

ETUC RESOLUTIONS 2012

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**European Day of Action
and Solidarity**

**For Jobs
and Solidarity
in Europe**

**No to
Austerity**



European Trade Union Confederation
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**SYNDICAT
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ETUC RESOLUTIONS

Adopted by the Executive
Committee during 2012

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JANUARY 2012

ETUC DECLARATION ON THE “TREATY ON STABILITY, COORDINATION AND GOVERNANCE IN THE ECONOMIC AND MONETARY UNION”

Adopted by the Steering Committee on 25 January 2012

On 8 and 9 December 2011, the European Council decided to engage in an international agreement aiming at strengthening budgetary discipline. Governments considered that reinforcing fiscal obligations would bring back market confidence and save the Euro. The decision was followed by intensive and semi-secret negotiations aiming at reaching an agreement by the end of January 2012. The process of negotiation ignored the democratic scrutiny that should normally characterise any reform of the Union, in particular by not giving the full role to the European Parliament. The ETUC deplores this undemocratic process and its undemocratic consequences at national level.

EU leaders are wrong to believe that a new Treaty, without an accompanying deepening of democracy at EU level - including the full involvement of the social partners at European and national level - nor any new specific commitments on Eurobonds and taxes on financial transactions, will restore growth and resolve the sovereign debt crisis. The new rules on economic governance should not be disguised by Europe's leaders as a technical matter.

The ETUC opposes this new Treaty. Although we support common rules and economic governance, we cannot support these rules. We are convinced that the proposal before us will weaken Europe instead of reinforcing it. The new Treaty will undermine the support of the population for European integration, and it will stifle growth and increase unemployment:

- 1) In the absence of sustainable investments for growth, austerity measures will not lead to the solution of the Euro crisis and to employment; they will not either reassure financial markets.
- 2) Casting in national constitutions or legislation a strict adherence to public deficit rules will only exacerbate the current crisis.
- 3) Returning to balanced public accounts requires a long term approach including fair taxation policies, a financial transaction tax, combating tax fraud and tax evasion, a partial pooling of the debt, adequate intervention of the ECB, and strong control over the financial sector.
- 4) The need for economic governance is being used as a means of restricting negotiating mechanisms and results, attacking industrial relations systems and put downward pressure on collectively agreed wage levels; to weaken social protection and the right to strike and privatise public services. The ETUC actively resists these attacks, which, cumulated over the years, will dismantle a social model which is unique in the world. The wrong and socially harmful German initiatives such as Agenda 2010 or increasing the retirement age should not be imposed on other European countries.
- 5) European integration, if it is to succeed, must be a positive project bringing social progress and more and better jobs. This is why the ETUC reiterates its demand that a social protocol should be integrated into the European Treaties.

The new Treaty is only stipulating more of the same: austerity and budgetary discipline. It will force member states to pursue damaging pro-cyclical fiscal policies, giving absolute priority to rigid economic rules at a time when most economies are still weak and unemployment intolerably high. It will bring downwards pressure on wages and working conditions, surveillance and sanctions. Governments failing to comply with the fiscal compact will be brought to the European Court of Justice, which may impose sanctions.

The new Treaty does not address the Euro Area's key problem that, besides the European Central Bank (ECB), there is no institution with enough liquidity capable of stopping a bond run on individual Euro Area members, with one bond run spilling over and contaminating the rest of the Euro Area. Unlike banks, Euro Area governments do not have a 'lender of last resort' to put a stop to irrational but self fulfilling financial sector herd behaviour.

In addition, the practical implementation of this new Treaty raises a number of problems. It is not clear how the 'structural' deficit will be defined or which

interest rate and potential growth rate that will be used to calculate medium term fiscal sustainability.

Europe needs a different economic union with a strong social dimension based on the following principles:

- A clearer mandate for the ECB. The ECB's objective should be to promote price stability along with full employment and convergence of member states' finance conditions. The ECB should not only have the possibility but the obligation to act as a 'lender and buyer of last resort' for sovereign debt.
- A partial pooling of the debt through Eurobonds.
- A wage safeguard clause, imposing the full respect of the autonomy of social partners to bargain collectively and preventing the fiscal compact from intruding in the areas of wages, collective bargaining systems, wage formation systems, collective action and organisation. Wages are not a brake on the economy but its engine.
- Provisions to safeguard growth: excluding public investments that support potential growth from the 'balanced budget rule', safeguarding the public revenue side by engaging to counter tax competition, fraud and evasion, a structural role for European social dialogue to avoid a blind implementation of rigid economic rules that would harm the economy.
- A Social Progress Protocol must be attached to the European Treaties to guarantee the respect of fundamental social rights.

MARCH 2012

ETUC ACTION PROGRAMME ON GENDER EQUALITY

Adopted by the Executive Committee on 6-7 March 2012

Introduction

The EU has made significant progress over the last 50 years in promoting greater equality between women and men in society and in the labour market. Since its foundation EU equal treatment legislation has contributed and will contribute to equal participation of women and men in Europe's economy and society.

With the new mandate for the period 2010-2014 the Commission adopted different EU instruments to deal with gender equality:

- The **EU Women's Charter** strengthens EU efforts to build a gender perspective into all its policies for the next five years while taking specific measures;
- The **Strategy for Equality between Women and Men** builds on the experience of the Roadmap for Equality between Women and Men of 2006 and represents the European Commission's work programme on gender equality for the period 2010-2015 on the basis of six thematic priorities¹;
- The **Europe 2020 Strategy** sets a new target of 75% women and men to be employed by 2020 and ambitious objectives on employment, innovation, education, social inclusion and climate/energy.

¹ The six areas of action of the EU Strategy for the period 2010 – 2015 are: (i) equal economic independence; (ii) equal pay for equal work or work of equal value; (iii) equality in decision-making; (iv) dignity, integrity and ending gender-based violence; (v) gender equality in external actions; (vi) horizontal issues: gender roles, legislation and governance. For more information see: <http://ec.europa.eu/social/BlobServlet?docId=6568&langId=en>

Undoubtedly, the EU Commission has favoured a political approach that focuses more on awareness rising activities and exchange of good practices instead of improving the existing legislative framework on gender equality.

Probably the most relevant legislative initiative undertaken in the field of gender equality concerns the revision of the Maternity Protection Directive, currently blocked at the level of the Council, following the adoption of the European Parliament report in October 2010. In 2011, Commissioner Reding also announced her intention to take action to improve gender balance in company boards. Other non-legislative initiatives that concern gender equality are also foreseen in the European Commission work programme 2012-2013: a consultation of the European social partners on the review of the Directive on equal pay and a second stage consultation on reconciliation between work, family and private life.

Over the last years, the ETUC has repeatedly called upon the EC to take a more ambitious and better integrated approach towards gender equality. The situation of women in the labour market and in society is still hugely unbalanced and persistent gaps exist between women and men within the EU 27 and candidate countries:

- **The employment rate** for women has increased from 51% in 1997 to 62% in 2011, with large differences remaining between member states (between 39% and 75%);
- Female employment has grown mostly in highly feminised jobs and sectors, such as public and private services. Women **work part-time** more than men (accounting for over 75% of part-timers) and are more often employed on fixed term or temporary agency contracts;
- The impact of **parenthood** on labour market participation is very different for women and men – only 65.6% of women with children under 12 work, as opposed to 90.3% of men;
- The **gender pay gap** between women and men in Europe is around 17% on average, with a variation from 5% to 31%. In many member states the gap has not narrowed over the last ten years and in several is even increasing;
- More than 70% of **low-wage earners** in Europe are women and in most EU member states, 17% of women experience **poverty** compared to 15% of men. Older women are particularly at risk of deprivation;
- Nearly 60% of **EU university graduates** are women, nevertheless they are lagging behind in decision making positions at political and economic level.

Women make up 12% of the supervisory boards of the largest publicly listed companies and only 3% of the boards' presidents are women;

- In 2005 34% of men have received **continuous vocational training** in enterprises compared to 31% of women;
- One woman in five in Europe has been subjected to **domestic violence** and one out of two reported some form of **sexual harassment** in the workplace;
- Nearly **45% of ETUC members are women**. This account for roughly 38 million female trade unionists. However, their representation in trade unions' decision making bodies and positions is far from proportionate and progress is very slow.

The current economic crisis risks further undermining these gloomy findings, if inadequate policy action is undertaken to tackle gender gaps.

The effects of the economic downturn on policies related to gender equality are beginning to emerge. Budget cuts have severely affected public expenditure, with public services, such as education, training and social care, suffering mostly, as well as the users of those services, who are in the large majority women. Public sector workers (predominantly female) are hit in quantitative and qualitative terms in various member states. Changes in pension provisions through restrictions on caring credits are promoting further inequalities between women and men.

The ETUC strongly believes that there is an urgent need to address gender gaps in the labour market and avoid erosion of recent measures enacted to support gender equality. Investments to re-launch growth are required and they should bring resources in highly feminized sectors.

Gender Equality continues to be a priority for the ETUC

At the 2011 Athens Congress, the ETUC committed itself to continue to place the gender dimension high on its agenda and to pursue the objectives set in the Gender Mainstreaming Charter adopted at the Congress in Seville.

The ETUC completely shares ITUC statement made at their 2nd World Congress in Vancouver in June 2010: *“Cultural, economic, social and religious barriers must be identified, condemned and overcome in order for women’s human rights to be respected and fully implemented everywhere. As gender discrimination*

frequently interacts with other forms of discrimination such as age and gender identity, policies and programmes should be put in place to address the multiple forms of discrimination against women and a cross-cutting approach on gender should be adopted."

Trade unions can make gender equality a reality. We are key players in promoting social justice and combat discriminatory and unlawful behaviors at work. We also have a unique role in promoting social and sustainable change, not only at work but also in the society. We know that trade unions' commitment to fight against discrimination between women and men requires a strong political will which implies the realization of both strategic and organisational actions. We are also aware that this investment is indisputable if we want to counteract the dangerous trends that Europe is facing, with the rise of inequalities at all levels, the mounting of precarious work and the risk of declining working conditions for women and men.

ETUC therefore believes that more needs to be done to achieve EU2020 objectives and integrated strategies are required to promote gender equality in the labour market and in trade unions.

In order to achieve greater gender equality the ETUC follows a dual approach by both implementing gender mainstreaming and initiating specific measures (policy action, projects, awareness-raising activities, etc.) in the field of gender.

Besides the Charter on Gender mainstreaming, the ETUC adopted two equality plans in the past (in 1999 and 2003) as well as various positions and resolutions in order to: foster reconciliation of work, family and private life (2007); reduce the gender pay gap (2008); improve maternity protection at EU level (2009); ensure equal treatment between men and women engaged in a self employed activity (2009); enhance gender balance in trade unions (2011)².

Gender equality was addressed by the ETUC in the context of the cross-industry EU social dialogue. A Framework of Actions on gender equality was negotiated in 2005 in which social partners advocated on occupational segregation, women in decision- making, work-life balance and equal pay, and an evaluation report was adopted in 2009. In their last work programme, covering 2012 – 2014, the EU social partners also reaffirmed their willingness to continue to act on the

2 See ETUC website: <http://www.etuc.org/r/48>

Framework of Actions priorities and agreed that further joint action is needed to address remaining inequalities.

Achieving gender equality in the labour market and society remains an imperative for the ETUC. Concrete measures are required to bring change and this Action Programme is intended to set ETUC priorities in the area of gender equality with a view of an evaluation at the mid-term mandate Conference. It is addressed to all national confederations, European trade unions' federation and to ETUC itself and it aims at pursuing the following, inter-linked, goals where trade union action is needed:

- 1. Implementing gender mainstreaming into all ETUC policies**
- 2. Achieving equal pay between women and men**
- 3. Eliminating gender representation gap in decision making bodies**
- 4. Promoting the combination of work, family and private life**
- 5. Addressing the link between domestic violence and workplace rights**

The Action Programme sets out ways in which the objectives can be met, measurable and time-framed targets, follow-up procedures and an evaluation process.

Objective 1: Implementing gender mainstreaming into all ETUC policies

Gender mainstreaming is a strong equality principle that concerns both women and men. It involves structural change, it impacts women's and men's role in public and private life, in the workplace, in the private sphere and in the society. It means assessing how policies impact on women and men, and taking steps to change policies if necessary.

Since 1999 the ETUC and its member organisations have adopted a clear commitment to incorporate the dimension of equal opportunities and of the gender perspective in all fields of policy planning and activity. ETUC members recognized that this requires the development and adoption of tools, mechanisms and guidelines and have committed themselves to put in place adequate measures to achieve this aim.

In order to re-boost trade unions' commitment to implement gender mainstreaming, the ETUC adopted a Charter on Gender Mainstreaming at its Seville

Congress in 2007, where it is stated that *"Gender equality is an essential element of democracy in the workplace and in society. ETUC and its affiliates confirm their commitment to pursue gender equality as part of their broader agenda for social justice, social progress and sustainability in Europe, and therefore adopt a gender mainstreaming approach as an indispensable and integral element of all their actions and activities"*. Three broad definitions of gender mainstreaming were identified and they are still valid.

Gender mainstreaming seems to be a difficult concept to implement. It needs political will, the collection of adequate gender-based statistics, adequate funds and resources and a balanced participation of women and men in decision making. Many trade unions still do not incorporate the gender dimension into their policies and actions and therefore new efforts need to be deployed to achieve this aim.

Mainstreaming gender equality in collective bargaining remains a major challenge, and demands stronger cooperation with and commitment of the industry federations especially, and sectoral and branch unions at all levels.

Integrating gender mainstreaming in employment issues is key to fighting discrimination in the labour market. However, in order to achieve equal rights it is essential to fully integrate the gender dimension also in all policy issues that are high in the EU and ETUC agenda, such as: impact of austerity measures and recovery from the crisis, economic governance, sustainable development and green jobs, vocational education and training, migration, cooperation and development, health and safety.

1. Implementing gender mainstreaming into all ETUC policies

KEY ACTIONS:

- As indicated in the GM Charter, the ETUC will set the policy that every document presented to its Executive Committee must contain a gender impact assessment, and at least indicate with a short motivation if and how the gender perspective has been included.
- A set of draft guidelines to implement gender mainstreaming in trade unions leading to the publication of a brochure will be realized.

- All ETUC working groups and committees should gender-mainstream their work as well as supporting documents according to these guidelines.
- It is essential to understand the impact of the economic and financial crisis on policies that are (directly or indirectly) related to gender equality. The ETUC, with the support of the ETUI, will draw up a comparative study analysing the impact of the crisis on the differential situation of women and men in the labour market, in relation with the austerity measures undertaken, their impact in the public services and in care facilities provisions, etc.
- ETUC and its affiliates will continue to:
 - explicitly invite, support and train women to participate in collective bargaining committees and negotiating teams, including in EWC's;
 - invest in training of collective bargaining negotiators, men and women, at all relevant levels in gender equality issues;
 - include gender perspective during negotiations (pay systems and wage increases mechanisms that improve men and women, lifelong learning, leaves facilities).
- A specific gender approach will be integrated into ETUC migration policies and with regard to decent work for domestic workers. The ETUC will continue to lobby for a EU legislative framework for the protection and non-discrimination of domestic workers.

Objective 2: Achieving equal pay between women and men

The European Union from its very beginning has pursued the goal of equal pay for women and men for work of equal value. European legislation on equal pay has contributed to tackle direct discrimination between women and men as regards pay, but barriers persist to ensure that work of equal value performed by men and women is paid at the same rate. Progress in closing the gender pay gap appears to be very slow, and notwithstanding all efforts to achieve the aim of equal pay, statistics show the existence of a gender pay gap in all EU Member States; in some countries the gap is even widening. Taking into account the fact that the European Union has been taking action in this field for more than 50 years, this is a disappointing result.

The ETUC is aware that legal action alone has proved to be insufficient to tackle pay differentials between women and men and that a combined approach at different levels is needed to eliminate this persisting and complex form of discrimination.

The Action Programme adopted at the Athens Congress identified the pay gap between women and men as one of the priorities of its work for the period 2011 – 2015 and the ETUC has committed to *"support members' initiatives to tackle the structural problems of pay inequality and the tendency for pay (for both men and women) to be lower in sectors dominated by women than in sectors dominated by men. Many occupations that are mainly carried out by women need to be revalued and the ETUC intends to assist affiliates in exchanging information on achieving this through collective bargaining and/or through using legislation"*.

A key means of tackling the gender pay gap is collective bargaining. It is also essential that trade unions raise awareness and share good practices that have been successful in reducing pay differentials between women and men in sectors and professions.

The gender pay gap is an area where action is urgently needed as there are pervasive implications on pensions and poverty levels for women.

2. Achieving equal pay between women and men

KEY ACTIONS:

- The ETUC will continue to campaign for stronger EU legislation to close the gender pay gap and promote collective bargaining in this area.
- ETUC will implement a EU project to explore trade unions' successful initiatives and barriers to tackle the gender pay gap. The project will include the following actions
 - Compilation of initiatives adopted by ETUC member organisations to achieve equal pay, including revision of job classifications and systems of job evaluation, pay audits, successful collective agreements;
 - Assess wage penalty linked to part-time working and other forms of precarious employment patterns;

- Awareness raising activities (regional workshops and EU Conference);
- Publication of a TU manual and brochure.
- The ETUC Women’s Committee and the Committee for the coordination of collective bargaining will work together to tackle the gender pay gap. As a start ETUC member organisations of these two groups will explore together quantitative targets for the reduction of pay inequalities between women and men.
- The ETUC and its members will contribute to the European Commission’s White Paper on pensions. The link between social and employment policies will be addressed and recommendations to achieve equality between women and men in social security and pensions provisions will be put forward.
- ETUC and its member organizations will continue to implement the recommendations addressed in the ETUC Resolution “Reducing the gender pay gap”, and in particular:
 - put in place campaigns, tools, etc. in order to raise awareness on the gender pay gap at national level and in the different sectors. The EU day on equal pay could be used as a reference to mobilize members and put in place specific awareness raising activities;
 - put the gender pay gap on the agendas of the collective bargaining;
 - put in place training of negotiators, equal access to vocational training and guidelines to tackle the gender pay gap.

Objective 3: Eliminating gender representation gap in decision making bodies

The under-representation of women in leadership positions and decision making structures has been a matter of concern for the ETUC for many years. A strong case for a strategic approach to achieving gender balance in trade unions’ decision-making and leadership structures as a basis for union democracy and for realising gender equality at societal, economic and political levels was through the adoption of the resolution for improving gender balance in trade unions in March 2011. The ETUC’s Athens Action Programme also addresses the female representation gap in decision making bodies and commits the ETUC to build up its action to guarantee a balanced composition between men and women by the

2015 Congress in particular through quantifiable targets such as an anti-discrimination provision, stipulating that each gender should be represented between 40% to 60% in the statutory bodies of the ETUC.

Since 2007, gender disaggregated data on affiliates' membership and decision making positions have been collected by the Secretariat through the "8th of March Survey" and its outcomes are presented and regularly discussed by the Women's Committee and the Executive Committee.

According to the last 8th March Survey, women represent about 45% of the ETUC membership and they have been crucial to sustaining trade union membership levels even in times where trade unions' overall membership has been shrinking. Despite this encouraging trend, there is a persistent low level of women in trade union leadership positions and little progress has been made over the last 4 years. Women are more likely to be in 'deputy' positions. Gender balance has been taken into account within the ETUC Secretariat, but still has not been achieved in ETUC standing committees.

Vertical segregation of women is a matter of concern for the ETUC not only within trade unions' bodies but also in society. Despite the fact that women outnumber men in upper secondary or tertiary education and represent the majority of graduates in most member states, they are still lagging behind in positions of responsibility in politics and business, as well as in other fields. The situation is particularly worrying in the corporate sector with, on average, one out of ten women members of boards in Europe's largest publicly quoted companies and only 3% of board chairpersons.

Trade unions can play a key role to ensure that the overall working environment supports a more balanced participation of women and men. A combination of measures is needed to address the persistent lack of women in positions of decision making in trade unions and in the labour market.

3. Eliminating gender representation gap in decision making bodies

KEY ACTIONS:

- Affiliated organisations will step up their efforts to achieve gender balance in their decision-making level bodies. Gender audits, mentoring programmes, gender-based membership trends, quantified targets and training to support women to take up leadership roles will be promoted.
- Affiliates will continue to take the need for gender parity into account when nominating representatives in ETUC standing bodies and working groups. ETUC confirms its commitment to achieve a representation of each gender in standing committees that is in line with the proportion of women in the overall membership rate.
- The ETUC will run the 8th March survey which shows the gender distribution in the decision making structures of the ETUC and its affiliated organisations. Results will be presented to and discussed in the Executive and Women's Committee. On the basis of the results achieved, further action will be considered to mobilize ETUC affiliates in view of the ETUC Congress 2015.
- As a start, the ETUC will draft a template for gender disaggregated data collection that can be used by national and EU affiliates and work together with members that do not collect disaggregated data.
- A study to improve gender equality in trade unions will be produced by the ETUI for the ETUC mid-term conference in 2013 with a view to reach the targets adopted by the Congress.
- ETUC will provide for specific recommendations to the EC to enhance women's presence in company boards in view of the EC initiative foreseen in June 2012.

Objective 4: Promoting the combination of work, family and private life

Care work is still unequally divided between women and men. Women are still taking on most of the care work and, at the same time, many women are in paid employment. The double burden of paid work and unpaid work within the

family, together with a persistent lack and adequacy of support care services, are some of the reasons behind the declining fertility rate in Europe and can be identified as one of the main barriers to women's full participation in the labour market and decision making at all levels. This problem is a growing one, especially for the so-called "sandwich generation": those who have to combine caring for their children and their elderly parents, with holding down some form of paid employment.

The ETUC has made several proposals in the area of reconciliation, following the consultation launched some years ago by the EC. We emphasized in particular the need for a integrated approach that offers a balanced mix to all workers, men and women, on the organization of working time, employment and working conditions.

Family-related leaves (such as maternity, paternity, parental, filial, carers) are effective measures, amongst others, to encourage the sharing of family caring responsibilities between women and men or partners of the same sex. However, barriers still exist which discourage their use especially by men.

Maternity protection is still not fully guaranteed and female workers often face discrimination and layoffs in case of pregnancy. In some member states, these discriminatory acts are being exacerbated by the crisis and young and precarious female workers are particularly at risk. ETUC fully supports for the need to review and strengthen the existing Pregnant Workers Directive (92/85/EEC) by introducing full payment, stricter rules against dismissal and increasing the length at least up to 18 weeks

There is a need for a coherent policy with regard to reconciliation that should offer: good quality, available and affordable child and elderly care facilities; a variety of paid leave options that should be taken by both parents; recognition of the role of fathers with regard to childrearing; flexible working time arrangements and possibility to reduce or extend one's working time (reversible part time work) and sound investments on services of public interest.

Once again, collective bargaining to enhance the balance between work, family and the private is an essential tool in the hands of trade unions. In March 2012 the Directive 2010/18 implementing the EU social partners' framework agreement on parental leave will have to be transposed in all EU member states.

ETUC considers reconciliation as an essential policy to address the gender pay gap and the lack of women in decision making, and action is needed to consolidate existing measures and address shortcomings.

4. Promoting the combination of work, family and private life

KEY ACTIONS:

- ETUC will put forward recommendations to the EU on carers' leave as a contribution to the EU Year on Active Aging.
- ETUC will continue to lobby for the revision of the Maternity Directive and engage in constructive dialogue with the EU Council, Commission and Parliament to overcome the current impasse;
- ETUC will ensure that negotiations on the revision of working time Directive will include provisions to facilitate work-life balance.
- ETUC will continue to lobby to adopt a paternity leave entitlement at EU level.
- ETUC will follow the implementation of Directive 2010/18 implementing the EU social partners' framework agreement on parental leave. An implementation report will be prepared by the ETUI.
- ETUC affiliates will seek to improve existing legislation on reconciliation via the collective bargaining at different levels: sectorial, national, regional and territorial. Measures should address both male and female workers and include for instance: the promotion of professional breaks, paid parental, paternity and family leave, flexible working time arrangements, company and inter-company kindergartens, etc.
- ETUC affiliates will continue to promote the exchange of good practices in the area of reconciliation, such as campaign to encourage men to use family-related leaves. They will disseminate information with regards to EU legislation and policies on gender equality at workplace. Adequate visibility of these practices will be given on the ETUC website.
- ETUC affiliates will also pay attention to the organization of trade union life (meetings, travels, activities) responds to work-life balance needs of both men and women.

Objective 5 : Addressing the link between domestic violence and workplace rights

Domestic violence is a complex issue consisting in a different mix of different types of abusive behaviors (psychological, physical, sexual, material, financial) and it is randomly regulated across the European union.

Both men and women can be either perpetrators or victims of domestic violence. In Europe today, one in four women may be or may have been a victim of violence. Violence against women takes different forms and cuts across all countries and social classes. It is an obstacle to the realisation of equality between women and men. The recession is likely to increase the risks of domestic violence and of violence against vulnerable groups of workers. Investment in prevention will therefore be very important.

The effects of domestic violence for the society are enormous and it is widely acknowledged that domestic violence has also an impact on work. Domestic violence can affect workers' capacity to get to work, violence can also continue at the workplace (via abusive phone calls, emails or physical abuse at the workplace by the partner). All these pervasive behaviours can negatively impact on workers' performance and well being and it puts at risk workplace safety.

Better workplace policies and practices can reduce the impact of domestic violence on work performance and security as various study demonstrate. Trade unions' action is therefore crucial in order to put in place adequate measures.

In its Athens Action Programme the ETUC has reaffirmed the need for Europe to issue a generally binding instrument on the protection of women against gender-based violence as such. The ETUC has also committed itself to continue mobilising to combat all forms of violence and to continue to monitor the implementation of the EU social partners agreement on preventing, combating and eliminating harassment and violence at work. The actions below intend to pursue this specific objective.

5. Addressing the link between domestic violence and workplace rights

KEY ACTIONS:

- ETUC will implement a project on good practices aimed at reducing the impact of domestic violence on working people by achieving better workplaces rights that support them to stay safely in their jobs and in their homes. The project will be intended to:
 - Raising knowledge about domestic violence and why and how it affects workplace;
 - Share trade unions' practices to prevent and deal with domestic violence.
 - Develop strategies of how to handle violence and harassment in the workplace
 - Adopt recommendations to ETUC affiliates.
- ETUC will continue to lobby for a legislative framework at European level, on the basis of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.
- The ETUC affiliates will commit to:
 - assess the impact and scale of domestic violence abuse in the workplace;
 - develop model policies with employers to protect and respect the dignity of workers experiencing domestic abuse;
 - share examples of good practice adopted;
 - work to lobby national governments to take effective action on domestic abuse.

Implementation, reporting and evaluation of the Action Programme

In order to successfully meet the objectives that have been identified in the Action Programme on gender equality, ETUC member organizations have committed themselves to promoting a sense of ownership, shared responsibilities and actions at all different levels.

As a first step, affiliated organizations will give adequate visibility to this Action Programme. It is therefore recommended to: translate the Action Programme

into national languages, send a copy of the translation to the ETUC so that EU-wide visibility could be given through ETUC's channels, and disseminate and discuss it with trade unions' representatives.

The ETUC secretariat will be responsible for leading some specific key activities to meet the objectives of the Action Programme and recourse to EU funding, if necessary.

An evaluation of progress to achieve the Action Programme will be put forward to the Executive Committee at the beginning of 2013 and a more consistent review of this instrument will be assessed on the eve of the ETUC Mid-Term Conference in 2013. The women's committee will have a strategic oversight of the implementation of the key actions identified.

ETUC and its member organizations will make available sufficient resources for the accomplishment of the key actions of the Action Programme on gender equality.

INVESTING FOR GROWTH AND JOBS – ETUC REACTION TO THE ANNUAL GROWTH SURVEY 2012

Adopted by the Executive Committee on 6-7 March 2012

1.

The European Union is in disarray – financially, economically and socially. The sovereign debt crisis shows no signs of abating, the economy is back in recession and the social impact of the crisis is evident: unemployment, poverty, inequality and insecurity are all increasing as citizens continue to suffer the fallout from a financial and economic crisis they did not cause. The European Commission's economic forecast, already poor when it published the second **Annual Growth Survey**¹ (AGS) in November 2011, has deteriorated further with the prediction that the euro-zone economy will contract further in 2012.

2.

Unemployment in Europe remains historically and stubbornly high. As at December 2011, the EU 27 unemployment rate stood at 9.9%, representing over 23.8 million Europeans without a job. The youth unemployment rate is 22.1%, i.e. almost 5.5 million people under the age of 25, an increase from 21% at the same period the previous year. To add to this gloomy picture, it is likely that the number of people at risk of poverty, which already amounted to 23% of the European population in 2010, has increased and will get even worse. The Employment and Social Developments in Europe 2011² (ESDE) report confirms that the general trend in inequality remains upwards, even in traditionally egalitarian member states. Almost one in ten employed Europe-

1 The 2012 Annual Growth Survey package, published on 23 November 2011, consists of the AGS Communication and 4 annexes: Progress report on Europe 2020, Macro-economic report, the Draft Joint Employment Report and a report on "Growth-friendly tax policies and better tax coordination in the EU".

2 Employment and Social Developments in Europe 2011, European Commission 15.12.11
<http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=6176>

ans is at risk of poverty because they do not earn a decent wage which allows them and their families to live in dignity. The gap between labour and capital's share of national income has also widened further.

3.

Recession and rising unemployment are not the only concerns. The lack of an EU-level democratic process – illustrated by the recently endorsed fiscal compact – undermines the model of EU integration. This will have serious consequences on our social fabric. Workers' rights, well established collective bargaining systems, institutions of social dialogue as well as the European Social Acquis are victims of financial markets and the wrong EU policies.

Annual Growth Survey 2012: failing to address reality and provide a credible solution to the unemployment and growth crises

4.

The ETUC's overall analysis of the 2012 Annual Growth Survey is that despite the more nuanced language on fiscal consolidation and the welcome inclusion of tackling unemployment and the social consequences of the crisis in the 2012 priorities, the key messages remain the same: fiscal austerity, structural reforms of the labour market (particularly the adjustment of labour costs to correct macroeconomic imbalances), completion of the single market entailing accelerating further liberalisation of services, network industries and public services, and the promotion of free trade agreements. Essentially, the AGS' policy recommendations are contradictory and, under pressure from the financial markets and the Troika policy prescriptions, austerity policy orientations will dominate over the social ones.

5.

The informal summit European Council of 30th January 2012 resulted in the endorsement of the «fiscal compact» and a Council orientation statement on growth and employment in advance of the March European Council. For the ETUC however, this was another missed opportunity – despite some indication of a commitment to tackle youth unemployment, the EU leaders failed to deliver substantial proposals to meet the growth and employment challenge.

6.

The **deteriorating employment and social situation** and the need to halt this downward spiral are recognised by the Joint Employment Report (JER)³. The ETUC acknowledges some positive elements of the JER notably: the emphasis on job creation; the focus on the difficult situation of young people, the low-skilled and the long-term unemployed; recognition of the essential role of social services and social protection systems in preventing marginalisation of low income and vulnerable groups; the call for investment in education and training to raise productivity and income levels; and acknowledgment that slowing growth is hampering employment recovery and improvement of the employment rate.

7.

The focus on youth unemployment in the AGS and, subsequently, the informal growth and employment summit (including the Commission's initiative for youth employment 'action teams') is, whilst long overdue, undoubtedly welcome. However, participation rates for disabled and migrant workers, who are among the most vulnerable and precarious of workers, have also been hit hard. The gender aspects of employment and the crisis, the potential negative impact on the gender pay gap (already apparent in some member states) and increasing incidents of pregnancy discrimination, must not be overlooked.

8.

A glaring omission from the European narrative on job creation and job-rich recovery is the absence of a focus on securing quality jobs and decent work, including proposals to address low wages and in-work poverty as well as income inequality. In contrast with the findings of the ESDE 2011, which highlight growing inequalities, the JER gives little attention to this rising trend. Moreover, while the ESDE confirms that decentralisation of collective bargaining leads to earnings dispersion and low minimum wages and, in consequence, to in-work poverty, the JER fails to assess the coherence between the Commission's recommendations to decentralise wage bargaining and remove indexation systems, and the lack of progress towards the Europe 2010 poverty reduction target.

³ Adopted by the EPSCO Council on 17 February 2012

9.

