity approach' to the revision. It strongly supported the principle that health and safety protection cannot just be understood as an individual interest, but is in the interest of society in general: in a limited sense, to ensure that it also protects third parties that may suffer from the bad health and safety of others (exhausted drivers in traffic causing accidents, tired doctors making mistakes etc.); and in a wider sense, to ensure that a healthy workforce and a healthy population are able to reproduce themselves and bring up healthy new generations of workers and citizens.

Allowing individuals to opt-out from health and safety regulations is therefore fundamentally wrong, and should never have been accepted as a provision in the Working Time Directive.

When the EP had to take a position on the very weak proposals of the Commission, against the background of severe pressure from Member States to keep the opt-out in place and to find a way out of the Simap and Jaeger judgements, it chose, with the support of the ETUC, to be strong about principles and flexible about solutions.

It was strong about principles, by saying:

- every and any form of opting out is not acceptable
- ECJ judgements, i.e. the Community acquis, must be respected, including the recognition of inactive on-call time as working time

It was flexible about solutions, by accepting:

- there can be a transitional period in which the opt-out can be gradually 'phased –out'
- it would be allowed to deal in a flexible way with how to count inactive hours.

In developing the package of revisions, the EP took into explicit account that the basic principles of labour law (as mentioned above in this position) had to be respected. It therefore developed the following approach to the issue of derogations from standards.

When the protection is not in the standard itself (maximum amount of working hours, minimum amount of rest hours, etc) then the protection must be in the process (countervailing power by collective bargaining, or at least information and consultation of workers and their representatives).

Therefore, with regard to the issue of lengthening the reference period for counting the 48 hours (up to 12 months) it only allowed this by collective bargaining or after proper information and consultation of workers and their representatives.

Finally, when seeing that the new provisions offering flexibility to firms would entail a high potential risk for increased irregularity and unpredictability of working hours for workers, it decided that workers – especially modern workers, being increasingly men and women with family and care responsibilities - needed also at individual level a 'counter-right' to flexibility, to accommodate their needs.

Therefore, an obligation on employers to inform workers well in advance of any change in their working time pattern was introduced, and the worker was accorded the right to request changes in his/her working pattern.

All in all, one could call the package an excellent example of a 'flexicurity approach', offering flexibility and security to both employers and workers.

Therefore, the ETUC is calling on the Commission and Member States to take the EP's position into full account when working towards a compromise on the revision of the Working Time Directive.

Towards an EU definition of a worker?

The Commission asks if there is a need for more convergent definitions of 'worker' in EU Directives.

In the current situation, EU Directives leave the definition of worker or employee to the Member States. However, at least when it comes to the implementation and application of EU labour law and labour standards, it should not be possible for there to be a wide divergence or scope for manipulation with regard to which categories of workers are covered or not covered,

In its recent position on the Commission's Guidelines with regard to the implementation of the Posting Directive[10] the ETUC has pointed to the fact that there are currently major problems with the proper implementation and application of the Posting Directive, related to lack of clarity with regard to the concept of the posted worker. According to the Directive, 'a posted worker means a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works'. Not only does this definition lead to many interpretation problems at national level, also in many Member States employers and service providers are abusing the 'self-employment' status to circumvent the applicability of the Posting Directive.

The ETUC has therefore argued, that it would be very useful if the Commission developed clear guidelines with regard to such issues, to promote more coherence and effectiveness in the implementation and enforcement of the Posting Directive,

taking into account that the definition as such of the employment relationship as distinguished from independent and self employed work should be left to national law and practice.

Such guidelines would also fit very well in an approach as recommended by the ILO in its 2006 Recommendations on the Scope of the Employment Relationship, which also recommends a set of guidelines and criteria to determine the existence of an employment relationship.

Combating undeclared work

With regard to undeclared work, the ETUC has expressed on several occasions, especially when discussing the Posting Directive, that there is a clear need for **more and better enforcement** of existing labour law and labour standards. We also want to stress the need to develop a stronger role for the EU in promoting more and better cooperation and coordination between national labour and social inspectorates, and have suggested establishing some kind of European 'Socio-Pol'.

In addition, ETUC wants to address the issue of the growing informal economy and especially the **labour exploitation** of undocumented migrant workers, demanding that there be more focus on

[10] Letter ETUC to Commission of 1 March 2007

instruments and mechanisms to tackle exploitation, including the recognition and enforcement of fundamental human and labour rights of irregular migrants, instead of repression and deportation.

ETUC is currently developing more concrete suggestions for the Commission to take into account when taking initiatives in the area of irregular migration, such as:

- ensure that the competences and activities of labour inspectorates are kept separate from immigration policing duties
- provide for possibilities to complain anonymously about exploitative working conditions
- separate labour rights from immigration rights (i.e. ensure that hours worked will always have to be paid, regardless of immigration status)
- clarify that irregular migrants have the fundamental right to organize in trade unions, and that providing them with support to get their human rights and human dignity recognized is not to be seen as 'facilitating irregular migration' (which is criminalized under EU law.....)

Increasing certainty with regard to labour law

The ETUC is clearly in favour of clarifying the employment status of temporary agency workers (see above).

Furthermore, as has been argued above in paragraph 5 of this position, the ETUC is in favour of developing mechanisms and policies to rebalance and refocus labour law, with a view to ensuring that labour law in its widest sense covers all workers that are working in the framework of a subordinate employment relationship. It should not be possible – as is now often the case - for the most vulnerable workers to be at the same time the ones not covered, in law or in practice, by labour law. In our view, the Commission should therefore first of all promote the implementation by Member States of the ILO Recommendation 198 as adopted by the ILC in 2006.

In addition, the Commission could develop guidelines, based on jurisprudence and good practice examples in Member States (for instance the introduction of a presumption of law in some Member

States regarding employment status, which has led to a reduction of bogus self employment and precarious contracts), and on how to improve better enforcement of labour law in situations of non-standard employment

A 'core of rights' to cover all workers

The ETUC is in favour of, by developing a core of rights (to be clearly distinguished from a 'floor of rights') applicable to a wide circle of working citizens, including new forms of (dependent) work. This could provide security throughout working lives and careers.

It should clearly include the right to freedom of association regardless of employment status and the right to collective bargaining, which would have to be safeguarded against national and European competition law as far as it is aiming at improving the living and working conditions of the workers concerned.

The ETUC has not been able to elaborate a detailed position on this issue in the short time available for this consultation, but would be ready to contribute to the debate on this issue in the follow up to this Green Paper.

14. CONCLUSION

The ETUC highly recommends that the Commission in its Communication later this year, following up on this Green Paper, revises its analytical framework and responds to ETUC's positions about all the above mentioned issues with a view to modernise **and strengthen labour** law to meet the challenges of the 21st Century.

Executive Committee- October 2007

2 COMMISSION'S COMMUNICATION ON "Towards Common Principles of Flexicurity: More and Better Jobs through Flexibility and Security"

ETUC's position

Executive Committee, 17-18/10/2007

I. INTRODUCTION

The Commission communication from the 27th of June on flexicurity has the merit of opening up the possibility of an in-depth discussion on the way the European labour market is adapting itself to change. This discussion will lead to the adoption of common principles on 'flexicurity' by the European Council at the end of this year.

The ETUC identifies this as an important opportunity to promote a concept of 'flexicurity' that is labour friendly, balanced and based on the realities of workers on the European labour market. The first part of this resolution defines the ETUC's agenda of flexicurity. The second part compares the ETUC view with the communication from the Commission and concludes that the communication is focussing mainly on reducing key workers' rights such as the right to stable jobs and secure contracts. The ETUC resolution concludes by urging the European Council to adopt a balanced and more labour friendly approach to flexicurity.

II. FLEXIBLE AND SECURE LABOUR MARKETS: THE ETUC POINT OF VIEW

1. **Thinking flexibility and security together: A secure workforce is good for productivity and competitiveness**. The idea that Social Europe and competitiveness for business are excluding each other, that flexibility for business and the security of the workforce contradict each other, is a non-starter. For the ETUC, the right starting point is instead to recognise that both business and workers need flexibility as well as security.

Workers need flexibility and autonomy in working time to make work and private life compatible. They need protected mobility to move into better jobs and to back up their negotiating position: Workers that are mobile will not accept to cut wages to 'subsidize' jobs that have become outdated because of the failure of the employer to innovate. They also need a flexible work organisation with rotating jobs, multi-skilling and continuous training, to enable them to safeguard jobs by improving innovation and productivity.

Business, at the same time, has a major interest in a secure workforce: Firms need a secure workforce to respond to competitive challenges. In order to compete in the global marketplace, business needs committed, motivated and skilled workers that are open to innovation and more productive techniques. An insecure, casualised, deskilled work force will not contribute to better productivity and quality objectives.

Firms, at the same time, also need workers to be mobile so that workers can better match their skills and competences with new job openings. Workers however will be much more willing to change jobs if they can be sure that the new jobs they are moving into have good upskilling and career prospects, good working conditions and are offering stable contracts. Societies also need to be socially mobile, giving people more chances during their lifetime.

2. **ETUC's key principles on flexible and secure labour markets.** It is not enough to simply state that flexibility and security should be seen as mutually supportive. What needs to be done is to make sure that flexibility and security are actually functioning in this way and that there

are no trade offs but complementarities between the two principles. To turn security into a basis for flexibility and vice versa, the ETUC puts forward the ten following policy dimensions and orientations:

Ensure good and robust job protection systems: The European labour market needs a good and robust system of job protection. Job protection is not the same as lifetime employment but protects workers from unfair and arbitrary dismissal. It promotes internal flexibility and business competitiveness, by, on the one hand, forging a loyal and motivated workforce and, on the other hand, providing incentives to business to invest in continuous training, innovation and productivity. Job protection also contributes to more secure job mobility by giving workers and trade unions the leverage to negotiate transitional security with the employers.

Undertake 'smart' reforms by enlarging and complementing job protection with employment security. Besides ensuring a robust level of job protection, the design of job security systems matters as well. Here, small changes in the design shifting specific accents of these systems can increase their contribution to deliver secured transitions and protected mobility. Here, the importance of advance notification in particular needs to be underlined. Advance notification not only provides dismissed workers with an early warning signal. It also makes it possible for social partners' funds and public employment services to start immediately with preparing these workers for the search for a new but rewarding job even when they are still working with the old employer.

Put job quality, including the principle that stable and secure open-end contracts, should remain the general form of employment, at the centre of flexicurity. Workers will be more inclined to accept 'change' and to move between jobs, firms and sectors if the labour market is mainly build up of quality jobs. Mobility will also be enhanced by the knowledge that the overwhelming majority of jobs offer an interesting and rewarding job as well as a stable and secure work contract. The Laeken indicators on job quality (see Commission communication 2003 on the quality of jobs) are a good basis to develop an agenda of job quality but need however to be enlarged so that they also include the principle of promoting stable, secure and open-ended work contracts as the general rule.

Promote negotiated flexicurity by strong, autonomous and representative social partners. Strong and omni-present trade unions allow collective agreements to strike a balance between flexibility and security without falling in the trap of generalized downwards competition on labour standards. Promoting collective bargaining solutions however entails moving from 'lip service' to real policy action. It includes measures to develop the role of social partners in the governance of social welfare systems, to extend collective bargaining (for example collective agreements providing workers with access to training or promoting reconciliation between work and private life) and to respect the autonomy of action of social partners. Given the diversity of industrial relations in Europe, labour law will in many cases need to continue or even increase its role in protecting workers against the power of employers to take away the jobs for their workers. Also, the principle of 'the rule of law' needs to be respected as well, implying effective enforcement of EU and national legislation.

Improve social welfare systems by ensuring generous social benefits covering all forms of contracts and work. Good unemployment benefit systems make change acceptable to workers by providing an alternative source of income when workers lose their job. They promote mobility by delivering the unemployed the financial means to look for a new job. They function as a 'job insurance' mechanism, compensating workers for investment they made in moving to a new job. They improve job matching and the overall efficiency of the economy by ensuring that workers do not have to accept a job below their skills level. Together with educational and retraining policies, they allow workers to redirect their skills so that they are back in line with the needs of a modern economy. They score up the practice of good working standards by providing workers with an immediate alternative to accepting or remaining in jobs with exploitative working conditions. They help preventing, along with other measures, workers getting trapped in 'bad job traps' by providing all workers, irrespective of their specific work contract, access to social security and services, including care for the children and the elderly.

Invest in active labour market policies. Active labour market policies are crucial to build bridges from one job to another job. In combination with generous benefits, public employment services,

retraining programmes, job search assistance constitute a 'learnfare' infrastructure that facilitates the transition into another and rewarding job.

Promote lifelong learning. An educated work force with updated skills is a flexible one, both in terms of internal as well as external flexibility. However, statistics show that business invests less and less in the training of its workforce, and this despite the increasing demand for better qualifications. To remedy this every worker should have an annual competencies and qualifications development plan besides the necessary training to ensure that the worker's competencies and skills are adapted to the changes introduced at the workplace level.

Putting better gender equality into practice. Compared to men, women often find themselves working in more precarious and insecure jobs characterised by excessive flexibility. Legislation, collective agreements, welfare systems and public services all need to be strengthened to fight gender imbalances and discrimination and improve the situation of women in the labour market.

Complement flexicurity with a growth and job friendly macro economic policy. A flexible labour market, even when it is a secure one, does not create more jobs. Jobs materialise because business face demand for their products and services. To kick start the process of job-creation, macro-economic policy needs to inject aggregate demand into the economy, so that more jobs become available for a more mobile and/or a more productive workforce.

Make available the budgetary resources that are necessary to finance flexicurity. Flexicurity policies need to be financed, implying that member states can even less afford the cycles of competitive tax dumping that are regularly occurring in Europe. Coordination of tax policy in particular on these categories of taxes that have a mobile taxation base, is urgent and necessary. Moreover, instead of following an "accountant's" approach, the implementation of the reformed Stability Pact should provide financial room to implement to allow member states to implement flexicurity.

III. ETUC ANALYSIS AND EVALUATION OF THE COMMISSION COMMUNICATION

3. The Commission blames 'job security' for precarious work.... The basic message of the communication is that workers need to give up on the security of their jobs and trade 'strict' job protection in for measures promoting so-called employment security. In the Commission's view, 'insiders' with their well protected jobs are responsible for pushing jobseekers – the 'outsiders' - into precarious jobs and/or keeping them in long term unemployment, thereby putting the sustainability of social protection systems at risk.