The ETUC rejects the approach that wages should be used as an instrument of competitive adjustment. Wages need to pursue and create a balance between different goals including income stability for workers, avoiding the dynamics of deflation, defending purchasing power, functioning as an engine for economic growth and ensuring a fair distribution of the benefits of economic progress. For the ETUC, the keys to competitiveness – both within and outside the European Union – are quality and innovation and these are not supported by flexible wages.

10.

Support for banks but only on condition they support investment: The AGS asks Member States to give priority to strengthening the banks' capital positions and, correctly, warns against banks improving their capital position by unduly restricting lending to the real economy. However, it fails to support this enormously important recommendation by setting up a policy framework to actually organise this.

11.

Mobilising the EU budget for growth and competitiveness: the ETUC supports the better use of the EU Structural Funds to bolster growth and employment creation, particularly to support apprenticeship schemes for young people. Whilst ETUC supports the improved use of the structural funds, these proposals need to go further. On their own, the funds are not sufficient for tackling the crisis and must be linked with economic governance based on investment, solidarity and social integration.

12.

Growth-friendly tax policies and better tax coordination in the EU: this new addition to the AGS annexes follows-up on the European Council's conclusions of 24 June 2011 that the Commission should report back on progress made in the structured discussions on tax policy issues in the context of the 'Euro Plus Pact'. The focus on the need for co-ordinated action to tackle tax evasion and fraud, to consider the role of taxation in contributing to fiscal consolidation and the recommendation to shift taxation away from labour towards taxation which is less detrimental to growth, such as wealth and environmental taxes are encouraging and deserve further consideration.

13.

The promotion of social protection systems, education and training is is nothing more than window dressing as budgetary cuts remain the priority: the Commission correctly underlines that priority should be given to investment in education and skills to address increasing skills' mismatches and that social protection systems should continue to cushion against poverty and social exclusion as the social situation deteriorates. However, the recognition of the important role of social investment in human capital and social protection is contradicted by the priority given to fiscal consolidation. The experience of countries which have already adopted this instruction confirms that cuts have been made in social payments, reducing social benefits and the financing of health and social services.

14.

Attacking public services and front-loading deregulation: member states are encouraged to pursue public sector reforms under the pretext of the need for "modernisation" and budget consolidation. The ETUC rejects a policy of public sector reform based solely on economic reasons and deficit reduction. The role and functioning of public administrations cannot be reduced to the narrow focus of fostering EU competitiveness.

15.

The deregulation agenda: the Commission's proposal, endorsed by the Council, to essentially exempt micro and small enterprises from new EU regulation is a worrying new development in the "Smart Regulation" agenda. The risk of blanket exclusion of SMEs from employment regulation, not least regarding health and safety, is unacceptable. The Commission's proposal to develop a scoreboard of proposals to reduce administrative burden as they go through co-decision and national transposition which it will use to highlight cases where the legislator "adds burdens" during the process raises questions regarding the encroachment on the competence of the national and European legislators.

16.

Super economic governance: The AGS is accompanied by a proposal for two new regulations on economic governance, specifically for Euro Area Member States. One seeks to further enhance the Commission's (DG ECFIN) powers to supervise ongoing budgetary processes at national level. The other aims to replace existing and recently installed European policy processes (European

Policy Semester, Excessive imbalance procedure) with a new policy process in which Member States 'experiencing or threatening to experience financial difficulties' are put under 'enhanced surveillance'. The latter aims, apparently, to 'broaden and deepen' policy measures and recommendations following from the Treaty articles on the economic and employment policy guidelines. There is an explicit link with the new budget for European funds by stating that non-compliance with the adjustment programme that follows from this new policy process will result in a suspension of payments from the European Structural and Social funds.

Europe urgently needs to change course

17.

Central bankers, finance ministers, European leaders and the European Commission have been taking the wrong decisions over the past years. The ETUC reiterates our long-standing message that austerity does not work: the policy is self-defeating and has failed. The view that rapid fiscal consolidation would restore confidence and push savings rates down has proven to be a myth. In fact, fiscal consolidation has been accompanied by falling household confidence and weakened economic activity. Despite the cuts, this is, in turn, not only keeping deficits high but is also pushing public debt ratios up because of the denominator effect. Sticking to short term deficit targets despite the fact that the EU economy is already in recession will only make the situation worse.

18.

A further European policy mistake is that labour market policies are called upon to counter serious macroeconomic policy mistakes on the premise that labour market flexibility, easy hiring and firing, will foster job creation. However, the reality is that labour market flexibility is not the miracle solution to create employment. The real risk is that decent jobs are converted into precarious and low paid ones which weakens the economy as low wages result in less demand while insecure jobs imply higher precautionary savings. In short, precarious jobs lead to a precarious economic recovery. The ETUC rejects this type of structural reform.

19.

Some messages from the latest summits (informal growth and employment summit of 30 January and the March European Council) indicate a realization

among EU leaders that fiscal consolidation and economic governance alone will not get Europe out of the crisis. The acknowledgment that tax policy has a role to play in supporting growth and the call for progress on the Commission's proposals on energy taxation, the common consolidated corporate tax base and on the financial transaction tax is worth noting but we await concrete progress on these issues. Similarly, the Council's endorsement of the Commission's recommendation that "growth-friendly expenditure" such as education, research and innovation should be prioritised, can be supported, but with the caveat that without a proper investment plan these objectives will not be realised. Finally, whilst employment and social policy matters appear to be creeping back on to an agenda dominated by economic policy, as things currently stand, the prospect of achieving the Europe 2020 employment and poverty reduction targets seems to moving further away.

20.

The proposed solution to the jobs and growth crisis, as presented by the Commission in the AGS and by the European Council, continues to consist in recommendations for labour market reforms – characterised by wage moderation and employment protection deregulation – combined with completing the single market, including its further liberalisation. This approach, coupled with the continued pursuit of austerity - even if now presented as "growth-friendly consolidation" - will do little to solve the pressing challenge of boosting the economy to provide sustainable growth and create desperately needed quality jobs.

21.

The ETUC continues to call for an urgent re-evaluation of the EU's current economic and employment policies. A change of direction - away from austerity and accelerated budget rebalancing and towards a sustainable economy supported by the creation of decent jobs and the reduction of inequalities between Europe's citizens - is urgently needed. The European Semester schedule should be modified to reinforce the political dialogue with the social partners and other stakeholders. The social partners should be consulted during the preparation of the AGS, not when it is a *fait accompli*. The ETUC supports the European Parliament's resolution on the *Employment and social aspects in the Annual Growth Survey 2012*⁴. We call for the Parliament's full involvement in the European Semester.

4 (2011/2320(INI))- adopted 15 February 2012

Investing for a sustainable economy, quality jobs and social equality: ETUC calls for a European Investment Plan and economic recovery led by wages and quality jobs.

22.

The recessionary developments in the economy call for an urgent 'reality check' on the economic policies being pursued and promoted across Europe. To stabilise the economy, we need '**circuit breakers**' to stop the negative feedback loops between the fiscal policy of austerity, the sovereign debt crisis initiated by the financial markets and the structural reform policy of social deregulation. Europe also needs '**accelerators**' to relaunch the economy, create quality jobs and fuel a self-sustained process of growth.

23.

Circuit breaker 1: the European Central Bank should, directly or indirectly, provide the necessary liquidity as a 'lender of last resort' for sovereign debt. Markets will thus be made to understand that the sovereign debt in the Euro Area is backed by a central bank, as is the case in the US and the UK with sovereign debt being issued in their own currencies.

24.

Circuit breaker 2: the EU must pursue the objective of a solid and well-regulated financial sector but the pro cyclical arrangements of current financial regulation should be reviewed, in order to ensure credit provision to the real economy. The combination of an accelerated imposition of higher capital requirements (Basel III norms imposing 9% equity ratio) by July 2012, together with banks being forced to register their holdings of sovereign bonds at a severely depressed market value ('mark to market'⁵), is triggering a renewed credit squeeze. The technique of 'mark to market' of sovereign debt should be abandoned. A distinction should be made between banks which predominantly provide credit to the real economy and investment banks (whose balance sheet consists of 60-70% of derivative trading and speculative activity). The capital requirements of the Basel III should be imposed on the latter by the July deadline, while the former should be subject to 'moving' capital requirements, depending on the business cycle. Banking sector

⁵ 'Mark to market' refers to the practice of valuing an asset at the current market value. The choice of the mark to market method is based on the highly unrealistic assumption that the 'market signal' is always the correct one. At present, however, the situation is such that markets are seriously undershooting and are excessively pessimistic towards sovereign debt and banks lose part of their capital base.

deleveraging will thus target speculation rather than affecting jobs. In addition, the access of the banking sector to the ECB's massive liquidity at an interest rate of 1% should be made conditional on the distribution of adequate credit to the real economy, while the practice of paying irresponsible bonuses and dividends must be stopped.

25.

Circuit breaker 3: The ETUC calls for a 'year of healing' with a temporary freeze on new fiscal austerity in 2012, combined with an adapted and longer time frame for reducing deficits below 3% of GDP. The Commission refuses to recognise that the unfolding recession is firmly linked to the austerity policy that it has been pushing for. Its objective of cutting public deficits from 6% to 3% in three years' time may be on track but the consequence is that recovery and jobs are jeopardised.

26.

Accelerator 1: a European Investment Plan focused on structural investments rather than structural reforms. Instead of member states competing on jobs, Europe needs to invest itself out of the crisis and out of debt by developing new sectors and economic activities, underpinned by a coherent European industrial strategy and investment in public services. This Investment Union would need to transfer the high savings surpluses of one part of the Euro Area into a structural investment policy that is focused on upgrading the economic and industrial structure, in particular, of the 'deficit' Euro area economies, while developing a close synergy with the 'greening' of the European economy.

27.

To support this European Investment Plan, the ETUC repeats its call for new sources of revenue to be developed, including a financial transactions tax and Eurobonds. Revenue streams should also be improved via fairer taxation (a European wealth tax should be considered). Robust measures to tackle tax evasion, fraud and corruption must be implemented and efforts to address the causes and problems of undeclared work and the informal economy must be stepped up. The European structural funds should also be used to bolster the Plan. In addition to the ESF, the European Regional Development Fund should be better utilized (currently, around 25% of these funds -approximately 80 billion euros - are unallocated) to support job creation and stimulate growth⁶.

6 'The proposed EU Multiannual Financial Framework and Cohesion Policy 2014-2020: ETUC position and call for consultation' adopted by ETUC Executive Committee 7-8 December 2011

28.

The public sector, broadly defined, drives development and has a potential as part of the Europe 2020 Strategy or economic governance reforms to pave the way for more sustainable and fairer development. Any public sector reforms should be driven by the fundamental objective of securing the sustained delivery of high quality public services, accessible to all and pursued with the full involvement of the social partners.

29.

Accelerator 2: Decent jobs with decent contracts and decent wages. If European investment is to kick start growth, it is also crucial to make that growth self-sustaining. The present policy of promoting precarious work and downwards wage flexibility must be reversed into a process of wage led growth. Fair wages must be promoted through meaningful and effective social partner negotiations and increases in national minimum wages. The ETUC reiterates that social partners are primarily responsible for setting wages through negotiated collective agreements and that their autonomy in this regard must be respected. We oppose the policy of decentralisation of wage formation systems aimed at bringing wage setting to a level where workers' and trade unions' bargaining position tend to be weak.

30.

The ETUC welcomes the focus on **youth employment** as a top priority. Young people are particularly vulnerable to precarious employment and the ETUC stresses that the focus must be on the provision of quality jobs and training and not on further deregulation of employment protection legislation and fostering precarious contracts. Measures to address youth unemployment should form part of a wider strategy to create quality employment in general and be integrated into member states' employment policies. We support a **youth guarantee** in Europe to ensure that every young person is offered training or a job within a set period of time. We also support the Commission's initiative to establish "action teams" on youth employment with a view to assisting member states to identify the necessary elements for national youth employment plans

31.

We recognise the value of mechanisms to protect employment such as the German system of "Kurzarbeit" by which jobs are maintained, income loss-

es are prevented and workers are given the opportunity to upgrade their skills. EU-level initiative with this objective should be developed with the full involvement of the social partners. The European Commission wants to publish a communication on Flexicurity as part of an Employment Package. The ETUC warns that the focus on flexicurity in current economic circumstances is extremely unhelpful and a dangerous distraction. Instead, the emphasis should be on addressing precarious work and developing active labour market policies.

32.

A social contract for Europe. The crisis, austerity, economic governance and the fiscal compact are being used as a vehicle to weaken workers' right, interfere with collective bargaining, and dismantle our public services and social protection systems. The ETUC continues to highlight the dangers that such unbalanced policies pose to the European social model and social cohesion. We urgently need a reorientation towards the social aspects: a social contract for Europe, giving priority to investments that promote a sustainable economy, quality jobs and social justice, while fighting inequalities.

ANTICIPATING CHANGE AND RESTRUCTURING ETUC CALLS FOR EU ACTION

Adopted by the Executive Committee on 6-7 March 2012

Social dialogue, negotiation and participation are the fundamental values and tools which underpin and reconcile the promotion of social cohesion, quality employment and job creation and increased innovation and competitiveness in European economies. Action on the anticipation and management of change is therefore predicated on the respect for fundamental worker rights. Any attempt to use the economic and financial crisis as a means to undermine or limit the role of negotiation or other fundamental worker rights, presenting them as a luxury in a period of austerity, will be vehemently opposed by the ETUC and Europe's citizens. On the contrary, it is in a crisis that a stronger role is needed for the social partners to ensure that they are able to find solutions to manage change socially whilst promoting and stimulating growth and development.

On the 17 January 2012, the Commission published a new Green Paper on 'Restructuring and anticipation of change: what lessons from recent experience?'. By launching an on-line public consultation, the Green Paper aims to identify "successful practices", feeding the results of this consultation "into the revived flexicurity agenda" with a view to steering a debate on a "possible approach to and framework for restructuring". With such poor ambition, and a total absence of proposals to tackle the ever more urgent situation regarding restructuring in Europe, it is not clear to European workers why the Commission has waited nearly a decade before deciding to waste even more time and procrastinate with dissemination practices. Moreover, it is disastrous that the approach to address public and private sector restructuring will be based on an already discredited European-level labour market strategy. Furthermore, the Green Paper makes reference to the 2003 "orientations for reference" negotiated in the framework of the European social dialogue. However, the text was never formally adopted by ETUC. Affiliates only noted this weak document and strongly expressed their will for a European framework on anticipation and restructuring.

If the European Union is to respond successfully to the challenges posed by the economic crisis, imposed austerity, globalisation, climate change, demographic trends, rising inequalities and the swift pace of technological and organizational change affecting society in general and the workplace in particular, it needs to take urgent action and develop a strategic and pro-active approach with regard to anticipating and managing restructuring based on a European legal framework. For a decade, the ETUC has called consistently called for a 2nd stage social partner consultation and EU action. Today's employment and economic crises create an urgent imperative for this action.

Commission backslides on own proposals

The ETUC is all the more critical of the decision to publish a Green Paper rather than a social partner consultation since this reflects a major step back from the Commission's own work programme. In October 2010, through the Europe 2020 Flagship Initiative on Industrial Policy, the Commission announced its intention to launch a 2nd stage social partner consultation on restructuring during 2011. Indeed this initiative was the only social element in the EU's renewed industrial policy agenda. However, this initiative has been repackaged as a Green Paper, open to public consultation, and stating the discussion about European action from scratch rather than building on work undertaken since the first social partner consultation in 2002. Not only does this contradict the Commission's own position stated in 2010 that social partners were the primary actors in restructuring and that their views and possible joint action should be prioritised, but it also adds another delay to EU legislative action ensuring the framework for the anticipation of change.

Anticipating, managing and accompanying restructuring processes requires the active participation of all relevant actors and must be based on clear synergies between political, legislative, contractual and financial instruments. In addition, action must be taken at all relevant levels, including the European level. This can only be achieved if we are able to establish the right balance between the interests of the different stakeholders, namely those of the enterprise and its workforce. We know that this is seldom the case!

Social cost of restructuring rising

2012 is set to be a difficult year for European workers. Intensifying global competition, the spirally economic crisis, demographic developments, technological progress, climate change obligations and shifts in patterns of employment individually and collectively are having a dramatic impact on labour markets. If the EU is to meet these challenges, it will need to create more and better jobs and enable working men and women to improve their skills and more specifically match them to short-term and long-term labour market demand. This demands long-term policy on the anticipation of change and the development of common industrial policies.

Trade unions do not resist change, as long as it is justified, negotiated and well-managed in a socially responsible way. What the ETUC will always resist is a scenario in which the negative consequences are borne exclusively by workers, whilst a significant proportion of managers who have failed to live up to their responsibilities receive a 'golden handshake' in return, all the more unpalatable as income inequality is growing exponentially between top salaries and average pay.

While different national and regional policy and legal frameworks operate in the EU, restructuring always entails high costs for workers and their regional and local economies. These costs are rising. The alarming nature of the financial and economic crisis and the austerity measures which continue to fuel it have led to reduced public sector funding, which in turn has led to the further loss of jobs, the growth of precarious work and insecurity for millions of men and women, particularly those on temporary or part-time contracts and engaged in seasonal work, adding a formidable supplementary challenge. "Fiscal consolidation plans" coordinated at EU level are effectively enforcing widespread public sector restructuring

plans, i.e. job and pay cuts, reduced employment protection, weakening or even banning of trade union rights, outsourcing or privatization of public services, leaving limited or no room to negotiate restructuring plans. Meanwhile, over recent decades, global competition and company restructuring have led to the loss of employment in manufacturing industries in the European Union, particularly amongst the low skilled. The ETUC has long argued that zero unemployment should be the main goal of policies managing restructuring processes

alongside the recognition that policies must deliver appropriate solutions for each and every worker. This demands a framework on support measures and investment in active labour market policies.

However, the very systems cushioning workers from the brutal impact of economic change are being undermined through austerity and deregulation, and worker representatives are increasingly considered only as a means of ensuring the acceptance of change. On the contrary, it is only through consistent and stronger worker participation that change can be managed in a socially acceptable manner, trust is nurtured and anticipation policies can develop.

While, the rules of financial and industrial capitalism are global, the applicable standards on workers' participation in corporate strategy and restructuring are still largely shaped at national level, with a few European tools (information and consultation, EWCs etc.) which have not been fully implemented in all Member States. With ongoing globalisation, it is becoming more and more difficult to defend subsidiarity approaches defending national provisions. As business goes global and ignores national boundaries, a rethinking of the role of workers' involvement in companies and the public sector is essential at European level. Existing legislation needs to be addressed and improved to reflect economic reality. For instance, the transfer of undertakings directive's limited scope which necessitates a revision so that transfers through a change of ownership can also be covered. This is particularly important in a context of the increasing financialisation of investments, as aggressive job cutting and frozen wages are often the price paid for an excessive debt burden undertaken by a leveraged buy-out. It is only on the basis of strong worker participation that a coherent anticipation agenda at European level can be developed, which has as its central goal the promotion of high quality employment and decent living standards.

Already in its Communication in 2005 on restructuring, the Commission recognised the problems associated with the negative fallout of restructuring, delocalisation, fusions, takeovers and mergers, not just for workers themselves, who in every country share a sense of insecurity prompted by fear that their jobs will disappear or go abroad, but also for different sectors of the economy that are directly or indirectly exposed to the consequences of restructuring and for entire local and regional economies. These consequences are more often than not incompatible with the Europe 2020 objectives, namely those related to promoting full employment and the quality of jobs, social and territorial cohesion,

a new industrial policy agenda for Europe and sustainable development. In yet only limited and mostly reactive steps have been taken since the last Communication: e.g. the recast rather than revision of the EWC directive, the creation of the European Globalisation Adjustment Fund, or lately the proposal for sectoral skills and jobs councils. Workers still bear an unfair burden in anticipating and managing the effects of corporate decisions.

Trade unions have integrated constant change as an ever more present feature of their daily action in order to maintain a certain level of performance in the European sectors of activity and to remain competitive in the global market. In a legal vacuum, a number of multinational

companies and their workers have chosen to negotiate agreements on the anticipation of change. However, these individual transnational agreements cover a diverse range of issues, and lack a legal framework to ensure their application therefore are dependent on goodwill on the part of the partners. During recent months, the speed with which management has abandoned its commitments included in such agreements, e.g. in GM or ArcelorMittal, demonstrates this weakness. Moreover, while this is strategy available to larger companies with strong industrial relations cultures, these agreements cannot provide a framework to tackle the wider effects of public sector restructuring and the silent restructuring going on in SMEs within broader supply chains and regional economies.

This reality and good practices to tackle at the national level have been explored in successive social dialogue projects on restructuring in the EU27, several Commission-organised Restructuring Forum and the ETUC's and national trade unions' own projects. Considerable literature and case studies exist but political will to draw the lessons and put these into practice has been lacking.

We have had enough evaluations of best practices – it's time for political action!

Ten years after the first social partner consultation on the issue, which already identified weaknesses and loopholes in EU rules, the ETUC calls for strong EU action to proactively improve the anticipation of change in workplaces and improve the legal framework in which restructuring takes place. The ETUC con-

siders the following 5 elements key to EU action on the anticipation and management of change and restructuring:

– **Preparing and enabling workers: key role of education and training**

Equal access to continuing education and training is essential to respond to citizens' changing circumstances and aspirations on the one hand and the needs of the labour market on the other. The ETUC considers that all workers should have equal access to education and training at all levels, regardless of their age, gender, employment status, or nationality, and particularly groups with low participation, such as the low-skilled, older workers and workers on temporary or part-time contracts, so that they are able to acquire, update and develop their knowledge, skills and competences throughout their lifetime (e.g. through individual training plans and learning accounts). Those that need training the most should not be the least likely to obtain it. The ETUC calls on the EU to underpin this access with a workers' right to training. An anticipation framework must address tools focused on future skills needs and the upgrading of skills, through strong social dialogue on workforce planning and multiannual plans on employment and skills development in the public sector, companies and sectorally. The ETUC considers that employers, and particularly SMEs, should support lifelong learning initiatives by making learning more accessible during working hours, and better suited to workers' needs, either through the individualisation of learning plans, the shift to competence-based training, the move to modularisation or the use of distance learning. The ETUC calls on Member States and employers to invest in working men and women and to increase expenditure per employee for initial and continuing vocational training, particularly to support young workers entering the labour market (through a European Youth Guarantee) and to redeploy those made redundant (ETUC Resolution December 2010: <http://www.etuc.org/a/8067>).

– **Maintaining and creating jobs: key role of industrial policy**

UA stronger and sustainable European industrial policy agenda creating and maintaining jobs through significant public and private investment in R&D, innovation and infrastructure, to develop a strategic approach that goes beyond enhancing framework conditions but promotes life-cycle thinking and the need to close the ecological loop, supporting the development and diffusion of more eco-efficient technologies and fostering the development of markets for sustainable goods and services, while adjusting industry to these upcoming sustainable markets and technologies and preparing indus-

try for greater energy- and resource-efficiency (ETUC Resolution April 2011 <http://www.etuc.org/a/8682>).

– **Giving workers a voice and place in strategic decisions: key role for information, consultation and participation**

The strengthening of worker rights to information, consultation and participation is fundamental. Worker representatives and trade unions should not be seen only as a means of ensuring the acceptance of change, and involved in the case of restructuring. An anticipation agenda demands a consistent dialogue, the building of mutual trust and a model of corporate governance in which workers' rights to contribute to corporate strategies are increased. A stronger participation of workers in strategic business decisions which are often taken at European or global level is necessary. This links to an ambitious European industrial policy and corporate governance agenda, with worker representatives empowered at the company level on questions of investment, production, innovation and R&D spending, as well as general corporate economic, social and environmental management. The current crisis must be considered as opportunity to strengthen worker involvement to strengthen the long-term viability and sustainability of European workplaces. The rights of information, consultation and participation in restructuring and in the case of a change of ownership must be improved to ensure adequate 'voice' for workers and opportunities for trade unions to negotiate fair solutions on their behalf. This process should take place in a context of upward harmonisation. Existing legal instruments on information, consultation and participation must be fully respected and enforced, with efforts made to ensure coherence. Employers who do not respect these instruments should be sanctioned effectively. In the event of merger control procedures, DG Competition should take decisions on the basis of a number of different aspects and worker involvement, namely those related to employment and industrial policy. This confirms the need for better interaction between the relevant EU policies when designing an appropriate strategy for managing restructuring. Furthermore, corporate governance rules should ensure managerial autonomy to avoid an over-emphasis on the short-term demands of shareholders (see Resolution December 2011: <http://www.etuc.org/a/9425>).

– **Ensuring a European legal framework: key role of collective bargaining**

The creation of a European legal framework for transnational collective bargaining and agreements at enterprise level or sectoral level, respecting the

bargaining competence of trade unions, in order to support public and private sector companies and sectors handle challenges dealing with issues such as work organisation, employment, working conditions and training (ETUC Resolution <http://www.etuc.org/a/1847>).

– **Providing a safety net: key role for active labour market policies, social protection and support measures**

Any restructuring framework must include support mechanisms for workers who fall victim to economic change, recognising the importance and role of quality public services. These mechanisms must be clearly defined, both prior to the restructuring process itself, throughout that process and by monitoring it over an appropriate period of time in a bid to analyse the sustainability of the steps taken. These steps should include health and safety and gender impact assessments of restructuring plans, an active search for alternative solutions to redundancy, tailor-made measures in the areas of job counselling, training, support in finding a new job, placements in another company, support for the creation of new activities with access to necessary loans, adequate social protection during unemployment and a job search period. All this with a view to promoting negotiated geographical and career mobility ensuring non-discrimination, while avoiding 'brain-drains' between countries. These measures should be co-financed by the EU's Structural Funds (ETUC Resolutions <http://www.etuc.org/a/9510>).

ANNEX:

ETUC response to questions posed in the 2012 Green Paper on Restructuring and anticipation of change: what lessons from recent experience?

Lessons from the crisis

- 1. Are the policy measures and practices outlined above in relation to restructuring, with special reference to short-time working schemes during the crisis appropriate? In what specific contexts? Are they able to cope with persistently weak demand? Finally, what can Member States, the Commission or the social partners do to exchange, disseminate and encourage wider application of the best practices in this domain?**

The Green Paper wholly fails to address either the drivers of restructuring in the current crisis or the manner in which stable and strong industrial relations has avoided greater unemployment.

The economic crisis has demonstrated the need to go further in the discussion through EU legislative action on anticipation of change and restructuring. In those cases/countries where the social partners have been allowed/able to find joint solutions they have been highly innovative and successful in doing so. However, as this is not the case throughout the EU there is a need for EU legislation to address those gaps.

Unfortunately, little attention is paid to understand what and how instruments in which countries have helped to maintain employment levels in some countries during the crisis. Short time schemes and the use of working time accounts are only possible on the basis of a two-track approach: strong employment protection and intensive collective bargaining. However, the Commission gives a limited analysis on the situation in Germany, Belgium, Austria or the Scandinavian countries which managed to maintain employment at a high level despite collapses in production. The Commission stresses the risk of "prolonged use of short-time work", "possibly delaying" restructuring and argues that short-time work schemes hold back productivity growth. Indeed the productivity growth was negative in these countries, but very positive in Spain. As the Commission for ideological reasons does not accept "more non-productive time", described as "labour hoarding", the Commission's view of short-time is ambiguous and unclear. This approach is neither helpful nor appropriate.

For the ETUC, the active intervention of public authorities and/or social partners through 2008-9, through the rapid application/extension of existing labour law measures (largely based on arrangements for seasonal professions) and the negotiation of new collective agreements, demonstrated the importance of strong labour market institutions, in avoiding a far deeper and more rapid collapse in employment. Short-time working schemes proved a highly successful model for smoothing the short-run adjustment.

When private sector demand evaporated and production plummeted following the collapse of Lehmann Brothers in autumn 2008, public sector-led demand stepped in, both in the form of 'automatic stabilizers' (unemployment benefits and benefit support for short-time working schemes) as well as in the form of explicit demand stimulus.

Countries which already had these schemes in place had an advantage as they avoided delayed reactions of this buffer. An important factor in making best use of these schemes seems to have been their quick adaptation to the new needs, although some countries did not avail themselves of this option, or did so to only a limited degree. Countries that introduced such schemes for the first time suffered delays in the buffer effect but, on the other hand, were able to design them directly in the manner best suited to the current crisis. The short-run buffer function of ALMPs depends, among others, on prior expenditure and intensity levels, on timing (early activation or not) and on the focus of measures (short-term versus long-term, training versus employment subsidies).

In many cases, they provided the emergency provisions needed to cope with unanticipated collapse, ensuring the maintenance of purchasing power for workers and maintaining skilled workforces close to companies.

Trade unions have been highly critical of companies' that have exploited the availability of such schemes to hold workers in a 'limbo' for a long period without investment in training or activity, and effectively supported through a state subsidy of salary costs. Therefore, these schemes were largely destined to be short-term and must be linked to demand-focused economic and sustainable industrial policy measures (e.g. the 'cash for clunkers' or energy efficiency and renovation programmes). Such policies ensured that key manufacturing industries and services in Europe were able to rebound by early 2010.

As the Commission Staff Working Paper demonstrates, much has already been done to share the lessons of these national experiences at interprofessional and sectoral level.

Despite the broad dissemination of different practices (through Restructuring Forum, social dialogue committees, within social partner organisations), the lessons of 2008-9 were very quickly forgotten in the context of the spiralling financial and economic crisis from 2010 to date. Economic governance rules (through the so-called 6-pack as well as the hastily and undemocratically concluded 'International Treaty on economic governance') have pushed member states to adopt extremely pro-cyclical policies. With austerity squeezing countries to breaking point as unemployment rockets up, under these circumstances, it would be sensible to let the automatic stabilisers work. That is what the eurozone member states did in 2009. It ensured that the recession, while very deep, was at least not excessively long. However, this option is now tightly curtailed, removing key tools to ensure the cushioning of economic change. The short time working arrangements ensured that the workforce was available to quickly respond to increased demand. A rebound currently being jeopardised by the excessive austerity imposed in the context of the sovereign debt crisis. Supply-side labour market reform will not ensure future growth and employment in Europe; this must be addressed through demand-led sustainable growth policies, including the promotion of a Just Transition to an energy and resource efficient model.

The experience gathered over the past decade and particularly since 2007-8 demonstrates the importance of European action to create a legal framework through a European directive on the anticipation of change and restructuring, based on the good practices already developed at company, sectoral and national level. The ETUC demands EU legislative action to ensure this is taken forward.

Fostering economic and industrial adjustment

2. The Commission would like to hear views from stakeholders on the following questions:

a. What types of framework conditions are most appropriate in order to enable successful industrial adjustment?

In the view of the ETUC, 5 key framework conditions must be addressed through EU action: macroeconomic framework conditions, the promotion of social dia-

logue and collective bargaining, investment in education and training, worker participation and corporate governance, and the creation of a European industrial policy capable of reorienting the European economy towards sustainable development, and generating jobs in the process.