Given this approach, it comes as no surprise that the Commission communication implicitly defines 'strict' job security by qualifying the - rather low - level of job protection in Denmark as being 'moderate'. Indeed, on the OECD Employment Protection Legislation indicator for regular workers Denmark only scores 1,5 on a scale ranging from 0 (no protection) to 6 (maximum protection). By redefining Danish job protection as 'moderate' (instead as being 'low'), the Commission is targeting the majority of job protection systems in Europe, including countries that have high employment rates and are rather successfully in adjusting to change (Sweden, Netherlands, Norway). Only the Anglo-Saxon members (which have even lower job protection levels as Denmark) as well as Belgium and Italy (which have similar levels of job protection for regular workers) would be excluded from the Commission's drive against 'strict' job protection legislation.

4. **... and does not propose a satisfactory and credible policy agenda to promote 'employment security'** Although the communication does stress the importance of policies such as lifelong learning, active labour market policies and benefit systems, a closer look reveals that the approach taken here is a very narrow one. Basically, the Commission is describing a 'workfare' and not a 'learnfare' approach of getting people as rapidly as possible into another job without having due attention whether these jobs are precarious ones. With the unemployed under more pressure to accept such jobs, employers will be looking to reduce to downgrade the quality of the jobs on offer. The Commission's workfare approach can be recognized in the following points:

- Unemployment benefits are analysed from the point of view that they harm the incentives to accept work and not from the point of view that good benefits make workers secure and accept change. Whereas even the OECD uses the wording of 'generous' benefits to describe flexicurity, the Commission instead calls for 'adequate' benefits, which for some actually might mean 'low' benefits;
- The Commission's view of 'modern' social protection systems also seems to be skewed towards measures promoting low productive jobs such as 'in-work benefits' and 'efficient' job search support;
- Active labour market policies are limited to job search help and 'make work pay' policies. The dimension of skills for all, retraining the unemployed, advice and guidance, upgrading their skills has been omitted from the communication, although it is one of the centrepieces of the so called Danish 'learnfare' model;
- On lifelong learning strategies, the communication does contain some positive wording. However, this is subsequently being downplayed by rather peculiar language on the fact that employers currently bear a significant proportion of the costs of on-the-job training and that, in addition to this, workers may also bear some of the costs for example by investing their time. Here, the Commission ignores the structural trend of employers providing their workers with less and less access to training.

5. **Assessment of the Commission's flexicurity principles: not really consistent.** The Commission proposes eight flexicurity principles. The ETUC supports several of these such as the principle that rights and responsibilities should be balanced by all actors including business, the fact that flexicurity is not about one single model and that it needs to be adapted to the specific circumstances of Member states, the need to support gender equality, the role of trust and dialogue between governments and social partners.

However, the ETUC regrets that the Commission at the same time is proposing other principles that work to undermine the previous ones:

- By putting 'flexible' contracts as well as sufficiently flexible firing at the heart of the strategy, the Commission is in practice giving priority to the model of 'external' flexibility at the expense of other models using 'internal' flexicurity to adapt to change;

- 'Easy firing' and 'flexible' contracts will make the balance of power shift towards employers, thereby undermining the principle that business should also bear its part of the burden of adjustment as well as reducing business incentives to develop internal flexicurity strategies which are aimed at innovation and higher productivity;
- By calling for promoting both 'external' as well as 'internal' flexibility, the Commission ignores the fact that 'internal' flexibility can, for certain countries' be a valid and more productive alternative to models of 'easy firing' and high or excessive contractual diversity. The Commission's underlying idea seems to be that workers that can be easily fired will be less resisting a flexible work organisation that is then driven by the employers' needs;
- Calling upon social security to be 'modern' and 'active labour market policy to be 'effective', together with the statement that 'social protection needs to support, **not inhibit**, social protection inject a clear pro-deregulation bias in the Commission guidelines;
- In omitting any reference the importance of macro-economic policies in creating more jobs as well as the need to insure sufficient government revenue (including tax revenue from profits) to finance 'flexicurity', the Commission's flexicurity principles are seriously incomplete and risk creating the false impression that flexicurity, in particular low firing regulation, will in its own, create more jobs and provide new revenue for the state. This however is a dangerous illusion. The link between 'flexicurity' and general employment performance is not obvious. For flexicurity to work, growth-friendly macro-economic policies are necessary to create the new jobs that match a mobile and productive work force.

6. **Extremely worrying flexicurity indicators:** indicators are the basis of any strategy and certain indicators have the power to pull the strategy in the one or the other direction. This is why the Commission proposal to include the OECD indicator on job protection is extremely worrying. Not only is this indicator crude, unreliable and incomplete but also its simplistic focus on the level instead of the design of job protection is making the indicator inappropriate in giving a proper picture of the degree to which a certain system of job protection is promoting productive change. It also stands in contrast to European Union legislation giving workers rights to information and consultation in the event of collective dismissals, with the OECD index rewarding countries not applying this basic right.

Another indicator, proposed by the communication, concerns 'unemployment traps' or the extent to which unemployed are better off when accepting a job instead of remaining on unemployment benefits. This indicator also presents an incomplete picture of how benefit systems work to influence job matching and is constructed from the assumption that the only effect of unemployment benefits is to reduce the incentive for unemployed to take up jobs.

Including these indicators in the flexicurity agenda runs the risk that workers will start to identify the European Employment Strategy as a strategy to lower workers' rights.

7. **ETUC-conclusion: The Commission communication needs major rebalancing**. Comparing the ETUC's approach to flexicurity with the Commission communication shows that they take a totally different orientation. Whereas the ETUC is calling to modulate the design (not the level!) of job protection systems so that employment security measures are added to the security of stable jobs, the communication's focus is simply on reducing the **level** of job protection. Whereas the ETUC is promoting secure contractual arrangements as the general form of employment in Europe, the Commission wants 'flexible and reliable' contracts. Whereas the ETUC wants to see generous social benefits as a basis for 'learnfare' agenda and upwards mobility, the Commission is promoting a 'workfare' agenda.

Therefore, the ETUC is of the opinion that the Commission communication is presenting a view on flexicurity that is seriously imbalanced in favour of the interests of business. With the flexicurity agenda as defined by the Commission, business will get the 'flexibility' to fire workers at a low cost, while also obtaining the 'security' of having at its disposal a work force that is disciplined by 'workfare' policies to accept any kind of job, even if this is a precarious one.

This type of flexicurity agenda is not desirable. It will result in an insecure work force unable to engage in the agenda of training and developing high productive workplaces, in rising inequality because the elite of strong 'insiders' (CEO's, managers, supervisors) will capture the wage moderation efforts obtained from regular workers whose bargaining position has deteriorated and, finally, in an economic slowdown because of increased precautionary savings of workers.

IV. CONCLUSIONS: ETUC CALLS UPON THE EUROPEAN COUNCIL, EUROPEAN PARLIAMENT AND COMMISSION TO REBALANCE FLEXICURITY BY MAKING IT MORE LABOUR FRIENDLY

8. **Business and its responsibility need to be brought back into the equation**. The ETUC insists upon the Council and the Commission that the flexicurity communication is not balanced and needs substantial change to make it more friendly to workers. What needs to be urgently done is to bring the responsibility of business to develop and implement sustainable labour market practices back into the picture. The root cause of precarious jobs is not that workers are overly protected but that business has been using as well as developing loopholes in labour law by pressing governments with the false and dangerous argument that, for business to invest and create jobs, it needs to be 'pampered' by excessive and unlimited flexibility. To fight segmented and two-tier labour markets, labour law needs to strengthened, not weakened further. Modern and stronger labour law means making sure that:

- loopholes in labour law which are giving employers the possibility to keep (regular) workers continuously in what were supposed to be temporary and/or exceptional statutes, are closed. This includes measures to end chains of fixed-term employment and forms of 'sham' contracts (such as zero hour contracts for example).
- all forms of subordinated employment relationships fall within the scope of labour law and offer robust protection, thereby addressing situations of bogus self-employment and abuse of civil law contracts.
- a-typical jobs do not function as 'dead-end' job 'traps' but carry equivalent as well as extended rights to transform precarious jobs into regular work.

9. **To do so, the ETUC urges the European Council to undertake the following actions**. When defining the common principles for flexicurity, the European Council should:

- Make sure that segmented labour markets are addressed by ensuring upward convergence into stable contracts, not by trans-

forming stable contractual arrangements into an exception instead of being the general principle;

- Complement job security with employment security measures;
- Focus on a policy agenda promoting the quality of jobs;
- Strengthen and give more value to collective bargaining practices by strong and representative social partners, fully respecting their autonomy;
- Place at the heart of the strategy the promotion of strategic objectives such as a stable employment relationship, the right to collective bargaining and to trade union membership;
- Keep into account that there is not a single policy model or solution and that diversity of industrial relation systems in Europe needs to be respected;
- Insists on the fact that a flexicurity policy that is mutually supportive can only work if it is accompanied by growth-friendly macro-economic policies and by coordinated tax policies; at the same time, it must fully respect labour law;
- Insist on the role that action at the European level plays in setting a level playing field on sustainable labour market practices for business in the European internal market. Here, a European directive on temporary agency workers, ending this particular form of labour force segmentation by implementing the principle of 'equal pay for equal work' is the first and most pressing issue that should be taken care of;
- Put forward relevant indicators (in the place of indicators measuring the deregulation of job protection and social benefits), focussing on policies that invest in people and their skills, the extent to which workers are caught in 'bad job' traps, the level of precarity and insecurity of jobs and contracts and indicators measuring if workers succeed to move up to a better job and/or contractual status;

10. **Respect the joint European social partners' opinion**. Finally, the ETUC wants to draw special attention of European policy makers to the joint social partners' analysis on the challenges facing the European labour market where European employers have given their agreement to:

- analyse job protection systems from the point of view of 'design' (and not from the point of view of 'level' of protection);

including references to promote stable employment relationships and to complement (not 'substitute') job security with employment security measures;

- stress the importance of macro-economic policies exploiting the full growth and job potential of the economy;
- recognize the existence of situations of what we call precarious work (involuntary part-time and fixed term work, low wages, low transition rates into better jobs,...);
- underline the importance of social dialogue and autonomous social partners.

3 EU REFORM TREATY

Statement by the ETUC
Executive Committee, 17-18/10/2007

1. The ETUC regrets the unambitious nature of much of the EU Reform Treaty. There was a real opportunity to revive social Europe by extending qualified majority voting and by extending the competences of the Union to control the dark side of globalisation and rampant financial capitalism. What we have instead is a series of modest adjustments to the EU's framework of rules, which will have only a limited impact on the process of deepening Europe's capacity to act decisively in the world.

2. We understand the need for the EU to avoid a further period of institutional paralysis. We recognise too that there are important improvements in the text from a trade union view when compared to the Nice Treaty like the introduction of full employment as a goal and the concept of social market economy. In particular, the Charter of Fundamental Rights will become legally enforceable on member states although the UK and Polish opt out from the Charter of Fundamental Rights and other limitations on the Charter will inevitably adversely affect its value. The ETUC deplores this action by the UK and Polish Governments.

3. There may also be some confusion about exactly what 'legally enforceable' means in relation to member states. The ETUC would like a clear confirmation that there is no doubt that the Charter is legally binding on member states when the Treaty is ratified. Although an improvement to the Nice Treaty the ETUC is also concerned that, in the new text, there could be a lower profile recognition of the role of social partners than was the case in the former EU constitutional treaty. It is very important that the Social dialogue/partners section has the same legal value as the earlier section of the Treaty, is prominently featured, including in a declaration, and is clearly applicable beyond the limits of social policy.

4. On services of general interest, the ETUC welcomes the

proposed new protocol, but underlines the need for a regulatory framework at EU level.

5. Once the Treaty is signed, the ETUC calls on the EU to move on and undertake a fundamental review of Europe and globalisation covering economic policy, the operation of financial markets, industry policy, including research and development and innovation, and giving new impetus to social Europe to help workers handle change. The ETUC will be mobilising behind a trade union programme for the next European Parliamentary elections in 2009.

Executive committee - December 2007

4

FOURTH REPORT ON ECONOMIC AND SOCIAL COHESION

"Growing Regions, Growing Europe"

ETUC contribution to the consultation launched by the Commission Resolution

Executive Committee, 05-06/12/2007

1. INTRODUCTION

In accordance with Treaty Article 159, every three years the Commission evaluates the status of cohesion policy and the contribution of other Community policies.

On 30 May 2007, the Commission adopted the Fourth Report on Cohesion that presents an update on the progress made towards achieving economic, social and territorial cohesion and on the manner in which Member State and Community policies have contributed to it.

This Fourth Report presents useful statistics, although it is not always clear whether the figures concern the EU of 15, 25 or 27. It presents a preliminary appraisal of cohesion programmes for 2000 to 2006 and provides new information confirming and strengthening the usefulness of cohesion policy in the EU.

2. THE DEBATE INITIATED BY THE COMMISSION

At the Fourth European Cohesion Forum, held on 27 and 28 September 2007 in Brussels, the Commission initiated a consultation on how the EU cohesion policy should adapt to new challenges and how its delivery can be improved.

As the new programming period 2007-2013 begins, following the reform of the Structural Funds, we consider it a priority for the

Commission to present an assessment of implementation of the strategic approach that characterises the new programming. More specifically, there should be an analysis of the follow-up given to the priorities listed in the Community Strategic Guidelines adopted by the EU Council on 6 October 2006.

In any case, this Resolution constitutes the ETUC's contribution to the debate launched by the Commission.

First of all, the ETUC wants to stress once again the need for a strengthening of Community structural policies in the enlarged Europe, to the extent that the principles of cohesion and solidarity are written into the Treaty and constitute two of the most important vehicles for the integration of peoples and territories.

There is no escaping the fact that the last two enlargements have widened the economic development gap, shifted disparities geographically eastward and made the employment situation more difficult. It is thus essential to continue the territorial cooperation by strengthening the support at different levels : transnational, interregional and cross border.

In addition to the challenge of reducing disparities between the regions, it is obvious that cohesion policy will also have to take up the new challenges identified by the Commission, namely the need for restructuring and modernisation as a result of globalisation, climate change, higher energy prices and demographic changes.

However, we consider that two aspects are not sufficiently taken into account: on the one hand, the role of the social partners and implementation of the partnership principle; on the other, the connection with implementation of the Lisbon Strategy, since the March 2005 European Council declared that the Structural Funds are the financial instruments of the revised Lisbon Strategy.

3. OUR PRIORITES

The partnership principle

The ETUC is convinced that partnership is a fundamental principle in guaranteeing the delivery of Structural Fund interventions. The drive to establish quality partnerships must be continued by involving the social partners at every phase of Fund interventions.

Since the new Structural Fund Regulation does not clearly define the principles of partnership but once again leave it to national

rules and practices, we repeat our demand for a clearer definition of these principles.

The ETUC also regrets that the European Social Fund is the only fund that relies on the active participation of the social partners within its European Committee. In our view, this participation represents considerable added value.

The European Social Fund

The new ESF Regulation encourages good governance and partnership, stating in particular that the Member States must ensure the participation of the social partners during preparation, implementation and follow-up of ESF support.

It is essential in this context that an "appropriate" volume of ESF resources is indeed allocated under the Convergence objective to capacity building, which includes training, networking actions, strengthening of social dialogue and activities undertaken jointly by the social partners, as the latter state in their joint analysis of the key challenges facing the European labour market.

The ESF can play a growing role in meeting identified challenges, in particular the necessity of investing more in people and taking measures to facilitate geographical and professional mobility.

The ESF is and must remain the Community instrument of choice for implementation of the European Employment Strategy.

The European Employment Strategy – the quality of employment

The report states that 400,000 jobs were created during the period under review, but fails to state what type of jobs. It is clear that as a result of revision of the Lisbon Strategy, in the framework of the Integrated Guidelines, the employment pillar has been left on the sidelines compared to the competitiveness objectives. The European Employment Strategy must be placed back at the heart of the Union's priorities and more funds must be released to create more and better jobs. "Quality employment", which is one of the three mandatory objectives of the EES, must be placed at the centre of the strategy, notably through the reintroduction of the objective of reducing the number of low-wage workers, the working poor and of people working in other types of precarious work.

For the ETUC, the creation of more and better jobs, support for the adaptation and modernisation of education and vocational training systems with a view to lifelong learning and the creation of a knowledge-based society, the promotion of social inclusion, the

fight against unemployment and the promotion of equal opportunity and gender equality are key conditions for attainment of the Lisbon objectives.

4. MEETING THE CHALLENGES

Cohesion policy must respond to the challenges at hand and, in doing so, help reduce disparities between regions and promote a society of full employment, equal opportunity and social inclusion and cohesion.

Cohesion policy must contribute to the creation of a genuine European labour market, primarily through the promotion of solidarity between regions and mobility.

New indicators must also be developed to measure regional development, for example, the unemployment rate.

Training and qualifications

From the angle of social cohesion, we consider training and qualifications for employment and active citizenship to be the two sides of the same coin.

All young people should have basic qualifications upon completing compulsory education. Nowadays, basic qualifications represent a broader concept than in the past, and include IT skills enabling people to be active in an information society. That means that in Europe all children should complete school and all young people should have access to secondary studies after completing compulsory education. Occupational skills are also necessary since there will be greater requirements in the future. Access to initial and continuing vocational training should be guaranteed to ensure that young people acquire the skills needed by the labour market and thus can have a job.

The European labour force reserve is found among unskilled adults and the jobless. It is consequently crucial to develop their skills. They need basic qualifications, beginning with reading and writing. They also need vocational qualifications and skills to find their place in a changing labour market. Besides, they need tailor-made measures that answer to their specific needs.

In addition, active workers need continuing training throughout their career. This is a shared responsibility of the employer, the

public authorities and the worker/citizen. The social partners must provide support through collective bargaining and/or social dialogue. In their Joint Work Programme 2006-2008, the European Social Partners include education and lifelong learning as one of the possible issues for the negotiation of an autonomous agreement.

It is consequently important to promote, also by means of the ESF, the active participation of adults in continuing education and training, while encouraging openness between vocational education and training and other forms of education, including higher education, and supporting measures for the recognition and validation of formal and informal qualifications and skills.

Globalisation

It is clear that ongoing and a growing number of structural problems, unexpected shocks, processes of industrial restructuring or economic diversification and company mergers in a number of EU regions require increased support for these problem areas.

For the ETUC, it is essential to develop regional development programmes that help the regions to anticipate and promote economic change while reinforcing their competitiveness and attractiveness, along with programmes developed at the suitable territorial level to help people to prepare for and adapt to economic change.

With regard to the proposal concerning economic restructuring, the ETUC supports stepped-up introduction of permanent surveillance systems involving the social partners, companies and local authorities, whose role is to review economic and social changes at regional and local level, and to anticipate future developments in the economy and the labour market.

Demographic changes

The ETUC considers that a positive response to the challenges arising from demographic changes requires an integrated approach within the framework of implementation of an anticipation strategy. There must be multiple instruments, policies and actors.

Active and inclusive labour market policies for the benefit of young people and older workers must be defined in close collaboration with the social partners. This requires the definition of an enhanced career-long policy and in connection with lifelong learning. The aim is to develop active policies that attract young

people to the labour market and that allow, on a voluntary basis, a phased-in and active retirement of older workers as well as policies that make the reconciliation of family and professional life easier.

The ETUC considers that measures must be taken to improve the quality of youth employment while combating its precarious nature. These measures must include the promotion of more secure jobs for youth, improvement of health and safety standards and equal access to social security to prevent young people from slipping into the informal economy.

A positive programme must be developed to increase not only the rate of labour market participation of women but also the quality of work for women, to create the conditions enabling older workers to work until retirement age and the people furthest away from the labour market to have access to it.

The ETUC also considers that immigration can represent only part of the solution to Europe's demographic problems. The main challenge will be to develop a more proactive immigration policy, geared towards management rather than prevention of immigration, and to secure the support of the European population for such a policy.

Tying cohesion policy more security to other national and Community policies

For the ETUC, it is essential to ensure greater complementarity between the Union's cohesion policies and other Community policy areas, in particular macroeconomics, transport and other services including social infrastructures that create a favourable public environment, ensuring that all Union policies include the crucial aspects of economic and social cohesion and the development of quality employment. This coordination of Community policies must take account first and foremost of the commitments made as part of the European strategy for sustainable development and must be matched with the coordination of fiscal policies so as to avoid social and fiscal dumping.

5. FINANCIAL RESOURCES

As the report points out, cohesion policy now accounts for around one third of total EU expenditure and will amount to some 54.2 billion euro in 2013. However, in spite of the challenges posed

by the two recent enlargements of the EU, the volume of Funds is declining in relation to the Union's GDP. In 2013, it will represent only 0.35% of GDP, compared to a scant 0.4% in 2004, which is a return to its level of the 1990s.

It is consequently essential to tie the debate on the future guidelines for cohesion policy to the review of the EU budget in 2008/2009. In this context, existing funds such as the Solidarity Fund and the European Globalisation Adjustment Fund should be increased. Similarly, the scope of the enlarged ESF and the new challenges it will have to take up in the future (mobility, demographic change), as the social partners point out in their joint analysis of European labour markets, require an adequate financial response at European level. For the ETUC, adequate financing – which makes it possible to take up the challenges identified by the Commission and which is needed at European level – is a fundamental condition for meeting the challenge of implementing the Lisbon Strategy and respecting the EU's commitments in other areas.

5 LISBON STRATEGY THE ETUC'S POSITION ON THE REVISION OF THE INTEGRATED GUIDELINES

Executive Committee, 05-06/12/2007

PUTTING THE QUALITY OF EMPLOYMENT AT THE HEART OF THE NEW INTEGRATED GUIDELINES

THE GOOD NEWS

1. By registering an impressive 3% rate of expansion in 2006, after four long years of slow growth, the European economy has finally started moving again. This improved growth has been matched with stronger employment and consequently a reduction in unemployment. At just under 7% in 2007, unemployment in Europe has not been this low since the early 1990s. The resumption in growth has also brought the average government deficit in the euro zone close to zero, although progress is uneven from one country to the next. The Nordic countries have been conspicuously successful.

2. Over the longer term, it is worth noting that while economic growth was disappointing for a number of years; the European economy nevertheless functioned as a 'job-creating machine'. For the period 1997 to 2005, the Europe of 25 created 18 million new jobs and the employment rate climbed six points in the euro zone and four to five points for the Europe of Fifteen and the Europe of Twenty-five.

WHAT CONCLUSIONS CAN BE DRAWN?

3. The ETUC's demand for more and better jobs nevertheless remains more valid than ever. Europe is in the process of missing the target of a 70% general employment rate and 60% of women by 2010. What is more, the quality of jobs increasingly leaves a great deal to be desired. The joint analysis of the European social partners particularly demonstrates that, while open-ended employment contracts are still the general rule, there is nevertheless a structural trend taking place towards an increase in atypical work: a large share of the increase in the employment rate since 2000 consists of part-time work held by more and more workers often feminine who have been unable to find full-time employment. The high proportion of fixed-term contracts is also continually increasing and represents in some countries up to one third of salaried employment.

4. The appropriate conclusions need to be drawn from these developments:

I. First, the upturn in growth in 2006 is proof that those who claim that the European economy cannot grow because it is hemmed in by constraints such as social Europe and workers' rights are mistaken. In fact, the European economy and labour market are reacting to the upsurge in macro-economic demand by translating it into the creation of new jobs and additional economic activities. One particular aspect concerns the fact that if the European countries cooperate with each other, the impact on the economy is amplified, as demonstrated by the joint boost in the German and French economies seen in 2006.

II. Second, there is a need for structural reforms based on the principle that social Europe is a factor of productivity and that there needs to be investment in people rather than reduction of their labour rights. On the one hand, workers who experience insecurity are not productive workers, as seen in the slowdown in Europe's productivity growth, which goes hand in hand with the trend towards more insecure employment since the middle of the 1990s. The opposite is also true, however. If investments are made in training workers, in making careers more secure and in stable

employment contracts and relations, growth and job creation are made more sustainable.

III. Third, it is becoming increasingly obvious that there are no contradictions between well designed and generous welfare systems on the one hand, and economic growth and job creation on the other. On the contrary, most of the best performing Member States have guaranteed a high level of social protection while striving to attain the Lisbon Strategy targets. This shows that workers who have a sense of security and confidence contribute actively to the ongoing structural changes needed to deal with the challenges of globalisation.

PUTTING THE QUALITY OF EMPLOYMENT AT THE HEART OF THE INTEGRATED GUIDELINES

5. Given the necessity of promoting the quality of employment, including the quality of employment contracts, the Commission and the Council cannot afford simply to duplicate the existing guidelines. The ETUC, moreover, has not invested a year's worth of discussions and dialogue with European employers on a joint analysis and recommendations for the labour market only to have to conclude now that nothing will be changed in any case.

6. The ETUC urges the Commission and the Council to place the quality of employment at the centre of the new guidelines 2008-2010 by introducing the following recommendations:

7. **Invite the Member States and the national social partners to improve compliance with and implementation of the principles of the existing European social acquis**. Indeed, this European social acquis contains important principles which allow an adequate response to unsustainable labour market practices, for example, the principle of equivalent rights for part-time workers, the principle of terminating the use of successive fixed-term contracts in lieu of an open-ended contract, and the principles of equal pay for equal work and gender equality.

8. **Invite the Member States and the national social partners to match strong social protection systems with policies and measures that improve productive transitions for workers**. To achieve that goal, the ETUC notes the need for sufficiently long notice periods in cases of redundancy. Indeed, the notice period enables the workers concerned to prepare themselves in time. More needs to be done, however: the notice period must also be used as a platform for organising structural support for workers who have been made redundant. The idea is to help such workers immediately rather than letting them disappear into unemployment for months before the employment services finally deal with them. The social partners are in a good position to organise such complementarity between employment protection and secure transitions by using collective agreements to create and finance solidarity structures that assist workers who are made redundant.

9. **Maintain and strengthen the use of target figures for getting the jobless back into jobs, lifelong learning, child care facilities, care opportunities to the elderly ones, reducing gender-based wage inequality and failure at school**. These objectives have represented the heart of the European Strategy for Employment from the very beginning, but they also reflect a political will to invest in the institutions and the proper working of the labour market by organising 'upward competition' and by promoting the best labour market practices. It is essential not only to maintain these targets but also to guarantee practical follow-up in the best way possible. Recent statistics on these targets for all the countries and reviews of these aspects should be organised by the Commission and the Labour Ministers.

10. For the ETUC, for example, it is particularly important that the following points be used methodically as benchmarks for national implementation of the Lisbon Strategy.

- A "new start" for each jobless person after six months of unemployment.
- The possibility for the long-term unemployed to participate in active measures by 2010.
- Participation in lifelong learning by at least 12.5% of the adult working population (aged 25-64 years).
- The guarantee of child care facilities by 2010 for at least 90% of

children between age three and the age of school attendance and for at least 33% of children under age three.

- A substantial reduction in the wage gap between men and women to a rhythm of at least a point per year.
- A European average of less than 10% of school drop-outs.

11. With 15% of European workers earning low salaries and with millions of working poor, Europe must ensure that the Member States address these problems. Targets for the reduction of the number of working poor and/or of those earning starvation wages must be reintroduced into the integrated guidelines.

12. Lastly, if we wish to improve total employment rates and reduce the difference between employment rates for men and women, then targets for access to other kind of care facilities (for the elderly, etc.) also need to be put in place, in addition to the target for child care.

PUTTING THE 'E' OF EUROPE BACK INTO THE LISBON PROCESS: THE COMMUNITY ACTION PROGRAMME

13. Although the Member States have primary responsibility for implementing the Lisbon agenda, the fact remains that Europe has the responsibility to provide a European framework that enables the Member States to carry out desirable structural reforms instead of having to compete against one other in a downward spiral. In other words, Europe and the European institutions do not exist solely to create a border-free internal market. The European Union also exists to shape this internal market, to promote cooperation between the Member States in such a way as to prevent social dumping and to ensure adequate macro-economic demand on the internal market.

14. The ETUC observes that threats to European growth often come from outside the Union and that the collapse of the dollar exchange rate and the subprime crisis on international financial markets can endanger Europe's economic prospects. A European response to these external challenges is necessary and possible, however. Indeed, the European Union has economic instruments such as the monetary policy implemented by the European Central Bank, the possibility for the ECOFIN Council to establish exchange rate policy

guidelines, the co-financing of transeuropean projects by the European Investment Bank and taxation policies to ensure the proper working of the internal market. The ETUC invites the Commission to introduce in the Community Action Programme a chapter on the contribution of the Community's economic action to stabilisation and stimulation of the European economy, in particular in situations where economic shocks risk reducing or maintaining economic activity below its potential level.

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

16. As described in the joint analysis by the European social partners, workers are confronted with different challenges on the European labour market. Enhanced implementation of the European social acquis can respond to certain of these challenges and phenomena of insecurity, successive fixed-term contracts for example, and can ensure equivalent rights for part-time workers. However, there are also other precarious practices such as false self-employment, starvation wages, atypical work arrangements that become traps, non-voluntary part-time work and more generally the lack of flexibility in working time from the standpoint of compatibility between work and family life. The existing social acquis either does not resolve or insufficiently resolves such practices. Since these can be used as the object of downward competition between the different Member States and can also hamper productivity and the availability of work, it is the European Union's duty to take action. The ETUC urges the Commission to develop the European social acquis within the Community Action Programme with a view to building on it and finalising it. For the ETUC, the Commission must give priority to the following themes:

- Giving a new boost to discussions on the temporary agency work directive with the objective of guaranteeing the strict principle of equal pay for equal work.

- Implementing equivalent rights for atypical workers and guaranteeing their transitional rights so that atypical work

becomes a stepping stone rather than a trap of insecure employment.