1. Sustainable and progressive macroeconomic policies are the bedrock for public services and private companies operating in Europe. While social Europe has been stalled, we have witnessed the liberalisation of labour markets, the greater introduction of both precarious employment and economic flexibility, and changes in our welfare states which promote greater wealth inequality - especially in relation to unemployment policies and pensions. Wages and labour costs have increasingly been targeted undermining purchasing power and consumer demand. We urgently need coordinated and sustainable investment, and integrated social, economic and sustainable industrial policies, to ensure public confidence in the economy and stimulate economic demand, protecting jobs in the real economy. Growing wealth and income inequalities must be addressed through fair taxation policies. Excessive inequity in pay structures between senior management and their workforces has to be rebalanced (i.e. maximum bonuses awarded to top management must be regulated). Workers should be compensated fairly for productivity gains achieved by their company. The share between profit and wages should be more fairly balanced in order to support the development of workers' purchasing power. Moreover, measures to tackle fiscal dumping in the EU are needed, including the directive on a harmonised corporate tax base, the abolition of tax havens and greater effort to fight tax evasion.
2. In the context of today's economic restructuring, the role of social dialogue and collective bargaining on local, national and European level is of crucial importance to ensure the framework conditions for socially acceptable restructuring and the anticipation of change. Stronger co-operation between social partners at all levels is needed. During the crisis we have seen the benefits to be gained by the social partners adopting joint solutions, however, more recently in many countries the crisis is being used as an excuse to undermine social dialogue structures and interfere with the autonomy of the social partners, particularly in relation to collective bargaining and wage setting.
3. Europe's social and economic well-being is dependent on having a well-educated and highly skilled population, and education and training play an essential role in giving citizens the knowledge, skills and competences

they need to participate fully in society and the economy. It is particularly important in the context of restructuring and anticipation of change, to equip and prepare workers for changes in their workplace/industry. Global competition, demographic developments, technological progress, climate change obligations and shifts in patterns of employment individually and collectively are having a dramatic impact on labour markets and the need for new knowledge, skills and competences. If the EU is to meet these challenges, it will need to create more and better jobs and enable working men and women to improve their skills and more specifically match them to short- term and long-term labour market demand. "Comprehensive life-long learning strategies are required to ensure employability of workers. It is important to establish effective concepts for initial and further training, create jobs, not least for those who are excluded from the labour market due to, for example, shortcomings in their education, and to take effective steps to remove discrimination as far as access to and remaining in the labour market are concerned. Well educated workers and the capacity to innovate are key elements of competition and a prerequisite for prosperity. This is indispensable for the creation of productive and highly-skilled jobs" (a 2010 joint statement ETUC, BUSINESSEUROPE, CEEP and UEAPME <http://www.etuc.org/a/7327>). The ETUC considers that all workers should have equal access to education and training at all levels, regardless of their age, gender, employment status, or nationality, and particularly groups with low participation, such as the low-skilled, older workers and workers on temporary or part-time contracts, so that they are able to acquire, update and develop their knowledge, skills and competences throughout their lifetime. Those that need training the most should not be the least likely to obtain it. The ETUC calls on the EU to underpin this access with a workers' right to training. The ETUC considers that employers, and particularly SMEs, should support lifelong learning initiatives by making learning more accessible during working hours, and better suited to workers' needs, either through the individualisation of learning plans, the shift to competence-based training, the move to modularisation or the use of distance learning. These elements should be integrated into a European legal framework on the anticipation of change and restructuring.

4. Socially responsible restructuring and the anticipation of change fundamentally rely on timely and adequate worker information, consultation and participation. Negotiated solutions to restructuring must be prioritised in all operations and all countries. The current crisis demonstrates the need

for a profound renovation of the current model of corporate governance which has proved its limitations. We need a new model which gives workers a stronger say in corporate strategy and prevents the excesses of financial capitalism which have weakened long-term corporate development. The ETUC calls for workers' involvement in the public sector and companies to become more effective through the strengthening of information/consultation and participation rights both at national and European levels. Workers are concerned about the sustainable development of their workplaces and want to be better involved in shaping the future of their organisation or companies via participation in the development of company policies. In order to achieve this they have to be informed and properly consulted – this entails having the relevant information in due time and before decisions are taken so that their views can be genuinely taken into account. Participation in decision-making bodies (such as supervisory boards or executive boards) should be strengthened. Effective and strengthened involvement of workers is a pre-condition to ensure sustainable futures for companies and to ensuring socially responsible transitions.

5. The ETUC has long called for the European Union to ensure more coordination and strength in its industrial policy. In the context of providing alternatives to a downward spiral of competition on wages and labour conditions, trade union led innovation initiatives and the development of industrial policy concepts show that there are alternatives to concession bargaining, extending working hours and reducing pay to increase competitiveness and profitability. The European economic growth model cannot be built only on the increase of labour productivity, the uptake of ICTs or the knowledge economy but should take on board the development and uptake of sustainable technologies as well. Short-termism in business decisions has to be addressed through corporate governance and industrial policy instruments, e.g. distribution of shareholder dividends must not be done to the detriment of investment in the workforce and infrastructure and the company's development which are pre-conditions for guaranteeing a healthy and sustainable enterprise. The use of job losses and cost cutting programmes by many companies as the only means to maintain profit margins has to be addressed by public policy makers, with incentives created for longer term planning. It is widely recognised that the competitiveness of companies will be ever more dependent on the way in which they are able to invest in the development, adoption and utilisation of technologies and processes for more energy and resource efficiency. This medium to long term agenda is only possible if the constraints of short-term 'shareholder value' are

eased. To support this, European industrial policies must be developed through regulation, standards and incentives, and directed towards developing a new economic model based on innovation, eco-efficiency, sustainable technologies, sustainable production and consumption, and the internalisation of ecological costs. Worker participation in industrial and innovation policymaking and implementation is of vital importance, since this engagement ensures an anticipation approach is possible through forward-thinking collective bargaining agreements and joint positions (e.g. the December 2010 joint position Confindustria-CGIL/CISL/UIL on the state of Italian industry and energy efficiency, which follows the broader 'Industry 2015' governmental initiative on an industrial policy tool-box). In the current Europe 2020 strategy, European industrial policy has risen up the agenda, however little regard is given to the importance of social dialogue and worker participation in horizontal or sectoral industrial or innovation policies – this is to the detriment of this approach and its effectiveness.

b. What existing measures on access to finance to accompany structural adjustment constitute good practice?

The European Social Fund is “the EU financial instrument” for restructuring (as stated in the current Art 3.1). Lessons have to be drawn from the use of the Structural Funds to support the recovery of the European Union. There can be no one-size-fits-all solution as, for example, the differences in unemployment rates in member states show but we consider that the future ESF needs to include such measures and priorities as:

- providing particular support for the young, older workers and the most vulnerable groups
- improving work organization by ensuring the conciliation between living and working time
- establishing labour market observatories
- encouraging the “recycling” and vocational retraining of workers, with a focus on innovation and the transition to a low-carbon economy
- improving support for SMEs, very small enterprises and “social economy” enterprises
- defining the role of training in times of crisis on the basis of discussions on the way sectors and regions will develop in the future
- improving dissemination of good practices, such as investing in training during periods of short-time working
- reinforcing social dialogue by joint training courses for social partners

- determining new sources of jobs creation namely in the activities linked to the fight against climate change.

The measures foreseen in the framework of the European Globalization Adjustment Fund have to be included in the ESF. On the one hand, it is essential to ensure coherence between the “curative” measures following an enterprise restructuring, which are tackled by the EGF, and the “preventing” measures foreseen by the ESF. On the other hand, it is of the utmost important to ensure a coherence between the principles of both Funds, above all concerning partnership and particularly the involvement of trade unions. Finally the ESF supports the development of social dialogue namely by improving social partners’ capacity building and it has to continue to do so.

c. What further measures need to be taken to improve bankruptcy proceedings?

The ETUC regards Directive 2008/94/EC as an indispensable instrument of Union’s law, providing minimum protection to workers throughout Europe. But as the Directive leaves a significant margin of manoeuvre to the national legislator to implement its principles, it is essential that the Commission carries out a thorough monitoring of the transposition law in each of the Member States, having regard to the general principle of useful effect. Whilst the Insolvency Directive is an essential element of protection, its actual impact will be minor if an appropriate framework to address the consequences of the economic crisis is not in place. The risk that public authorities and companies throughout the Union are becoming unable to meet their duties towards their employees is dramatically increasing. The best protection of employees against insolvency is to avoid bankruptcies. The ETUC urges the Commission to further reflect on measures designed to prevent bankruptcies, including:

- good governance policies. If some insolvencies can be the result of economic difficulties, other reasons such as insufficient capitalisation, bad management or fraud are at the origin of many bankruptcies
- the role and size of the European Globalisation Adjustment Fund must be reassessed in the light of the increased economic difficulties
- the potentially unequal protection between employees’ rights in case of insolvency and employees’ rights in case of redundancy for economic reasons must be addressed.

Insolvency hardly comes out of the blue and often there are cash flow problems

causing irregular payment of wages for a longer period than 3 months. Because of the significant divergence in the national transposition laws on the ceilings, the situation needs to be assessed on a case by case basis. A significant number of national trade unions have expressed strong concerns that in their Member States there is a large number of workers whose unpaid wages exceed the limits set by national law. Moreover, a number of Member States apply a narrow definition of 'remuneration' (e.g.: excluding severance pay, bonuses, reimbursement arrangements etc.). This can result in the non-fulfilment of considerable claims. Therefore, an improvement in existing EU provisions on

The challenge of adaptability of businesses and employability of workers – companies at the centre

3. Is the anticipative approach feasible with regard to management of change and restructuring?

Yes. It is already being practiced but in a quasi-legal vacuum at European level, as demonstrated by the Commission's Staff Working document accompanying this consultation. These transnational company and national examples must be supported and extended through the creation of a European legal framework on anticipation of change and restructuring.

4. How can the existing orientations and guidelines on restructuring be improved in light of the lessons learned from the crisis and the new economic and social challenges? How can the lessons from the crisis be disseminated and implemented?

Throughout the Green Paper, the objective is to better identify and disseminate good practices, but this is not enough. Through its argumentation, the Green Paper (and the Staff Working Document supporting it) reinforces the crucial role of legislative/contractual regulation in providing a framework not only for anticipation and prevention but also the handling of decisions concerning restructuring operations. One cannot sufficiently stress the importance of the concept of "in due time" in the context of consultation and the provision of information. The ETUC goes further; regulation should not be based on good examples but should act as it always has done at the European level, to provide minimum standards that will make it possible to avoid bad practices.

Since the Gyllenhammar report "Managing change" requested and published by the Commission in November 1998, the Commission has consulted the social partners via two communications on restructurings and employment. The first was presented in January 2002, "Anticipating and managing change: a dynamic approach to the social aspects of corporate restructuring", and the second in March 2005 "Restructuring and employment". Rather than taking into consideration the recommendations made in response to those consultations, the Commission has instead chosen to use a draft document that was never formally adopted by the interprofessional social partners, the 2003 joint orientations, as a basis for the consultation. This is wholly unacceptable.

There is little convincing analysis in the Green Paper of the current situation of massive job losses and unemployment in the deepest recession since the 1930s, as compared to the situation in 2008/9 when automatic stabilisers and collective bargaining ensured lower job losses than foreseen. This is notably the case in respect of the public sector and the impact of national and European fiscal constraint and austerity on restructuring in public and private sector workplaces. The Commission limits itself to a self-referential framework, self-referencing many Commission communications ("Think Small First" 2008, "Review of Small Business Act" 2011, "Economic Recovery Plan" 2008, State aid rules...) rather than the reality.

The failures of the financial markets and of corporate governance are not reflected, rather there is an over-focus on the "internationalisation of world production" and the "competitiveness challenge". The proposed remedy is "to enhance the competitive base" of European companies. The Commission starts from scratch and avoids analysis of its own previous policies – for instance the Commissioner Bolkestein's action plan on financial services which pushed towards extreme liberalisation of financial markets or the flexicurity agenda which pushed for more social insecurity for workers and more atypical jobs. The Commission continues to stress that the concept of flexicurity is at the core of an integrated strategy and the adaptation capacity of workers needs to be further enhanced, when all evidence from the ground demands increased social dialogue and worker protection against precarious work.

Much evidence and experience has been amassed over the past decade through union or employer-only, joint social partner, Commission initiatives and EP activities. Several recommendations made by the Gyllenhammar report have never been addressed: one aimed to encourage major companies and public sector

employers to publish a “report on change management” whilst another sought to encourage public authorities to obtain sufficient resources to play a role in training or retraining workers and facilitate necessary changes without losing workplaces. The same is true of the refusal to provide public subsidies to any company making dismissals without taking measures to safeguard the employability of dismissed workers. All restructuring should be subject to gender and health and safety impact assessments. It is now time to put this good practice into action. This should be fed into the elaboration of a legal framework on restructuring and the anticipation of change.

The key lesson drawn from the crisis is on the need for a strengthening of worker resilience through better and stronger information, consultation and participation, a worker-focused skills agenda and strong public industrial policies supporting active labour market policies at all levels. This is best done through a European legal framework on anticipation of change.

Creating synergy in the process of industrial change

- 5. What could be done to encourage strategic long-term and innovative approaches to the management of change, including employment and skills issues, be encouraged? How can synergy be improved between companies, local authorities and other local actors? How should specific responsibilities and roles be distributed among companies, social partners and public authorities be distributed in this field?**

The rules of financial capitalism are global, yet, the applicable standards on workers’ participation in corporate strategy and restructuring are still largely shaped at national level, with a few European tools (information and consultation, EWCs etc.). With ongoing globalisation, it is becoming more and more difficult to defend subsidiarity approaches defending national provisions. As business goes global and ignores national boundaries, a rethinking of the role of workers’ involvement in the public sector and companies is essential at European level. It is only on this basis that a strong anticipation agenda at European level can be developed, which has as its central goal the promotion of high quality employment and decent living standards.

Trade unions have integrated constant change as an ever more present feature of their daily action in order to maintain a certain level of performance in the Euro-

pean sectors of activity and to remain competitive in the global market. In a legal vacuum, a number of multinational companies and their workers have chosen to negotiate agreements on the anticipation of change. However, these individual transnational agreements lack a legal framework to ensure their application and therefore depend on goodwill on the part of the partners. During recent months, the speed with which management has abandoned its commitments included in such agreements, e.g. in GM or ArcelorMittal, demonstrates this weakness.

Moreover, while this is strategy available to larger companies with strong industrial relations cultures, these agreements cannot provide a framework to tackle the wider effects of public sector restructuring and the silent restructuring in SMEs in broader supply chains and regional economies.

6. How can effective practices for anticipating employment and skills needs within companies be further encouraged? How can training be developed as a permanent feature of human resources management? How can synergy between action taken by companies and public sector initiatives be promoted to facilitate appropriate employment and skills policies?

Preparing and enabling workers to anticipate changes demands a key role for education and training. Therefore the ETUC demands that a future framework on anticipation of change and restructuring addresses workers' rights in this regard, and ways of applying them.

Equal access to continuing education and training is essential to respond to citizens' changing circumstances and aspirations on the one hand and the needs of the labour market on the other. The ETUC considers that all workers should have equal access to education and training at all levels, regardless of their age, gender, employment status, or nationality, and particularly groups with low participation, such as the low-skilled, older workers and workers on temporary or part-time contracts, so that they are able to acquire, update and develop their knowledge, skills and competences throughout their lifetime (e.g. through individual training plans and learning accounts). Those that need training the most should not be the least likely to obtain it.

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

An anticipation framework must address tools focused on future skills needs

and the upgrading of skills, through strong social dialogue on workforce planning and multiannual plans on employment and skills development in the public sector, companies and sectorally. Trade unions not only play an important role in the context of improving skills development and developing innovative concepts and industrial policy through their bargaining powers, but also are able to directly influence the practice of workers and learning environments as demonstrated through the UnionLearn initiative of the UK's Trade Union Congress (TUC).

The ETUC considers that employers, and particularly SMEs, should support life-long learning initiatives by making learning more accessible during working hours, and better suited to workers' needs, either through the individualisation of learning plans, the shift to competence-based training, the move to modularisation or the use of distance learning. Regional social partner approaches, together with public authorities, offer a tried and tested means of ensuring the engagement of SMEs and their workforces. The sectoral social dialogue has a key role to play in coordinating joint responses at European level.

The European Social Fund should be better used in the future to promote these initiatives – this should be taken into account in the current negotiations on the 2013-2020 EU budget proposals. There can be no-one-size-fits-all solution as, for example, the differences in unemployment rates in member states show but we consider that the future ESF needs to include such measures and priorities as:

- providing particular support for the young, older workers and the most vulnerable groups
- improving work organization by ensuring the conciliation between living and working time
- establishing labour market observatories
- encouraging the “recycling” and vocational retraining of workers, with a focus on innovation and the transition to a low-carbon economy
- improving support for SMEs, very small enterprises and “social economy” enterprises
- defining the role of training in times of crisis on the basis of discussions on the way sectors and regions will develop in the future
- improving dissemination of good practices, such as investing in training during periods of short-time working
- reinforcing social dialogue by joint training courses for social partners

- determining new sources of jobs creation namely in the activities linked to the fight against climate change.

At transnational company level, the EMF-Schneider Electric framework agreement providing for skills anticipation and training for individual workers certainly offers a good practice example.

The ETUC calls on Member States and employers to commit to increased investment in working men and women. Now is not the time to cut back national education and training budgets and programmes as these will provide the basis for future innovation and ensure that crippling skills gaps are avoided. Therefore, commitments should be made for an increase in expenditure per employee for education and continuing vocational training (ETUC Resolution December 2010: <http://www.etuc.org/a/8067>).

7. How can companies and their workforces be encouraged to engage in early and adequate preparation of restructuring processes favouring acceptance of change? What best practices exist in this field?

Giving workers a voice and place in strategic decisions is a precondition to socially-responsible restructuring, meaning a key role for information, consultation and participation. The strengthening of worker rights to information, consultation and participation is fundamental.

The rights of information, consultation and participation in restructuring and particularly in the case of a change of ownership must be improved to ensure adequate 'voice' for workers and opportunities for trade unions to negotiate fair solutions on their behalf. This process should take place in a context of upward harmonisation.

Existing legal instruments on information, consultation and participation must be fully respected and enforced, with efforts made to ensure coherence. Employers which do not respect these instruments should be sanctioned effectively.

In the event of merger control procedures, DG Competition should take decisions on the basis of a number of different aspects and worker involvement, namely those related to employment and industrial policy. This confirms the need for better interaction between the relevant EU policies when designing an appropriate strategy for managing restructuring.

A stronger participation of workers in strategic business decisions which are often taken at European or global level is necessary. The current crisis must be considered as opportunity to strengthen worker involvement to strengthen the long-term viability and sustainability of workplaces. Furthermore, corporate governance rules should ensure managerial autonomy to avoid an over-emphasis on the short-term demands of shareholders (see Resolution December 2011: <http://www.etuc.org/a/9425>).

There is a key role of collective bargaining within a future European legal framework. To reflect the increasing importance of transnational restructuring, the Commission should finally propose the creation of a European legal framework for transnational collective bargaining and agreements at enterprise level or sectoral level in order to support companies and sectors (public and private) handle challenges dealing with issues such as work organisation, employment, working conditions and training.

Thirdly, trade unions do not resist change, as long as it is justified, negotiated and well- managed in a socially responsible way. What the ETUC will always resist is a scenario in which the negative consequences are borne exclusively by workers, whilst a significant proportion of managers who have failed to live up to their responsibilities receive a 'golden handshake' in return.

As the very systems cushioning workers from the brutal impact of economic change are being undermined through austerity and deregulation, worker representatives are increasingly considered only as a means of ensuring the acceptance of change. On the contrary, it is only through consistent and stronger worker participation that change can be managed in a socially acceptable manner, trust is nurtured and anticipation policies can develop.

Crucial to that trust and policy framework are active labour market policies, social protection and support measures. Any restructuring framework must include support mechanisms for workers who fall victim to economic change. These mechanisms must be clearly defined, both prior to the restructuring process itself, throughout that process and by monitoring it over an appropriate period of time in a bid to analyse the sustainability of the steps taken. These steps should include job cuts as a last resort, an active search for alternative solutions to redundancy, tailor-made measures in the areas of job counselling, training, support in finding a new job, placements in another company, support for the creation of new activities with access to necessary loans, adequate social protection during unem-

ployment and a job search period. All this with a view to promoting geographical and career mobility ensuring non-discrimination. Good practice examples include the tools of 'redeployment taskforces' which are already used in various member states to support workers. These measures should be integrated into the EU legal framework to ensure that all workers may benefit across Europe and should be co-financed by the EU's Structural Funds where needed.

8. To what extent can mutual trust and shared diagnosis play a role in good management of restructuring? How can this be promoted within companies and in broader contexts?

It is only through consistent and stronger worker participation that change can be managed in a socially acceptable manner, trust is nurtured and anticipation policies can develop. An absence of dialogue can have ruinous consequences, as can be seen from Eurofound data on restructuring and workplace health as well as recent suicide cases in some prominent companies.

There are examples from across Europe of how governments and public sector employers have completely failed to take on board any of these. Pay freezes and/or cuts, job freezes or cuts and other changes to working conditions have been imposed on millions of public sector workers without any consultation or negotiation. Any mutual trust that existed before, and indeed some progress on social dialogue was observed in the years before the financial crisis, has now been totally undermined or seriously weakened.

Anticipation and preparation for change are the pre-conditions for managing change in a socially responsible way. Developing regular joint analyses on the situation of a plant, company, sector or region can provide a key means of generating and focusing this dialogue, improving mutual understanding and finding innovative solutions. This demands an equalizing of the balance of power between employer and worker through measures to ensure worker representatives have access to expert and union support. Since this was one of the key improvements of the revision of the EWC directive in 2007, this right should be extended to all EU information and consultation norms.

Despite the existence of good national legal tools and practices (e.g. GPEC in France) there is a need to go beyond the national level and develop a joint approach at European level. With ongoing globalization and European mar-

ket integration, it is becoming more and more difficult to defend subsidiarity approaches defending national provisions. As business goes global and ignores national boundaries, a rethinking of the role of workers' involvement in companies and the public sector is essential at European level.

9. What can companies and employees do to minimise the employment and social impact of restructuring operations? What role can public policies play in facilitating these changes?

The ETUC has long argued that zero unemployment should be the main goal of policies managing restructuring processes alongside the recognition that policies must deliver appropriate solutions for each and every worker.

This demands parallel public policies and investment promoting the creation of good quality jobs, here there is a key role for strong European and national industrial and innovation policies. A stronger and sustainable European industrial policy agenda creating and maintaining jobs through significant public and private investment in R&D, innovation and infrastructure, to develop a strategic approach that goes beyond enhancing framework conditions but promotes life-cycle thinking and the need to close the ecological loop, supporting the development and diffusion of more eco-efficient technologies and fostering the development of markets for sustainable goods and services, while adjusting industry to these upcoming sustainable markets and technologies and preparing industry for greater energy- and resource-efficiency.

Public policy must also provide a safety net through active labour market policies, strong social protection and support measures.

A European restructuring framework must include support mechanisms for workers who fall victim to economic change. These mechanisms must be clearly defined, both prior to the restructuring process itself, throughout that process and by monitoring it over an appropriate period of time in a bid to analyse the sustainability of the steps taken. These steps should include job cuts as a last resort, an active search for alternative solutions to redundancy, tailor-made measures in the areas of job counselling, training, support in finding a new job, placements in another company, support for the creation of new activities with access to necessary loans, adequate social protection during unemployment and a job search period. All this with a view to promoting geographical and career mobility ensuring non-discrimination. These measures should be co-financed by the EU's Structural Funds.

10. What can companies, local authorities and all the other stakeholders usefully do to minimise the regional impacts of restructuring? How can companies affected as a result of the restructuring of another company be supported in their own adjustment process? In particular, how can SMEs be better informed and assisted in the restructuring process?

A characteristic of public debates on restructuring is that they overwhelmingly refer to cases and developments in large enterprises. When it comes to restructuring and change in SMEs little is found in the press, despite the importance of SMEs in terms of employment (over 3/4 of workforce in many countries) and number of companies (99% of European companies). This clearly limits data collection and analysis in EU instruments such as the EMCC/Eurofound. The crisis has shown the importance of addressing restructuring in supply chains and regional networks, but in sectors dominated by SMEs workers are poorly addressed in current EU policy.

It is therefore not surprising that 'silent restructuring' is increasingly one of the ETUC's main concerns over the past years – it is also one of the main reasons that a European legal framework is urgently needed to link territorial and sectoral measures on employment and skills anticipation with the majority of the workforce.

SMEs are at a disadvantage to large companies in relation to financial and other instruments for dealing with and managing restructuring. Meaning that structural change often means dismissals as other alternatives are unavailable. Once redundancy is pending, a worker in an SME has often more limited access to redeployment services and training opportunities – increasing the cost for the individual worker rather than easing the transition into another job. The development and use of regional and sectoral approaches has proved successful in a number of member states (e.g. the Italian management of 'Territorial Crisis' has been used to extend national provisions on support measures to SMEs on a regional basis).

Therefore a European legal framework should give a clear role to regional and local authorities. This must be complemented by an obligation on employers to cooperate with public authorities and trade unions, as experience and good practice from Scandinavia as well as France and Italy demonstrates that this is the only means of ensuring that information is delivered at the earliest possible stage allowing proper preparation of support measures and social plans.

11. What role can evaluation and reporting of past restructuring operations play in increasing knowledge and improving stakeholders' practices?

Learning from experience and analysing the situation over time, particularly at sectoral level, are crucial to ensure that policies are achieving their aims. The promotion of sectoral skills and employment councils and observatories is essential to this end. This experience should be fed into the improvement of European institutions tools in the field, notably the European Monitoring Centre on Change, which despite its initial role is currently only seen as a limited aid for social partners engaged in restructuring and anticipation. European Restructuring Forum are another useful tool, however once good practices are identified political will must be engaged to ensure they are implemented or adapted in other countries. This has not been the case without a legal framework, but these elements could usefully be integrated into a legal framework, e.g. by implementing the Gyllenhammar report's recommendation on pressing major companies and public sector employers to publish a "report on change management". Ideas of regional reporting could be developed to ensure the SME-dimension is represented adequately.

12. What role social dialogue could play in better disseminating and encouraging best practices for the anticipation and management of restructuring?

Social dialogue has been the main vehicle for disseminating good practices in the past decade. This should undoubtedly continue to be a key tool, but must be complemented by an improvement in the regulatory framework. Under the guise of economic governance, there is a wholehearted attack on industrial relations, with challenges to the Labour Codes and basic labour and social rights in many countries, and a concerted attempt to decentralize collective bargaining to the lowest level. This is a dismantlement of the key mechanisms to guarantee solidarity and social cohesion within and between member states. Social dialogue is crucial to ensure the framework for the anticipation of industrial change. It is therefore more than counter-productive to be dismantling when we should be reinforcing industrial relations structures to prepare for the changes coming in the light notably of the transition towards an energy and resource efficient model. Hypocritical demands from European institutions for more social dialogue on the one hand, while the foundations of social dialogue are undermined on the other, is deeply cynical.

13. While fully taking into account the huge differences between Member States in this regard, the Commission would like to hear the views of stakeholders (in particular national authorities and social partners' organisations) on whether some aspects of the employment protection systems need to be reviewed in the light of this intended transition towards anticipation and proactive protection of employment.

Strong and effective employment protection systems, together with stable industrial relations as a centre element, are crucial to ensure fair transitions in the labour market. Any attempt to further deregulate the labour market under the guise of the Commission's flexicurity or restructuring initiative will be strongly opposed by the trade union movement. Measures are urgently needed to reduce precarious work and generate new jobs to counter the rising unemployment in Europe. Supply-side labour market policies do not create jobs. Reducing workers' protection further will not create a more proactive strategy on anticipation but increase insecurity and resistance to change.

The role of regional and local authorities

14. How can a supporting role be encouraged for public authorities, particularly at regional level, in anticipation processes, as well as in particular restructuring events, taking into account differing national traditions regarding the involvement of public authorities in company-level processes?

Public authorities are crucial actors in ensuring the coordination of anticipation strategies at different levels, the engagement of both sides of industry, developing longer term strategies for regional and local economies together with stakeholders, and ensuring the coherence between employment creation policies, skills anticipation and support measures for workers affected by restructuring.

The Commission should also recognise more broadly the role public authorities not only as a supporting actor, but also public authorities' role as a key employer at different government and sectoral levels. Public sector restructuring – currently the strongest wave of restructuring in the EU through unilateral austerity measures – should also be foreseen within a framework of socially responsible restructuring and anticipation.

THE FUTURE OF EUROPEAN COMPANY LAW: TOWARDS SUSTAINABLE GOVERNANCE

Adopted by the Executive Committee on 6-7 March 2012

1.

Trade unions have a fundamental interest in promoting more democracy at the workplace and sustainable EU governance. The coming years will be difficult for workers. The current economic context leads to more frequent changes in company strategies, including greater recourse to restructuring. Workers and their representatives must be given a place and a voice in these strategic decisions¹.

2.

In this Resolution the ETUC calls for a radical change of approach in EU policy. EU company law currently overemphasises businesses' and shareholders' needs to the detriment of the interests of workers and other stakeholders. Furthermore, promoting regime competition and short-termism is not sustainable in the longer term. EU company law should focus on promoting a coherent, sustainable and forward-looking corporate model, including an EU framework instrument on workers' involvement. Major questions can also be raised about the real purpose and effect of the current better regulation agenda.

3.

The ETUC reiterates its demand for a meaningful consultation on policy orientation. A more active involvement on the part of European Social Partners in the shaping of EU company law policy would greatly contribute to unblock numerous deadlocks. Online consultations and Green Papers are not an adequate sub-

¹ See ETUC Resolution "Anticipating change and restructuring: ETUC calls for EU action" of 6-7 March 2012 and ETUC Resolution "Workers participation at risk: towards better employee involvement" of 8 December 2011

stitute for the specific consultation of the social partners, which is foreseen in the European Treaties.

4.

Reforming European company law in the interests of workers and other stakeholders will not be an easy task. The ideologies of shareholder value and regime competition have fundamentally shaped the EU company law acquis. But the financial crisis has clearly demonstrated the need for change.

5.

However, Social Europe and a sustainable economy cannot be realized simply by hoping that the crisis will pass soon and the economic recovery will put us on the right path. The demands discussed above, together with the list in the annex of existing EU company law directives and where they need to be reformed, provide a roadmap for fundamental change in how our companies operate and are regulated. In order to achieve a democratic and social Europe, it is crucial that workers and their representatives are not excluded from the political process. The relationship between companies and society has become unbalanced in favour of the former. But companies need to serve society, rather than society serving the shareholders. A proper balance can be achieved only by fully including trade unions in the process of change.

ANNEX 1:

Explanatory memorandum

Shareholder value vs the welfare of workers and other stakeholders

1.

The ideology of shareholder value claims that the company is the private domain of shareholders and that workers are merely a “factor of production”. The reality, however, is that the company is a community which is dependent upon the commitment and contribution of workers as key stakeholders. Company law needs to reflect the fact that the company is a community, that workers’ interests should be placed on the same footing as shareholders, and that workers have a right to exercise “voice” within the firm.

2.

Realizing this concept of a “sustainable company” requires fundamental changes in our legal and regulatory framework. Company law needs to take the long-term interests of workers and other stakeholders into account, not just the interests of shareholders. The transparency of companies, particularly with regard to their social and environmental impact, needs to be improved through binding standards for disclosure. Executive remuneration plans are very important instruments for governance and should be more clearly nailed down with regard to disclosure, explanations, limited bonuses and tax accountability. Executive remuneration must not be based on short term movements in share price. Finally, our financial markets need to be tamed so that “casino capitalists” are replaced by long-term responsible shareholders.

Change the fundamental objectives of EU company law

3.

Instead of promoting a harmonising approach, the Commission is pursuing a regulatory competition agenda based on basic minimum requirements at EU level and a mutual recognition principle. By introducing a 1 euro minimum capital requirement and very light registration requirements, the Commission’s proposal for a European Private Company² illustrates well this minimalist approach.

² COM (2008) 396/3. See ETUC Resolution of October 2008: <http://www.etuc.org/a/5463>

4.

The consequences of this regulatory competition agenda run against the spirit of European integration. National company laws, where they provide for fairness and social justice, are under the fire of EU law and the pressure is increasing towards more regime competition amongst company laws to provide the highest corporate benefits.

5.

The ETUC considers it unacceptable for EU law to promote a race to the bottom agenda. A major change of approach is urgently needed so as to restore the fundamental objectives of sustainable EU company law: to prevent regime competition and to promote a forward looking model at EU level taking into account the necessity of high level of quality employment and social progress.

Preventing regime competition

6.

The ETUC believes that increasing company mobility can be beneficial to the European economy to the extent that it responds to justified business needs, linked to genuine organisational reasons. But cross border mobility cannot be treated as an end in itself, which means that EU law must put in place the necessary safeguards to prevent the setting up of artificial structures, such as “letter box companies”, designed to evade the applicable national rules.

7.

The choice of the **registration place** is an important step in the life of businesses as it determines the main national regime applicable to the company. Against this background, the ETUC considers that the ‘real seat’ principle should be a core principle of EU company law. However, the dominant philosophy is to allow companies to establish their registration seat in a different Member State than the place of real business. For the ETUC, this artificial division has no justification under EU law. It leads to regime competition for all the wrong reasons, including in particular tax optimisation and circumventing existing workers’ rights.

8.

The ETUC therefore urges the EU legislator to devise the appropriate rules so as to ensure that the registration place is linked to the place of main business.

9.

Furthermore, the ETUC is increasingly concerned by **transfers of registered offices** in the Union. European Court of Justice rulings have made such transfers very problematic, in particular from a regime competition point of view. In the absence of an express will from the EU legislator, the Court has strengthened the possibility for companies to choose the corporate regime of any Member State.

10.

There have been initiatives to approve a specific company law Directive dealing with such transfers (the '14th company law Directive'). The ETUC is very conscious of the fact that such a Directive would lead to an increase of cross-border transfers within the Union, with the accompanying risks of delocalisation and watering down of workers' rights. A number of safeguards are therefore indispensable so as to limit transfers of registered offices to cases of justified business needs, linked to genuine organisational reasons. In particular, the following pre-conditions are essential for ETUC support for a 14th Directive:

- As highlighted above, the 'real seat' principle is indispensable;
- there must be a meaningful information and consultation procedure about the proposed transfer. Effective sanctions must be put in place so as to guarantee the respect of this obligation;
- the provisions governing workers' involvement (information, consultation and participation) must be in line with the mechanism of the SE Directive³.

11.

A **substantial capital base** for companies is considered to provide a basic level of protection for workers and other stakeholders when companies run into financial difficulties. Currently however, with the exception of financial companies and public limited companies, there is no EU level minimum capital requirement. This has allowed a "race to the bottom" between Member States, many of which have been lowering capital requirements in an attempt to attract foreign business. The EU should impose a minimum capital requirement for all kinds of companies which will provide a reasonable level of protection to workers and other stakeholders if the company they are working for or doing business has financial problems.

³ Directive 2001/86/EC supplementing the statute for a European company with regard to the involvement of employees

12.

Overall, the ETUC considers it necessary to start discussions on a **framework instrument on workers' involvement**. The exercise should not be about rethinking national models on information, consultation and participation but to build a sustainable European company law model. Any company which decides to benefit from the provisions of European company law (eg: a European Company, a European Cooperative Society, a European Private Company, a company moving across the EU in line with the cross border merger Directive etc.) should at the same time adhere to certain shared values⁴.

13.

Furthermore, the large EU company law *acquis* is disjointed. In their quest for the 'lightest regime', companies are not only able to pick and choose national legal forms; they can also put EU instruments in competition with each other.

14.

Considering the current approach to EU company law, the ETUC is of the view that a codification of EU company instruments is a perilous exercise, which may have damaging consequences. There is, however, a clear need to create in the short term **more convergence between the various EU company law Directives**. For instance:

- the Takeover Directive 2004/25/contains very weak provisions on workers' involvement. This Directive must therefore be reviewed with a view to align its provisions on workers' rights with other pieces of the Community *acquis*.
- the relevance of the distinction between listed companies and private companies which is currently made by EU law must be reassessed. For instance, the protection
- afforded by the transfer of undertakings Directive 2001/23/EC must also be available to workers in listed companies.
- the worker involvement provisions in the cross border merger Directive
- 2005/56/EC must be aligned to those of the SE Directive 2001/86/EC
- whenever a company envisages relying upon an EU company law instrument, there should be a mandatory assessment of the impact upon workers (eg: merger, division, transfer of registered office, take over, etc.).

⁴ See previous ETUC resolution at: <http://www.etuc.org/a/8684>

- Similarly, where new EU company law initiatives are being envisaged, the ETUC urges the Commission to reflect carefully on a coherent approach. The SPE proposal in its current form should be withdrawn as it creates intolerable competition with both the SE legislation and national company laws. Also, the provisions in the existing *acquis* must serve as a point of departure for an initiative on cross border transfer of registered seats.

15.

The financial crisis demonstrated once again that **auditing** firms fail to adequately play the role of “gatekeepers” that they are supposed to. The extent to which companies and financial institutions receiving a “seal of approval” from an auditing firm ran into difficulties in the crisis and thereafter shows that this failure was systematic rather than exceptional. Core causes of this failure include: significant conflicts of interest through the simultaneous provision of auditing firms of both auditing and certain types of consulting services, an oligopoly among large auditing firms, flaws in current accounting standards, and a focus on historical (rather than forward-looking) performance and on data of interest mainly to shareholders.

16.

The Commission’s recent proposals on auditing⁵ need revision in order to achieve a number of goals: encouraging a forward-looking focus which includes a judgment of key risks and the sustainability of the business strategy, inclusion of more information relevant for workers and other stakeholders, respect for two-tier board systems and access to audit reports in different national systems of worker involvement in the EU, and removing conflicts of interest that would endanger independence in the auditing process, in order to discourage a rubber-stamp approach to auditing.

17.

The current regime of **company reporting** is characterized by a focus on listed companies and the needs of their shareholders. Workers and other stakeholders need and should receive the relevant information, such as financial information, and the social and environmental impact of companies. In the rare cases where information is disclosed, it is frequently done so without reference to external standards.

5 Proposed Regulation on statutory audit of public interest entities (COM (2011) 779 final) and Proposed Directive amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (COM (2011) 778 final)

Furthermore, when disclosure is done on a “comply or explain” basis, explanations are frequently lacking or inadequate. The lack of adequate information to workers and other stakeholders, especially in smaller sized companies, can prevent the detection of financial difficulties in the company. The spirit of the general framework Directive on information and consultation (Directive 2002/14/EC) must be respected.

18.

The ETUC judges the current disclosure regime as “poor” and demands reporting by a larger spectrum of companies (nonlisted as well as listed, and not only large companies) on the basis of common standards which allow comparisons over time and between companies. Mechanisms for improving the credibility of this information include external auditing and trade union verification (e.g. of labour standards in supply chains).

Simplification of company law

19.

Under the headline “minimizing the regulatory burden for small and medium-sized enterprises (SMEs) and adapting EU regulation to the needs of micro-enterprises” the European Commission has accelerated its efforts to deregulate a large part of the European economy. In the area of company law the Commission has proposed waiving requirements for SMEs (particularly for micro-enterprises) defined by the 4th Company Law Directive (dealing with accounting requirements) and the Transparency Directive.

20.

SMEs are estimated to account for approximately two thirds of private sector employment in the EU, thus the potential impact of deregulation on employment and working conditions is huge. The owners of many of these companies enjoy the privilege of limited liability, which limits the claims that stakeholders can make in the event of company failure. The ETUC is adamant that better regulation does not necessarily mean less regulation. Necessary safeguards and rights for workers and other stakeholders should not be abolished in the name of reducing costs.

ANNEX 2: The weaknesses of the current eu company law acquis

REFERENCES	TOPICS	ETUC COMMENTS (NB : all Directives which relate to company strategy and restructuring should contain a provision requiring a thorough impact assessment of the proposed measure on the workforce)
Directive 2009/109/EC	As part of the simplification initiative, under certain conditions reduces reporting and documentation requirements in case of divisions and mergers	Reporting and documentation requirements in general need to be strengthened, particularly regarding information and consultation rights for workers.
Directive 2007/63/EC	Extends option for shareholders for an exemption from requirement for an independent expert's report contained in the cross border merger directive to purely domestic mergers	<ul style="list-style-type: none"> • Rights to an independent expert's report should be • extended to employees • Other information and consultation rights should be strengthened
Directive 2007/36/EC	Shareholders' rights	<ul style="list-style-type: none"> • Shareholder responsibilities should be defined, not just shareholder rights • The voting records of investors should be made publicly available • Accountability should be ensured along the investment chain, so that investment managers and proxy agencies act in the interests of ultimate owners . • Enough transparency should be created so that companies can identify their shareholders, including those with short interest and borrowed voting rights.

Directive 2006/68/CE	Formation and capital of public limited liability companies	Provisions on minimum capital requirement need to be strengthened.
Directive 2005/56/CE	Rules on cross-border mergers	<ul style="list-style-type: none"> Workers' rights need to be aligned to the provisions of the SE Directive. In particular, provisions on information and consultation must be included and the provisions on participation must be identical to those of the SE Directive Requires impact assessment of envisaged financing for the merger
Directive 2004/25/CE	Rules for takeover bids	<ul style="list-style-type: none"> Requires stronger rights for workers, including in particular application of the transfer of undertakings Directive, and meaningful information and consultation about the proposed take over Requires more transparency on the take over procedure Require prior impact assessment of the take over
Directive 2003/58/CE	Modernization of the Accounting Directives	More transparency should be required in the form of binding standards for social and economics reporting, not just reporting on financial performance.
Directive 2001/86/CE	SE directive	<ul style="list-style-type: none"> Phenomenon of shelf SEs should be investigated, Adaptation clause needs to be included so that negotiations on workers' involvement are triggered in case of significant change in the size and/or repartition of the workforce Requires setting of a register at EU level, which would allow more transparency regarding business activities and the size of the workforce
Eight Council Directive 84/253/EEC	Auditing	<ul style="list-style-type: none"> Requires removing of conflict of interest of auditing firms with both auditing and consulting business Access of employee representatives to auditing reports Requires forward-looking statements

Seventh Council Directive 83/349/EEC Fourth Council Directive 78/660/EEC	Accounting	<ul style="list-style-type: none"> • Must be more stakeholder oriented • Access of employee representatives to the information
Sixth Council Directive 82/891/EEC	Division of companies	<ul style="list-style-type: none"> • Requires reference to transfer of undertakings directive • Requires prior impact assessment
Directive 2011/35/EU	Mergers of public limited liability (amends 3 rd directive)	<ul style="list-style-type: none"> • Requires reference to transfer of undertakings directive • Requires prior impact assessment
Second Council Directive 77/91/EEC	Formation and capital of public limited liability companies	Requires strengthening minimum capital requirement
Directive 2009/101/EC	Registration/ power of organs/ nullity	<ul style="list-style-type: none"> • More transparency in registration and basic company information • Improve access to (European) business register
Directive 2001/23/EC	Information and consultation on proposed transfer of undertakings + prohibition of changes in work conditions, including dismissals, for reasons directly connected to the transfer	Requires extending the scope to cases of shares sales, division of companies, mergers of public limited liability companies

EU PUBLIC PROCUREMENT FRAMEWORK – ETUC POSITION

Adopted at the Executive Committee on 6-7 March 2012

1.

In December 2011, the Commission adopted the revised framework for public procurement comprising a general directive on public procurement, a specific directive applying only to water, energy, transport and postal services, and a directive on the award of concession contracts.

2.

The ETUC deplors that the aim to better integrate social and environmental considerations in public procurement has not been met. The Commission has favoured a voluntary approach meaning that it would be optional for public authorities to take social and environmental considerations into account. The Commission has also failed to address the incompatibility between EU law and ILO Convention 94, which is a result of the Rüffert case. The public procurement rules should support the promotion and implementation of the Convention. They must ensure that national labour laws and applicable collective agreements are fully respected. The ETUC calls on those Member States that have yet to ratify the Convention to do so as soon as possible. In order to avoid abuses of working conditions, a system of joint and several liability must be introduced that clearly stipulates that the whole subcontracting chain is jointly held liable regarding pay and working conditions, social security, fundamental rights, health and safety and training.

3.

The Commission's proposals do not contain any guarantees to uphold or improve the quality of services. The ETUC cannot accept that the award of public contracts shall continue to be based on the lowest cost criterion. Awarding contracts on the basis of the "most economically advantageous" criterion provides sufficient guarantees that a tender is assessed both on its economic and social merits.

4.

The ETUC believes that it is necessary for local authorities to enjoy wide discretion over the organisation and delivery of public services. They must be able to provide public services directly to their citizens. A wide interpretation of in-house arrangements is therefore important.

5.

The ETUC welcomes the recognition that social services cannot be treated the same way as other public services and are thus subject only to transparency and non-discrimination principles. However, compliance with labour law and collective agreements must also apply to the procurement regime for social services. Furthermore, social security and trade union services must be excluded since they do not constitute services within the meaning of EU law.

6.

The ETUC does not believe that there is a need for a specific directive on concessions. Contrary to the stated objectives, it increases legal uncertainty for public authorities. The scope is vague and the relationship with the two other procurement directives is not clear. It raises concerns about the ability of public authorities to organise key sectors in a social and sustainable manner.

7.

Finally, the ETUC renews its demand for a moratorium on liberalisation in the absence of a full and comprehensive evaluation of the impact of the EU measures to date.

ANNEXE :

Mémoire explicatif

Contexte

1.

En janvier 2011, la Commission a publié un Livre vert sur la modernisation de la politique en matière de marchés publics. La réponse de la CES a mis l'accent sur la responsabilité des pouvoirs publics à utiliser l'argent public afin de promouvoir le développement économique et social, l'emploi de bonne qualité et les services, produits et œuvres de qualité¹. À la suite de l'affaire Ruffert, il subsiste une grande incertitude quant au fait de savoir dans quelle mesure les parties contractantes peuvent convenir d'un principe de totale égalité entre tous les travailleurs du même territoire. Il est dès lors difficile de respecter la Convention 94 de l'OIT dans les États membres qui l'ont ratifiée, ce qui laisse la porte ouverte au dumping social dans toute l'UE. La CES a également souligné que les marchés publics sont un choix et pas une obligation et, en particulier, que les pouvoirs publics doivent jouir d'une large faculté d'appréciation concernant l'organisation et la prestation de services publics.

2.

À la suite du Livre vert, la Commission a publié en décembre 2011 un ensemble de mesures pour la révision des règles de l'UE applicables aux marchés publics. Cet arsenal de mesures est composé d'une proposition de directive générale remplaçant la directive 2004/18/CE sur les marchés publics², une directive en matière de passation des marchés par des entités opérant dans les secteurs de l'eau, de l'énergie, des transports et des services postaux (« la directive sur les services publics ») remplaçant la directive 2004/17/CE³, et une directive sur l'attribution de contrats de concession⁴.

3.

Bien que chacune de ces propositions contienne des spécificités liées à leurs champs d'application respectifs, elles poursuivent deux objectifs : augmenter

1 Voir <http://www.etuc.org/a/9260>

2 COM (2011) 896 final

3 COM (2011) 895 final

4 COM (2011) 897 final

l'efficacité des dépenses publiques et permettre une meilleure utilisation des marchés publics en faveur d'objectifs sociétaux communs. La CES salue en particulier le second objectif étant donné que l'approche qui prévaut actuellement est presque exclusivement basée sur des considérations économiques. Néanmoins, le contenu des propositions ne répond pas aux objectifs sociaux et des améliorations importantes sont nécessaires pour garantir le respect du droit du travail et assurer des services publics de qualité.

4.

Bien que la CES soutienne les principes de transparence et de non-discrimination, nous ne sommes pas convaincus de la nécessité d'une directive spécifique sur les concessions, qui couvre le droit d'exploiter des œuvres ou des services. Contrairement aux objectifs exposés, elle augmente l'incertitude juridique pour les pouvoirs publics. Le champ d'application de la directive proposée n'est pas clair et la relation avec la directive générale sur les marchés publics n'est pas expliquée. En outre, la CES craint que la directive interfère avec le droit des pouvoirs publics d'organiser les services publics de la manière dont ils l'entendent.

Respect des salaires décents et des conditions de travail

5.

Il est essentiel que toutes les parties à une procédure de passation de marchés publics soient liées par le droit national du travail et les conventions collectives applicables localement. Cependant, les directives proposées contiennent de très maigres dispositions sur les aspects sociaux et, par conséquent, elles ne constituent pas une protection suffisante contre la concurrence déloyale sur les conditions de travail. En outre, dans de nombreux États membres, les conventions collectives nationales et sectorielles sont actuellement attaquées par les récentes réformes du marché du travail établissant la préséance des accords d'entreprise sur les accords nationaux/sectoriels. Ce facteur supplémentaire fait peser sur les travailleurs la menace de voir leur salaire et leurs conditions de travail ébranlés par une concurrence sur les prix les plus bas dans les marchés publics.

6.

Dans les propositions de la Commission, la possibilité d'intégrer les considérations sociales et environnementales dans les processus d'appel d'offres reste entièrement optionnelle pour les parties contractantes. La CES rejette cette

approche « volontaire » et incite vivement les institutions de l'UE à introduire des obligations juridiquement contraignantes. Les conditions d'exécution du contrat doivent inclure le respect de toutes les conditions d'emploi sur le lieu où le travail est effectué. Lorsque le prix ou le coût perçu par le soumissionnaire semble être anormalement bas, le soumissionnaire potentiel doit apporter la preuve qu'il respecte ces conditions. Dans le cadre de l'exécution du contrat, toute violation des conditions de travail doit automatiquement conduire à l'exclusion du contractant.

7.

Concernant le niveau de protection, la Commission estime que seul le droit européen et les principales conventions de l'OIT doivent être pris en compte. Les considérants indiquent même que seules les considérations liées à la « santé, et l'intégration sociale des personnes défavorisées ou de membres de groupes vulnérables » sont admissibles et que ces considérations devraient rester dans les limites de la directive sur le détachement des travailleurs⁵.

8.

Une telle approche minimaliste laisse la porte ouverte au dumping social. Le droit du travail européen, et en particulier la directive sur le détachement des travailleurs, n'harmonise pas les droits du travail dans les États membres mais fixe simplement des normes minimales destinées à assurer la coordination entre les divers systèmes nationaux. En tant que tel, le droit européen ne peut prévenir la concurrence déloyale sur les conditions de travail. Pour la CES, le principe de l'égalité de traitement sur le lieu de travail est essentiel. Les institutions européennes devraient garantir que le cadre de l'UE sur les marchés publics respecte toutes les conditions d'emploi sur le lieu où le travail est effectué. Les conditions applicables doivent être comprises comme l'ensemble du droit national du travail ainsi que les conventions collectives. Il s'agit là d'un préalable destiné à garantir la compatibilité entre le droit de l'UE et la Convention 94 de l'OIT. Elle stipule que les conditions en vigueur dans le cadre de contrats de marchés publics ne doivent pas être moins favorables que celles qui sont établies pour le même travail dans le même domaine par une convention collective ou un instrument similaire. 10 États membres de l'UE ont ratifié la Convention. L'UE est tenue de s'assurer que tous les États membres peuvent continuer à adhérer à la Convention, d'encourager sa ratification et sa mise

⁵ Voir par exemple le considérant 41 de la proposition concernant les marchés publics

en œuvre, et de résoudre les ambiguïtés de la législation communautaire qui pourraient constituer un obstacle⁶.

9.

Néanmoins, ces conditions peuvent facilement être contournées en cas de chaînes de sous-traitance complexes et non surveillées. Afin d'encourager la transparence, les autorités contractantes doivent donc demander aux soumissionnaires d'indiquer dans leur soumission toute sous-traitance proposée (dans la proposition de la Commission, cela est uniquement optionnel). En outre, un système de responsabilité solidaire doit clairement stipuler que toute la chaîne de sous-traitance est conjointement responsable concernant les conditions de salaire et de travail, la protection sociale/sécurité, les droits fondamentaux, la santé et la sécurité, ainsi que la formation.

10.

Il convient aussi de noter que les propositions offrent souvent aux parties contractantes la possibilité de demander des labels sociaux, afin de certifier les caractéristiques environnementales, sociales ou autres. La CES estime que ces labels peuvent donner des informations utiles concernant le comportement durable des contractants (par exemple, la promotion des stages et les investissements dans la formation, etc.). Cependant, en tant que tels, les labels ne peuvent pas offrir de garanties suffisantes concernant le respect des conditions de travail et des exigences environnementales. En outre, les propositions n'accordent pas assez d'attention aux normes applicables qui peuvent être spécifiées dans les appels d'offre, telles que les normes de qualité qui, dans certains cas, ont prouvé leur impact positif en termes de salaires, conditions de travail et charge de travail, en particulier lorsqu'elles sont incluses dans des conventions collectives.

Services de qualité

11.

La CES a toujours critiqué le fait que les règles de l'UE applicables aux marchés publics dépendent essentiellement de considérations économiques, quelles que soient les conséquences pour la qualité des services. En particulier, le fait de juger les appels d'offres selon le critère du coût le moins cher ne peut garantir la qua-

⁶ Voir la résolution de la CES sur « les conditions de la liberté de circulation : plus de protection des travailleurs et une concurrence loyale » <http://www.etuc.org/a/6255>.

lité et la durabilité. L'attribution de contrats sur cette base aboutit souvent à des fraudes, des violations des règlements et des services de mauvaise qualité. La CES incite donc vivement les institutions de l'UE à abolir le critère d'attribution du « coût le plus bas ». L'attribution de contrats sur la base du critère « le plus économiquement avantageux » (LPEA) offre des garanties suffisantes pour qu'une soumission soit évaluée en fonction de ses avantages économiques et sociaux.

12.

En outre, les règles actuelles de l'UE applicables aux marchés publics ignorent la contribution positive que les travailleurs peuvent apporter à la procédure de passation de marchés. La CES demande que le législateur européen clarifie, dans les directives proposées, que l'attribution de contrats par les pouvoirs publics ne constitue pas un transfert au sens de la directive⁷. La jurisprudence de la CJE devrait être codifiée dans les directives afin que les pouvoirs publics aient une meilleure compréhension des règles en vigueur.

13.

La directive sur le transfert d'entreprises implique une véritable procédure d'information et de consultation concernant le « transfert » proposé. Les représentants des travailleurs doivent donc être informés et consultés concernant l'impact potentiel d'un futur processus d'appel d'offres. Ce dialogue devrait avoir lieu avec les employeurs existants et potentiels.

À cet égard, les propositions de la Commission visant à introduire de nouvelles techniques de passation des marchés sont intéressantes. Les entités contractantes pourraient à présent avoir recours à une procédure en deux phases, afin que le dialogue/les négociations avec des soumissionnaires pré-identifiés puissent avoir lieu avant l'attribution du contrat. Les représentants des travailleurs doivent pouvoir jouer un rôle actif dans cet échange.

14.

La directive sur le transfert d'entreprises interdit également toute modification des conditions de travail existantes, y compris les licenciements, qui sont directement liées au transfert. Il est extrêmement important que cette obligation soit mise en œuvre dans le contexte des marchés publics. Les appels d'offres successifs sont une source de grande incertitude pour la main-d'œuvre et, par voie de conséquence directe, ils portent préjudice à la continuité d'un service.

⁷ C-173/96 et C-247/96 *Sanchez Hidalgo*, C-343/98 *Collino*, C-172/99 *Oy Liikenne*, C-340/01 *Abler*

15.

Les propositions de la Commission contiennent de nouvelles dispositions concernant les coûts du « cycle de vie ». Cela devrait permettre aux entités contractantes de tenir compte de toutes les étapes de l'existence d'un travail ou d'un service, depuis l'acquisition des matières premières jusqu'à l'élimination, l'évacuation et la finalisation. Les coûts à prendre en compte n'ont pas trait exclusivement aux dépenses monétaires mais aussi aux coûts environnementaux (les émissions de gaz à effet de serre et le changement climatique). L'introduction du calcul des coûts du cycle de vie constitue un écart supplémentaire par rapport à une approche purement économique, mais la dimension sociale doit être examinée de manière plus détaillée. Le travail précaire, les longues heures de travail, les mauvaises conditions de santé et de sécurité, le manque d'investissements dans les compétences, etc. ont aussi des coûts externes qui doivent être pris en compte.

Le rôle des autorités locales

16.

Le traité de Lisbonne considère les services publics comme un instrument indispensable de cohésion sociale et régionale. Le protocole sur les services d'intérêt général met en particulier l'accent sur le rôle essentiel et la grande latitude des autorités nationales, régionales et locales dans la prestation, la mise en œuvre et l'organisation de services d'intérêt général, de la manière aussi proche que possible des besoins des utilisateurs et ce, afin d'assurer que les pouvoirs publics puissent exercer leurs responsabilités en garantissant les droits fondamentaux des citoyens. Les nouvelles règles de l'UE en matière de marchés publics doivent respecter ces principes.

17.

Les deux directives proposées sur les marchés publics n'incluent pas les arrangements internes. Cet aspect est important car les pouvoirs publics devraient être à même de fournir des services publics directement à leurs citoyens. La CES appelle à une interprétation très large de la notion du terme « interne », afin de couvrir clairement la coopération public-public et la coopération avec des partenaires sans but lucratif qui respectent les critères d'intérêt général.

18.

Les propositions de la Commission excluent également les services sociaux du cadre général et les soumettent à un régime plus léger, imposant uniquement le

respect des principes de base de la transparence et de l'égalité de traitement. Les propositions énumèrent « les services de la santé et les services sociaux, les services administratifs, les services pédagogiques, les services de santé et les services culturels, les services de sécurité sociale obligatoires, les services de prestations, d'autres services communautaires, sociaux et personnels, les services fournis par les syndicats et les services religieux » ainsi que les services sociaux et d'autres services spécifiques qui bénéficieraient de ce régime plus léger. La reconnaissance du fait que les services sociaux ne peuvent être intégrés dans les services économiques ordinaires est accueillie favorablement. Cependant, les directives proposées intègrent dans les règles applicables aux marchés publics des services qui, bien que plus légers, n'ont rien à voir avec le marché intérieur. Les références aux services de sécurité sociale et aux services syndicaux doivent être supprimées.

19.

La CES reconnaît que les pouvoirs publics devraient avoir autant de marge de manœuvre que possible pour organiser les services sociaux. Cela ne signifie cependant pas que les aspects sociaux devraient être ignorés. Il est, par conséquent, extrêmement important de garantir que le respect des conditions de travail et la qualité des services s'appliquent aussi aux services sociaux.

20.

Dans l'ensemble, la notion même de services sociaux est une question très controversée.

Les concepts varient grandement non seulement en fonction des traditions nationales mais aussi dans plusieurs domaines politiques communautaires (ex : directive sur les services et règles en matière d'aide d'état). La CES renouvelle son appel en faveur d'instruments communautaires spécifiques sur les services sociaux.

21.

La directive proposée sur l'attribution des contrats de concession est très problématique concernant le principe de subsidiarité et la discrétion nécessaire à laisser aux pouvoirs publics. La CES ne conteste pas les règles du traité concernant la transparence et la non-discrimination. Cependant, la directive impose des obligations plus strictes que les exigences de la jurisprudence de la CJE et pose en tant que telle de sérieuses préoccupations quant à la capacité future des pouvoirs publics à organiser des secteurs clés de manière sociale et durable.

22.

En outre, la CES est préoccupée par le vague champ d'application de la directive ainsi que par ses seuils peu élevés. Elle peut être considérée comme un encouragement à libéraliser des secteurs clés qui ne sont pas toujours ouverts à la concurrence (par exemple l'eau, les services portuaires et les services sociaux). L'ouverture de ces secteurs à la libre concurrence menacerait les normes sociales et écologiques sans contribuer nécessairement à la qualité de ces services. La CES réitère sa demande en faveur d'un moratoire sur la libéralisation en l'absence d'évaluation complète et globale de l'impact des mesures communautaires prises à ce jour.

COLLECTIVE BARGAINING: THE ETUC PRIORITIES AND WORKING PROGRAM

Adopted by the Executive Committee on 6-7 March 2012

The context

The austerity measures decided on by the European institutions and governments are having a heavy and negative impact on wage trends, on wage formation systems and on collective bargaining. The role of the social partners has been undermined in most EU countries and it has had repercussions for trade union power.

In a time of economic recession, a downward spiral of wages has replaced currency devaluation and has become a tool of competitiveness for the European Union.

Wage freezes and cuts, both in the public and private sectors, opening clause contracts as well as bipartite and tripartite agreements are strongly influencing the collective bargaining activity.

These changes follow a decade of comparably slow increases in wages and unit labour costs (often due to labour market reforms) in some countries and a lack of bargaining in other countries, notably in Central and Eastern Europe. This has weakened collective bargaining coordination and undermined positive experiences like the Doorn process.

After the Europlus Pact, the "six pack" and the Fiscal Compact, this competitive strategy is spreading across the whole of Europe, through imposed decentralization of collective bargaining and the setting of wages according to productivity only. Even if the Treaty does not allow wage intervention from the European level at the national one, this constraint has been bypassed through the "institutional coordination" of wage policies which are currently

undermining or totally suppressing the role of social partners in a number of countries.

How can we coordinate collective bargaining policy

To confront this austerity context and fight against wage dumping, the Collective Bargaining Committee of the ETUC launched the idea of shaping a “new kind of coordination”, with the aim of supporting affiliates’ actions by trying to define an articulated range of updated principles, to be implemented according to the different national situations.

We want to strengthen the unions in their performing of the task of safeguarding the wage levels for their members. Therefore we must better analyse short falls in our previous processes, better define the limits and objectives of our action and adapt it to the new context and to the various national needs.

Of course there is no “one size fits all”-solution and we must not impose anything to anyone: there are affiliates that need our help and support, others that don’t; some affiliates prefer to coordinate their collective bargaining policy in groups of countries or sectors, others that don’t want or cannot participate in a coordinating process.

We need to respect these different traditions, but at the same time we need to agree on common goals, learn more from each other, share more information and lessons with each other and form a common strategy for strengthening the unions and the union capacity in Europe.

In the current extraordinary situation we cannot adopt a “stand-alone position”, because the austerity measures and notably the new Commission scoreboard on wages’ imbalances in Europe will force wage intervention and austerity on even the stronger countries.

Therefore we need more solidarity, we need to combine forces through differentiated strategies, to find new ways of mutual help.

Different strategies for different situations

In countries where collective bargaining coverage is high, affiliates seek to strengthen or want to preserve their current wage formation systems.

In other countries, notably where collective bargaining is weak or non-existent, trade unions want new tools to defend wages.

The effects of minimum wages on wage trends and coverage, and TU membership, were discussed in this context.

The extension of collective agreements coverage was recognized as a fundamental tool to prevent wage dumping.

The possibility of promoting a Social Contract at European level, to implement the recovery strategies, to guarantee the social partners' autonomy and rights in collective bargaining, fair wages, good employment and a common level of social protection throughout Europe, was also discussed.

The definition of wages in the various countries depends both on bilateral negotiations between social partners and trilateral social dialogue. Fiscal and social measures influence the wage formation process and should be dealt with by social partners.

The scope of collective bargaining has to be seen in a larger context. Not only wages have to be negotiated, but also qualitative objectives regarding working conditions, equality principles and employment policies.

In the countries with high levels of unemployment, the priority of the trade union activity must also continue to be the maintenance and creation of jobs. This means that flexible formulas could be agreed in order to maintain jobs as well as to create them but, in any case, this should not constitute the poaching of jobs from other companies, other regions or other countries.

Solutions at European level are also sought through strengthening macro-economic dialogue and social dialogue, and by organizing more effective joint campaigns.

The general message from the affiliates is that the European trade union movement should coordinate these different tools more concretely in order to avoid competitive trends. They generally need to exchange information and notably best practices, but in some countries they also need to set up common demands and actions.

Confidence is needed between the affiliates and trust must be restored.

A new coordination of collective bargaining policy

A general coordination with single guidelines for all is difficult to reach in the new economic context, or it can't even allow us to achieve the results we need. It is also difficult to propose a universal campaign title appealing to all workers independently of their country of residence, sector or professional position.

We should better focus our analysis and strategies on the different priorities of affiliates in the various countries, regions and sectors. We will try to provide some concrete help to our members.

Thus we should move from a general abstract idea of coordination, to a more concrete set of initiatives, focused on the different situations and needs. We should adopt a "new coordination of collective bargaining policy".

Collective bargaining remains a matter of national trade unions and in some countries, sectors and companies is also coordinated by confederations and ETUFs. The ETUC can provide a forum to bring the different affiliates together and organise a coordination of the various coordinating activities.

The possibility of creating informal regions for developed cooperation and coordination of policy - with the common features of labour market, economic situation, structure of collective bargaining systems, trade union density and structure and so on – could be developed, discussed and tried.

Our future coordination of collective bargaining policy could be founded on four main priorities, to be discussed in greater detail in the coming months in a continuous process of "step by step" implementation.

1. Strengthening collective bargaining

Collective bargaining is the core business of trade unions. Unfortunately, in many countries collective bargaining does not exist or is not able to provide sufficient protection. The bargaining powers of social partners as well as the content of collective agreements vary considerably.

The ETUC and its affiliates should take more responsibility for safeguarding and promoting trade union rights in Europe.