- Complementing the working time directive, not only by eliminating the 'opt-out' but also by introducing the collective right for workers to request flexible working hours, a full-time contract, a part-time contract, or a return to a full-time/part-time contracts.

- Review and reinforce the directive 'parental vacation' to improve the reconciliation of family and private life.

6 RESOLUTION 2007 FOR THE COORDINATION OF COLLECTIVE BARGAINING 2008

Executive Committee, 05-06/12/2007

I. THE ECONOMIC AND POLITICAL CONTEXT

1. **Another economic context**. With the return of stronger growth as from 2006, the overall context for collective bargaining and the formation of wages has undergone a sea change in Europe. On the one hand, lower unemployment and a stronger dynamic of job creation make workers less vulnerable to being blackmailed by employers claiming that the existing jobs need to be saved by practising wage moderation. On the other, with order books once again nicely full, companies can afford less in the way of labour unrest.

2. **Nevertheless, pressure on collective bargaining remains**. The ETUC notes that despite these improved economic conditions, pressure from the 'political' players to pursue the policy of wage moderation remains, and is even becoming more pronounced. This pressure comes in particular from the European Central Bank, but also from the Council of Finance Ministers (Ecofin).

a. The European Central Bank continuously calls on the trade unions to preach wage moderation. The ECB's basic idea seems to be that any acceleration in the formation of wages poses a threat for inflation. So the ECB makes no distinction between a certain upturn in nominal wage growth starting from a very modest level on the one hand, and an inflationary wage drift on the other. The ECB tries to conceal this fundamental error by

invoking a whole string of reasons which are not always so persuasive. The ECB's view is that moderation is necessary in order to create jobs, as a response to the increase in the euro exchange rate, to offset the rise in raw material prices, to rebalance the competitive positions within the euro zone, to combat inflation. There has never been any mention of the role of wages as a factor in demand and stabilisation against general falls in price levels.

b. The Ecofin Council takes a paradoxical approach: on the one hand, Ecofin has discovered that the share of wages in added value in the European countries is experiencing a structural trend downwards and gets involved in discussions about this phenomenon, while on the other, and instead of drawing the logical conclusion that wage moderation is excessive and that collective bargaining needs to be beefed up, the president of the Eurogroup announces that we need to examine alternatives such as **non-contractual** profit-sharing.

It is important not to underestimate the political signal that the decision-making power for remuneration should be transferred back to the employers, ignoring the role that the trade unions and collective bargaining need to play in achieving a fair division of the benefits of growth.

c. Aside from this paradoxical approach on non-contractual profit-sharing, the Ecofin also focuses on the formation of public-sector wages, claiming that this formation of wages in the public sector is stronger than in the private sector, and is liable to operate in a 'pro-cyclical' manner. The ETUC regrets to note that the Ecofin seems to be basing itself on incorrect data. The point is that the results of the ETUC questionnaire show that in recent years, the dynamic of wages in the public sector has been lower than the (already very small) rises in the private sector. The finance ministers cannot have it all ways: wage moderation to abide by the standard of 3% maximum deficit and an extension of that moderation also when the deficit has virtually disappeared on average across the euro zone.

3. **The better growth effectively leads to a break in the trend in wage evolutions, but sometimes this break still remains modest**. On the basis of members' replies to the questionnaire, the ETUC notes that effectively, some European countries have seen a strengthening of collective bargaining on wages thanks to stronger economic growth. The countries concerned are primarily in Scandinavia (Denmark, Norway, Iceland), where negotiated wage increases are becoming (even) higher. The same conclusion may be drawn in the case of Central and Eastern Europe with regard to effective wages, where we are sometimes even seeing rates of wage increases of almost 20%. But effective and negotiated wages are also rising in some countries in the euro zone (Germany, Austria, the Netherlands), where the slackening of growth has had sometimes drastic effects on wage increases. Nevertheless, even if there is more growth in nominal wages in these countries, the ultimate result, at least for 2007, remains quite modest, given that effective nominal wage growth remains close to inflation, or even slightly below.

4. **The euro zone is already practising the 'competitive stability' model.** One of the major concerns of the ECB is that the return of wage increases in one or two countries (Germany in particular) would have a big impact on the euro zone average, thereby pushing inflation in the euro zone above the 2% threshold. In addition, it is highly likely that the ECB has continued to increase interest rates for this reason. Nevertheless, this does show that the reality is completely different, and that there is no general acceleration in wage increases across all the euro zone countries. In practice, the acceleration (limited, or sharp) in wage increases in Germany is offset by a slow-down in wage rises in Italy and Spain, while wage increases in France are pretty stable. All of this means that at least some of the tightening of the ECB's monetary policy has been based on flawed premises.

5. **Formation of wages and surge in raw material prices.** Of the 18 countries which responded to the questionnaire, five are close to the guideline of offsetting inflation and the rise in productivity in wages, and two are doing spectacularly better. On the other hand, there are five which remain well below the guideline, with one or two countries where this is a persistent state of affairs. Nevertheless, there is not a single

country in the report which is recording real wage losses in 2007, compared to three countries in 2006 and four countries in 2005.

6. **Minimum wages: some movement.** Both in countries where there is a legal minimum wage and those which do not have one, there are some interesting developments afoot. In the first case, and in particular in the countries of Central and Eastern Europe, not only are we finding steep increases in minimum wages, but also there are governments and/or parliaments which are announcing relatively ambitious statistical objectives (in terms of percentage of median wage). In these countries, the shortage of labour, coupled with the need to combat 'cash in hand' wage payments, are forcing governments to raise the minimum wage. In the second case, we are seeing a reinvigorated political discussion on this issue, which has already led in Austria to an agreement between the social partners to implement a minimum wage of 1000 euro in 2009 in all sectoral collective bargaining agreements.

III. GUIDELINES FOR THE COORDINATION OF COLLECTIVE BARGAINING IN 2008

7. Collective bargaining on the formation of wages is particularly important in 2008. Continued economic growth in 2008 will depend on boosting household consumption; but the surge in raw material prices is once again busily chipping away at purchasing power.

On this subject, the ETUC observes that this surge seems to be determined more by financial speculation than by any genuine tensions between global supply and demand . It is suspicious that since summer 2007 and since the 'sub-prime' financial crisis, raw material prices and food prices have started to rocket. International speculative capital, having lost confidence in the traditional investments within the OECD countries, has clearly shifted its investments, speculating on increases in raw material prices. For example, it is extremely odd that the price of oil should be increasing when at the same time, the margin for the surplus between global supply and global demand is allegedly set to increase in 2008.

8. Let us add to this that in some countries; the governments are intending to go ahead with an 'internal devaluation', which is a less

well-known element in Danish-style 'flexicurity'. By increasing VAT and then reducing employers' charges on labour, the result is a nominal reduction (instead of moderation) of the wage bill in favour of the employer and in addition, part of this operation is funded by exporters from the other (European) countries.

9. Faced with these challenges, the ETUC calls on the union negotiators in Europe to demand the biggest possible increase in purchasing power. With regard to the price of raw materials, the ETUC is hard pushed to see why wages should be the only adjustment variable and only workers should have to pay because of inflationary financial speculation. Here, a re-regulation of the financial markets to achieve productive and non-speculative use of the cash created, coupled with policies to tax profits from speculation, needs to be implemented if we are not, as usual, to have to resort to even more excessive wage moderation. If internal devaluation does happen, the ETUC asks the negotiators not to put up with this operation, but to try to achieve an additional wage increase to offset the effect on consumer prices.

10. In more practical terms, the ETUC urges the trade union negotiators to base themselves more than in the past on the formula guiding wage increases in light of the total of inflation and structural productivity.

Cross-border co-operation

11. The action plan approved by Congress had flagged the importance of a political initiative designed to 'encourage, promote and support all initiatives for co-operation at cross-border level' and to extend the co-operation initiatives to the 'areas where economic, territorial, monetary and social conditions are similar (in particular in the countries of the euro zone)'.

12. On the basis of this mandate, the IRTUC Coordination Committee on 6-11-2007 examined and debated the matter, and decided on the basis of IRTUCs which had put themselves forward to get this activity underway starting with 7 IRTUCs:

1. Friuli-Venezia-Giulia/Slovenia,
2. Andalucia/Algarve,
3. Lombardy/Tessin/Piemonte,
4. Viadrina (Berlin-Brandenbourg/Lubuskie),
5. Friuli-Venezia-Giulia /Veneto /South-West Croatia,
6. Elbe-Neisse (Germany-Poland-Czech Republic),
7. Galicia/North Portugal.

13. In this first group of IRTUCs, the ETUC will support co-operation which should deliver more effective exchanges of information, improve inter-union co-operation, the selection and dissemination of good practices and experiences, while respecting the various collective bargaining systems.

14. With regard to the euro zone, a first seminar to provide an exchange of opinions and avenues of initiatives for individuals is scheduled for 18 and 19 February 2008.

Transnational agreements

15. The Commission has signalled the launch of a communication on the subject before the end of the year.

16. The communication should be structured around three principles:

a. It should be a 'status communication' vis-à-vis the initiatives conducted thus far (expert panel, report on the agreements, two seminars conducted by the Commission during 2006 to explore the various aspects of the issue)
b. As a status communication, it does not seek to open a phase of formal consultation of the social partners, because at this stage, the Commission does not claim to give rise to a legislative consequence.
c. The goals that should be proposed will be narrower, namely:

- Towards the implementation of the actions aimed at improving exchanges of information and knowledge. In that context, the Commission will put up a website to collect and analyse the texts, and it would anticipate the preparation of a guide on the subject

- The encouragement of the initiatives by the social partners at confederal and sectoral level
- To conduct initiatives designed, within the context of the evolution of the process, to build a broader consensus in order to result in the selection of criteria capable of giving the subject a European reference framework.

17. On our side, following the text approved on this subject at Congress, in terms of the methodology, we have been heartened by the fact that the Commission has decided to revive the initiative with a Communication, because this allows us to keep open the issue of retrying an initiative with Business Europe which until now has been strongly in contrast with this subject and getting the other European institutions (EP, EESC, Committee of the Regions, etc), to which the communication will be addressed, involved. The importance for our side of paying the closest attention to this issue has been confirmed by the most recent data collected by the Commission.

18. The number of transnational agreements has risen from 92 (2005) to 147 (2007.) Accordingly, the trend and the dynamic are very strong. Two thirds of these texts have an exclusively European dimension, and they relate to all the biggest European multinational groups.

19. Consequently, the problem of clarifying which players have the representative character to give a mandate to the negotiations and the power of signature remains unresolved, and needs urgently to be settled, like the definition of clear procedures on the implementation of the texts signed.

20. Obviously, the texts do not all have the same status. Some are restricted to the signature of declarations of principle, while others, on the contrary, relate directly to restructuring and relocation processes.

21. In that connection, the clarification on the procedures for the application of the agreements is becoming a thorny issue: one which the Federations need to resolve on a case-by-case basis without a reference framework.

22. Consequently, the ETUC calls upon the Commission to create, after the launch of the communication, a 'permanent place' to allow the continuation at this level of a debate directly with the social partners, rather than with experts, so as to organise ongoing monitoring on the texts signed and the possibility of examining the most salient general points emerging from the agreements.

23. The ETUC will notify the EC step by step as this issue evolves.

Improvement of exchanges of information

24. In implementing the 2006 resolution, the ETUC has started to publish bulletins on the collective bargaining with a view to increasing the exchange of good negotiating practices and organising an exchange of information in 'real time'. The ETUC, with financial aid from the Institute, plans to step up this work, bringing in the team of researchers on the Dutch 'wage indicator' project at the University of Amsterdam. This team will give the ETUC a monthly overview on the most recent trends in collective bargaining across Europe.

7 ETUC POSITION ON THE REVISION OF THE EU EMISSIONS TRADING DIRECTIVE

Executive Committee, 05-06/12/2007

PRELIMINARY REMARKS

1. This position paper represents the contribution by the ETUC and its member organisations to the consultation on the revision of the directive establishing a European CO_2 emission trading scheme (directive 2003/87/EC). The new Directive will apply for the trading period starting in 2013.

2. The ETUC recalls its support for a unilateral independent EU commitment to reduce its GHG emissions by around 25% by 2020 and by around 75% by 2050 (resolution adopted by the ETUC Executive Committee in October 2006).

3. The European cap and trade system is considered by the European Commission to be the keystone of the European mechanism for combating climate change by achieving the ambitious objective of an autonomous reduction of 20% in greenhouse gas emissions by 2020 decided by the European Council in March 2007. It covers close to 11.500 installations in the 25 Member states, in the power and heat generation industry and in selected energy-intensive industrial sectors: combustion plants, oil refineries, coke ovens, iron and steel plants and factories making cement, glass, lime, bricks, ceramics, pulp and paper.

4. The ETUC considers that the EU ETS can play an important role in limiting greenhouse gas emissions in line with the 'polluter pays' principle, while minimising the global cost of the reduction effort. However, it is not a magic bullet. In itself, the carbon market is not in a position to stimulate investments in renewable energy sources or in energy-saving projects, which are highly labour-intensive sectors. This makes it indispensable to mobilise all the public instruments, such as regulation, taxation, subsidies and R&D, taking into account their combined impact in social terms, notably on Europe's workers.

5. It is also crucial to adopt stronger measures for the sectors not covered by the ETS and whose emissions are still rising, so that the burden of meeting the commitments does not weigh disproportionately on the ETS sectors and the taxpayers (through the purchase of Kyoto credits by governments).

6. The first application phase of the EU ETS (2005-2007) has been described by the Commission as a phase of 'learning by doing'. Experience has shown that while the EU ETS has made it possible to include the cost of CO2 in the decisions taken by businesses, it has not so far delivered reductions in emissions, because of the over-allocations in quotas granted by the Member States to industry. The decisions by the Commission on the second application phase (2008-2012) indicate a stronger concern to respect the Kyoto protocol, which the ETUC approves.

7. In the long term, the competitive advantage will indeed fall to the industries that have developed very low-emission technologies; but European industry needs to be supported in international competition while it is investing in the technologies of the future. In the view of the ETUC, the major issue in the EU ETS is to find a balancing point which would make it possible to achieve a significant reduction in emissions without, during the transitional phase, imposing an excessive burden on European industries which are heavy energy users and are exposed to competition from major global rivals which have not deployed efforts equivalent to those by the EU to control their emissions.

8. Therefore, we have to accept the idea that the implicit price signal provided by the EU ETS should be differentiated by ETS sub-

sectors sector, depending on their exposure to international competition and the risks for employment in the European Union.

9. Unless we are careful, the redistributive impacts of the EU ETS will be significant, or even untenable for some categories of workers, some sectors of the population or some economic players. This is all the more true as the ETS will evolve towards auctioning of emissions permits. This makes it essential for the social consequences to be correctly anticipated and monitored whether it be in terms of employment and closures, regrouping and relocation of businesses or impact on the price of energy for very low-income households.