The ETUC and its affiliates should fight to preserve, enhance and spread collective bargaining everywhere, keeping some principles in mind:

- We have to defend the autonomy of social partners in collective bargaining;
- We should fight against the unwanted decentralization of collective bargaining, achieved by getting rid of undermining the collective agreements at national level;
- Wages should rise according to annual rates reflecting – among other developments
- increases in inflation and gains in productivity;
- Increasing wages and boosting internal demand, together with investments and innovation, is a fundamental tool for supporting economic growth;
- Collective bargaining is a key instrument in combating discrimination and tackling the pay gap between men and women.

While we should stick to these principles, we should be aware that they could be applied in different ways and degrees, depending on the actual possibilities existing in the countries.

It should be a target to be achieved progressively, an objective to be pursued by offering a degree of flexibility. At the same time, nominal wage increases should stay in positive terrain, and wage cuts and freezes should be rejected.

These guidelines enable us to devote part of the total bargaining space to measures that support job creation by, for example and amongst other things, increasing the number of trainees, investing in lifelong learning and reducing the incidence of precarious and insecure job contracts. In situations or coun-

tries where trade unions wish to do so, collective bargaining can go beyond the sum of inflation and productivity.

A greater coordination between us is needed to manage this kind of flexibility; some shared guidelines have to be set, that should not be crossed below which we shouldn't go.

This has to be done by starting from a common evaluation of the recommendations on salaries and economic imbalances issued by the Commission with its scoreboards. The EU institution put an external coordination on the table that we must counter with an autonomous and shared TU strategy.

The reaction to the scoreboard (that concerns 12 member states, even with strong economies) has to come from the entire European trade union movement: the responses have to be coordinated and the Collective Bargaining Committee is the ideal place in which to start this discussion.

2. Defensive agreements, opening clauses

Over the last 10 years and especially after the crisis, affiliates in several countries have negotiated tripartite or bipartite defensive agreements at national level, or opening clauses agreement at company level, aimed at saving employment or supporting competitiveness.

In order to avoid the possible negative dumping consequences of these kinds of agreements, we may need some guidelines that could be shared between the affiliates, for example:

- Avoid all practices which are aimed at bypassing trade unions; the agreements have to be signed by representative trade unions wherever they exist, not only by work councils or by committees that have no mandate from workers;
- Defensive agreements should aim at avoiding dismissal, supporting investments and
- innovation, facing the effects of the crisis, and not wage dumping or competition between workers;
- The possible negative effects of an agreement aimed at saving employment should be temporary and not affect the general collective bargaining system and its coverage in the country or sector or company involved;

- Concessions made by the unions must have a clear and well-defined compensation; the principle of “quid pro quo” exchange should be taken into account;
- Company level agreements should be embedded in higher-level framework agreements, clearly setting lower limits to be respected by company level concession bargaining;
- Procedures to control deviations should be set up by social partners at the level involved.

3. Minimum wage and collective bargaining coverage

The coverage of the collective agreements at any level should be pursued in each country. It is the most suitable instrument for trade unions to ensure fair wages and avoid social dumping. A high level of trade union membership is fundamental to improving collective bargaining coverage.

In countries, sectors or companies where collective bargaining does not exist or is not strong enough to ensure decent and fair negotiated wage coverage for the majority of employees, the legal minimum wage and/or the erga omnes coverage could be useful tools.

Minimum wages and indexation systems, as well as collective agreements coverage, have to be preserved and strengthened where they already exist.

The minimum wage is not an objective by itself but an instrument for fighting the development of precarious work and to shift the wage ladder upwards.

Legislation on the minimum wage should provide for a specific involvement of social partners in bipartite/tripartite bodies/consultations before the adoption of the minimum wage by public authorities.

The ETUC and the EU federations should strongly support our affiliates at every level in order to achieve these objectives, in accordance with their national circumstances.

The different systems of minimum wage, indexation, erga omnes, collective agreements coverage should be analysed at a technical level within the ETUC with the aim of better understanding of the different systems and proposals, as a precondition for a possible coordination.

4. Transnational and cross-border agreements

There was a strong request by our affiliates, especially at cross-border level and in Central and Eastern European countries, for enhancing cooperation and coordination of the negotiations in multinational companies.

This is an important way of preventing social dumping and wage competition and of achieving a progressive approximation of working conditions within the same company.

This issue falls under the scope of Transnational Company Agreements and is going to be discussed by a specific coordinating body setup by the ETUC together with the ETUFs. The discussion should also involve the national trade unions and federations, in order to submit a specific resolution to the Executive Committee in the near future.

Practical commitments and actions

The four principles mentioned above are a first list of proposals that need to be discussed further.

There might be some organizations that are interested in applying some guidelines; some trade unions in implementing other priorities. For any priority we should set specific guidelines.

We should start an enhanced cooperation process, to strengthen our positions and actions in all the fields we choose as a basis for our strategy of a “new kind of coordination of collective bargaining policy”.

Possibilities for starting regional informal clusters for enhanced cooperation and mutual learning between national trade unions should be discussed and developed.

The CBC should develop its working methods in order to work in a more effective way.

A Summer School will be organized, with a general discussion and four working panels, aimed at better analysing and defining the four principles and the guidelines we will set out.

This will be the scope of the project we are going to submit to the Commission this year in the field of the coordination of the collective bargaining policy.

Furthermore, we need to discuss in more detail the way to apply the decision already taken in the last Executive Committee's resolution on collective bargaining in 2010, aimed at setting up a Steering Committee within the CB Committee.

This kind of Steering Committee (that already exists within other permanent Committees in the ETUC) would not be a political or decision-making body, but simply an internal task force, whose purpose should be to support the work of the CB Committee at technical level.

From this perspective, and in order to avoid confusion with the statutory Steering Committee of the ETUC and the elective Steering Committees within the ETUC's other permanent Committees, it may be necessary to call this particular committee by another name.

In the last resolution the Steering Committee proposed involving the ETUFs only, in order to strengthen the coordination at European level between them and the ETUC. In the new context we should also consider the involvement of few representatives of the national affiliates, from the main regions where an enhanced coordination will be achievable.

The new name and the composition criteria of this committee will be defined by the Secretariat, in agreement with the Collective Bargaining Coordination Committee. That decision should not imply a cost increase for the ETUC.

Meanwhile, a range of practical actions has to be defined in order to:

- Enhance 'networking' amongst members so that they learn the most effective bargaining strategies from each other;
- Promote the exchange of information, in order to share common priorities and guidelines;
- Try to involve in the coordination process the most relevant people in charge of collective bargaining by the affiliates;
- Support the creation of coordinating activities between confederations and federations in those countries and regional areas in which they don't exist;
- Encourage the ETUFs in improving their internal coordination of collective bargaining with the national federations in each sector and across the sectors;

- Ensure that the European dimension is taken into account when affiliates pursue their collective bargaining aims (also, wherever possible, through the ETUC's involvement in the regional clusters for enhanced cooperation);
- Ensure that the gender dimension is taken into account in collective bargaining (e.g. women are included in negotiations; negotiators are trained on gender equality issues etc.);
- Coordinate the annual questionnaires and surveys issued by ETUC, ETUFs and national affiliates;
- Organize common training activities with the affiliates that request it, regarding collective bargaining policy and notably technical matters, for example, the indicators for wage negotiations (inflation, productivity etc);
- Launch joint campaigns and actions to spread information and to support affiliates in strengthening each other their collective bargaining activities.

Adopted by the Executive Committee on 6-7 March 2012

The ETUC Executive Committee meeting on 7 March 2012, expresses its full solidarity with the working people of Greece who are gravely and irreversibly affected by losses of jobs and income that erodes their ability to address the negative impact of the crisis.

The ETUC declares its support for the Greek trade unions in their struggle against the unprecedented IMF–EU–ECB onslaught that methodically dismantles core labour rights, uproots labour institutions and demolishes the social state depriving workers of vital institutional capabilities to defend themselves. In particular, free collective bargaining is impeded, collective agreements abolished and trade unions intimidated, while social dialogue is systematically destroyed to be replaced by authoritarian unilateralism that renders national social partners redundant. The senseless and unjustifiable demand by the Troika for the closing of the Workers' Housing Organisation (OEK) and of the Workers' Social Fund (OEE) is a further attack on the existence of trade unions in Greece.

Greece is being pushed to one of the deepest economic slumps in modern times, forecast to cumulatively reach wartime recession levels of 25%–30%. Sacrifices imposed on workers, pensioners and their families are without precedent in the post war period. The most drastic reduction in a primary budget deficit that Europe has seen for over 30 years was achieved in Greece thanks to the impoverishment of Greeks. With more than one million unemployed, nearly 30% of the population has shifted to below the poverty line. Nearly a quarter of a million people rely on relief work for a daily meal.

Nonetheless fresh austerity is ceaselessly heaped on top of existing measures. The national minimum wage – the last protective threshold for low-paid workers – was recently slashed by 22% (32% for young workers) a move that will

universally pull down wages by 40% and abolish a series of benefits. Further measures are expected in June.

The ETUC monitors with the utmost concern the situation in Greece that by far exceeds any sense of fiscal discipline and violently imposes a level of devastation no people can accept, leading the country into an economic, political and social abyss.

We express our indignation at the proposed prioritising of loan repayments over pensions, salaries or any social need via an escrow account where all public Greek revenues will be collected, pushing the country soon into an internal default.

This is not an acceptable course. Greece needs options for recovery in a spirit of real solidarity and cohesion which for once will really put people before the markets.

The ETUC reiterates its proposal for an EU-type “Marshall Plan” approach aimed at growth, employment and innovative investment: an EU solidarity pact for economically sustainable and socially acceptable solutions with the effective involvement of trade unions. We call on Greece’s creditors and the Greek authorities to refrain from further squeezing of wages, pensions and imposing new taxes. It is prime time to insist on alternative debt and deficit-reducing options. Equitable tax collection, action against tax fraud, effective use of structural funds available for investment, revisiting Greece’s excessive defense spending and easing its defense needs by a European guarantee for Greek frontiers, and cutting superfluous spending and not social expenditure are just some of the available alternatives.

The ETUC and its affiliates will remain vigilant and active, at the forefront of Pan-European efforts to save Greece.

APRIL 2012

ETUC DECLARATION ON THE COMMISSION PROPOSALS FOR A MONTI II REGULATION AND ENFORCEMENT DIRECTIVE OF THE POSTING OF WORKERS DIRECTIVE

Adopted by the Steering Committee on 19 April 2012

The Commission package on the posting of workers adopted on 21 March 2012 does not strike the right balance between protecting workers and facilitating cross-border service provision. The ETUC rejects the proposal for a Monti II Regulation and calls on the Commission to revise the Posting of Workers Directive.

European legislation restricting the freedom to take collective action will never be accepted by the European trade union movement. The right to take collective action is a fundamental right guaranteed by European and international legislation. The Commission's proposal contravenes the EU Charter of Fundamental Rights, the European Social Charter, the European Convention on Human Rights and ILO Conventions 87 and 98.

The ETUC opposes the Monti II Regulation on the following grounds:

- It restricts the right to take collective action;
- It does not ensure that economic freedoms do not take priority over fundamental social rights and that, in case of conflict, fundamental social rights will take precedence;
- It reinforces the proportionality test as developed by the ECJ in Viking which leaves it up to the national courts and ultimately the ECJ to decide if collective action is necessary;

- It reinforces the interpretation given by the ECJ in Viking and Laval and does not solve the problems resulting from the judgments, to which President Barroso committed himself to finding a solution.

The ETUC deplores the minimalistic approach taken by the Commission by proposing an Enforcement Directive instead of a revision of the Posting of Workers Directive itself. Besides falling short of key ETUC demands, such as equal treatment, the proposal will not prevent abuses of workers' rights nor does it clarify the scope of the Posting of Workers Directive.

Furthermore, the Enforcement Directive does not propose effective and dissuasive measures to combat fraud and so called letter-box companies.

The ETUC regrets that the onus is on the Member State of establishment to carry out the control and monitoring, and not the host country in which the posted worker is actually working. The proposed national control measures are too restrictive and not even binding upon Member States. Governments must be free to take other measures than those listed in the Directive.

In order to ensure the compliance of subcontractors with their legal and contractual obligations, the ETUC has requested the introduction of a system of joint and several liability. Although the Commission's proposal foresees joint and several liability limited to the construction sector and direct subcontractor situations, it is undermined by the stipulation that a contractor that has taken due diligence cannot be held liable.

The European Union should commit to the precedence of fundamental social rights over economic freedoms and stop undermining workers' rights such as the right to take collective action and the right to bargain collectively. The ETUC is therefore reiterating its demand for a social progress protocol, to be attached to the treaties.

The ETUC will also put forward a proposal for a social contract for Europe to ensure that all workers can fully enjoy their fundamental rights.

JUNE 2012

EMPLOYMENT PACKAGE: THE ETUC'S RESPONSE TO THE EUROPEAN COMMISSION'S COMMUNICATION *TOWARDS A JOB-RICH RECOVERY*

Adopted by the Executive Committee on 5-6 June 2012

Introduction

The Employment Package¹, published on 18 April 2012, is the European Commission's response to the persistently high level of unemployment in Europe. It sets out a medium-term agenda for action, by the European Union and the Member States, to support a 'job-rich recovery' and reach the Europe 2020 Strategy goals. The Commission is right to focus on this daunting challenge and appears to be starting to heed the incontestable evidence of steadily rising unemployment figures and the weak economic outlook. The following ETUC comments are predominantly focused on the *Towards a job-rich recovery Communication* ('the Communication').

The ETUC recognizes a number of positive developments reflected in the Employment Package. In particular, we welcome the recognition that the new EU economic governance needs to be coordinated with employment and social policy and that the social partners must be more closely involved in this process. We also support the attention given to the following issues: the need to rein-

¹ The Employment Package consists of the *Towards a job-rich recovery Communication* accompanied by nine Staff Working Documents, http://ec.europa.eu/commission_2010-2014/andor/headlines/news/2012/04/20120418_en.htm

force social dialogue within the EU governance; encouraging labour demand; addressing chronic youth unemployment; tackling labour market segmentation; identifying sectors with a potential for job-creation (green economy, health, ICT); investing in workers and skills; and renewing efforts to remove obstacles to the free movement of workers.

With unemployment in the eurozone reaching 11% and over 10% in the rest of the European Union (affecting over 25 million people), halting and reversing this devastating employment crisis is of the highest priority for the ETUC. The Employment Package represents a step in the right direction, but the ETUC is concerned that if the EU collectively continues the policy of austerity, many of the package's more positive proposals will remain only that. While the Commission is right to emphasise that appropriate macroeconomic, industrial and innovation policies are important for employment growth, it is not proposing any Investment plan, nor is it taking into consideration the impact of trade policy. The ETUC insists on the need for coherence between employment, investment and external trade policies. Existing accompanying measures such as the Globalisation Adjustment Fund are not enough to mitigate the negative effects of Free Trade Agreements on employment in certain sectors. Without a shift in the EU's policy orientation, the ETUC questions the ability to deliver the desired job-rich recovery. Labour market policies will not compensate for macroeconomic policy mistakes and the Employment Package will not operate in a vacuum nor, on its own, create the necessary conditions to foster job creation.

Austerity is having a negative impact on employment both in the public and private sectors. It is increasing inequalities still further and escalating poverty. Eighty percent of Europeans believe that poverty has increased in their country over the past year and only 14% are hopeful of seeing an improvement in their household's financial circumstances in the coming year.²

Ultimately, austerity is jeopardising any potential recovery. The ETUC has consistently argued that there are alternatives so we repeat our call for: a temporary freeze on new fiscal austerity in 2012 (and linked to this a moratorium on public sector job cuts to protect employment in the EU); a European Investment Plan focusing on structural investments and supported by new sources of finance including a financial transactions tax and Eurobonds; and that the European Central Bank should act as a lender of last resort³.

2 Sixth Flash Eurobarometer, http://ec.europa.eu/public_opinion/flash/fl_338_en.pdf

3 ETUC Resolution - Investing for growth and jobs, ETUC reaction to the Annual Growth Survey 2012,

Although the Employment Package presents some important positive policy developments, the ETUC regrets its disproportionate focus on supply-side measures. Increased labour market flexibility through employment deregulation remains the primary objective of proposed labour market reforms. It is also important to note that increasing labour supply at a time when there is an excess with such high levels of unemployment, will result in even higher unemployment in the short term.

Supporting job creation

Encouraging labour demand

The Commission is advancing some suggestions aimed at stimulating labour demand. The ETUC agrees that more efforts need to be channelled into making labour markets more inclusive and that specific measures are required to target vulnerable groups. In this context, the Communication pinpoints the use of hiring subsidies as a means of cushioning the unemployment effects of the economic crisis. The ETUC is concerned that this should not be promoted as or mistaken for an appropriate general policy for creating sustainable and quality jobs. Policy makers should avoid providing the wrong incentives which could encourage employers to lower productivity, training and pay so as to ensure eligibility for such schemes. The negative 'revolving door' effects of such subsidies, whereby workers are fired only to be rehired to take advantage of a subsidy, should also be taken into consideration.

Whilst acknowledging the EU's limited competence in the field of taxation, the ETUC agrees that tax policy has a role to play in supporting job creation and believes that the focus should be on shifting tax burdens from labour to capital. We note the progress on the Common Consolidated Corporate Tax Base but in the absence of a minimum EU common corporate tax rate, the downward trend of corporate tax fosters tax competition and negative job relocation. Whilst ETUC endorses an approach which would shift taxes towards property and properly monitor redistributive effects, a shift towards consumption taxes would be counterproductive, ignoring the regressive impact of such taxes on income distribution. Similarly, the suggestion that employer social security contributions should be reduced is flawed and unbalanced, failing to take account of the impact this could have in weakening the revenue pillar of social security systems. Member States should instead be encouraged to strengthen these

systems which constitute a fundamental aspect of the European social model and are the automatic stabilizers which proved effective in the early stages of the crisis.

The ETUC has previously called for increased efforts to tackle the causes of undeclared and informal work and welcomes the attention given to this issue, including the proposal to launch a consultation on establishing an EU-level platform between labour inspectorates and other enforcement bodies. An EU-level network of senior labour inspectors (SLIC) already exists; the consultation should therefore address whether there is a need for a new platform rather than improving the use of the SLIC network, with a formal structure for involving the social partners.

Additionally, the ETUC believes that in the context of a developing European labour market, a broader outlook is required encompassing the protection of workers, compliance with labour law and collective agreements and, within that framework, focusing on the most vulnerable workers such as migrants, the young and other workers in precarious employment. In all respects, labour inspectorates must be well resourced, particularly in times of crisis and the corresponding increase in their workload. In breach of ILO Convention 81 on labour inspectors, there is already a shortage of labour inspectors in a significant number of Member States and in some countries austerity measures have led to further cuts in their numbers.

Wages and job creation

Wage-setting: the ETUC welcomes the fact that by referring to real wage growth (and not just wage or nominal wage growth) in line with productivity developments, the Communication implicitly rejects the wage norm that the Competitiveness Pact adheres to. We also welcome the recognition of the need to boost wage growth where wages have “significantly lagged behind” such developments. However, the ETUC rejects the Commission approach whereby wages are seen as an instrument of competitive adjustment. We stress, instead, that wages and wage formation systems have a wider role to play and different objectives to pursue including:

- providing security by not giving employers the right to cut (nominal) wages;
- avoiding deflationary trends, implying that nominal wage cuts and freezes are to be avoided;

- working as an engine for demand and growth through real wage increases and a fair distribution of income between capital and labour;
- promoting the modernization of the economy: robust, rather than flexible, wage setting mechanisms are a powerful incentive for employers to seek solutions based on innovation and modernization instead of falling back on a simplistic and unsustainable strategy of wage cuts.

The fact that wages fulfil differing objectives implies that the role of autonomous social dialogue and the support of this dialogue through systems of coordinated bargaining are of crucial importance. The ETUC attaches the utmost importance to the European Treaty principles stipulating that the EU must strictly respect the national systems of industrial relations and has no competence regarding wages.

Growing in-work poverty is a phenomenon that must urgently be remedied. The ETUC maintains that a decent wage, coupled with decent working conditions, allowing people to live and work in dignity, is the most effective 'incentive' to taking up remunerative work. Whilst appropriately set minimum wages can help to prevent in-work poverty, we reject the implication in the Communication that a minimum wage equates to a decent wage. For the ETUC, a decent wage rather than a minimum wage should be the measure for 'ensuring decent job quality'. Moreover, the Commission's view on sufficiently 'adjustable' and 'differentiated' minimum wages floors is unclear and could be interpreted in a way which undermines a key principle of a minimum wage: i.e. to limit market competition which forces workers to undercut each other by installing a wage floor. The ETUC will not support the downwards adjustment of minimum wages in times of crisis when a stringent wage floor is more necessary than ever, as is happening in Greece for example.

Job creation potential in key sectors

Green economy: the ETUC has consistently promoted the transition to an energy and resource-efficient economy and the development of green jobs as response to the environmental challenge and as a key aspect of an alternative agenda to austerity in securing a sustainable economic recovery. The Employment Package rightly raises the issue of the employment potential in addressing climate change and we welcome its broad definition of 'green jobs' used. For the ETUC, the move to an energy and resource efficient economy must guarantee a Just Transition and we regret the Commission's failure to address this crucial dimension.

We stress the need for a high level social dialogue on climate and employment. More detailed comments are set out in the ETUC Resolution on Qatar COP18⁴.

Health and social care: the Communication provides a good description of the challenges facing these sectors which will need to be addressed if we are to harness their job creation potential and ensure that this results in providing quality employment. The ETUC stresses that any policy action in this area must start with the basic principle that healthcare and social services are services of general interest (public services). Citizens have the right to expect that they are of high quality, affordable and universally available. Related to this, the Commission's failure to acknowledge the importance of the public financing aspects of these sectors and the need for public investment in the service quality to boost quality jobs and improve employment in the sector, is a major concern.

The ETUC emphasizes that the focus must be on the creation of quality jobs. The social partners at all levels have an essential role to play in developing the strategies and creating the right conditions that will allow the job-creation potential of the growth sectors as identified in the Employment Package to be realized. As regards health and social care, the recognition of the role of the social partners and the outcomes of the sectoral social dialogue on recruitment and retention and ethical cross-border recruitment in the hospital sector is welcome.

Mobilising EU funds for job creation

The ETUC welcomes the Commission's general approach to mobilising EU funds for job creation. We support the orientation of all the funds towards achieving labour market objectives. However, the ETUC believes that the European Social Fund (ESF) must be the main instrument for implementing the Europe 2020 Strategy in the field of employment, labour market policies, mobility, education and training and social inclusion and that the four priorities for ESF use should remain clearly defined in the regulation. The ESF should also expand its support to the development of social dialogue, namely by improving the capacity building of social partners. In terms of governance, the European Social Partners have welcomed the new "European Code of Conduct concerning Partnership" which should serve as a guideline for the implementation of the structural funds regulations.

4 ETUC Position 'Putting just transition into action in Europe and globally - ETUC position towards Qatar COP18, <http://www.etuc.org/a/10041>

Restoring labour market dynamics

Labour market reforms: There are many examples where companies, working with trade unions, have delivered positive and innovative changes in adapting to the transforming global economic landscape. Whilst it is true that during the initial stages of the economic crisis the social partners agreed on and implemented effective solutions with the aim of cushioning the effects of the recession in the interest of companies and workers, a fundamental aspect of such negotiated approaches is that they were possible in those Member States with a well-established tradition of social dialogue. For the trade union movement this merely demonstrates the merits of strong social partners, with effective social dialogue and collective bargaining.

The ETUC has warned that focusing on a European concept of flexicurity would be unhelpful but the Commission has, nevertheless, sought to revisit the flexicurity agenda in the context of and as a response to the crisis. By continuing with the European flexicurity agenda (with the reference to a “single open-ended contract” being repeated in the accompanying staff working document), the Commission is failing to send the clear message that, in a time of crisis, flexicurity is not the answer. Europe’s labour markets already have a high degree of flexibility but the quest for ever more flexibility has resulted in worker insecurity often linked to the rise in atypical forms of employment. There is evidence⁵ that the flexicurity concept has failed to pass the test of the crisis, with rapidly rising unemployment with little or no corresponding security in the form of robust benefits, increased access to training and the necessary active labour market policies.

Moreover, the Commission even seems to be sliding backwards on the dimension of labour market security by invoking ‘time limits’ and ‘increased conditionality’ for unemployment benefits. In particular, presenting social security reforms which have contributed to an explosion of inequalities and poverty as ‘modern’ (Germany, Hartz reform) is disingenuous as is the claim that Member States that have both weak job and social protection constitute a ‘flexicurity’ cluster (CEE countries).

Whilst the Commission advocates that Member States should, despite budgetary constraints, maintain the pillars of flexicurity (e.g. unemployment benefit coverage) the reality does not support this. The ETUC questions whether the Com-

⁵ *Not for bad weather: flexicurity challenged by the crisis*, ETUI 3/2010, ISSN 2031-8782

mission is really able to reconcile the promotion of fiscal consolidation with the flexicurity agenda. Added to this, while it is generally accepted that strong social dialogue is a necessary element for the success of any genuine flexicurity model, we currently see a Europe-wide trend of attacks on collective bargaining and the resistance at European level to strengthening workers' involvement.

The ETUC reiterates that labour market flexibility does not create more jobs, but simply transforms the existing work into precarious jobs and contracts: "Bad jobs drive out good jobs". This actually undermines the recovery of the economy since workers in flexible, insecure contracts get paid less and save more because of the insecurity they are facing. Precarious work produces a weaker, not a stronger, recovery – as the Communication itself points out, during the crisis job losses were mainly concentrated on workers with fixed term contracts.

The ETUC does however believe that the Commission's focus on the potential benefits of internal flexibility is positive. The ETUC has called⁶ for an EU-level initiative, to be developed with the full involvement of the social partners, with the objective of maintaining jobs, protecting income and providing workers with an opportunity to maintain skills.

Labour market segmentation: the Commission rightly acknowledges the problem of labour market segmentation, excessive use of non-standard contracts and bogus self-employment but the ETUC regrets the lack of balance displayed in its approach to tackling the issue. Whilst the Commission remains focused on employment protection legislation (EPL) as an obstacle to job creation, the ETUC maintains that any balanced approach must recognise that precarious work is a consequence of too many loopholes in labour law, allowing some employers to undermine the stability of the work relationship and gain unfair competitive advantages over those who seek to respect worker protections. Rather than a general approach which seeks to weaken EPL, the Commission should focus on closing those gaps and ensuring equal treatment for all workers irrespective of contractual status and gender.

We emphasise the need to ensure that any initiatives in the context of the Employment Package are geared towards promoting gender equality generally and specifically addressing the gender pay gap and gender segregation in the labour market.

⁶ ETUC Resolution - Investing for growth and jobs, ETUC reaction to the Annual Growth Survey 2012 (see above)

Delivering youth opportunities: the ETUC has repeatedly stressed the urgency of the situation regarding youth unemployment and in their Work Programme 2012-2014, the European Social Partners committed to negotiating a framework of actions on employment for young people as a priority. In a context in which flexibility is unilaterally imposed on young workers, the emphasis needs to be placed first and foremost on security. The ETUC is convinced that an approach focused on making 'flexicurity' a key element in addressing the labour market segmentation of young people is both risky and misguided. Active labour policies, guaranteeing the creation of quality jobs and averting any risk of social exclusion or discrimination against young people, implemented jointly with the social partners, should be promoted instead.

The ETUC supports the concept of a youth guarantee ensuring that every young person is offered training or a job within a set period of time. We look forward to the Commission's proposal for a Council Recommendation on Youth Guarantees before the end of 2012. Within the framework of the youth guarantee concrete targets should be set e.g. for the reduction of youth unemployment within a precise time frame and to increase the EU budget for combating youth unemployment, including the ESF. The ETUC is also committed to a "European Charter on Internships and Apprenticeships" and welcome the Commission's consultation on a Quality Framework for Traineeships to which we will submit a separate response.

Reinforcing social dialogue & collective bargaining

Strong social dialogue at all levels is a key element in finding relevant solutions to labour market and workplace problems and is as relevant in times of crisis as at any other. The Commission's emphasis on reinforcing social dialogue is both welcome and timely. The ETUC underlines the need to support and spread collective bargaining as a tool for reducing labour market inequalities, ensuring decent work and wages, preventing social dumping and ensuring fair competition. Coordinated collective bargaining is an important engine for boosting aggregate demand and organizing a self-sustained process of economic growth. This implies and requires a national and sectoral approach to collective bargaining, in addition to action at company level.

In this context the ETUC also reiterates its demand that a legislative general framework instrument be developed, strengthening the rules on worker participation, ensuring that all the legal forms of company entity at the EU level are subject to binding regulations on worker participation in company boards

and on information and consultation with worker representatives regarding cross-border issues⁷.

The Communication rightly highlights that “strong social dialogue is a common feature in those countries where labour markets have proved to be more resilient to the crisis”. However, the actions of the Troika in those Member States subject to financial bailouts, and those of other Member States of their own volition, are in stark contradiction. The ETUC reiterates our concern that the economic crisis is being used by many Member States as an excuse to disregard trade union and workers’ rights⁸, and dismantle industrial relations structures and processes thus undermining social dialogue and collective bargaining. The ETUC warns that these reforms may violate fundamental ILO, Council of Europe and EU norms and standards. The ETUC condemns the Commission’s failure to react more strongly to measures violating fundamental rights of the kind guaranteed in the EU Treaty and in the Charter of Fundamental Rights. We call for more visibility from the Commission in promoting and defending trade union rights, including safeguarding the right to strike.

Invest in skills

There is a clear consensus among policy makers and the social partners that investment in the education, training and skills of Europe’s citizens is a key condition for European prosperity. The ETUC agrees with the Communication’s emphasis on investment in skills, the need for anticipation of skills’ needs and the focus on developing lifelong learning (LLL). The ETUC has previously called for an individual right to training. Whilst the Commission is right to raise the issue of skills mismatches, the ETUC is concerned that the unemployment crisis should not be reduced to a question of skills’ mismatches and shortages. Merely matching the skills’ needs in the labour market, improving vocational education and training (VET) and the recognition of competences is not sufficient to create new and good jobs.

The ETUC also warns that the impact of the economic crisis, fiscal consolidation and corresponding public spending cuts, should neither be ignored nor minimised. A real and effective policy on LLL, VET and on training and education effects on labour market is impossible without appropriate funding. Structural funds can make an important contribution but are complementary and

7 ETUC Resolution on workers participation at risk: towards better employee involvement, 07-08 December 2011, http://www.etuc.org/IMG/pdf/Resolution_Workers_Participation_EN_FINAL.pdf

8 *The crisis and national labour law reforms: a mapping exercise*, ETUI Working Paper 2012.04

the Member States, regions and local authorities should provide the necessary resources to support the processes.

The ETUC also draws attention to the role of industry and the social partners in this area. The partnership principles should be strengthened, including clarification that this involves not only employers and VET providers, but also trade unions at all levels. The direct management of LLL/VET by trade unions through their own institutions/bodies/representatives should also be recognised and supported. Additionally, businesses must be encouraged to invest in not only their own but also the local workforce. Measures should be developed to assist SMEs in particular, for example, through pooling resources, to ensure that their workers have access to training and LLL opportunities. The impact of company practices, such in restructuring or relocating processes, on skills retention in a sector and in the locality should also be addressed.

Restructuring: the ETUC has repeatedly stressed the need for a legal framework on anticipation and management of change and restructuring and demanded EU action to implement this, most recently in our response to the Green Paper on restructuring⁹.

Towards a European labour market

The ETUC believes that a European labour market must be founded on European 'rules of the game', combining open borders with adequate protection. These must ensure: equal treatment of local and migrant workers, no unfair competition on wages and working conditions; respect for national collective bargaining and industrial relations systems; equal access of all workers to social benefits; and proper instruments and tools for monitoring and enforcement of labour standards.

Mobility: the ETUC remains firmly committed to the principle of the free movement of workers and believes that voluntary mobility is to be encouraged and facilitated. Mobility should, however, be a right not an obligation and we are concerned at the disproportionate emphasis being placed on geographic mobility as a solution to unemployment. Mobility can contribute to improving an individual's employment prospects but must not detract from the need for necessary investment at all levels in local development i.e. creating jobs where people live, particularly in areas of high unemployment.