10. This implies that the trade union organisations, which have a strong presence in the sectors covered by the ETS, should be actually involved in the ETS decision-making and monitoring process, as they are in some Member States. In Spain, for example, Tripartite dialogue round tables involving employers, trade unions and the government have been set up in the framework of the implementation of the Kyoto protocol.

11. As part of closer harmonisation of the ETS at EU level, and in accordance with Article 138 of the Treaty, the ETUC calls upon the Commission to set up a European platform for tripartite social dialogue on the European emissions trading scheme bringing together European social partners (employers and trade unions) and the relevant Directorates-general. The platform should be composed of an intersectoral Platform and sectoral platforms for each industrial sector included in the ETS. The platform would aim to prevent, avoid or reduce the potentially adverse social effects and fully exploit the social opportunities that could result from implementation of the ETS Directive, in particular those related to competitiveness and employment.

12. Moreover, the ETUC proposes the introduction of a 'European low-carbon economy adjustment fund', to be financed notably by a proportion of the income from the auctioning of emission permits, the object being to help workers affected by the transformations associated with the transition to a very low carbon emission society, to assist them with their re-training and job search efforts. This fund would build upon the experience gained from the operation of the Globalisation adjustment fund. This same mechanism might be used

for adaptation to the effects of climate change, as suggested by the Green Paper on adaptation to climate change in June 2007.

13. Involving workers and their representatives in decision-making and guaranteeing that workers losing their jobs because of climate change mitigation measures will be offered other employment options are preconditions for achieving the ambitious emissions reductions targets for 2020 adopted by the European council in March 2007.

PRINCIPAL RECOMMENDATIONS FOR THE REVISION OF THE EU ETS

14. The ETUC considers that the revision of the EU ETS directive must meet the following key objectives:

- To make the mechanism more effective to significantly drive down greenhouse gas emissions, in line with the commitments entered into by the European Council in March 2007;
- To harmonise the allocation of the quotas in the European Union, to limit the risk of distortions of competition and thus of social conditions;
- To increase the transparency of the operation of the allowances market and effectively involve the trade union organisations in the decision-making and monitoring process;
- To limit the risks of relocation of industries which are heavy energy users.

Maximum harmonisation tied to new European solidarity and social consultation mechanisms

15. The current operation of the EU ETS, which is highly decentralised at the level of the Member States in terms of quota allocation, entails risks both for the environment and for employment, since it tends to encourage businesses operating at the European level to pit European employees against each other in the search for the solution with the lowest environmental cost.

16. Accordingly, the ETUC favours maximum harmonisation of the EU ETS at European Union level, provided that it is accompanied from the outset by:

a. a formal social participation mechanism enabling EU social partners to build consensus on the EU 'burden sharing' and on the social consequences – for employment, wage-earners and consumers alike – but also to consult on the method and on the regulatory and financial resources, the implementation and the follow-up (see § 10).
b. new 'solidarity' mechanisms at European Union level to help the sectors, the regions and the workers most seriously affected to make the transitions necessary (see § 11).

17. In light of the above, the ETUC is in favour of an approach whereby the global quantity of allowances authorised for the sectors covered by the EU ETS, as well as its distribution by major sectors (energy production, industry, aviation) are defined from the outset at European Union level. This 'single ceiling' option for the EU seems better suited than the current 'separate caps per Member State' option to guarantee fair treatment of the industries within the EU at a time when it will be necessary to step up efforts at emission reductions.

18. The single ceiling should be strict enough to contribute significantly to the ambitious emissions reduction target agreed upon by the EU for 2020.

19. Under this 'single ceiling' option, criteria to be applied for EU burden sharing (EU-wide ETS cap setting and Member State allocation) should be simple and transparent, and account for a mix of: a) adoption of best available technologies in the industrial and electricity sectors (ETS) b) convergence in the per-capita domestic emissions (mainly residential and transport) c) GDP per capita. In our view, this approach would allow for an equitable sharing of the social costs of the mitigation commitments between workers in different economic sectors while accounting for differences in Member states' 'ability to pay'.

Allocation mechanism

20. The ETUC would support a combination of free allocation according to benchmarking principles – based on Best available technologies – and selling of allowances – by auction or on the CO_2

market, provided that the determination of the share of each mode accounts for the impact on European workers and is determined through consultation of trade union organisations, and implementation is progressive as from 2013. Such allocation scheme should be harmonised for the industrial sectors throughout the EU in order to avoid distortions of competition and social conditions. .

21. However, there are few experiences in the use of auctions that are directly comparable with the role envisaged in the EU ETS. The period running until 2013 needs to be used profitably in order to test the auction mechanisms which will be set up voluntarily by the Member States and provide a collective learning dynamic. With the prospect of 100% implementation, where any mistake would be particularly expensive, the implementation arrangements and their impacts will need to be studied extremely carefully, because they will largely determine whether or not the objectives being pursued are achieved.

22. Should auctions become the general method, the ETUC deems it necessary to create an organisation to regulate the carbon market at European level, under the aegis of the Commission, for the sake of ensuring the optimal operation of the market and notably avoiding excessive price volatility and the manipulation of the auctions by the bigger players.

Differentiated allocation approaches for sectors

23. For the sake of reconciling economic development, emission reduction and the maintenance of industrial employment in Europe, the ETUC recommends that the allowances allocation be the subject of a different approach per sector, taking account of their varying degrees of exposure to international competition, the risks in terms of employment and their ability to pass on the cost in the price. The study conducted by the ETUC shows in particular that some major energy-consuming industries, broadly globalised, such as the iron and steel industry, can use the EU ETS to accentuate the process of relocating labour or freezing their investments in Europe if at the same time their competitors do not bear the same constraints on their carbon emissions. This could also lead to an increase in global emissions (the 'carbon leakage' phenomenon).

24. For the electricity and heat production sector, as this sector to a great extent escapes from international competition (with the exception of imports from Russia and Ukraine) and is able to pass on the cost of CO_2 to the consumer, the ETUC takes the view that auctioning or selling part of the emission permits to this sector on an experimental basis would provide the governments with the public funds necessary to substantially strengthen current public policies geared towards energy efficiency and climate change mitigation.

25. For the few sectors subject to international competition (notably iron and steel, cement, aluminium), a full allocation by auction is impracticable as long as the EU competitors do not bear similar costs associated with their emissions. For these sectors, the ETUC backs free allocations according to benchmark principles. The reference to the best techniques available would be used to distribute a certain level of allocation free of charge. Installations failing to comply with the reference to the benchmarks would have to purchase permits. The references to the benchmarks will need to be revised regularly to take account of technological progress.

A border adjustment mechanism to compensate for competitiveness impacts

26. Given that such a mechanism would not be enough to eliminate the losses of competitiveness for the electricity-intensive sectors, the ETUC urges the Commission to introduce compensation measures, such as Border adjustment mechanisms. Such a mechanism would be required as long as the major competitors of the EU industry, as well as power producers in the competing countries, are not subject to a comparable carbon constraint. The fact that an importer is part of an international sectoral agreement to reduce carbon emissions is not sufficient in itself to eliminate the competitiveness impact. The importer should also afford increases in electricity prices similar to those paid by industry in Europe.

Utilisation of the income from the paid-for quota allocation

27. The method of allocation of the income generated by the sale of the quotas is a crucial question, insofar as it links into the question of tax reforms, and it determines the environmental effectiveness of

the system and its social acceptability. It should therefore be the subject of in-depth consultation with the social partners.

28. For its part, the ETUC calls for a significant percentage of the income to be fed into a 'European low carbon economy adjustment fund', intended to help workers affected by the transformations associated with the transition to a very low carbon emission society. This fund would have the same status and the same operating arrangements as the regional policy funds.

29. The rest of the income should be devoted first and foremost to the fight against climate change – by supporting the investments designed to achieve the long-term decarbonisation of the European economy – and to the promotion of employment –by decreasing the weight of the tax burden on salaries with regard to the other factors without undermining the level of social protection.

Scope of the directive

30. The ETUC supports the inclusion of the aviation sector in an emissions quota trading system, as proposed by the Commission. Such a system must apply the same treatment to airlines starting from or flying into European airports, with no distinction as to nationality. The permit allocation should be made through auctioning, given the fact that airlines are able to pass-on to a large extent compliance costs to customers.

31. As the price of CO2 permits in the EU ETS is likely not to be high enough to drive significant emissions reductions, we support the introduction of additional measures, such as kerosene taxation or VAT on airline tickets.

32. The maritime transport sector should likewise be covered in a similar mechanism. Emissions from this sector are twice those of air transport and could increase by some 75% over the next 15 to 20 years. Europe controls 40% of the world's fleet.

33. In the case of these sectors, attention needs to be paid to improvements in working conditions and the application of labour law in order to prevent any downward pressure on wages and working

conditions designed to offset the added cost linked to emission reduction.

Utilisation of the flexibility mechanisms (clean development mechanism or CDM, joint implementation or JI)

34. The possibility of using the credits from CDM or JI projects to offset the quotas on the carbon market plays a major role in reducing the cost of emission reductions in Europe and disseminating more effective environmental technologies in the emerging and developing third countries. But it must not favour transfers of investment outside the European Union or excessively maintain the market price of carbon at an excessively low level. Over the long term, there is likewise a risk that the delay in upgrading European businesses might translate into a competitive disadvantage when the carbon constraint is reinforced.

35. The ETUC accordingly reiterates its position to the effect that flexible mechanisms cannot constitute anything more than a complementary instrument alongside local measures to deliver on the European Union's emission reduction pledges. The use of CDM and JI credits must be limited, with a cap which could be defined at European level.

36. The credits from flexibility mechanisms must come only from projects which deliver genuine benefits in terms of sustainable development, both for the environment and for the populations and workers in the host countries. This objective is established by the Directive introducing the link between the emissions trading scheme and the project mechanisms[1], which emphasises in its preamble that 'corporate environmental and social responsibility and accountability should be enhanced in accordance with paragraph 17 of the Plan of implementation of the World summit on sustainable development. In this connection, companies should be encouraged to improve the social and environmental performance of JI and CDM activities in which they participate'.

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[1] Directive 2004/101/EC of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms

37. Yet it is a matter of regret that the social performances of the projects are not taken into account either by the CDM executive committee at international level, or by the Member States in the EU with the notable exception of Belgium. The experience of Belgium shows how the flexible mechanisms can be made to provide both environmental additionality and social progress in developing countries.

38. The ETUC therefore recommends that the CDM and JI projects should be systematically subjected to a procedure of approval by the national public authorities and that the list of evaluation criteria be set at the EU level in order to ensure a level playing field across Europe. The list of criteria should include:

a. the project promoter's pledge to respect the principles of the OECD's guidelines for multinationals, the eight ILO basic conventions[2], Convention 155 on Occupational Health and Safety and Convention 169 on Indigenous and Tribal Peoples.

b. Social sustainability, covering employment (number of jobs created, skills development, quality of employment), equity and access to essential services such as energy services.

c. The involvement of the trade union organisations in the projects approval procedure.

CONCLUSION

The reinforcement of the EU ETS, which will be crucial in achieving the EU's ambitious objectives for the post-Kyoto period, demands harmonisation at EU level and the introduction of European social negotiations – both global and sectoral – to correctly address its redistributive impacts on employment. The ETUC and its member organisations are ready to play their full part in this process.

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[2] Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); Right to Organize and Collective Bargaining Convention, 1949 (No. 98) ; Forced Labour Convention, 1930 (No. 29) ; Abolition of Forced Labour Convention, 1957 (No. 105); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Equal Remuneration Convention, 1951 (No. 100); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182)

8 ETUC POSITION REGARDING EUROPEAN COMMISSION'S PROPOSALS ON LEGAL AND 'ILLEGAL' MIGRATION

Executive Committee, 06/12/2007

1. INTRODUCTION

1) This position builds on previous ETUC resolutions and positions on this issue, adopted since its Prague congress 2003[1] and especially chapter 2 of the Action plan as adopted at its congress in Seville in May 2007[2].

2) In 2004, the Council of Ministers adopted the so called 'The Hague programme' on legal and illegal migration, and asked the Commission to present a policy plan on legal migration. The Commission started a consultation process with the Green Paper on economic migration[3], to which the ETUC contributed with an extensive response in March 2005[4]. The Commission came up with a Communication on a Policy Plan for legal migration in December 2005, which foresaw the adoption of five legislative proposals on

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1 - Action Plan October 2003 http://www.etuc.org/a/1944
- ETUC response Green Paper economic migration March 2005, http://www.etuc.org/a/1159
Transitional measures December 2005, http://www.etuc.org/a/1898
- joint position ETUC, Solidar and Picum spring 2007, http://www.etuc.org/a/4325

2 Congress document Seville, http://www.etuc.org/a/3971

3 COM (2004) 811 final
http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=192439

4 COM (2005) 669 final
http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=193722

labour immigration. This approach aimed at laying down admission conditions for specific categories of migrants (highly qualified workers, seasonal workers, remunerated trainees and intra-corporate transferees) on the one hand, and securing the legal status of already admitted third-country workers and introducing procedural simplifications for the applicants on the other hand.

This new approach must be understood against the background of the previous initiative of the Commission, in 2001, to come up with a comprehensive horizontal draft Directive, dealing with a general framework for admission of migrants for employment and the rights those migrants would enjoy.

This initiative, broadly supported by the European Parliament and the ETUC as well as civil society, failed to get support of Member States in the Council of Ministers, and was eventually withdrawn by the Commission.

3) In July 2006, the Commission presented a Communication on Policy priorities in the fight against illegal immigration of third country nationals[5] (TCN's), and suggested to reduce the 'pull factors' that encourage illegal immigration into the EU, the most important one being the possibility of finding work, by ensuring that Member States (MS's) introduce similar penalties for employers of such TCN's and enforce them effectively. The European Council endorsed this suggestion in December 2006, and invited the Commission to present proposals.

4) On 16 May 2007, the Commission presented a draft *Directive of the European Parliament and the Council, providing for sanctions against employers of illegally staying third-country nationals*[6] (further: **'Employers' sanctions Directive'**).

Also on 16 May 2007, the *Commission presented its Communication on Circular migration and mobility partnerships*

5 COM (2006) 402 final
http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=194507
6 COM (2007) 249 final
http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=195730

between the EU and third countries (further: **'Communication on circular migration'**)

On 23 October 2007, the Commission presented two draft Directives: The draft *Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment*[8] (further: **'Blue card Directive'**), and the Draft *Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State, and on a common set of rights for third-country workers legally residing in a Member State*[9] (further: **'Rights Directive'**).

5) This position sets out key elements for ETUC's response to these various initiatives, where possible explicitly linked to specific paragraphs of the ETUC Congress document adopted in Seville in May 2007, which will allow ETUC to take active part in the legislative process with more detailed contributions and amendments, and which offers ETUC affiliates as well as third parties a single document for reference.

2. ETUC'S COMMITMENT

In its Action plan adopted at the Seville Congress of May 2007, the ETUC demanded a more proactive policy on economic migration and more investment in integration (chapter 2, paragraphs 2.41 to 2.52).

Summarized:

a) There is an urgent need for policies with regard to migration and integration at EU level, based on the recognition of fundamental

7 COM (2007) 248 final
http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=195729
8 COM (2007) 637 final
http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=196320
9 COM (2007) 638 final
http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=196321

social rights of current citizens as well as newcomers and embedded in strong employment and development policies, both in countries of origin and in countries of destination. A common framework of EU rules on admission for employment is urgently needed. However, this framework should not be aimed unilaterally at the demand for temporary migration, as this would favour precarious jobs and hinder sustainable integration.

b) The EU must develop a more proactive migration policy, geared towards 'managing' and not preventing mobility and migration for employment, that combines strong integration efforts with making employers and public authorities respect and enforce labour standards. This should offer old and new groups of migrant and ethnic minorities equal rights and opportunities in our societies, while promoting social cohesion.

c) This policy must be based on a clear framework of rights as established by international UN and ILO conventions and Council of Europe instruments, and be developed in close consultation with social partners at all relevant levels.

d) Labour market shortages should be primarily addressed by investing in the capacities and qualifications of unemployed and underemployed EU citizens (including those from a migrant or ethnic minority background) as well as long term resident third country nationals and refugees.

e) In addition, possibilities should be created for the admission of economic migrants, by providing for a common EU framework for the conditions of entry and residence, based on a clear consensus between public authorities and social partners about real labour market needs, preventing a two-tier migration policy that favours and facilitates migration of the highly skilled while denying access and rights to semi- and lower skilled workers.

f) Such policy should prevent the increasingly negative effects of the global competition for skilled labour: the potential devastating effects of the brain drain and youth drain on countries of origin, as well as the potential "brain waste" in terms of the underutilisation of skills and qualifications of migrants in the countries of destination.

g) More proactive policies should also be developed to combat labour exploitation, especially of irregular migrants, demanding recognition and respect of their trade union and other human rights, and providing them with bridges out of irregularity. While there is a need to be tough on employers using exploitative employment conditions, more effective policies should be developed to prevent and remedy such exploitative situations.

h) This must be linked to external (trade, development) policies that promote raising living standards and opportunities in sending countries, which would offer (potential) migrant workers and their families proper job opportunities at home. Cooperation and partnership with third countries, in particular developing countries and the European neighbourhood countries, should be strengthened.

i) ETUC and affiliates will address employers and their organisations at national and EU level to explore ways to deal with economic migration and integration in social dialogue at all appropriate levels, recognizing the strong employment and labour market dimension of these issues.

j) ETUC and its affiliates will develop policies and strategies to organise migrant workers, defend and promote their trade union rights and other human rights (whatever their legal status), develop strategies to incorporate the situation and demands of migrant workers into trade union work and integrate them in the structures of trade union organisations, prevent and combat exploitation, and improve their living and working conditions. ETUC and affiliates should also strengthen their cooperation with trade unions in sending countries.

Based on this programme of action, the ETUC Congress adopted the following action points:

- Work towards a more proactive Europe migration policy geared towards managing not preventing migration, combined with strong integration efforts and the enforcement of human rights, labour standards to combat the exploitation, especially of irregular migrants.

- Intensify actions and campaigns both at European and at national level in favour of ratification and application of all conventions and important instruments of the ILO, UN and Council of Europe conventions on the protection of the rights of all migrant workers and their families.

- Support policies that recognize the fundamental social rights of all workers and which favour social cohesion by preventing the creation of two-speed migration channels and the exploitation of workers in irregular administrative situations and the recruitment of migrants in precarious working and social protection conditions.

- Combat all forms of human trafficking.

ETUC's response to the various recent initiatives of the Commission in the area of migration is based on the commitment and programme of action as adopted by its Congress.

3. GENERAL COMMENTS

A. A PIECEMEAL APPROACH MAY LEAD TO A TWO-TIER MIGRATION POLICY, WITH LESS OR NO RIGHTS FOR LOWER SKILLED MIGRANTS

Already in 2005, on the occasion of the consultation of the Commission's Green Paper on economic migration, the ETUC acknowledged the Commission's view that a successful Community policy in the area of economic migration can only be put in place progressively, taking into account the fact that the access of third country nationals to EU labour markets is a highly complex and sensitive issue.

EU legislation on the admission of economic migrants should therefore be conceived as a 'first step legislation', laying down certain

[10] except for a possible preferential treatment of citizens of neighbouring countries on the basis of the EU neighbourhood policies, and preferential treatment based on bilateral agreements that are often based on historical links between host country and country of origin.

common definitions, criteria and procedures, while leaving to the Member States to respond to the specific needs of their labour markets and to determine the volumes of admission of persons.

At the same time, it cannot be denied that there is growing inter-dependence between Member States with regard to decisions taken in the area of immigration, which call for more harmonization at EU-level.

First of all, because of the already existing mobility of workers and services. Further harmonisation, not only of immigration law, but also regarding minimum working conditions and equal treatment in situations of cross border working, is necessary to bring about a European internal labour market, and to prevent social dumping.

Secondly, national policies with regard to asylum and with regard to the entrance of certain groups of migrant workers (such as high skilled workers) are already having an impact on the labour markets of other Member States, because of regulations with regard to mobility of long term third country nationals, the right to deliver services in other MS's, and the general impact of admission of TCN's on the European labour market.

Thirdly, the increased competition between industrialised countries on the global labour market for workers with high skills or scarce professions demands European coordination to provide a sustainable framework, that would benefits EU Member States as well as the workers concerned and their countries of origin.

In this context, the ETUC has always been in favour of taking a horizontal approach, along the lines of the original draft Directive of 2001, rather than coming up with a series of sectoral proposals.

One important argument against a sectoral approach is that this would increase the divergence in rights for several groups of workers and may contribute to a two-tier migration policy with less or no rights and protection for the lower skilled and low paid migrants. In ETUC's view, European migration legislation should cover all third country nationals, without general preferences or privileges.

The ETUC understands the difficulties for the European Commission to adopt again a horizontal approach, taking into

account the reluctance of many Member States to cooperate and legislate in the area of legal migration. The ETUC therefore sees the initiatives of the Commission to propose a Directive on admission for high skilled workers, accompanied by a proposal for a general framework Directive on rights for all third country nationals that are legally residing in an EU Member State, as positive steps in the right direction.

On the other hand, the ETUC has major problems with the fact that these proposals are preceded by a draft Directive on sanctions for employers employing irregular migrants (mostly occurring in the low skilled and low waged segments of labour markets and sectors),

whereas in the legislative programme of the Commission there is little or no initiative to offer legal channels for migration for medium or lower skilled labour, except for the announced initiative on seasonal workers. Without such legal channels, sanctions for employers employing irregular migrants may not only turn out to remain largely ineffective, but may also lead to further repression, victimisation and exploitation of irregular migrant workers (see explanation below).

B. Inadequate legislative process and insufficient consultation of social partners

The EU is still suffering from very inconsistent and inadequate legislative procedures when it comes to legal and illegal migration, which may lead to a very unsatisfactory process of decision making.

According to the current EU Treaties, in the area of illegal migration legislation can be adopted in co-decision with the European Parliament, and qualified majority voting in the Council. When it comes to legal migration however, the procedure is only consultation of the European Parliament and unanimity voting in the Council. Co-decision and qualified majority voting will be extended to the whole area of migration policy only if and when the Reform Treaty is ratified by all Member States.

However, even then there will still be Member States that have a special position with regard to the Justice, liberty and security chapter, as they have negotiated the possibility to 'opt in' (or not) every time a legislative initiative is taken (UK and Ireland) or have

opted out altogether (Denmark). In this context, the ETUC is wondering how successful the current proposals can be.

On many occasions the ETUC has stressed the need for strong social partner consultation and involvement on any EU initiatives taken in the area of economic migration, i.e. migration for employment.

The current realities and patterns of mobility and migration already have an enormous impact on labour markets and industrial relations. New migration policies and strategies should be more closely linked to and embedded in employment and labour market policies. Social partners at all relevant levels (local, sectoral, national and European) are often best placed to assess and address labour market needs and promoting consensus between public authorities and labour market actors on the policies and instruments to be adopted.

The legal framework for decision making on migration at EU level does not explicitly foresee consultation of the European social partners. The ETUC however insists that the Commission and the Council recognize the social policy dimension of economic migration, and establish adequate procedures and practices for consultation of the European social partners in the legislative process.

4. SUMMARY OF CONCLUSIONS

In Annexes A-D more detailed comments can be found on the various initiatives.

A. With regard to the Employers' sanctions Directive:

Irregular migration is a complex phenomenon, and employment one of many pull factors. An adequate response requires a wide range of measures and policies, addressing undeclared work and precarisation of work and the need to open up more channels for legal migration.

The ETUC has some strong concerns about the draft Directive, especially when put in place in the current context in which very limited legal channels for migration of TCN's in low skilled and low paid jobs exist in MS's, and little or no emphasis is placed on combating exploita-

tive labour conditions. Taking into account that employers' organisations have especially complained about all the elements of the proposal that might allow it to have some real effect in practice, there is a great risk that especially those elements will be weakened or deleted in the course of the legislative process. This may have the effect of the Directive becoming a toothless instrument that will mostly drive the undocumented workers further underground. The ETUC calls on MS's and the EP to prevent this happening at all costs.

B. With regard to the Circular Migration Communication:

In ETUC's view, the idea of circular migration must be carefully explored, and should certainly not replace more comprehensive policies in which more permanent legal channels for economic migration are also made available. Tackling brain drain and promoting ethical recruitment and a constructive policy of 'brain-exchange' should be part of such approach.

However, in the context of such broader policies, measures that allow migrants more flexibility to move between their country of origin and country of residence without losing their immigration status and rights can be a positive incentive for migrants to explore the opportunities in their country of origin, and may thereby make a positive (although modest) contribution to alleviating the brain drain.

C. With regard to the Rights Directive:

This proposal is certainly the most important one in the package, and is as such highly valued by ETUC. We welcome the fact that the Commission clearly understands the need for a clear and unambiguous legal framework offering equal treatment to migrant workers, as has been demanded on many occasions by ETUC.

The ETUC agrees with the European Parliament[11] that this Directive should be submitted (and adopted) in advance of the specific Directives that will regulate the access of specific groups of migrants,

and that different sets of rights and double standards for different groups of workers should be avoided.

[11] Report on the Policy Plan on Legal Migration, rapporteur Lilli Gruber, 17.9.2007, Final A6-0322/2007

D. With regard to the Blue Card Directive:

The global social responsibility for preventing brain drain is an area where a coordinated EU policy on high skilled migration would be very welcome, to prevent MS's competing with each other for skilled workers at the expense of countries of origin. ETUC would like to see more obligatory mechanisms and measures to prevent unethical and aggressive recruitment, and wants to emphasize the important role social partners can play in the development of such measures.

The 'Blue Card' initiative must not lower standards among workers already in Europe, or stop investment in their training. Also jobs in sectors where there are shortages will have to be made more attractive to the locally unemployed in terms of wages and working conditions. The Blue Card initiative must not replace policies and incentives to invest more in the currently unemployed, migrants, and women to enter higher skilled jobs.

This Directive is the first one in a series of announced proposals that would harmonise conditions for admission to the EU. The Commission has chosen a group of migrant workers that according to most MS's is very welcome to fill their high skilled labour market shortages. While the proposal has several weaknesses, it provides a starting place for discussion and debate on how to develop more legal channels for migration. The ETUC will therefore carefully study the Commission's proposals, and work closely with the European Institutions to improve them where necessary. We will also discuss these questions with European employers' organisations.

ETUC's position regarding the various Commission initiatives

A. EMPLOYERS' SANCTIONS DIRECTIVE

Summary of the proposed Directive

On 16 May 2007, the Commission presented a draft Directive, providing for sanctions against employers of illegally staying third-country nationals.

The proposal is based on Article 63(3)b of the EC Treaty, which gives the EU competence to reduce illegal immigration to the EU. This (narrow) legal basis explains why, according to the explanatory memorandum, the proposal is concerned with immigration policy and not with labour or social policy. It also explains why the proposal does not cover TCN's who are legally staying in the EU but are working in violation of their residence status (such as students and tourists), nor covers labour exploitation of migrants who have the required residence and work permits or of EU citizens who are working in spite of restrictions based on transitional arrangements for the free movement of workers. The proposal also does not cover TCN's when working as posted workers.

The proposal takes as a starting point that a major factor that encourages illegal immigration is the possibility for illegal migrants to find work, and that therefore measures should be taken to reduce that pull factor.

The aim is to ensure that all MS's introduce similar penalties for employers of illegally staying TCN's and enforce them effectively.

Key elements of the proposal:

- the definition of employer covers both natural and legal persons employing others, both in the course of business activities and as private households (for instance care-takers and cleaners);

- the central provision is a general prohibition on the employment of TCN's who do not have the right to be resident in the EU;

- employers are required to check the residence status of a TCN before recruitment, and – when a business or legal person – are required to notify the competent national authorities. If they have carried out these obligations, they are not liable to sanctions;

- they are not liable in the event that the worker shows forged documents, unless these documents are manifestly incorrect;

- sanctions consist of fines, and the cost of return of the TCN

- the TCN would not be subject to sanctions on the basis of this Directive; however, on the basis of a separate draft Directive[12], MS's would be required to issue a return decision to any illegally staying TCN;

- employers would be required to pay any outstanding remuneration and taxes and social security contributions; a work relationship of 6 months shall be presumed unless the employer can prove differently; MS's will have to ensure that TCN's also receive this back-pay when they have already left the country;

- in addition, business employers can be disqualified from public benefits, subsidies and public procurement;

- in case of subcontracting, the main contractor is jointly and severally liable with the subcontractor for sanctions and back pay;

12 COM (2005) 391 http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=193255

- there will be criminal penalties for serious infringements, including 'particularly exploitative working conditions' (such as a 'significant difference in working conditions from those enjoyed by legally employed workers') and where the employer knows the worker is victim of human trafficking;

- TCN's should be given opportunities to lodge complaints directly or through third parties such as trade unions and NGO's, which should be protected against sanctions for supporting illegal immigrants;

- in case of particularly exploitative working conditions and criminal proceedings, the workers should receive a temporary residence permit to allow them to appear as witnesses in court, and their return should be postponed until they have received their back pay;

- MS's would be required to inspect at least 10 % of companies established on their territory per year.