⁹ ETUC Resolution on Anticipation change and restructuring ETUC calls for action 6-7 March 2012, <http://www.etuc.org/a/9815>

We welcome the Commission's focus on the obstacles to mobility and the free movement of workers. Removing obstacles is mainly up to the Member States, but the Commission should recommend guidelines and coordinate national and intergovernmental initiatives. We regret, however, the failure to emphasize the need for equal treatment, the obstacles posed by social and wage dumping and the need to ensure respect for national employment and labour law and industrial relations systems. The ETUC reiterates that the Commission's proposals regarding the Monti II Regulation and the Enforcement of the Posting of Workers' Directive do not resolve these problems¹⁰.

The ETUC does not support the division of the EURES (the European employment services) between the ESF and the proposed new Programme for Social Change and Innovation (PSCI). The ESF should provide a minimum share for EURES activity, notably cross-border partnership, which is fundamental to removing obstacles to mobility and preventing social dumping across borders. Additionally, the mobility priority in the ESF's use should be compulsory for the Member States. If EURES is, nevertheless, divided into two funds, the PSCI should be a subsidiary tool to support EURES cross-border partnership, together with the ESF; to achieve this goal, the partnership principle and minimum share must also be integrated in the PSCI¹¹.

Migration: the Commission recognizes the need to address the issue of migration, and whilst no concrete proposals are in this Communication, numerous legislative initiatives have been taken in recent years. For the ETUC, a coherent legal framework for migration, including the need to avoid rights' segmentation among different categories of migrants, combined with improved policy coordination of policy in this area is required. The Communication's failure to address the obstacles to the mobility of third country migrant workers is also an important missing element.

Enhancing EU Governance

Reinforcing coordination of employment and economic policies: the ETUC has previously highlighted the need for more balanced economic governance and therefore welcomes the proposal to balance the new economic governance by

¹⁰ ETUC position on the Enforcement Directive of the Posting of Workers Directive, <http://www.etuc.org/a/10037>

¹¹ The proposed EU Multiannual Financial Framework and Cohesion Policy 2014-2020: ETUC position and call for consultation, <http://www.etuc.org/IMG/pdf/EN-The-proposed-EU-Multiannual-Financial-Framework-and-Cohesion-Policy-2014-2020.pdf>

strengthening its coordination with employment and social policies. This is also a necessity if the EU is to reach its Europe 2020 goals.

The proposals to build a benchmarking system on employment and a scoreboard of the implementation of the National Jobs Plans are useful. It should allow the transparent monitoring of employment performances and progress towards other Europe 2020 targets such as poverty reduction. To this end, the European social partners should be involved in setting the benchmarking and scoreboard criteria.

Improving the involvement of the Social Partners: involving social partners in the elaboration and implementation of economic and employment policies is essential. Moreover, the social partners should be consulted in a timely fashion prior to the publication of the Annual Growth Survey and in discussions to define the 'main strategic priorities' regarding employment policies rather than once already established.

For the ETUC, organizing a monitoring of wages at the European level can only be done under the following conditions: the autonomy of social partners is strictly respected, wages are not used as an instrument of competitive adjustment, the scope must be broad and include fiscal, monetary policy and qualitative determinants of competitive positions, that profits and their use are being monitored.

A stronger and improved macro-economic dialogue, including in particular an enlarged exchange on political level between the European and national social partners on the one hand and both employment ministers as well as ministers of finance on the other, is the right forum through which this closer involvement of social partners is to be organized. This also constitutes the forum through which social partners should be involved in the procedure on macro-economic excessive imbalances (scoreboard, alert mechanism report, in-depth country studies).

In all of this, the articles 153-5 TFEU, restricting the competence of the European Union on wages, and article 152, obliging the Union to respect the diversity of national systems of industrial relations and wage formation, need to be taken strictly into account. To do so, and in respect of the autonomy of social partners, any specific discussion on wage dynamics needs to be done at a bi-partite level between European social partners themselves, with the Commission facilitating such a dialogue in accordance with articles 152 and 154 TFEU.

ETUC POSITION TIME TO OVERCOME GENDER IMBALANCE IN CORPORATE BOARDS IN THE EU

Adopted by the Executive Committee on 5-6 June 2012

The ETUC position

At the last Athens Congress the ETUC committed itself to place the gender dimension high on its agenda, by pursuing the objectives set in the Gender Mainstreaming Charter adopted at the Congress in Seville and by adopting adequate measures to tackle remaining gender inequalities in the labour market.

ETUC's fight to stand against women underrepresentation and discrimination in the labour market and in society has a long history. ETUC adopted several positions to enhance women's participation in decision-making structures and processes and an exhaustive summary of these is contained in the ETUC Resolution "Recommendations for improving gender balance in trade unions" adopted by the Executive Committee on 9 March 2011.

The resolution reaffirms that *"Equality between women and men is a founding principle of the European Union and a long standing commitment of the ETUC. A balanced participation by women and men in society's major political and economic decisions is a key element to developing real democracy and it has also proved to be an essential factor contributing to economic growth"*.

In 2005, the ETUC negotiated a framework of actions on gender equality in the context of the European Social Dialogue. In this instrument, we recognized, together with the employers, that the lack of women in decision-making posi-

tions was one of the four priorities¹ that the social partners had to tackle in order to advance gender equality at the work place.

In the final evaluation report of the Framework of Actions adopted in November 2009, we jointly affirmed that *“achieving an increase in the proportion of women in decision-making positions is an objective shared by social partners, who regard the promotion of women into senior and managerial positions as an investment for a more productive and stimulating working environment and for a better economic performance”*. In the same document is also stated that *“the underrepresentation of women in decision-making positions in economic and political domains was addressed as a concern by several of the contributions reported by the national social partners”*.

The ETUC has also put in place different actions and recommendations to strengthen gender balance in collective bargaining teams. ETUC is strongly convinced that the involvement of women and men at all levels of collective bargaining as well as in workers' representation structures is a basic value of the trade union movement and it enables new perspectives to be integrated into the bargaining agenda, by drawing on female trade unionists' experiences, opinions, knowledge and skills.

In ETUC's response to the consultation on the Green Paper on an EU Framework for Corporate Governance we affirmed that *“voluntary approaches have not proven to be very successful in the past. Therefore, introducing binding measures should be considered if companies do not improve the gender balance on boards”*.

The issue of enhancing gender equality in company boards should therefore be considered in the light of mainstreaming ETUC policies with regard to gender and non-discrimination.

ETUC believes that gender equality and diversity in the boardroom of companies is a key democratic principle with positive economic side-effects. The principle of gender equality should be however been kept separate from that of diversity: women are neither a group nor a minority, but one of the two forms of human being and more than half of the world's population not to

¹ The other three priorities are: addressing gender stereotypes, the gender pay gap and reconciliation of work, family and private life

mention 45% of the European workforce. Therefore, the balanced participation of women and men in decision making bodies is not only merely a question of diversity, but an essential imperative of the fundamental principles of democracy and human rights, as enshrined in the EU Treaties and the Charter of Fundamental Rights.

Women's talents are currently being underutilized at decision-making levels, in particular at top level. Change is necessary in many instances, and especially in the corporate world to strengthen Europe's competitiveness, combat the current economic crisis and create a sustainable future in which all talents are used to the full and all voices are heard in decisions shaping Europe's future.

To date countless voluntary-based initiatives have been taken to create awareness and increase pressure on companies to improve women's access to the decision-making power in the corporate world. However, progress has been extremely slow as the most recent figures published by the European Commission and the Parliament illustrate. More action and binding measures are needed to reach gender balance in economic decision-making positions.

EU latest initiatives in this regard, have led to some European countries to start discussion or to adopt binding measures to ensure gender equality in company boards. Nevertheless, in order to ensure a consistent approach and the same level of women's representation throughout the member states the ETUC believes that a EU level instrument is needed.

In ETUC's view one of the most effective ways to ensure a better gender balance on boards is the introduction of binding measures, with clear targets, deadlines and sanctions. These measures provide a strong incentive to the corporate world to introduce targeted actions, not only in order to meet legal requirements, but furthermore to ensure the efficiency and sustainability of their decision-making structures.

In order to be consistent with previous statements in this field, the ETUC believes that the principle stated in the ETUC Action plan adopted at the Congress in Athens should apply to gender equality in company boards. This principle indicates that *"each gender should be represented between 40% and 60% in decision-making structures"*. This quota should apply to publicly-listed and non-listed companies and to both executive and non executive board members.

In principle, the EU initiative should apply to all companies since equal opportunities should be ensured to every working women and men. At first larger companies, both listed and non listed, should be tackled by the EU while a transitory period could be established for medium-sized enterprises that have to set up a board according to national company law.

Attention should be given to the different national legal systems differentiating between one- and two-tier bodies of companies. As board members' terms might differ from country to country a sufficient transition period should be foreseen and the target should be reached by 2020. Noncompliance with quota requirements should be accompanied by a monitoring system and by sanctions that are consistent with national company law.

Quotas should, however, not disregard formal and substantive qualifications and not lead to indirect discrimination against women.

Quotas should not also be seen as a goal in itself or a permanent instrument. The EU should therefore regularly review the implementation of any measure adopted in this regard and consider the withdrawal of the quota at a certain moment once the target has been reached and permanently established in all member states.

The ETUC believes that effective, dissuasive and appropriate sanctions should be introduced for those companies not complying with legislation. Sanctions should comprise a multifaceted approach, starting with mild dissuasive measures (ie warnings, progressive monetary sanctions, etc.) towards harsher actions culminating in the forfeiture of the offices of elected members of the board in cases of non compliance.

Different steps could be foreseen and the Commission should take as a basis successful practices that already exist in countries where quotas and sanctions have been introduced (such as France, Belgium and Italy).

Next to sanctions, the EU initiative could also foresee incentives. For example, companies that meet the target and apply gender equality policies may be favoured in public procurement.

The ETUC is also convinced that public awareness on the social and economic advantages of an enhanced presence of women in decision making positions should continue to be promoted.

ETUC finally considers that policies addressing the current obstacles for women to reach top positions, such as measures to reconcile work, family and private life for both women and men, fighting gender stereotypes in education and in the labour market, and engaging men in the debate should also continue to be promoted and adequate measures should be put in place.

Social partners have a clear responsibility to ensure that the company's overall working environment supports a more balanced participation of women and men in decision making.

A monitoring and measuring system at EU and country level should be established, involving social partners and tracking progress and signaling effective approaches for further dissemination. Regular data collection, reporting and publication of results in order to increase pressure on boards to make changes should be undertaken.

ETUC further considerations on the need to re-boost the EU gender equality agenda

In ETUC's view the issue of women's underrepresentation in economic decision-making should be addressed within the wider framework of tackling discriminations between women and men in the labour market and society.

The low rate of representation of women on boards can be explained by persistent unequal access to economic, social and cultural resources between women and men, by inequalities in the share of paid and unpaid work, by the persistent undervaluation of women's work.

Such factors are major reasons for women's attainment of fewer high posts than men despite representing the majority of university graduates. In this perspective, in addition to strategies and legislation concerning gender equality in employment, care leave measures and services need to be improved for women and men.

The ETUC therefore calls upon the EU to promote policy initiatives in order to fight effectively against a number of other discriminations that women still experience in the labour market.

In replying to the consultation on the follow-up strategy to the Roadmap for equality between women and men 2006-2010 the ETUC made concrete proposals to the Commission to tackle gender inequalities. The ETUC strongly believes that these recommendations are still valid and should be urgently addressed:

- A reinforced commitment to gender equality, including new legislative proposals to tackle the gender pay gap (with quantitative targets, sanctions and incentives for the social partners to actively carry out pay audits and analysis of the pay differentials), the horizontal and vertical professional segregation of women and precarious forms of work;
- A combination of gender mainstreaming with specific actions, to begin with all measures and policies regarding the economic and financial crisis. This includes for instance measures to tackle the gender impact of the economic and financial crisis in recovery packages, training and retraining programmes for women, including investing (also) in female dominated sectors and public services;
- An EU Directive to introduce a minimum right to paternity leave and carers' leave;
- New indicators to measure progress on care services;
- Comparative research on part-time work and proposals on how to make part time work a genuine quality option for men and women;
- Full respect, recognition and support of the role and autonomy of social partners at all levels in promoting equality between men and women through social dialogue and collective bargaining;
- Measures to prevent and combat any form of harassment and violence against women;
- Obligations with guidelines to implement gender impact assessments in all legislative proposals that are put forward by all EU Institutions.

Context

One of the issues mostly debated at European level in recent times in the area of gender equality has been the under-representation of women in decision-making positions, and more specifically in company boards.

Despite the severe economic crisis affecting Europe, women's presence in the labour market have been slowly rising, but the situation between countries differs. Europe is far from attaining EU2020 target of 75% of women and men

in employment and women continue to be seriously underrepresented in economic decision making positions, especially in senior management functions and in corporate boardrooms.

According to the most recent EU study, in 2012 women made up 13,7% of the supervisory boards of the largest publicly-listed companies. This figure has been increasing by 5 percentage points since 2003. Across the European Union, one in three large companies had no women at all on its board in 2010. And this is despite the fact that more women are earning college degrees than men (60% of new university graduates in Europe are female)².

Women are almost completely absent from leadership positions as CEO's and Chairpersons: in the EU only 3% of the presidents of boards are women with no substantial increase in the last ten years³.

The figures vary by country: more than 25% female board members in Sweden, Latvia and Finland while less than 10% in Cyprus, Malta, Italy, Luxembourg, Portugal, Estonia, Ireland and Hungary. Gender balance is more encouraging among employees' board level representatives, where women account between 20%-30%⁴.

Findings are particularly alarming also when looking at companies' attitude to investment in females workers careers development. According to an analysis of gender representation in Executive/Management roles across Europe issued by Mercer, 71% of 5,321 companies across the EU do not have a clearly defined strategy or philosophy for the development of women into leadership roles. The same study also recognizes that a more diverse workforce reduces turnover and absenteeism and increase innovation and creativity.

Unfortunately, data on board composition broken down by company size are not available, however national studies suggest that the total share of women tends to be slightly lower in smaller companies.

2 Women in economic decision-making in the EU: Progress Report, European Commission, 2012

3 Equality in decision making: diverse approaches for gender balanced corporate boards, Background note for the EC Conference Equality between women and men, 19-20 September 2011", Mirella Visser, 201

4 See: European Commission database on women in company boards: http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/business-finance/quoted-companies/index_en.htm and EuropeanPWN Board-Women Monitor http://www.europeanpwn.net/index.php?article_id=8

Some EU countries have so far introduced legislative measures with quotas to increase the number of women in business leadership. To date, quota legislation exists in the following European countries: Belgium, France, Iceland, Italy, Norway, Spain and the Netherlands.

Quotas range from 30% to 40%, they are generally binding for both public owned and publicly-listed companies and in few cases sanctions are foreseen. In most of the countries where legislation was introduced, a transition period is set.

Other member states implement a voluntary approach to promote gender balance in boards. These voluntary initiatives range from effective corporate governance codes, leading to transparency, accountability and peer pressure, an active role of the government (in the form of target-setting for state-owned companies' boards), a constructive role of the media and global policies in favour of gender equality. However, in the majority of Member states (where the underrepresentation of women in board is also low), the debate is completely absent and any initiative addressing the issue of gender equality in company boards has been taken.

Irrespective of the solutions found in individual Member States, today one idea is gaining ground in Europe: there is a business case for gender equality. Studies show positive correlations between diversity in boards and company performance.

For instance, a McKinsey study of large European companies (also quoted by various EU reports on this matter) indicates that the best companies in terms of work environment, innovation, accountability and profits were those with a higher proportion of women on boards⁵. According to their latest report, companies with a gender balanced composition can achieve an operational profit which is 56% higher than that of male only companies. These findings are supported by a large number of EU, national and business reports⁶.

The EU response

Equality in decision-making is one of the priorities addressed by the EU. The most recent documents adopted to tackle this long-standing challenge are

5 A.O. "Women Matter" by McKinsey 2010; "The bottom line: connecting corporate performance and gender diversity", by Catalyst, 2004.

6 "Women to the top! Female leadership and Firm profitability", 2007, by EVA (www.eva.fi)

the Women's Charter and the European Commission's Strategy for Equality between Women and Men 2010-2015⁷. In both documents, the European Commission has reaffirmed its commitment to working to increase gender balance in decision-making positions. In particular, the Commission commits to consider targeted initiatives to improve the situation.

The European Commission has also tried to stimulate the corporate sector to voluntarily take action to achieve more gender-balanced boards. To this end, in March 2011, Commissioner Reding met chief executives and chairs of boards of publicly-listed companies to discuss the under-representation of women on corporate boards. She challenged all publicly-listed companies in Europe to sign up to the «Women on the Board Pledge for Europe» and voluntarily commit to increasing women's participation on corporate boards to 30% by 2015 and to 40% by 2020. The issue of better gender balance in boards was also addressed in the Green paper on the EU corporate governance framework in 2011.

In March 2012, the European Commission has issued a progress report on the impact of the voluntary pledge and the measures taken by companies. A public consultation was launched to identify appropriate measures for addressing the persistent lack of gender diversity in boardrooms of listed companies in Europe. The Commission is seeking views on possible action at EU level, including legislative measures, to redress the gender imbalance on company boards. Following this input, the Commission will take a decision on further action later this year.

Commission's initiative has been supported by the European Parliament through the adoption of a Report on women and business leadership in 2011 and by the latest Report on the equality between men and women in March 2012⁸. MEPs welcomed Commission's initiative and urged the Commission to "*propose legislation including quotas by 2012 for increasing female representation in corporate management bodies of enterprises to 30% by 2015 and to 40% by 2020*", if voluntary measures do not manage to increase the proportion of women.

⁷ See EC webpage: http://ec.europa.eu/justice/gender-equality/index_en.htm

⁸ See EP Report on women and business leadership : <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2011-0210&language=EN> and the EP Report on the equality between men and women 2011 <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2012-0041&language=EN>

Another indication of EU willingness to address gender balance in company boards is found in Commission's work programme for 2012 where it is stated that *"Following the gender equality strategy a Recommendation would aim to improve gender balance in company boards. As well as being a fundamental right, gender equality is crucial for the EU's growth and competitiveness"*. On this basis a public consultation was launched by the Commission in March 2012 and the ETUC replied in May.

A SOCIAL COMPACT FOR EUROPE

03

Adopted by the Executive Committee on 5-6 June 2012

Gathered within the European Trade Union Confederation, we, trade union leaders of Europe, want to launch an appeal and propose a Social Compact for Europe.

We see increasing inequalities, rising poverty and exclusion, soaring unemployment, work insecurity that affects particularly young people, and growing disillusion about the European project.

We see a worrying increase in nationalism, racism and xenophobia. This trend, exacerbated by low wage competition, could lead to a rejection of the European project that the ETUC has always supported.

We see that the post-war economic and social settlement, which led to the creation of the European Union and the European social model, is threatened. This unique social model has brought considerable gains for citizens and workers and has allowed us to rebuild from crisis to prosperity.

We affirm that fundamental social rights must have priority over economic freedoms. That is the spirit of the Charter of Fundamental Rights integrated in the Treaty of Lisbon. That should be emphasised in a Social Progress Protocol to be appended to the Treaties.

We believe that monetary union must serve the European integration process, based on the principles of peace, democracy and solidarity, as well as economic, social and territorial cohesion. This is the way to secure a future for citizens in a globalised world.

We recall that the EU's stated purpose is economic and social progress. Achieving the EU's 2020 objectives requires socially stable societies, sustainable economic growth and financial institutions serving the real economy.

We believe that it is through social dialogue that we will be able to seek fair and efficient solutions in response to the grave crisis that the Union faces. But, regrettably, we see democracy at work and social dialogue often being disregarded, attacked and undermined.

We call on the EU to focus on policies improving living and working conditions, quality employment, fair wages, equal treatment, effective social dialogue, trade union and other human rights, quality public services, social protection - including fair and sustainable health and pension provisions - as well as an industrial policy favouring a just transition towards a sustainable development model. Such policies would contribute to building citizens' trust in their common future.

We reject all policies leading to downwards competition be it on labour rights, wages, working time, social security, taxes or the environment.

We support coordinated economic policies as well as the objective of sound public accounts but we deplore the economic governance measures put in place that undermine social achievements of the past decades, stifle sustainable development, economic recovery and employment and destroy public services. This is why we oppose the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG).

We are also concerned at the method used to produce the TSCG Treaty that excluded meaningful involvement of the European Parliament and citizens.

We insist that the EU and its member states should observe scrupulously European and international instruments such as ILO conventions, the jurisprudence of the European Court of Human Rights and the revised European Social Charter, to which the European Union should accede as well as to its Protocol providing for a system of collective complaints (1995).

For all these reasons, we demand a Social Compact for Europe, the contents of which we offer to discuss and agree upon at EU tripartite level.

The European Trade Union Confederation considers that the following elements should be included in this Social Compact:

Collective bargaining and Social dialogue:

Free collective bargaining and social dialogue are an integral part of the European Social Model. Both must be guaranteed at the EU and national level. Each member state should put in place the relevant supporting measures;

The autonomy of the social partners at national and European level as well as their role and position must be respected; there must be no unilateral intervention by the public authorities in collective bargaining or existing collective agreements; and coverage of workers by collective agreements should be maximised;

Effective involvement of social partners, as from the diagnostic phase, in European economic governance and national reform plans is essential. Efforts to adapt to changing circumstances should be commensurate with peoples' means and not be borne by workers and their families alone.

Economic governance for sustainable growth and employment:

Urgent measures to bring the sovereign debt crisis to an end and give the ECB the role of lender of last resort, thus enabling it to issue Eurobonds. Growth programmes adapted to each country should be discussed, agreed and monitored with social partners;

European industrial and investment policies aimed at meeting the economic and environmental challenges; priority should be given to investments in sustainable infrastructure, research and development, climate technology and renewable resources. They should not to be included in the calculation of public deficits;

Rules to secure a regulated, solid and transparent financial sector at the service of the real economy;

Extra resources, raised from improved use of the European structural funds, the European Investment Bank, project bonds, and an adequately engineered financial transaction tax, should be allocated to social and environmental purposes;

Stop EU pressure to liberalise public services which are a national responsibility;
Decent wages for all, contributing to growth and internal demand;

A youth guarantee for all young people in Europe, ensuring the provision of a decent job, or of adequate training opportunities, within four months of unemployment or leaving school;

Measures to improve the quality of jobs and combat precarious jobs; fight abuses in the practice of part time, temporary and fixed term contracts;

Active labour market policies including initiatives to support people with little or no links to the labour market.

Economic and social justice:

Redistributive and graduated taxation on income and wealth, and the end of tax havens, tax evasion, tax fraud, corruption and undeclared work;

Determined action against speculation;

Effective measures to secure equal pay and equal rights for work of equal value for all; collective agreements and equal wages should apply to all whatever the form of their contract, specifically when they work at the same work place;

Implementation of policies to end the pay gap between women and men;

Wage-setting to remain a national matter and to be dealt with according to national practices and industrial relation systems. Negotiations between social partners at the relevant level are the best tool to secure good wages and working conditions; the statutory minimum wage, in those countries where trade unions consider it necessary, should be increased substantially. In any event, all wage floors should respect Council of Europe standards on fair wages.

Harmonisation of the corporate tax base and minimum rates of taxation for companies, possibly with the introduction of a minimum rate of 25%, the current average level of imposition in Europe.

We call on European employers' organisations, EU institutions, national governments and supportive organisations to engage in a discussion on this ETUC proposal for a Social Compact for Europe.

TOWARDS GREATER EDUCATION AND TRAINING FOR SOCIAL EUROPE: ETUC ACTION PROGRAMME ON LIFELONG LEARNING AND VET

Adopted by the Executive Committee on 5-6 June 2012

PART ONE BACKGROUND INFORMATION

1. EU context

Lifelong learning has been a key policy of the European Union since its early days.

Trade unions are also committed to make lifelong learning a reality for all. Not only with respect to labour market needs but also as a fundamental component of an individual's development.

In recent years, also due to the challenges with which Europe is being confronted, education, training, and professional and vocational learning and development have become increasingly important items on the agenda of EU institutions, member states and social partners.

A sustainable and high quality lifelong learning policy is essential for educating and preparing individuals for life, supporting job creation, recovery and mobility. It would also help to foster trust in the construction of a strong and inclusive

European Union, with the active involvement of all citizens, and especially social partners, in policy making and implementation.

Europe's current challenges indicate that the direction of the reforms on VET undertaken at EU level (i.e. the Copenhagen process) remains the right one for the years to come. The ETUC Action Programme, adopted in Athens, identifies four drivers of change that will shape Europe's economies and societies and the demands for its VET systems: the economic crisis; developing a low carbon economy; labour market trends towards more skill-intensive jobs; and Europe's future skill supply and demand.

Social partners, and notably trade unions, can play an important role in addressing these challenges, through social dialogue and collective bargaining activities at every level, as well as through direct involvement in the implementation of lifelong learning actions for workers.

Between 2008 and 2010 Europe lost around 5.5 million jobs due to the economic slowdown. The crisis has also constrained economic growth and skill demand which will lag behind skill supply and may lead to over-qualification in the short term;

One in five young people in Europe cannot find a job. The youth unemployment rate (at over 20% and in some countries as high as 50%) is twice as high as for the whole working population. 14% of young people leave school without a diploma;

76 million people of working age (24-64) have either a low level of qualification or no qualifications at all. This figure represents nearly 30% of the European workforce.

At least 40% of 30-34-year-olds should complete third level education by 2020, nevertheless there is still a lack of flexible pathways between vocational education and training schools and higher education institutions;

Cedefop's latest estimate states that there could be around 83 million vacant posts between 2012 and 2020, with the creation of 8 million new jobs and 75 million jobs becoming vacant due to retirement or people leaving the labour market. Most job opportunities will be in services (including tourism, health care

and IT). The trend towards more skill-intensive jobs at all levels will continue and many traditional manual or routine jobs will decline;

Even if the new jobs end up being at the higher or lower end of the job spectrum most job opportunities will still be those requiring medium-level qualifications (including many vocational qualifications) and will continue to employ around half of Europe's workforce;

The polarization of employment has a corresponding effect on the polarization of wages, which are high for highly skilled workers and conversely decrease for the low and unskilled people. At the same time highly qualified workers can also experience underpayment or undervaluation of their performance and in times of economic downturn workers often are obliged to undervalue or hide their qualifications in order to find work more easily;

Despite its many benefits, vocational education and training are not highly regarded, although evidence shows that training not only helps to integrate disadvantaged target groups, but also leads to wider social and economic benefits equal to those achieved by general education;

Many countries in Europe have reformed or looking to introduce apprentice systems with the aim to achieve better interaction between education and employment systems; reducing youth unemployment and strengthening companies by supplying the next generation of skilled workers. Some EU Member States have already developed good systems (i.e. the Nordics, Germany, the Netherlands, etc.), but in the majority of the EU countries reforms have still have to be implemented to enhance the accessibility and quality of existing apprenticeships schemes.

Investment in continuous training by enterprises remains low, especially in SMEs. The crisis has even worsened the performance of enterprises providing continual training and public financing does not help to change companies' reluctance to provide it. This is a worrying trend especially in a context where many member states have severely reduced their investment in education and training;

Only 4.8% of adults (50-64 year olds) participate in learning programmes, although the EU target under the Education and Training strategy is 15% by 2020. From 2014 the EU's working population will start to shrink, making it ever more vital to constantly update and upgrade adults' competences and skills in preparation for a prolonged working life;

Possible teacher shortages are to be expected in the near future. In many European countries, the majority of teachers currently employed are close to retirement and there is a significant fall in the proportion of graduates in the field of education and training mostly as a result of the influence of the economic and financial crisis in the education sector. This has also contributed to the privatization of formal education institutions, to the merger and closure of schools, and to the dismissal of significant number of teachers from all levels of the education sector. Cuts in the educational budgets risk the quality of education and Europe's recovery from the crisis.

2. The EU Agenda and programmes

The EU has set up an ambitious agenda on lifelong learning. A variety of initiatives and instruments have been developed. They are currently under implementation at various levels and require the full participation of a variety of stakeholders, including trade unions.

The main reference document is 'Europe 2020 – the European strategy for smart, sustainable and inclusive growth' which proposes five headline targets for 2020, two of which are directly linked to education and training and labour market policy:

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

In order to meet these global targets the European Commission has proposed seven flagship initiatives¹, two of which are directly linked to education and training and the labour market, 'An Agenda for New Skills and Jobs' and 'Youth on the Move'.

In parallel the EU has entered a new stage in the 'Copenhagen Process'. The Bruges Communiqué, agreed by Member States and the social partners in December 2010, sets out future priorities for enhanced European cooperation in vocational education and training with 11 strategic objectives for the period 2011-2020 and 22 short-term deliverables for the first four years (2011-2014)².

1 http://ec.europa.eu/europe2020/tools/flagship-initiatives/index_en.htm

2 http://ec.europa.eu/education/lifelong-learning-policy/doc/vocational/bruges_en.pdf

Since 2002, the EU has also put in place “common European tools”, principles and guidelines to make qualifications more transparent, comparable and transferable, as well as to improve flexibility and quality of training. The current tools in place are: the European Qualifications Framework (EQF)³, the European Credit System for Vocational Education and Training (ECVET)⁴, the European Quality Assurance Reference Framework for Vocational Education and Training (EQA-VET)⁵, EUROPASS⁶ and European Skills/Competences, Qualifications and Occupations (ESCO)⁷.

Furthermore, the EU is in the process of adopting recommendations on the validation of non- formal and informal learning and reviewing the Professional Qualifications Directive (2005/36/EC)⁸.

In parallel, EU Member States, in conjunction with another 20 countries, launched the European Higher Education Area (EHEA), previously known as the ‘Bologna Process’, in March 2010, and the European Credit Transfer and Accumulation System (ECTS).

All these tools and principles constitute an integrated framework, the impact of which depends on their consistency and on how they interact.

It should be noted that the EU has adopted a series of different programmes which can be used to support the development of European common tools as well as education and training activities in general. These are: the European Social Fund, which helps the integration of the unemployed and disadvantaged sections of the population into working life, mainly by funding training measures (with a budget of approximately 75 billion Euros for the period 2007 to 2013)⁹. The European Commission is now working to prepare a new generation of EU funding for programmes which will cover the period 2014 – 2020.

Another important programme in this domain is the Lifelong Learning Programme, which funds projects at different levels of education and training - Comenius for schools, Erasmus for higher education, Leonardo da Vinci for voca-

3 http://ec.europa.eu/education/lifelong-learning-policy/doc44_en.htm

4 http://ec.europa.eu/education/lifelong-learning-policy/doc50_en.htm

5 <http://www.eqavet.eu/gns/home.aspx>

6 <http://europass.cedefop.europa.eu>

7 <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=852>

8 http://ec.europa.eu/internal_market/consultations/2011/professional_qualifications_directive_en.htm

9 http://ec.europa.eu/employment_social/esf/

tional education and training, Grundtvig for adult education¹⁰. The new Lifelong Learning programme “Erasmus for all” aims at simplifying and streamlining the old programme into interrelated policy priorities and is currently being discussed at Parliament and Council level and will be finalised by the end of 2012.

Recently, the European Commission adopted an employment package containing measures for an EU job-rich recovery¹¹. Among the different policies addressed, the package recognizes lifelong learning as key to security in employment and puts forward initiatives in order to reach a threefold objective: better monitoring of skills needs, better recognition of skills and qualifications and a better synergy between the worlds of education and work.

Finally, a relevant actor in strengthening European cooperation in vocational education and training is CEDEFOP, whose mandate is to provide information on, and analyses of, vocational education and training systems, policies, research and practice, which are being used increasingly in the preparation of policy-making.

Although the ETUC welcomed the adoption of most of these initiatives, on various occasions we have underlined that better coordination with all the EU tools is needed, to avoid duplication of work as well, and that the social partners should be involved and consulted at all levels if the initiatives are to be successfully implemented.

The ETUC also emphasises the fact that in order to deliver the expected results the EU skills strategy should be linked and coherent with a sustainable and forward looking EU industrial strategy.

3. EU Social Dialogue and education and training: past achievements and the way forward

Article 3 of the Athens Manifesto commits the ETUC to placing more and better jobs at the top of the European agenda and at the heart of EU economic governance, and reflecting this in the European Social Dialogue as well as in the evaluation of the 2020 strategy and Single Market Act. The Strategy and Action Plan from the 12th ETUC Congress underlines, inter alia, the following:

10 http://ec.europa.eu/education/lifelong-learning-programme/doc78_en.htm

11 <http://ec.europa.eu/social/BlobServlet?docId=7619&langId=en>

- *'In the future, even more emphasis and resources will need to be devoted to improving workforce skills in accordance with the needs of our time';*
- *'Access to quality education and lifelong training for all is a right that must be recognized and implemented'.*

Prior to the Congress, the ETUC Executive Committee passed a resolution in March 2009 on initial and continuous vocational training for a European employment strategy¹² and a further resolution in December 2010 on more investment in lifelong learning for quality jobs¹³.

The ETUC also signed a Framework Agreement on Inclusive Labour Markets with BUSINESSEUROPE, CEEP and UEAPME in March 2010, which emphasized the following¹⁴:

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

The Framework Agreement on Inclusive Labour Markets is currently being implemented by social partners at relevant levels.

More recently, in their Joint Work programme 2012 – 2014 the EU social partners recognized that the continuous development of competencies and the acquisition of qualifications are a shared interest and responsibility for employers, employees and public authorities. For enterprises, access to and development of

¹² <http://www.etuc.org/a/6078>

¹³ <http://www.etuc.org/a/8067>

¹⁴ <http://www.etuc.org/a/7076>

a skilled workforce is one of the conditions for innovation and competitiveness. For workers, acquiring, updating and developing relevant knowledge, skills and competences throughout their working lives is the most effective way to find and remain in employment.

In 2002, European social partners adopted a framework of actions on the life-long development of competencies and qualifications. The EU social partners affirmed jointly that the four priorities within this framework of actions remain valid in the current situation. Nevertheless, the following two issues have emerged since 2002: 1) Skills needed in greening economies; 2) the update and upgrade of the skills of older workers in the context of longer working lives. They will consequently take action on these two issues using the existing matrix of four priorities as a basis.

Furthermore, the European Sectoral Social Dialogue Committee in Education (ESSDE) was launched in June 2010 by the European Trade Union Committee for Education (ETUCE) and the European Federation of Education Employers (EFEE). The committee adopted joint actions to influence EU policies and to improve the teaching, working and learning environment by identifying and exchanging good practices. ESSDE separate working groups are dealing with issues such as the recruitment and retention of staff in a time of strict budgetary constraints, gender equality, teachers' mobility and improved higher education.

Other EU sectoral social dialogue committees are implementing joint actions to improve training, qualifications and skills within their sectors of responsibility. Examples in this regard include the textile sector (with the establishment of a EU sectoral skill council for the textile, clothing and leather sectors); the road transport sector (with a joint social partners project on training in the commercial road transport sector); tourism (the development of a European qualification and skills passport for the hospitality sector) and the metal sector (joint "ad hoc" working group on skills shortages).

These initiatives complement and at the same time reinforce the experience that social dialogue and collective bargaining play at national, regional and company level with respect to education and training issues. They include (but are not limited to): collective agreements in private and/or public sector including provisions on tools to identify and anticipate competence needs at company level; awareness-raising actions towards companies on the importance of identifying and anticipating competence needs to anticipate industrial change;

mutual social partners funds for training programmes for companies and workers; trade union learning representatives that negotiate training programmes, the development of individual learning accounts, etc.. Finally, in most EU countries, social partners participate in tripartite bodies where they give advice on national policies on qualifications, skills, etc. In addition, they take a range of specific actions to better tailor education and training systems to labour market needs.

PART TWO: ETUC'S DEMANDS AND ACTION PROGRAMME

4. ETUC policy and demands on education and training and VET

ETUC has constantly placed lifelong learning, education and training at the heart of its agenda, not only by dealing with these policies directly but also by making the link with other relevant issues that are strongly related to an ambitious and effective lifelong learning agenda (i.e. restructuring, anticipation of change, demographic change, greening of the economy, etc.).

As has been seen, the EU has put in place several instruments for improving education and training at all levels, nevertheless the ETUC believes that the economic and social context in which these tools have been developed has been underestimated. There is a clear risk that EU policies and instruments in the area of LLL and VET will not meet the ambitious aims identified because there has been an insufficient analysis of the context and a lack of adequate resources. In some instances some EU policies also wrongly attribute to LLL the power to generate jobs, while for the ETUC, LLL and VET can contribute to job quality but not necessarily to job creation.

A different governance for macroeconomic policies is needed and the policies should aim to support economic growth. The ETUC therefore welcomed the employment package but at the same time asked for more ambitious resources and initiatives to boost job creation and the quality of jobs, also by enhancing qualifications and skills. ETUC also demands more binding measures for member states to fully meet education and employment objectives set out in the various EU instruments and initiatives. In particular ETUC demands concern incentives, resources and an enhanced partnership, not only at European but at all levels where social partners play a role in defining these policies.

- The ETUC's view is that lifelong learning should concern all education patterns: early childhood, compulsory school education, vocational education and training, higher education, research and innovation, adult learning including professional development and the training of workers/employees. The ETUC has constantly called for the EU and national member states to guarantee a high quality level of education and training, an emancipatory and high-level initial education and fair working conditions for teachers;
- Access to lifelong learning is still a major challenge in most of the EU member states.

The ETUC has repeatedly called for lifelong to be/become a reality for all workers (especially with regards to the low-skilled workers or precarious workers) and for all citizens (the young and adults, men and women, without discrimination on grounds of disability, ethnicity, race or sexual orientation);

- There should be a balance between education and training as well as between education and work. We therefore need to encourage further investment in improving the permeability between compulsory and vocational education and training to higher education, and between education and the labour market. There should be a smooth transition from education into work as well as from work into education and back. Labour market training needs take place at a faster pace than those occurring in education and training systems, therefore a stronger link between cross-industry and education trade unions is needed;
- Given the challenges posed by the economic situation, further efforts are needed to combat unemployment and early school leaving, and in reducing the mismatch in skills as well as ensuring that the European workforce gets the best out of the EU tools put in place to become highly qualified;
- All formal, non-formal and informal learning institutions and providers need to receive further financial support to teach lifelong learning and to provide more courses for all free of charge
- Focused education and training strategies should be established and social dialogue should be supported to develop a transition strategy for green and white sectors, as well as for company and sector restructuring, notably due to the economic crisis. Training on the green economy and sustainable development as well on European Structural Funds and their potential to positively impact education, training and employability should be further deployed;
- Anticipation of change and company restructuring can be ensured in a sustainable manner only through adequate levels of education and training;
- High quality training should be seen and promoted as a key instrument for providing concrete possibilities for the unemployed to access the labour mar-

ket. Furthermore, the combination of collectively-agreed training schemes with reduced working hours (the so-called kurtzarbeit in Germany) should be considered as one of the more/most successful measures implemented by social partners for buffering the effects of the crisis.

The social partners' role in shaping and influencing education and training policies should be respected and promoted at all levels. Collective bargaining should be also promoted. The Action Programme sets out ways in which these broad objectives can be met: measurable and time-framed targets, follow-up procedures and an evaluation process. It calls for an active involvement of ETUC affiliates at all levels.

5. The ETUC Future Strategy on lifelong learning

In order to meet the above-mentioned challenges the ETUC needs to:

- a. Influence EU institutions in order to create a strong link and political coherence between employment, education and economic policies with a view to supporting growth, inclusion and job creation. More and better resources will be needed to strengthen education and training and structural funds and ESF funding can play an effective role;
- b. Monitor and contribute to the implementation of education and training policies. Trade union organizations must play an essential role in motivating employees with regard to the benefits of lifelong learning. Through collective bargaining or trade union training programmes at all levels, trade union organizations must contribute to increasing the awareness of workers and trade union delegates of the challenges posed by the EU 2020 and ET 2020 agenda;
- c. Work to safeguard, improve and better coordinate European education and training instruments and programmes and develop them further in the next EU funding period (2014-2020);
- d. Influence policy-making and institutions at the European level, notably in the light of EU policy issues and legislative processes at stake in the lifelong learning agenda (e.g. VET, recognition of non-formal and informal learning, mobility, the new lifelong learning programme, Erasmus for All, the modernization of the professional qualification directive, upcoming recommendations on NFIL etc.);
- e. Lobby the EU to adopt recommendations enabling lifelong learning for all

- and make sure that the new Erasmus for all gives incentives to continuous education for workers as well to the full involvement of social partners;
- f. The economic downturn should not lead to reduced investments in education and training. Public authorities have specific responsibilities for ensuring good quality training despite budgetary constraints. Employers also have their role to play in this regard. They should be doing more and better in terms of investing in the skills of all groups of workers and in providing an adequate number of training hours. Tax incentives can positively support these commitments.
 - g. Improve the link between LLL and youth policies. Education and training should offer options for both employment and further study for young people;
 - h. Re-evaluate and strengthen, within the context of the European Social Dialogue, the 'Framework of Actions for the Lifelong Development of Competencies and Qualifications' and activate the 'Framework Agreement on Inclusive Labour Markets';
 - i. Support and coordinate European sectoral trade unions on the development of lifelong learning initiatives within the new context of sectoral social dialogue, sectoral/company level collective bargaining, European sector skills' councils, skills panorama and ESCO;
 - j. Step up training on education and training matters and to fully incorporate them in other areas (i.e. restructuring,) in partnership with the ETUI and affiliated unions;
 - k. Support national confederations with the introduction, implementation and evaluation of European common instruments, such as EQF, EQUAVET and ECVET, as well as tripartite/bipartite dialogue at national and local level;
 - l. Take full advantage of the potential of its Lifelong Learning Working Group to strengthen a European trade union strategy on education and training;
 - m. Develop a simple communication strategy for sharing information.

6. ETUC' s Actions

There is a need to bridge the gap between the theoretical concept of EU common tools (EQF, ECVET, EQUAVET, etc.) and their application in regards to the reality of national education and training and qualification systems. As a starting point, the ETUC, with the support of the ETUI, will launch a pioneering training programme for trade unionists to make the most of EU tools and principles.

A new ETUC project will be developed between 2012 and 2013. It will focus on the implementation and relevance of the E&T EU agenda (or EU common tools for workers). While EU institutions and the Cedefop have substantially followed the reporting on policies and systems, more empirical evidence is needed from the perspective of the workers, trade unions and social partners on the barriers, challenges and bottlenecks they face. The ETUC will promote a new study to provide recommendations on the practical implementation of learning outcomes in European countries, their relevance for workers, how it is used for example in relation to curricula, assessment, standards, or validation.

Furthermore the ETUC will also promote an exchange of trade unions' views with regard to the dual learning systems and good practices that have been developed by trade unions to enhance quality of apprenticeships. The following qualitative elements for structuring a modern dual vocational training system will be taken into consideration from the outset: VET as a springboard for ongoing and further training, need to adapt to technical and economic changes, as well as processes of corporate organization developments; cooperation between learning institutions; definition of the legal status of trainees; cost-benefit analysis of in-company vocational training; involvement of social partners.

This project could be a first step towards a more general multiannual action, aimed also at mapping the involvement of trade unions in tripartite negotiations, and consultations regarding LLL policies at national and local level, the LLL in collective bargaining activities, and LLL bodies directly managed by trade unions.

The setting up of a network (within the LLL working group) of committed and experienced trade unionists that will work on the ETUC's behalf to defend trade union positions in the numerous EU consultative bodies.

A renovated lifelong learning section of the ETUC website, possibly with a space where ETUC affiliates can share information and experiences on trade unions' actions in the field of education and training will be considered in this regard.

The ETUC will continue to promote the sharing of trade union good practices at national and EU sectoral level through meetings or seminars about specific topics (collective bargaining on LLL and skills, trade union involvement in training, etc..) that are of interest to member organizations. In particular, a strong

emphasis will be placed on social dialogue and collective bargaining practices in this area;

7. ETUC's affiliates challenges

Influence policy-making at the national level, notably in the light of the EU policy issues at stake in the lifelong learning agenda.

Lobby to implement the European tools and the partnership principle in all the Member States and at sectoral and local level as well. Report regularly to the ETUC working groups about challenges and trends (especially for trade unions) in developing these tools, in order to enable the ETUC to lobby effectively at EU level in a way that also reflects workers' views and needs in the implementation of these tools;

Lobby to ensure a full implementation of all European financial instruments at national level, notably the ESF, and push the Member States and the other public authorities to provide their own resources to support education, training and better skills in the labour market.

Participate in peer learning activities and in the exchange of good practices on the implementation of the European tools, create a sense of ownership of the process and stimulate further activities.

Organize activities aimed at promoting EU common tools, including the Copenhagen process. Give adequate support for enhancing mutual recognition and competences.

Include lifelong learning in the collective bargaining agenda. Evidence shows that social partners' agreements have a positive effect on participation, and the number of hours spent, in continuing training.

Our affiliates' good practices in this field have achieved some useful results:

- a. Include into collective bargaining specific mechanisms that encourage the careers of workers upgrading their professional qualifications in order to make effective workers' rights to lifelong learning;
- b. Develop training through collective bargaining, with the aim of encouraging participation in educational processes, particularly in SMEs;

- c. Link the recognition of professional skills to improve wages and working conditions;
- d. Ensure, through collective bargaining, guidance for workers and develop training schedules in accordance with needs of companies and workers, with particular respect to disadvantaged groups;
- e. Secure adequate time requirements for learning phases through collective agreements and /or legislation. Ensure that training officers also have a time budget.

8. Implementation, reporting and evaluation of the Action Programme

In order to successfully meet the objectives that have been identified in the Lifelong learning Action Programme on lifelong learning equality, ETUC member organisations commit themselves to promoting a sense of ownership, shared responsibilities and actions at all different levels.

As a first step, affiliated organizations will give adequate visibility to this Action Programme. It is therefore recommended that: the Action Programme is translated into national languages, that a copy of the translation is sent to the ETUC so that EU-wide visibility can be given through the ETUC's channels, and then disseminated and discussed with trade union representatives.

The ETUC secretariat will be responsible for leading some specific key activities for meeting the objectives of the Action Programme, having recourse to EU funding if necessary.

An evaluation of progress in achieving the Action Programme will be put forward on the eve of the ETUC Mid-Term Conference in 2013. The lifelong learning working group will have a strategic oversight of the implementation of the key actions identified.

The ETUC and its member organizations will make sufficient resources available so that the key actions of the Programme are accomplished.

ETUC POSITION ON THE ENFORCEMENT DIRECTIVE OF THE POSTING OF WORKERS DIRECTIVE

Adopted by the Executive Committee on 5-6 June 2012

Further to the ETUC declaration on the Commission proposals for a Monti II Regulation and Enforcement Directive of the Posting of Workers Directive adopted on 19 April, this position paper sets out the ETUC's key demands regarding the Enforcement Directive. It should, however, be noted that since the Enforcement Directive does not address the core provisions of the Posting of Workers Directive, the ETUC's demand for a revision of the Directive remains.

Legal basis

In order to ensure that the Enforcement Directive is not a pure internal market instrument based solely on Art. 53 (1) and 62 TFEU, a social dimension must be included at least by creating a dual legal basis through the addition of Art. 153 TFEU (social policy).

Scope

The Enforcement Directive should ensure adequate protection of workers regardless of their status and also in case of change of status. The relationship with the Rome I Regulation, which lays down the rules for the choice of the applicable law, therefore needs clarification. This could be achieved by introducing a presumption that the habitual place of work within the meaning of Rome I is in the host Member State unless it is proved otherwise.

Furthermore, the applicable situation to temporary agency workers in case of posting needs to be clarified. The equal treatment principle provided for by the Temporary Agency Work Directive must also be respected in situations of posting. The Enforcement Directive should ensure that it applies to temporary agency workers unless they are guaranteed more favorable treatment regarding their terms and conditions of employment in another instrument.

Criteria determining the notion of posting

An indicative list of criteria for establishing whether an undertaking is genuine and whether a posted worker is temporarily carrying out his or her work in another Member State, as proposed by the Commission, gives Member States the possibility to pick and choose the least cumbersome criteria. This creates legal insecurity and makes the Enforcement Directive inefficient. The list of criteria should be binding in every Member State. It should also include quantitative elements and be non-exhaustive, i.e. Member States must as a minimum transpose the listed criteria to be able to make an overall assessment of the relevant elements. Furthermore, the Enforcement Directive should clarify when Member States are supposed to examine if the criteria are fulfilled.

To reduce the possibility of circumvention of the Posting of Workers Directive and the Enforcement Directive through false self-employment, criteria based on the ILO Recommendation No. 198 on the employment relationship should be added.

Preventing abuse and circumvention

The Enforcement Directive does not propose effective and dissuasive measures for combatting fraud or preventing abuse, misuse or circumvention. Therefore, it is essential to add provisions preventing successive assignments to the same post and so-called letter-box companies.

Moreover, workers whose employing company in the alleged Member State of establishment is in fact a letter-box company must benefit from the Treaty provisions on free movement of workers and equal treatment. The Enforcement Directive should also ensure that a posted worker cannot be sent to replace another posted worker in order to perform a similar task, except for objective reasons such as illness or termination of the contract by the posted worker.

Liability

The introduction of a joint and several liability mechanism is indispensable in protecting workers from abuses. Otherwise, a contractor could easily evade national regulations or collectively agreed labour standards and working conditions by creating extremely complex networks of subcontractors.

The Commission's proposal, however, is limited to the construction sector and direct subcontractor situations. It is also undermined by the stipulation that a contractor that has taken due diligence cannot be held liable.

Joint and several liability must apply to any sector of activity. The Enforcement Directive should also introduce a mandatory chain liability, which stipulates that the main contractor(s) is liable for the compliance of all subcontractors, with the applicable terms and conditions of employment, and social security contributions.

The concept of "due diligence" should be deleted. There is no definition at the European level and it would therefore vary from one Member State to the other. It has been indicated that in order to escape liability, it might be sufficient for the contractor to check the identity of the subcontractor and their history.

Control and monitoring

The onus should not be on the Member State of establishment to carry out the control and monitoring, but the host country in which the posted worker is actually working. Since effective cooperation between Member States does not seem to be the rule in practice, it is not acceptable that host Member States can only act at the request of the Member State of establishment.

National control measures should be mandatory and not limited to those listed in the Enforcement Directive. Governments must be free to take other measures as well. It should also be made clear that the article on national control measures applies to the host Member State. In addition, the Enforcement Directive should impose an obligation on the service provider to declare the use of posted workers prior to the posting.

With the purpose of improving the enforcement of the Posting of Workers Directive, public authorities, together with trade unions should have access to

documents such as the employment contract. The translation of these documents cannot be limited to those that are “not excessively long and standardised”. Workers and service providers must have access to information in their own languages.

The ETUC welcomes the obligation to designate a contact person, but this person should be a representative of the employer, have a legal capacity and their role should not be restricted to negotiations. The contact person should reside in the host Member State during the entire period of the service provision.

Enforcement

It is important that Member States are able to ensure effective labour inspection. Therefore, the Directive should not create a right for employers to challenge enforcement action simply because a risk assessment was not carried out.

The Enforcement Directive provides trade unions with the possibility of engaging in judicial or administrative proceedings on behalf or in support of a posted worker. This possibility should also apply to the enforcement of the obligations under the Posting of Workers Directive. In order to ensure coherence with collective agreements and all national legal systems, the chapter on enforcement should make it possible for a trade union to act on behalf or in support of a posted worker without the approval of the worker.

The possibility for posted workers to lodge complaints should not be restricted to outstanding remuneration or refund of excessive costs. The posted worker should also be able to claim any other entitlement due to him/her. A provision protecting posted workers when taking judicial and administrative proceedings should be included.

Sanctions should be effective and dissuasive not least concerning letter-box companies in order to prevent social dumping and the abuse of posted workers. To avoid weakening existing national legislation, a clause of non-regression is necessary as well as the granting of the right to Member States to maintain or improve the already existing control and surveillance mechanisms.

PUTTING JUST TRANSITION INTO ACTION IN EUROPE AND GLOBALLY ETUC POSITION TOWARDS QATAR COP18

Adopted by the Executive Committee on 5-6 June 2012

Following the outcome of the 17th set of international climate negotiations held in December 2011 in Durban (COP17), global climate negotiators are currently working on the elements of a future global climate agreement due to be concluded by 2015, and implemented by 2020.

The negotiations in Durban managed to save the UN climate process, paving the way for a final round of discussions on three key issues for the union movement:

- a. a second commitment period for the Kyoto Protocol which expires in December 2012;
- b. the 'Durban Platform', which consists of 2 elements. Firstly a work plan on enhanced ambition and, secondly, the negotiation of a new legally binding agreement applicable to all and to be finalised by 2015 and in force by 2020; and
- c. further work on key components of the Cancun Agreements (2010) on: global emission reductions to keep the global average temperature rise below 2°C; a Just Transition within response measures; market-based mechanisms to deliver CO2 reductions; mobilising scaled-up funds for developing countries to take greater and effective action; and establishing institutions to realise these objectives.

For the European Trade Union Confederation (ETUC), while we welcomed the Durban platform and acknowledge that the EU showed itself to be responsible and unified, every delay in reaching international consensus is increasing the eventual cost (economically, socially and environmentally) and reducing the chance of keeping global temperatures within a safe range.

Unlike other industrialised parts of the world (including Canada which, deplorably, withdrew from the Kyoto Protocol immediately after the negotiations ended), Europe assumed its responsibilities in Durban, by agreeing to continue to reduce its CO2 emissions under a second commitment period of the Kyoto Protocol, although the protocol will only concern 14% of world's emissions. Nonetheless, on 1 May 2012, the EU proposed to take on an 8 year commitment period – in line with the Europe 2020 strategy – to extend its Kyoto Protocol obligations to 2020 with a commitment of -20% greenhouse gas emissions (based on 1990 levels). The ETUC underscores the fact that this commitment, which essentially reflects business as usual as a result of the economic crisis, is not ambitious enough.

ETUC concern about the choice of Qatar to host COP18

Migrant workers, who make up a 94% majority of the Qatari workforce, lack basic labour and human rights, are systematically exploited, often work in health threatening conditions, and may be expelled for forming a trade union. For example, Qatar has refused to ratify ILO Convention 87: Freedom of Association and Protection of the Right to Organise Convention, 1948. Qatar is also the world's largest per capita emitter and has been a barrier in climate negotiations.

As in all their external relations, the ETUC demands that the EU and member states raise these concerns with the Qatari hosts and ensure that the importance of human rights (including workers' rights), Just Transition and Decent Work are central in their dialogue with the COP 18 organising team.

A public commitment from Qatar to Just Transition and Decent Work, by signing the relevant ILO conventions and ensuring an active participation of civil society in the COP18, is needed to build trust in the union and social movements on Qatar's chairing of the summit.

International Demands: a Just Transition needs a binding and ambitious framework agreement

The ETUC remains firmly committed to the creation of a global, fair, legally binding and ambitious agreement under the United Nations Framework Convention on Climate Change (UNFCCC). In line with the Intergovernmental Panel on Climate Change (IPCC) recommendations, the ETUC supports greenhouse gas emission reductions for developed countries (including the EU) of at least -25 to -40% based on 1990 levels by 2020, and -80 to -95% by 2050 to avoid an increase in global temperature of more than 2°C by 2100. The final UN agreement must include provisions for a "Just transition of the workforce, and the creation of decent work and quality jobs" that featured in the UN decisions in Cancun (2010) and Durban (2011). This should remain the focus of negotiations within the 'Durban Platform'.

Fundamentally, neither workers nor the environment can wait until 2015 for concrete action to reduce global greenhouse gas emissions and ensure the policies and measures needed to anticipate and manage the consequent changes in the labour market and societies. Therefore, the ETUC demands a mandate for the International Labour Organisation to start operationalising and implementing the commitment to Just Transition and Decent Work included in the Cancun agreement (2010) and reiterated in Durban.

The principle of 'common but differentiated responsibilities' must take into account historical emissions as well as changing global emissions. The ETUC supports the EU's insistence on clear targets from the emerging countries to cut their emissions in-line with IPCC recommendations.

The work plan on enhanced ambition must address additional mitigation efforts both before and after 2020.

Any new market mechanisms, based on Joint Implementation or the Clean Development Mechanism, must deliver genuine benefits in terms of sustainable development, both for the environment and for the populations and workers in the host countries. 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 global emission reduction pledges. The ETUC therefore recommends that future market mechanisms foresee that 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:

- d. the project promoter's pledge to respect the principles of the OECD's guidelines for multinationals and ILO conventions.
- e. Social sustainability, covering employment (number of jobs created, skills development, quality of employment), equity and access to essential services such as energy services.
- f. The involvement of the trade union organisations in both the host and sending countries in the projects approval procedure.

Following the formal creation of the Green Climate Fund, initiated in Copenhagen and structured in Durban, the ETUC calls on the EU to ensure that money is made available for this fund for 2013-2020 to reach \$100 billion annually as from 2020. Europe must commit funds for this period, a third of the total amount needed. This must be additional to EU member states responsibilities to provide 0.7% GDP in overseas development aid to fight poverty, and not substitute this earlier commitment.

Putting Just Transition into practice in Europe

The ETUC has consistently called for a Just Transition Roadmap to accompany the EU's climate and energy goals and strategies. On 19 April 2012, the Commission published its Communication 'Towards a Job Rich Recovery' (COM(2012)173), which includes a proposal for a set of key employment actions for the Green Economy.

The ETUC welcomes the initiative but is disappointed by the absence of clear commitments and actions to ensure the socially responsible management and anticipation of change stemming from climate and energy policy and the effects of climate change and resource use on our economies. The Communication is extremely vague in this respect, has little ambition, and fails to reflect the negative impact of the economic crisis on the carbon price and consequent investment and revenue.

The Communication is weak on the importance of adaptation, which will require investment in public services such as water management, coastal protection, healthcare, urban planning and nature conservation, and has the potential to

create employment. More focus on adaptation is urgently needed as the on-going economic crisis undermines Europe's preparedness for the consequences of climate change.

Building on the ETUC response to the Green Paper on anticipation and management of change (ETUC Resolution March 2012) and the ETUC's general response to the Employment Package (ETUC Resolution June 2012), and in order to build a European Just Transition Roadmap, the ETUC believes that 5 elements must be used as foundations:

g. Participation

The scale of changes necessary to reach a 80-95% reduction in greenhouse gas emissions by 2050 demands strong engagement from all parts of European society. Social dialogue, negotiation and participation are the fundamental values and tools which underpin and reconcile the promotion of social cohesion, quality employment and job creation and increased innovation and competitiveness in European economies. It is only through consistent and stronger worker participation that change can be managed in a socially acceptable manner, trust is nurtured and anticipation policies can develop.

The Commission's proposed actions are very limited in this respect, the ETUC calls for:

- A legal framework in Europe on the anticipation and management of change (ETUC Resolution, March 2012)
- Follow-up to the 1st high level social dialogue meeting on employment and climate (held on 13 May 2011), bringing together all relevant sections of the Commission
- Equivalent tripartite bodies at national level in all member states
- Sectoral roadmaps in priority areas such as energy supply, energy intensive industries, road transport, construction and domestic energy efficiency, developed in conjunction with the sectoral social partners charting the route to 2050 objectives, with interim targets
- Worker participation in EU R&D activities (e.g. board membership in European Technology Platforms, R&D PPPs, etc.)
- Extension of information and consultation rights to worker representatives to ensure rights related to environmental, sustainable mobility, energy and resource use in their workplaces

h. Job creation and maintenance

As is clear from the current employment situation, Europe urgently needs to cre-

ate significant numbers of new jobs in sustainable companies and sectors. Green and decent jobs can be created through domestic investments in (new) low-carbon technologies, in R&D and innovation, and technology transfer. Together with the impact of austerity measures, the low price for CO₂ (currently 8€/CO₂T) will delay and complicate the investment needed to support the transformation of industries, promote infrastructure modernisation, and, consequently, bring about the transition to a low-carbon economy. For the ETUC, all jobs that contribute to environmentally sustainable development are green, therefore we welcome the broad definition of Green Jobs adopted by the Commission and Employment and Social Affairs Council (EPSCO) and the Commission's Communication. This spans all sectors and industries covering all workers; not only jobs in new emerging sectors, such as renewable energy, waste management and environmental protection services, but also the transformation and creation of jobs in existing sectors as they become "greener". For the ETUC, it is the quality as well as the quantity of jobs that is crucial – jobs must be at least in line with ILO standards on decent work. A roadmap for Just Transition is therefore linked to demand-side measures such as:

- European intervention is urgently needed to ensure a strong carbon price signal (e.g. using set-aside mechanisms). Alongside the carbon market, carbon taxation should be used as a means of regulating the price signal which should not be left to the market alone, subject to conditions notably on social justice.
- The risk of carbon leakage from Europe will increase if Europe stagnates further, which is one of the reasons why the ETUC believes it is essential to proceed without delay to reform the Emissions Trading Scheme (ETS) (including border adjustment measures as a last resort), and tackle unfair trade practices.
- A strong and coherent European industrial policy agenda for all sectors, with a strong social dimension including worker involvement. Competitiveness proofing should not be at the expense of social or environmental progress.
- Adoption of the draft Energy Efficiency Directive ensuring a high-ambition directive, guaranteeing at least 20% increase in energy efficiency and saving in Europe by 2020, with national and European binding targets and mandatory energy auditing. Although it is not as ambitious as desired, the ETUC calls for political support for the Commission's original proposal on an annual 3% binding renovation rate for public building stock.
- Promotion of closed loop manufacturing and a circular economy, through revision of the Eco-Design Directive to include resource efficiency criteria and better implementation and enforcement of European waste legislation
- An investment agenda is urgently needed to create jobs in the short term

throughout the EU's regions and green the economy ensuring competitiveness in the longer term, through the promotion of the transformation and decarbonisation of energy and transport infrastructures, and energy independence.

Ensuring the greening of training, education and skills

Government-led, active education/training and skills strategies are fundamental in the transition to a low-carbon, resource-efficient economy, as recognised by the Commission's proposals. Equal access to continuing education and training is essential to respond to citizens' changing circumstances and aspirations on the one hand and the needs of the labour market on the other. The ETUC considers that all workers should have equal access to education and training at all levels, regardless of their age, gender, employment status, or nationality, and particularly groups with low participation, such as the low-skilled, older workers and workers on temporary or part-time contracts, so that they are able to acquire, update and develop their knowledge, skills and competences throughout their lifetime (e.g. through individual training plans and learning accounts). Therefore the ETUC calls for:

- An individual European worker right to training
- The promotion of sectoral training programmes and training accounts, closely involving the social partners, and common training modules related to green skills, plus the better recognition of non-formal skills and measures to ensure the transfer of collective skills
- An effective policy on vocational education and training, and public education policy demands appropriate funding. The structural funds while important but not sufficient, and the role of the European Social Fund should be guaranteed and increased.

Trade union rights

Respect for labour rights and other human rights is essential to ensure a Just Transition within Europe and globally. Therefore, the Commission must ensure that democratic decision-making and respect for human and labour rights are guaranteed in order to ensure the fair representation of workers' and communities' interests at the national level.

Social protection

Public policy must also provide a safety net through active labour market policies, strong social protection and support measures. A European restructuring framework must include support mechanisms for workers who fall victim to economic change. The ETUC fully supports the call for a social protection floor, to be addressed at the International Labour Conference (June 2012).

The ETUC supports increased unilateral ambition in reducing greenhouse gas emissions in Europe, if supported by a credible social agenda and the necessary funding to assist those sectors and regions which would experience a negative impact on employment in the absence of other large countries moving forward. The ETUC will continue to work with the ITUC and particular affiliated unions in other large countries such as Brazil, Canada, India, Russia, the US and China, to ensure credible commitments of these and other large countries (emitters).

OCTOBER 2012

EUROPEAN COMMISSION'S CONSULTATION ON THE TRANSNATIONAL COMPANY AGREEMENTS (TCAS)

Adopted by the Executive Committee on 17–18 October 2012

Background

In recent years Transnational Company Agreements (TCAs) have become an increasing practice in transnational companies. About 220 texts of different kinds (agreements, protocols, declarations, etc.) have been signed in 138 multinational companies covering more than 10 million workers worldwide. Almost 85% of such TCAs should be defined as European Framework Agreements (EFAs) according to their geographical scope.

The ETUC Discussion Note “More and Better European Company Framework Agreements: Enhancing Trade Unions in Transnational Negotiations with Transnational Companies” (Discussion Note) was submitted to the ETUC Executive Committee on 5-6 June 2012 with the aim of informing the ETUC affiliates about the most recent developments in this field and of clarifying the role of European trade unions in triggering and leading transnational negotiations with multinational companies.