ETUC'S POSITION

(ETUC Congress document Par. 2.49)

"More proactive policies should also be developed to combat labour exploitation, especially of irregular migrants, demanding recognition and respect of their trade union and other human rights, and providing them with bridges out of irregularity. While there is a need to be tough on employers using exploitative employment conditions, more effective policies should be developed to prevent and remedy such exploitative situations. Providing for a legal space in which irregular workers can complain about exploitative working conditions without immediately being threatened by expulsion, separating labour inspection from inspection on immigration status, recognising that labour rights and human rights can and do exist and should be dealt with independently from having the right documents in place, introducing chain responsibility of main contractors using agencies and subcontractors that do not respect minimum labour and human rights, are useful instruments that can be promoted by the EU."

In its letter of 2 May 2007 to Commissioners Frattini and Spidla, accompanying the joint statement of ETUC, Solidar and PICUM about the expected initiative of the Commission, the ETUC stated among other things that it is an illusion that EU MS's can solve the problem of irregular migration by closing their borders and implementing repressive measures. Instead, the protection of human rights and enforcement of labour standards for migrant workers - whatever their nationality or legal status – should be the top priority. Any measures to be taken should be part of a more proactive migration policy, put pressure on employers and their organisations at national and European level to show a more unambiguous commitment to the enforcement of labour standards, and should be developed in close consultation and cooperation with social partners at all relevant levels. In addition, any measures should also include proposals to protect victims and reward their cooperation in combating labour exploitation, in order to promote a virtual process of diminishing incentives for irregular employment and to denounce the current vicious circle of invisibility, silence, blackmailing and complicity.

The current proposal clearly falls short on the above mentioned aspects.

The aim of the proposal is **not** to combat labour exploitation but to tackle illegal employment of migrants without permit to stay. The Directive is proposed in advance of any proposal to open up legal channels for migration for medium or lower skilled migrants, and social partners have not been properly consulted. The ETUC therefore has serious doubts about whether the proposed instrument is the right one, proposed at the right moment in time, and in the right order of legislative proposals.

In this context, the ETUC is very concerned that it may have as its main effect the victimisation of migrant workers whatever their legal status.

Problematic aspects of the proposal:

a) in the view of the ETUC, the issue of 'illegal employment of irregular migrants' is a complex issue to which there are no easy answers. It is not just an issue for DG Justice, Liberty and Security but also for DG Employment, as it has a strong connection to the

functioning of labour markets and to undeclared work in general, and cannot be solved by focusing only on sanctions for employers; the Directive seems to assume that the submerged economy is functioning separately from the normal economy, and can be eradicated by administrative and penal sanctions; however, extensive evidence shows the close connection between the two, and also the existence of a considerable 'grey area'; in this regard, the inclusion of private parties employing irregular migrants in households may be particularly problematic, taking into account that until today proper policies to address undeclared work in domestic services, offering the tens of thousands of mostly female and often migrant workers doing domestic work some legal status and employment protection, are totally absent[13];

b) in practice, enforcement of the measures may turn out to be very difficult; the sanctions may have a deterrent effect on the relatively 'nice' employers, but may make the 'nasty' ones even nastier, with desperate undocumented workers driven even further underground (this effect is recognized in the impact assessment, where it says that the Directive may be an incentive for more trafficking!);

c) the Directive may contribute to a negative 'profiling' of migrant workers in general, with more discrimination and xenophobia as a result; the obligation to check documents will lead 'foreign looking people' being singled out for checking (as experience in the USA has shown);

d) without creating at the same time legal channels for migration and bridges out of irregularity (such as forms of regularisation etc.) those undocumented workers who need employment most to survive will turn to sectors with the most dangerous forms of work in terms of health and safety and rogue employers (as experience with the British Gangmasters Act has shown).

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13 ETUC has addressed this issue also in its recent response to the Commission's consultation on Reconciliation of work and family life, ETUC website www.etuc.org/a/3178 and www/etuc.org/a/3910

To prevent the draft Directive to have adverse effects, at least the following elements will have to be addressed and amended:

1) With regard to the scope of the Directive:
the fact that it does not cover legally resident migrants, nor EU citizens, nor TCN workers when posted is due to the limited legal basis, but will lead to major problems. What to do when legal migrants or workers from for instance the new MS's that are still confronted with transitional restrictions are exploited? Will they be in a less favourable position than irregular TCN workers? What about the exclusion for posted workers? Will this not make subcontracting and hiring via agencies even more attractive? And the joint and several liability that is proposed an illusory measure? One issue to address is therefore the question of a wider legal basis and/or an additional initiative that would allow to also tackle labour exploitation of EU citizens and posted workers.

2) The proposal aims to establish a minimum level of sanctions and enforcement, to prevent distortion of competition and 'secondary movements' of illegally staying TCN's to MS's with lower levels of sanctions. However, in the absence of European policies on regularisation, this objective may run counter to national policies addressing irregular migration with different instruments, such as offering employers and/or workers grace periods to correct administrative faults, or regularisation programmes. Such national approaches must explicitly remain possible, and therefore the Directive should contain a clause that it is 'without prejudice to national measures more favourable to workers';

3) The definitions of employer and subcontractor are not very clear, and especially raise questions as to how temporary agencies would be included. This is particularly problematic as in practice irregular migrants are increasingly employed via intermediaries including temporary agencies.

They should therefore be included in the definition of subcontractor, or a separate definition should be added, to ensure that they are covered by the provision on joint and several liability of subcontractors and main contractors.

4) The draft Directive obliges MS's to inspect at least 10 % of companies established on their territory to control illegal employment. In ETUC's view, this is a very problematic obligation. On several occasions we have argued that it is important to separate the tasks of the labour inspection regarding protection of workers and their working conditions from the tasks of immigration inspection. Currently, for most undocumented migrants, the labour inspection is just another guise of the police that is chasing them to expel them from the country.
The setting of targets in the current situation, in which the budgets for labour inspection are reduced in many countries, will inevitably lead to less worker-oriented activity, and more immigration policing activity, and will be counterproductive in terms of combating labour exploitation.

The Directive also contains several positive elements but also these provisions can be improved:

1) The fact that a 6-month employment is presumed and the worker, when caught, will have to get back pay for this period can be seen as at least some kind of 'damage control' in the interest of the worker.
However, why only let him/her stay in the country until the money is paid when the employer is sued for a criminal offence? Furthermore, it is questionable why the employer would have to pay the costs of return of the worker to his/her country of origin. This seems to shift the responsibility for such things from the state to private parties. In our view, the employer should only be held liable for such costs when he has been involved in recruiting the worker illegally. On the other hand, it is in our view only logical to take away from the employer *any illegal profit* that he has had by employing the worker on an irregular basis. This would mean that it is not minimum wages but 'comparable wages' with similar legal workers, as well as all other benefits that the worker should have received, that has to be the basis for the back pay obligation.

In this context, the ETUC welcomes the definition of 'exploitation' given in the Directive, being when there is "a significant difference in pay or in working conditions, particularly those affecting

workers' health and safety, from those enjoyed by legally employed workers"
However, it must be without any doubt that the worker for instance can claim any damages when there is a work related accident.
More in general, it is our view that the worker's rights based on the employment contract should remain valid, even if the worker does not have the right to reside or work on the territory. This should be clarified in the Directive.

2) As mentioned above, the introduction of joint and several liability for subcontractors and main contractors is a key element of the proposal, without which it will be a toothless instrument. It is therefore of particular importance to ensure that all kinds of intermediaries and especially temporary agencies will be covered by this provision.

3) The ETUC highly values the obligation for MS's to provide effective mechanisms for complaints, and the prohibition to impose sanctions to third parties such as trade unions who assist TCN's in their complaints.

4) Effective sanctions are a key element, and the ETUC therefore especially welcomes the proposal to exclude businesses from public benefits, aid or subsidies, and participation in public contracts. A temporary or permanent closure of the establishment may be a measure that goes beyond what is reasonable, especially when the employment of legally employed workers is involved, and cannot be taken in our view without consultation of workers and their representatives in the business concerned.

Criminal sanctions may be justified when the employer is deliberately exploiting workers or can be held responsible for gross negligence. However, as 'intentions' are very difficult to prove, we suggest taking the approach that the employer can be sued when he knew or could have known (for instance) that the worker was a victim of trafficking.

To conclude:

Irregular migration is a complex phenomenon, and employment one of many pull factors. An adequate response requires a wide range of measures and policies, addressing undeclared work and precarisation of work and the need to open up more channels for legal migration.

The ETUC has some strong concerns about the draft Directive, especially when put in place in the current context in which very limited legal channels for migration of TCN's in low skilled and low paid jobs exist in MS's, and little or no emphasis is placed on combating exploitative labour conditions. Taking into account that employers' organisations have especially complained about all the elements of the proposal that might allow it to have some real effect in practice, there is a great risk that especially those elements will be weakened or deleted in the course of the legislative process. This may have the effect of the Directive becoming a toothless instrument that will mostly drive undocumented workers further underground. The ETUC calls on MS's and the EP to prevent this happening at all costs.

B. COMMUNICATION ON CIRCULAR MIGRATION

(ETUC Congress document Par. 2.41)

.....A common framework of EU rules for admission is urgently needed. However, this framework should not be aimed unilaterally at the demand for temporary migration, as this would favour precarious jobs and hinder sustainable integration.

In the context of this position, the ETUC will only comment on the part of the document regarding circular migration, because of its clear connection to the proposed Blue Card Directive. In a separate position to be developed in the near future the ETUC intends to go further into detail with regard to the various aspects related to migration and development, and the possible role of mobility partnerships and EU mobility centres in countries of origin.

Summary of the Communication

With its communication the Commission aims to start a discussion on 'circular migration' as a new alternative to illegal migration on the one hand and permanent migration on the other. Circular migration is defined as a form of migration that allows some degree of legal mobility back and forth between two countries. On the one hand, TCN's that are settled in the EU could be given the opportunity to go back temporarily to their country of origin to set up a business or for professional or voluntary activity, without losing their residence status in the EU. On the other hand, TCN's residing in third countries could be given the opportunity to come to the EU temporarily for work, study or training.

The assumption is that this form of migration would benefit both migrants, EU countries and countries of origin, and help prevent brain drain. The proposal is to introduce measures that foster circular migration in the Blue Card Directive (see below) and in the upcoming Seasonal workers Directive (in 2008).

Effective circular migration should be ensured by introducing rules that offer promises of continued mobility in exchange for abiding by the rules, which will reduce the temptation to overstay the temporary permit.

In addition, measures should be taken to support migrants that return home in their search for jobs, setting up of businesses etc. Finally, effective return must be guaranteed.

ETUC's position

The ETUC has some serious doubts with regard to the recent emphasis in the migration debate on circular and temporary migration.

Although in itself possibilities for circular migration may be useful and attractive for both migrants, sending and receiving countries, we think that these positive potentials will only be able to materialize in a context of more comprehensive policies in which other (more permanent) legal channels for economic migration - including for lower skilled workers - are also available.

The current optimism about circular migration as an alternative to other forms of migration is a bit too dependent on the illusion that all forms of migration somehow benefit the country of origin (because of remittances), that all migrants would fit into this rigid model and would be interested to go back to their country of origin without the situation there being very much improved, and that countries of origin would be able to control their emigratory flows in the way the EU would like them to.....

Depending on what measures are put in place, the following questions should be addressed:

- will circular migrants' work permits be non-portable (i.e. restricted to specific employers or sectors), thereby increasing chances of exploitation and reducing chances of socio-economic mobility (and no chance to use acquired skills to move up the skills and career ladder....)?
- will policy-regulated circular migration systems become closed labour markets, with limited opportunities for access among new would-be migrants?
- which rights would apply? in the event that these are not clearly equal rights, a new incentive for unfair competition by migrants leading to their exploitation on the one hand, and to xenophobia on the other hand, would be created.
- since any temporary migration scheme will only function if migrants do indeed return after their statutory period of employ-

ment, will enforcement mechanisms become more draconian? and what about all the bureaucracy involved, with all the chances for 'grey areas' to develop (decisions not taken in time, overstaying for a few days means also loss of return rights?, etc.....)

- since circular migrants will be required to leave after short stays, will this preclude any kind of integration strategy (including learning the language, basic info about the receiving country and their rights, etc)? If so, this will make them more vulnerable, socially excluded and easier to exploit.
- as they will have to leave after a time, there will be no chances for naturalisation and/or gaining dual citizenship (which would in itself help them to 'circulate' more easily!)
- will they ever have the opportunity to get out of the system of circular migration, and become a permanent migrant?
- finally: will the system offer both migrants and employers situation that is so much more attractive that there will be less recourse to irregular migration? This can clearly be doubted, as long as more comprehensive migration, development and integration policies are absent.

In conclusion:

in ETUC's view, the idea of circular migration must be carefully explored, and should certainly not replace more comprehensive policies in which more permanent legal channels for economic migration are also made available. Tackling brain drain and promoting ethical recruitment and a constructive policy of 'brain-exchange' should be part of such approach.

However, in the context of such broader policies, measures that allow migrants more flexibility to move between their country of origin and country of residence without losing their immigration status and rights can be a positive incentive for migrants to explore the opportunities in their country of origin, and may thereby make a positive (although modest) contribution to alleviating the brain drain.

[14] ETUC agrees with BusinessEurope that there could be a potential contradiction between the strong emphasis put simultaneously on both circular and return migration on the one hand and the efforts to foster integration of third country nationals on the other hand.

C. RIGHTS DIRECTIVE

(ETUC Congress document Par. 2.43 and 2.44)

The EU must therefore urgently develop a more proactive migration policy(...) that combines strong integration efforts with making employers and public authorities respect and enforce labour standards. This should offer old and new groups of migrant and ethnic minorities equal rights and opportunities in our societies, while promoting social cohesion. (...)

Such a policy should, in an integrated approach, be based on a clear framework of rights as established by international UN and ILO conventions and Council of Europe instruments, and be developed in close consultation with social partners at all relevant levels.

The proposed *Council Directive on a single application for a single permit for TCNs to reside and work in the territory of a MS and on a common set of rights for third country workers legally residing in a MS* is based on Article 63.3.a EC (unanimity in Council and consultation of the European Parliament). It is to be read in conjunction with the 'Blue Card' initiative, on conditions for admission of highly skilled TCN's, published on the same day. Both proposals aim to replace the 2001 horizontal initiative on the conditions of entry and residence of TCN's for the purpose of paid employment and self employed economic activities, which failed to get support in the Council. The impact assessment to the proposed Rights Directive identifies a fully fledged legislative option in the form of a Directive regulating access to labour market and granting equal treatment for third country nationals as one of the most favourable options in view of the objectives sought. However, the Commission clearly does not regard this option as politically feasible.

These proposals must be distinguished from the existing Directive 2003/109 concerning the status of TCN's who are long term residents, which grants enhanced protection against expulsion and a general right to equal treatment - including access to the labour market under certain conditions - to TCN's who have been legally residing in a EU Member State for five years.

Summary of the proposed Directive

The objective of the proposed rights Directive is two-fold:

- to cut red tape by providing a single permit to reside and to work lawfully;
- to narrow the rights gap between 'legally' residing third country workers and nationals.

About the single permit:

The proposal provides for a one stop shop system for TCN's who would like to reside in a MS for the purpose of work. A single application procedure for the residence permit and work permit is envisaged.

These provisions will complement the existing Regulation 1030/2002, which provides for a uniform format for residence permits for TCN's: information relating to the permission to work will be indicated on this residence permit. The proposed Rights Directive only deals with procedural aspects, including the availability of remedies in the event of a rejected application. The actual conditions for the granting of the single residence and work permit will be spelt out in separate initiatives on high skilled workers, seasonal workers etc.

About the right to equal treatment:

The proposal further grants legally working TCNs basic socio-economic rights on an equal footing with MS nationals. Such equal treatment would cover:

a) working conditions, including pay and dismissal as well as health and safety at the workplace
b) freedom of association and affiliation to a trade union or employers' organisation
c) education and vocational training
d) recognition of qualifications in accordance with national procedures
e) social security (this covers maternity, illness, unemployment, old age, work related accidents and work related illness, family)
f) payment of acquired pensions when moving to a third country
g) tax benefits

h) access to goods and services, including procedures for obtaining housing.

The issue of access to employment is not dealt with, as this is supposed to be addressed in the specific directives for high skilled workers, seasonal workers, etc.

MS's may decide to apply some restrictions. In particular, equal treatment with regard to working conditions and freedom of association may be limited to those third country workers who are in employment. An unemployed third country worker may also be denied access to social security, with the exception of unemployment benefit. Finally, the right to public housing may be reserved to TCN's who have been legally residing or who have the right to stay for three years (which is an improvement compared to the fact that currently only long term residents have access to housing, i.e. after 5 years).

The Directive will not apply to specific groups of TCN's, among them posted workers, seasonal workers and asylum seekers.

The Directive would apply without prejudice to more favourable provisions of Community Law, bilateral or multilateral agreements and of national law.

ETUC'S POSITION

This proposal is certainly the most important one in the package, and is as such highly valued by ETUC. We welcome the fact that the Commission clearly understands the need for a clear and unambiguous legal framework offering equal treatment to migrant workers, as has been demanded on many occasions by ETUC. The ETUC agrees with the European Parliament[15] that this Directive should be submitted (and adopted) in advance of the specific Directives that will regulate the access of specific groups of migrants,

[15] Report on the Policy Plan on Legal Migration, rapporteur Lilli Gruber, 17.9.2007, Final A6-0322/2007

and that different sets of rights and double standards for different groups of workers should be avoided.

Problematic elements are the scope of the proposed Directive, which excludes for instance seasonal workers that have been admitted for a period not exceeding six months in any 12 month period. The link to the upcoming proposal for a Directive on seasonal workers must be clarified, as it may be expected that this Directive will also contain rights of seasonal workers.

However, the ETUC does not accept an exclusion of seasonal workers especially when it comes to direct work-related issues such as pay and working conditions, in which equal treatment has to be guaranteed regardless of specific immigration status.

Several Articles of the Directive will have to be studied more in technical detail, to see if the texts are adequate and in line with ETUC's demands and concerns, especially when it comes to the right to equal treatment and the possible restrictions to it (Article 12).

However, already at this stage the ETUC would like to explicitly denounce the possibility for Member States to limit the right to equal treatment with regard to working conditions and freedom of association (Article 12,2,d) to workers 'who are in employment'. This limitation is highly questionable from an international fundamental rights perspective, does not exist in the Long term residents directive, and raises several questions for instance about the protection of workers when applying for a job and being in the recruitment process, or about their protection in, for instance, a dispute about dismissal that takes place after they have already lost their job.

More generally, ETUC welcomes a reference to the Charter of Fundamental Rights in the explanatory memorandum (with special reference to the articles on freedom of association and on fair and just working conditions), but finds that references to international instruments such as relevant ILO and Council of Europe conventions are lacking.

With regard to the single permit for work and residence: although we recognize the benefits of simplification and a one stop shop approach, we have some doubts about the procedure and how to

guarantee that socio-economic factors (labour market situation and needs) and actors (such as social partners) are properly taken into account. When a single procedure is introduced, it is likely that decisions will be taken by the interior ministries. This may mean that other ministries, such as labour and social affairs, are excluded and thus their voices in the questions of economic migration might be weakened, instead of strengthened as ETUC would like to see happening.

D. BLUE CARD DIRECTIVE

(ETUC Congress document Par. 2.46 – 248)

2.46 Such a policy should recognise the need to prioritise investing in the capacities and qualifications of unemployed and underemployed EU citizens including those from a migrant or ethnic minority background, as well as long term resident third country nationals and refugees, to address labour market shortages, and not instead rely on simplistic and recruitment programmes that provide companies and member states with short term solutions without addressing long term consequences.

2.47 Such a policy should open up possibilities for the admission of economic migrants, by providing a common EU framework for the conditions of entry and residence, which should be based on a clear consensus between public authorities and social partners about real labour market needs on the one hand, and the illusion of closed borders on the other hand, preventing a two-tier migration policy that favours and facilitates migration of the highly skilled while denying access and rights to semi- and lower skilled workers;

2.48 Such policy should prevent the increasingly negative effects of the global competition for skilled labour: the potential devastating effects of brain drain and youth drain on countries of origin, as well as the potential "brain waste" in terms of the underutilisation of skills and qualifications of migrants in the countries of destination;

The objective of the proposed Council Directive on the conditions of entry and residence of TCN's for the purposes of highly qualified

employment is to improve the EU's ability to attract third country highly qualified workers. The Commission is concerned that highly qualified TCN's seem to favour the USA and Canada over the EU as a whole.

Differing admission systems, cumbersome procedures for admission and EU mobility are identified as potential reasons for the EU's relative unattractiveness. The Blue Card initiative therefore aims at laying down admission conditions for highly qualified workers.

Summary of the proposal

The proposal establishes a fast track procedure for the admission of highly qualified third country workers based on common definition and criteria. Highly qualified employment is to be understood as work for which a higher education qualification or at least three years of equivalent professional experience is required. In order to qualify for admission the applicant must present:

- a work contract or a binding job offer of at least one year;
- evidence of professional qualifications or relevant professional experience;
- a valid travel document and if appropriate evidence of a valid residence permit;
- sickness insurance for periods where no such insurance coverage results from the work contract;
- the applicant must not be considered to pose a threat to public policy, public security or public health;

In addition to these requirements, the gross monthly salary specified in the work contract or job offer shall be at least three times the minimum gross monthly wage as set by national law. Member States where minimum wages are not defined shall set the national salary threshold to be at least three times the minimum income under which citizens are entitled to social assistance in that Member State, or to be in line with applicable collective agreements or practices in the relevant occupation branches. The Commission justifies this criterion by the necessity to ensure that the admission decisions do not negatively affect other workers in the medium term, thereby combating wage dumping.

A specific scheme for young professionals of less than 30 years of age is envisaged whereby the salary criterion is set at twice the minimum gross monthly wage. In addition, MS's may waive the salary requirement where the young applicant has completed higher education on the territory of the Community.

These criteria are considered as mandatory. Therefore unless provided otherwise by Community law or bilateral or multilateral agreements, MS's will not be allowed to set differing criteria for admissions. However, MS's may decide to give preference to EU citizens and already residing TCN's.

Workers admitted will be issued a residence and work permit for two years, renewable for another two years (the 'Blue card'). The Blue Card can be revoked in case of unemployment exceeding three consecutive months. The admission procedure shall be completed within 30 days; the deadline may be extended to 90 days in exceptional cases. Basic procedural safeguards regarding redress are provided.

The Blue Card will grant TCN's and their families a series of rights:

- without prejudice to the principle of Community preference, the holder of the Blue Card shall enjoy equal treatment with nationals after two years of legal residence as regards access to highly qualified employment (i.e. this means that the salary requirement then no longer applies) although restrictions on certain activities may be retained;

- equal treatment as regards basic socio-economic rights (same list of rights as provided for in the Rights Directive: see above; but no restriction on freedom of association!). MS's may restrict equal treatment with regard to study grants, procedure for obtaining housing and social assistance;

- Immediate family reunification. However, by way of derogation to the family reunification Directive[16] , a restriction on access to the labour market for family members may be indefinite;

[16] 2003/86

- right to move for work to a second MS under certain conditions after two years of legal residence in the first MS. Periods of residence in the EU shall be cumulated in order to obtain the long-term residence status after five years. In order to sustain the circular migration policy and to limit possible brain drain effects, an EU Blue Card holder may return to his country of origin for up to 24 months with a view to exercise an economic activity, or to perform voluntary service, or to study without losing his or her right to a long term resident status.

MS's may decide to apply more favourable conditions concerning mobility and residence.

ETUC's position

In a first reaction the ETUC warned that the EU 'Blue Card' must not lower standards among workers already in Europe, or stop investment in their training. Also jobs in sectors where there are shortages will have to be made more attractive to the locally unemployed in terms of wages and working conditions. This is also true for the higher skilled segments of the labour markets, where there is a strong need as well to invest in the improvement of working conditions, equality, life long learning and measures to reconcile work and family life. The lack of investment in research, education and innovation in Europe, both in the private and the public sector is an important obstacle to the competitiveness of Europe. The Blue Card initiative must not replace policies and incentives to invest more in currently unemployed skilled workers including older workers, to invest in the upskilling of second and third generation migrants, and to invest in the untapped potential of women to enter high skilled jobs.

The ETUC has doubts about splitting off 'those we want' and 'those we do not want', which can in practice be difficult to define. Yet these proposals can be a step in the right direction if our concerns are acted on, and the social partners are involved at all relevant levels in assessing and addressing labour market needs.

The global social responsibility for preventing brain drain is an area where a coordinated EU policy on high skilled migration would be very welcome, to prevent MS's competing with each other for skilled workers at the expense of countries of origin, and to promote

ethical recruitment practices of high skilled workers from developing countries. ETUC would like to see more obligatory mechanisms and measures to prevent unethical and aggressive recruitment, and wants to emphasize the important role social partners can play in the development of such measures.[17]

Problematic issues that need to be addressed in the legislative process are:

- unrestricted free movement for workers who are EU citizens has not yet been fully achieved. Citizens of the EU are not covered by the proposal. The Directive may therefore lead to unjustified privileged treatment of high skilled TCNs over high skilled EU citizens, which should not be accepted.

- several MS's are already bound by international commitments in the field of labour migration.[18] If the proposals of the Commission fall short of the standards in these conventions, these member states may have difficulty to support them.
  This is for instance the case with regard to the term given to a worker after losing his job to look for a new one (3 months in the Directive, 5 under the Council of Europe Convention);

- the Directive is based on the assumption that it is possible to define who the 'high skilled workers' are. However, this is partly based on the requirement that the worker has a 'higher education qualification'. This means that MS's must accept the certificates of third countries' institutions. In the absence of any system of recognition of diplomas outside the EU this may be highly problematic. One option is therefore to align the required qualifications with the EQF (European Qualifications Framework).

On the other hand, the additional option of 'equivalent professional experience' may help resolve this problem, although also here the question arises of who is qualified to assess the equivalence.

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[17] See recent agreement between social partners at EU level in the hospital sector

[18] ILO convention 97, which has been ratified by 10 Member States, and Council of Europe Convention on the legal status of migrant workers 1977, also ratified by ten although different MS's

■ in addition there is a salary criterion of three times the gross minimum wage; this may be very problematic especially in Member States with a very low legal minimum wage (such as several new MS's); in ETUC's view, it might be more transparent and less ambiguous to talk about 'high skilled jobs' and define skills criteria for those jobs;

■ Member States where minimum wages are not defined shall set the national salary threshold to be at least three times the minimum income under which citizens are entitled to social assistance in that Member State, or to be in line with applicable collective agreements or practices in the relevant occupation branches. The Commission justifies this criterion by the necessity to ensure that the admission decisions do not negatively affect other workers in the medium term, thereby combating wage dumping. However, to really **avoid wage dumping, the trade unions or their local representatives must be informed of and have a real influence on the wage** setting for the migrant worker.

■ the scope of the Directive excludes persons seeking international protection as well as refugees and asylum seekers; although this is in itself logical, taking into account the different regulatory regimes applicable to asylum and migration and the need not to confuse the two, there is also a need for a renewed discussion on possibilities to allow asylum seekers and refugees to do paid work and to allow especially the higher skilled among them to maintain their professional skills and expertise, to prevent brain waste.

■ the Directive prohibits MS's to apply more favourable rules in order to prevent competition between MS's. It is very questionable if this can be maintained. Will MS's really be willing to abandon their power to ease labour migration requirements for favoured business?

■ at the same time, MS's will continue to have the right to determine volumes of labour migration (i.e. quota's etc.), so that even where an individual meets all the criteria, there is no guarantee that he/she will be admitted....

- the proposal provides for more relaxed rules for young workers (under 30), i.e. a lower salary level. Although this may be helpful for students from third countries who wish to stay in the EU, this provision seems to be a clear case of age-discrimination (with some question marks as to which age group in this situation is the one that is treated less favourably);

- the three month limit to look for work once unemployed not only causes problems with other international instruments, but there are also other good reasons for allowing people a longer period (e.g. the threat of expulsion may play into the hands of unscrupulous employers or at least gives the worker a very weak negotiating position when it comes to accepting unfavourable working conditions).

Positive elements are:

- the attempt to deliver a common fast track, flexible and transparent procedure for admission (although it is questionable if the goal will in practice be achieved)

- the list of rights contained in the Directive, which is including the important area's of equal treatment with regard to wages, working conditions, education and vocational training and freedom of association

- the right to mobility within the EU after 2 years of employment

- the right to 'circular migration' i.e. temporary stay in the country of origin without losing residence rights in the EU

- favourable family reunification rights

However, the provisions in the area of family reunification especially are very questionable, as they are substantially more favourable than those which apply to long term resident TCN's. This may create a situation in which long term low skilled workers are discriminated against when compared to short term high skilled workers, in an area which is closely linked to fundamental human rights (the right to family life). For ETUC, this is highly problematic.

To conclude

this proposal is the first one in a series of announced proposals that would harmonise conditions for admission to the EU. The Commission has chosen a group of migrant workers that according to most MS's is very welcome to fill their high skilled labour market shortages. While the proposal has several weaknesses, it provides a starting place for discussion and debate on how to develop more legal channels for migration. The ETUC will therefore carefully study the Commission's proposals, and work closely with the European Institutions to improve them where necessary. We will also discuss these questions with European employers' organisations.

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