The Discussion Note also draws attention to the opportunities and difficulties concerning the implementation of transnational agreements. In the Annex to

the Discussion Note, the ETUC illustrates the recurrent characteristics of the procedures for negotiating and managing EFAs established by European Trade Union Federations.

The Discussion Note also underlined the idea that EFAs and transnational negotiation should support and enhance national collective bargaining practices and possibly help in disseminating positive collective bargaining results from the countries where industrial relations are stronger to the other European countries. Any kind of misuse of EFAs by the companies aimed at undermining national practices and collective bargaining systems should be countered.

On the 10th of September the European Commission issued the Staff Working Document "Transnational company agreements: realising the potential of social dialogue" (Staff Document). The Staff Document provides some conclusions - largely based on the outcomes of the Group of Experts that was in place from 2009 to 2011 - in order to follow up the invitation contained in the Communication COM(2012)173final 'Towards a Job-Rich Recovery' in which it is stated that the role of TCAs "needs to be better recognised and supported" and invites the European Commission to "develop further action to disseminate good practice and promote debate with respect to Transnational Company Agreements".

The Staff Document considers transnational negotiations with multinational companies to be part of the social dialogue at European level and therefore any initiative to enhance it "requires as far as possible convergence, consensus and joint initiatives of the social partners".

The Staff Document also launches a public consultation aimed at collecting the opinions of relevant stakeholders on the main issues raised in the document and summarised in 9 key questions concerning the general scope and amplitude of a European policy – more precisely, they refer to the actors, legitimacy, transparency, implementation, legal effects and dispute resolution concerning TCAs.

This Resolution is aimed at defining the ETUC position, in order to provide a joint response to the European Commission's consultation on transnational negotiations with multinational companies. This Resolution is also meant to be a reference for those affiliates who wish to submit their responses to the public consultation.

The ETUC's position

The ETUC welcomes the Staff Document of the European Commission as it shows that the exercise carried out with experts and social partners in recent years has achieved the objective of creating a common understanding of the phenomenon and can establish common recommendations for European social partners that wish to negotiate at transnational level.

In particular, the ETUC looks positively on the establishing of an enabling environment for EFAs as they have shown to 'have greater capacity to attain their initial objectives' and they 'may refer to a more homogenous set of rules and traditions' (see also Staff Document, page 5).

EFAs can have positive effects on social dialogue from different perspectives:

- They can promote upwards harmonisation of working conditions throughout the operations of the same transnational company (TNC) in different countries so that higher standards prevail everywhere, with full respect of national collective bargaining traditions;
- They can provide innovative routes for anticipating change in transnational companies;
- In cross-border restructuring processes, they are an instrument for building a larger
- cross-border solidarity, facilitating the cross-border mediation of interests;
- They can support and enhance social dialogue in countries where industrial relations are underdeveloped.

If, on the one hand, EFAs can play a relevant role in enriching industrial relations in TNCs, it is necessary on the other hand to get rid of the uncertainties and obstacles that are currently hampering transnational negotiations. The existing shortfalls in defining the entitled actors and their mandate, in the form and transparency of the agreements, in the link between the implementation of transnational agreements' results and full respect of national collective bargaining traditions and in the provisions aimed at preventing legal disputes can undermine the concrete application and effects of EFAs at national and branch level.

Therefore, the ETUC agrees that EFAs should be supported and further developed, in social dialogue at cross-industry and sectoral level. The engagement of

the European Commission is welcome as long as it respects the autonomy of the national and European social partners in developing transnational negotiations and in setting the rules of the game themselves.

Many ETUFs, together with their national affiliates, have already established (or are on the way to establishing) the procedures in which transnational negotiations should take place (see examples attached). Such procedures have been demonstrated to work and present relevant elements of convergence in envisaging a procedural framework for negotiations at European level.

ETUFs' procedures for transnational negotiations with TNCs have already provided concrete answers to the questions addressed by the Commission in the Staff Document and in particular in clarifying issues concerning:

- The actors entitled to carry on negotiations and sign the agreements;
- How to get the mandate to negotiate and set up the delegations, with strict cooperation between ETUFs and national trade unions;
- The best form of the agreements, in order to ensure the implementation of their legal effects in and in full respect of different national contexts;
- Provisions aimed at preventing legal disputes, also through monitoring systems, first level dispute resolution mechanisms, penalties etc. (without prejudice to the national dispute resolution systems);
- Non regression clauses to be included in all EFAs;
- Proper paths for promoting the transparency and dissemination of information regarding EFAs.

After having studied the current practices and analysed the solutions that parties have worked out for their negotiations, the ETUC is convinced that the ETUFs should lead the negotiations and be the actor entitled to sign an EFA, in strict cooperation with relevant national trade unions through appropriate mandate and negotiation procedures. The ETUFs are already recognised as the actors by the European Commission and their representativeness is established beyond doubt. The Staff Document recognises this implicitly by referring to the link to the European sectoral social dialogue. On the employees' side, the ETUFs are responsible for properly involving the entitled national and company level trade unions in the European negotiations according to the different national practices, and (when required by such practices) the works councils.

European Works Councils and other actors (like IRTUCs – Interregional Trade Union Councils) are able to detect the need/opportunity for a transnational

agreement, initiate the process and/or pave the way for negotiations, help in ensuring the transparency and dissemination of information concerning the agreements towards the workers involved. It has to be stressed that the EWCs do not have a negotiation mandate. It will be up to the ETUFs, in strict cooperation with their national affiliates, to design the procedural rules in which EWCs and other relevant actors can play a role as long as they can enrich the final content of the agreements and improve their implementation.

Such procedures have not been adopted by all ETUFs or not applied in all sectors covered by ETUFs. The ETUC will cooperate with ETUFs in order to encourage the adoption and spread of suitable procedures for transnational negotiations with transnational companies to ensure a coherent setting of rules in different sectors and across sectors (in case of multi-sectoral companies), in line with the principles adopted by ETUFs.

Too often, the nature and degree of binding capacity of an EFA remains uncertain because of the deficiencies of the mandate enjoyed by the employer and/or by the management at national/branch level. Starting and concluding negotiations always depends on free and joint decisions by the parties, but in the absence of shared procedures and rules it can be very difficult to distinguish between proper agreements and mere non-binding declarations, and to ensure the full implementation and legal effects of EFAs.

It cannot be excluded that third parties (national courts or extrajudicial bodies) may be called upon to resolve conflicts or disputes in the interest of either one of the signatory parties or the beneficiaries of the agreements (e.g. an individual employee).

Certain legal implications of an EFA cannot be effectively handled by social partners and predefined optional and viable legal solutions may be of help for faster and more effective negotiations. A procedure leading to a clear mandate for negotiations, as well as the strong involvement of national trade unions could contribute to solve these problems, since it is at national level that TCAs have to be transposed.

Therefore, while preserving the autonomy of the social partners in establishing the rules of the game, we should be aware that certain legally-related aspects of transnational negotiations may need further support in terms of an optional framework of rules and recommendations.

An optional framework of rules for transnational negotiation with multinational companies may still be needed to provide references for those who wish to be engaged in transnational agreements. It is mainly due to some ambiguities that trade unions alone cannot resolve, especially when the negotiating parties desire to achieve binding commitments whose terms are supposed to be applicable in different countries with the same extent and effectiveness.

Collective bargaining is a trade union prerogative whether at enterprise, national or European level. For that reason the legitimacy of actors is a key issue in any European initiative and implementation of agreements has to be done in accordance with existing national practices.

Furthermore, the optional framework should state how conflicts and disputes over EFAs shall be solved and also how to solve disputes regarding the interpretation of the optional framework.

The ETUC looks favourably on the adoption of an optional frame of rules and recommendations for EFAs and largely agrees with the possible contents of such a framework, as described in Staff Working Document. It's up to the European Commission to propose to the European social partners the proper European legal tool for supporting this process, in order to open further consultation and possible negotiation.

We are aware that the most representative employers' associations at European level currently have a negative attitude towards getting engaged in such an exercise, but the ETUC is confident that a different opinion may emerge from many of the multinational companies

operating in Europe and from the sectoral employers' organizations, notably in the context of the sectoral social dialogue. The sectoral social dialogue would be the more appropriate level for developing and implementing such a framework of rules and recommendations.

An optional framework will also help the European Commission and social partners to improve the database on TCAs through better definitions of the agreements according to their scopes, forms, commitments, procedures and effects, as well as to set up a European procedure for the registration of the agreements.

ANNEX:

ETUFs procedures for transnational negotiations with TNCs

The debate around transnational negotiations has been of overwhelming intensity. It is a commonly-held opinion that the absence of rules has made negotiations with TNCs more complex. Autonomy and flexibility work as an incentive in a start-up phase. However, as time passes, the absence of general rules becomes an obstacle to effectively implementing agreements.

The ways in which transnational negotiations are triggered and managed vary greatly. A large number of texts have been signed by EWCs, national unions and European Federations. Sometimes they have negotiated alone, in other cases in cooperation amongst themselves but with different structures and procedures.

Many ETUFs have already developed their internal rules for transnational negotiations with TNCs in order to establish their legitimacy as the negotiating and signatory party from the workers' side.

According to the **IndustriAll** procedures¹, the European federation must be informed of the opportunity for triggering a transnational negotiation in a transnational company. The initiative mostly comes from an EWC but sometimes it comes from a national union or the works council of the company concerned or by the European Federation itself. Current EFAs have been negotiated in companies in which an EWC exists. It shows the relevance of the EWC in creating an enabling environment for transnational negotiations. According to IndustriAll policy, EWCs should be involved from the beginning in order to take advantage of their privileged position in the company.

If negotiations take place, the IndustriAll takes the lead. A delegation of the European federation will be set up and will include a representative from most countries (major players) in which the agreement is supposed to take effect. The IndustriAll delegation will be composed of national trade union officials and unionised members of the EWC, duly mandated by their national organisations. The negotiation team must include at least one representative from IndustriAll European Trade Union and/or the EWC coordinator, and/or a representative of

¹ Please note that similar procedures had been adopted by EMF, EMCEF and ETUF-TLC. The recently established Federation IndustriAll will continue to use the procedure as hereby illustrated.

the trade unions involved, one of whom will lead the negotiations. The IndustriAll Secretary will act as the leader of the delegation and will be the spokesperson. If an agreement is reached, it will be signed by the IndustriAll General or Deputy general Secretary.

The IndustriAll procedure is designed to make the EFA as binding as possible. The procedure is designed to give voice to both the national organisations and the EWCs concerned but also to prevent these small minority groups from definitely vetoing the eventual start-up of European negotiations/agreements. It is for that reason that countries representing less than 5% of the workforce cannot veto the decision to start negotiations. The results of negotiations are endorsed in each country with a qualified two-third majority according to national practices and rules.

Agreements signed by the IndustriAll according to its procedure derive their validity from the IndustriAll statutes and thus bind and commit all the concerned parties. The IndustriAll does not recognise as equally valid agreements signed outside this procedure.

EFFAT has established its own procedure even if its political agenda does not prioritise the establishment of EFA in transnational companies. According to EFFAT procedure, the EWC or the national unions must immediately inform the European federation of the opportunity of negotiating an EFA. In this case, EFFAT receives its mandate from the Executive Committee and a trade union delegation led by EFFAT will be set up. EFFAT's executive committee is to be kept informed about the ongoing negotiations and their outcomes. The agreement has to be approved by national unions and the organisations involved in the executive committee according to the 2/3-majority rule.

According to **EPSU** rules, when a company indicates its intention to start negotiations, or the EWC or the trade unions involved in the company express such a wish, then EPSU procedure should be respected.

The decision to trigger negotiations will be taken in a meeting with the national unions and the EWC. A decision will be taken according to the rule of 2/3-majority in each country. EPSU asks its national organisations to disclose the procedure through which they have voted or decided. However, countries representing less than 5% of the workforce cannot veto the decision to start negotiations.

Mandates can be discussed case by case but, as general rule, a mandate should be endorsed unanimously. If not, the 2/3-majority rule and the 5% threshold will apply. The mandate will specify the scope of negotiations, the composition of the delegation and a non-regression clause.

The EPSU delegation will be made up of a negotiating/monitoring group and a negotiating team. The latter is tasked with achieving an agreement with the company's management. The team can be led either by an EPSU Secretariat representative or by a national trade union official. The negotiating team may include EWC representatives.

The text is submitted to the negotiating/monitoring group. Once approved by the negotiating/monitoring group, the agreement needs to be adopted at national level according to the 2/3-majority rule. Should the agreement be rejected in a given country, none of the unions of that country should sign the agreement.

The agreement will be signed formally by the General Secretary or Vice-General Secretary (or other person duly mandated by them). It will include all the organisations concerned. The latter will have the task (commitment) of implementing the agreement in their own countries according to their own practices and traditions.

UNI-Graphical has also decided on a mandate and negotiation procedure identical to the one in force at the IndustriAll Federation.

Recurrent elements in ETUF procedures:

- Recognition of the EWC role in creating an enabling environment for transnational negotiations. Trade union members of EWCs should be entitled to be part of the European delegation, which negotiates an EFA, as part of the Trade Union mandated negotiators.
- European Federations must be informed of the possibility of starting a negotiation for an EFA. European federations take a leading role and sign agreements.
- National unions must be part of the negotiations but they have to mediate their specific national interests within the procedures adopted at European level.
- The search for consensus is the leading principle. In order to introduce democratic elements into a situation of divergent interests the 2/3-majority rule

applies within each country. Blocking minorities are subject to the threshold of 5% of the workforce.

- Procedures and mandate formation will make the agreements legally stronger and ensure their enforceability at national level.
- Information on the ongoing negotiations and their results are normally communicated to the executive committee of the ETUFs and other coordination bodies. Communication at national level and implementation into national level of collective agreements falls under the competence of the national organisations.

ETUC DAY OF ACTION AND SOLIDARITY FOR A SOCIAL COMPACT FOR EUROPE

Adopted by the Executive Committee on 17 October 2012

The ETUC Executive Committee meeting on 17 October 2012 call for a day of action and solidarity on 14 November 2012, including strikes, demonstrations, rallies and other actions, mobilising the European trade union Movement behind ETUC policies as set down in the Social Compact for Europe.

They express their strong opposition to the austerity measures that are dragging Europe into economic stagnation, indeed recession, as well as the continuing dismantling of the European social model. These measures, far from reestablishing confidence, only serve to worsen imbalances and foster injustice.

While supporting the objective of sound accounts, the Executive Committee consider that the recession can only be stopped if budgetary constraints are loosened and imbalances eliminated, with a view to achieving sustainable economic growth, and social cohesion, and respecting the values enshrined in the Charter of Fundamental Rights.

Fiscal consolidation had a sharper effect than originally estimated by Institutions, including the European Commission and the International Monetary Fund (IMF). Indeed the IMF now admits that they grossly miscalculated the impact austerity measures have on growth. This miscalculation has an unmeasurable impact on the daily life of workers and citizens the ETUC represents, and brings into question the whole basis of austerity policies advanced by the Fiscal Treaty and imposed by the Troika.

The Executive Committee note mounting opposition among citizens and workers in the countries concerned and reaffirm their support for affiliated unions fighting for decent working and living conditions. This situation results from the lack of coordination of economic policies and the absence of minimum social standards throughout Europe. In the context of free movement of capital, this gave free rein to competition between states, in particular in the field of taxation, labour costs and social conditions.

They reiterate that social dialogue and collective bargaining are central to the European Social Model. They strongly oppose the frontal attacks on these rights, at national and European level. The ETUC Executive Committee urgently calls for immediate adoption and transposition of the European social partners agreements currently before Council.

They recall that the Union is treaty-bound to “work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment”. They further recall that the ETUC’s support for the Lisbon Treaty was mainly predicated on the full application of those objectives.

They note that discussions are currently under way among Institutions and governments about the desirability of further treaty changes. A change of direction is necessary and priority should be given to resolving the crisis in line with the three pillars of our proposed Social Compact for Europe, which is gathering increasing support. This is articulated around social dialogue & collective bargaining, economic governance for sustainable growth & employment, and economic, tax & social justice.

They insist that active solidarity, social progress and democratic accountability must be an integral part of the European project. They consider as essential that a social progress protocol to be included as an integral and operative part of any new treaty. The ETUC will evaluate any new step in European integration on this basis.

DECEMBER 2012

TUNISIA: DEMOCRATIC TRANSITION IN DANGER – UGTT UNDER ATTACK

Adopted by the Executive Committee on 5-6 December 2012

The ETUC Executive Committee, meeting on December 5 in Brussels, strongly condemns aggressions against the national trade union centre UGTT, its militants and its assets. ETUC calls on the Tunisian government to fully comply with its obligation to guarantee security to all parties in civil society and to stop backward and reactionary forces seeking to destabilise the country and to block Tunisia's road to democracy. The ETUC Executive Committee calls on the EU institutions to improve and intensify their relations with the Tunisian social partners, recognising that social dialogue is a crucial prerequisite for Tunisia's future.

On Tuesday, December 3, the headquarters of the UGTT came under physical attack from a militia close to the ruling Islamic Ennahda party. The aggressors used stones, swords and teargas bombs. One of their slogans was: «Dissolution and purification of the UGTT».

The aggression took place on the day when the UGTT commemorates the assassination of their historical leader Ferhat Hached. UGTT militants were hurt and hospitalised, among them members of the Executive Bureau. The UGTT has been repeatedly the target of aggressions conducted by both Islamic extremists or partisans of the Ben Ali regime.

The UGTT headquarters, situated on a historical place in the center of Tunis, was the starting point of practically all demonstrations that finally helped to overthrow the Ben Ali regime. UGTT played a central role during the revolution and continues to do so in the transition process. That is the reason why extremists are continuously attacking the UGTT in the capital but also in the rural areas.

The ETUC has consistently supported the UGTT in its activities, before, during and since the revolution, recognising its central importance for democratic development and the preservation of basic human rights including gender equality.

Etuc letter to High Representative of the European Union for Foreign Affairs and Security Policy European External Action Service : http://www.etuc.org/IMG/pdf/17_12_2...

EGYPT: BAD START FOR DEMOCRACY – TRADE UNION FREEDOM UNDER THREAT

Adopted by the Executive Committee on 5-6 December 2012

The ETUC Executive Committee, meeting on 5 December in Brussels, expressed their deep concern at recent developments related to the draft Egyptian constitution. According to the constitution the current authorities seek to impose, trade union pluralism will de facto be prohibited and the state will continue to exercise control on trade unions. The ETUF - that was the transmission belt of the Mubarak regime – would, if the constitution is adopted, continue to function as the transmission belt of the Morsi regime.

The provisions for trade unions and labour law are in stark contradiction with international standards, particularly those of the ILO.

The European Union has a specific responsibility to help foster democracy. The EU Commission and European External Action Service claim that civil society is a part of the EU-Egypt Forum, whose recent meeting was hailed by them as a success. However, the ETUC regrets that it has not been invited to the meeting of the Forum and, worse, that the Egyptian government was allowed to exclude human rights organisations and the new democratic trade unions.

The ETUC calls on the EU institutions, especially the EU Commission, the EEAS and the European Parliament, to revise their policies in the light of recent developments. The ETUC, jointly with the ITUC, will continue to extend its support for a democratic and free trade union movement in Egypt, a cornerstone for the transition towards democracy.

ETUC RESOLUTION ON THE EFFICIENT USE OF NATURAL RESOURCES

Adopted by the ETUC Executive Committee on 5-6 December 2012

1.

The increasing scarcity of the resources that are currently being exploited poses a major challenge to the EU, which must, without further delay, launch a targeted and socially fair policy to improve the efficiency of their use.

2.

As regards the environment, the planet's limitations are becoming more and more apparent by the day, both in terms of ecosystems having to cope with pollution and from the perspective of the depletion of conventional raw materials. From a social point of view, the current level of resource consumption is leading to a sharp increase in the price of commodities, with socially pernicious consequences. Economically, the dependence on these resources and the inefficiency of their use are hampering companies' competitiveness and hitting employment, in particular in sectors that make substantial use of commodities. More generally, the growing signs of the gradual depletion of the natural resources, that are currently being used, calls for us to bring about a paradigm shift based on durability, reuse and recycling, and a radical reorientation of the European model as demanded by the Social Compact for Europe proposed by the ETUC.

3.

Aware of the need for this change in direction, the ETUC wants the Roadmap to a Resource Efficient Europe to help develop the EU economy. With this approach, the ETUC intends to be a stakeholder in the processes that will subsequently be launched. The ETUC highlights the need to quickly formulate scientifically robust indicators that take into consideration the social effects of the envisaged measures. It also stresses the importance of a regulatory framework based on

quantified and verifiable targets. It reiterates the need for a European roadmap regarding a just transition and a transition to a sustainable economy that is compatible with the protection of our climate.

4.

The ETUC regards the transition to an economy that is efficient in its use of natural resources as one of the essential cornerstones of a targeted policy to exit the crisis. According to a study commissioned by the European Commission, every 1% reduction in resource use could be worth €23 billion and could generate 100,000 to 200,000 new jobs¹. Increasing resource efficiency is a crucial plank of a policy to support the competitiveness of European companies by creating jobs and the political authorities must make it a top priority.

5.

However, the process of transition of the economic model will only be fully legitimate if it is based on a strong social dimension involving the following aspects:

- a. Active education, training and skill development strategies – mainly launched at the initiative of the public authorities – that prepare current and future workers for this development.
- b. The creation of stable, quality jobs with decent working conditions. In this regard, special attention should be paid to occupational health and safety, and in particular to emerging sectors such as recycling.
- c. A social dialogue that gets workers involved in the transition process.
- d. In this regard, the ETUC highlights the existence of many initiatives relating to the ‘greening’ of the workplace that have been proposed by worker representatives, and calls for an extension of the powers of European works councils to cover environmental issues. Mandatory company reporting on their environmental, social and corporate governance (ESG) performance is crucial to allow transparency and effective worker information and consultation procedures.
- e. Solidarity mechanisms to offset the adverse impact of the transition for certain categories of workers and for socially vulnerable groups.
- f. Social tariffs guaranteeing everyone access to energy and water.

6.

Social fairness in this transition is also a factor in taxation policy. The ETUC has long argued for taxation to be used as a means of regulating the price signals

¹ http://ec.europa.eu/environment/enveco/studies_modelling/pdf/exec_sum_macroeconomic.pdf

needed to promote energy and resource efficiency, which should not be left to market mechanisms alone. That said, the ETUC strongly defends progressive taxation, ensuring the redistribution of wealth. The need to reform taxation to improve resource efficiency should not undermine universal and affordable access to basic goods and services such as water and energy.

7.

The ETUC calls on the EU to address the impact of the liberalisation of the gas and energy markets in Europe on vulnerable social groups and their welfare, and to implement measures that curb rising energy poverty. The ETUC reiterates its demand for a strong EU energy policy, including the following characteristics:

- underpinned by public regulation and control,
- promoting the modernisation of Europe's energy grid and infrastructure,
- developing connections between member states,
- negotiating collectively with external energy suppliers, and
- guaranteeing social partner involvement.

8.

In accordance with the International Trade Union Confederation resolution adopted in Rio on 13 June 2012, the ETUC calls for natural and energy resources to be regarded as common goods whose preservation and democratic management must be ensured by the public authorities. The ETUC also reiterates that access to resources, energy and water are fundamental rights that the European Union and its Member States must safeguard and guarantee. The ETUC opposes policies pushing for further privatisation and commodification of natural resources, especially water.

9.

Public authorities have a key role to play, in particular by setting an example through the systematic use of Green Public Procurement, based on selection criteria reflecting a high level of environmental protection. The ETUC reiterates that the current proposed reform of public procurement envisaged by the European Commission must ensure that social and environmental considerations in public procurement procedures are taken into account. While it is only optional for the public authorities to take account of social and environmental considerations, the reform should promote sustainable development. Although the ETUC welcomes the fact that the lifecycle is set to become a criterion for the allocation of public contracts, it regrets the fact that the Commission only envisages this for the environment and has not yet defined a com-

mon methodology for setting it up. The ETUC advocates the rapid definition of a European methodology and the inclusion of social and employment dimensions in calculating the cost of a lifecycle.

10.

Public authorities should also strongly drive both private and public research and development activities, in particular with a view to supporting technological innovation. The ETUC recalls the Europe 2020 objective of at least 3% GDP to be allocated to R&D activities. The consolidation of public funding of research and innovation activities constitutes one of the main aids to this transition, but only on condition that research agendas are targeted towards the common good. Support for research in the private sector should avoid unfair profits and be conditional upon commitments regarding job creation in Europe.

11.

The current economic model, which is characterised by the existence of private oligopolies and speculative practices regarding commodities, appears socially unfair and politically illegitimate. The ETUC calls on public authorities to combat these practices and to support alternative economic models to individual ownership, for example leasing and forms of collective ownership of goods.

12.

The regulatory framework is crucial for stimulating a shift in resource efficiency. Greater coherence is necessary between European policy initiatives and particularly in European legislation on product policy. The ETUC supports the development of a framework directive bringing together the various sectoral and product rules and standards. The responsibility of producers and distributors should be developed, in particular by expanding the scope of the Ecodesign Directive to cover issues of efficiency in natural resource use. Extending the length of product guarantees and imposing obligations in terms of product disassembly and recyclability are measures that should be introduced into the text of the directive. These legislative developments should be based on an analysis of the life cycle of consumer goods to take into account all resources used, from the extraction of raw materials, through to the destruction or recycling of the product. This is a crucial pillar of a proactive European industrial policy agenda, for which the ETUC has repeatedly called, and is urgently needed to ensure that industrial sectors are restructured to minimise their impact on the environment and made accountable for their resource use.

13.

Health and environmental problems of the past linked to extractive activities are yet to be resolved in much of Europe, in particular by ensuring adequate compensation is available to the workers affected. The ETUC calls for:

- action to ensure a total ban on asbestos in Europe, and support and training for workers involved in asbestos removal and disposal (notably in the construction sector);
- the creation of a European health surveillance system for workers exposed to harmful substances in the workplace;
- better EU research coordination on industrial and occupational diseases;
- and, all new/future planning permission applications to be subject to effective environmental and public health assessments and based on the precautionary principle.

14.

The ETUC will play an active role in the European Resource Efficiency Platform and other forums to ensure that these concerns are integrated into European resource efficiency policy.

15.

Together with its affiliates, the ETUC will further develop its work on worker-led resource efficiency, notably through future Green Workplaces projects at company, sectoral, regional and national levels, and the broad dissemination of its Green Guide for union activists.

ETUC POSITION ON FREE MOVEMENT OF LABOUR FOR CROATIA

Adopted by the Executive Committee on 5-6 December 2012

On 1st July 2013 Croatia will join the European Union.

The ETUC Executive Committee calls on the EU Member States to refrain from applying any kind of temporary measures to block or limit the free movement of Croatian workers within the European Union.

The ETUC reaffirms that free movement and fair mobility are among the top priorities set within its political principles and that all four fundamental freedoms of the common market (i.e. movement of goods, services, capital and people) should be given equal importance.

The ETUC also considers that the relatively small size of the Croatian labour market should enable its integration without major difficulties and therefore sees no objective reason to postpone free movement of labour for citizens of Croatia.

Consequently, the ETUC Executive Committee calls on the European institutions and the Member States to ensure fair mobility, equal treatment, the prevention of social dumping, and the social integration of Croatian workers, and notably for cross-border workers who would be particularly penalized by temporary measures, which would keep them in a condition of irregular employment.

The ETUC Executive Committee also reaffirms its opposition to the application of the third phase of temporary measures against free movement of workers from Romania and Bulgaria.

In the Member States where temporary measures will be or have already been introduced, they must be replaced as soon as possible by policies aimed at the putting in place of the proper conditions for free movement, fair mobility and equal treatment in the labour market.

ECONOMIC AND MONETARY UNION RESOLUTION ON THE BANKING UNION

05

Adopted at the Executive Committee on 5-6 December 2012

The ETUC welcomes the conclusions of the October 2012 European Council on a European Banking Union as an important building block towards enhanced structures of European economic governance and deeper integration of the euro area. The banking union must enable European economic policy to break the negative feedback loop between the debt of sovereign states and their banks' balance sheets, in which private debt and public austerity have been mutually re-enforcing each other since almost three years. Its main objective must be to regain the primacy of policy over financial markets by creating solutions that would help to reduce the unsustainably high interest rate spreads that have rattled the countries in the periphery of Europe. The EU must urgently re-establish a level playing field for all of its members, preserve the single market for financial services and provide greater stability in the European Monetary Union (EMU).

The ETUC believes that for a banking union to achieve its objectives, a number of important issues must be addressed by the European legislation process ahead. In particular, these concern the architecture of the role of the ECB in the planned Single Supervisory Mechanism, its relationship with the European Banking Authority (EBA), access to ESM rescue funds for troubled banks, deposit guarantee schemes, and a banking resolution framework and fund.

Moreover, the ETUC is convinced that a European banking union can become fully functional only if and when issues related to the structure of the banking system and to the moral hazard herein are tackled simultaneously. A single supervisor and a resolution authority must be accompanied by a structural reform of banks, which should limit the ability of commercial banks to engage in certain kinds of investment banking activities. In addition, the ETUC demands that investment banks' ability to leverage should be limited to their own funds, which in turn would limit the systemic risk for citizens. Moreover, banks must

be prohibited from engaging in any kind of shadow banking activities. The ETUC recalls that the banking sector in Europe is heterogeneous and that many regional, cooperative and savings banks are serving the real economy at best by taking deposits, providing loans and ensuring the transfer of payments.

The ETUC therefore welcomes the thorough analysis made by the High-Level Expert Group on Reforming the Structure of the EU Banking Sector, chaired by Erkki Liikanen (HLEG or Liikanen Report), that robust structural reform of the banking sector would boost stability and growth in the EU. The report's diagnosis must now be translated into a comprehensive EU policy on banking reform that eliminates the flagrant distortions and delivers an efficient and stable banking system in the interest of the real economy, for enterprises and households alike.

The role of SSM and ECB

The ETUC welcomes the new role for the ECB which lies in the ultimate responsibility in SSM for specific supervisory tasks related to the financial stability of all banks in the euro zone, though national supervisors will continue to play an important role in day-to-day supervision and in preparing and implementing ECB-SSM decisions. For the ETUC, the proposals rightly gear to the effective disappearance of the distinction between home and host operating in the euro zone, since the ECB will have direct oversight of all 6000 euro zone banks, to enforce prudential rules and perform effective oversight of cross border banking operations into the euro zone. The ETUC believes though that it is impossible to supervise all 6000 banks, including very small local savings banks, with one single institution. In practice, the SSM will heavily depend on the cooperation with national supervisory authorities.

The ETUC supports the provisions in the draft Council Regulation that accord the ECB the right to authorize a bank, to withdraw the banking license, to remove the management of banks, to request any information on banking operations, to undertake on-site inspections and to impose sanctions. Supervision will be based on the common rules for capital requirements as set out in the two pieces of legislation that implement the Basel III agreements at EU level, the Capital Requirements Directive (CRD IV) and the related Regulation (CRR), both of which are currently negotiated between the Council, the EP and the Commission.

Financial supervision is linked to the exercise of sovereign power. This is why the ETUC believes that supervisory powers need to be properly defined as well as to become subject to judicial review and appropriate accountability. Inadequate or wrong actions by the supervisor cause the liability on the part of the State. Establishing a single pan-European supervisor is linked to the transfer of sovereign powers to the EU level with potential liability for the Member States involved. In the case of the SSM, decision making is shifted to the EU however the accountability still rests locally as the national governments retain responsibility for resolution and deposit insurance, which the ETUC believes is not an optimal outcome.

The ETUC warns against conflicts of interest that can arise between the mandates and objectives of monetary policy and those of financial supervision, e.g. when one side has an interest in keeping the banking system afloat so as to avoid losses to the ECB balance sheet to incur, while the other side is about to resolve a bank after a red alert. Becoming the single supervisor would give the institution an enormous concentration of powers, since it would be in charge of three important and related areas: monetary policy, banking supervision and – via its key role in the European Systemic Risk Board (ESRB) – macro-prudential supervision. This could lead to a situation where the ECB is controlling the impact of its own actions which is unacceptable for the ETUC. Additionally the ETUC warns against the loss of reputation if the ECB fails as a supervisor it will influence the credibility of its monetary policy.

The ETUC demands therefore firewalls to be built in to ensure the separation of the ECB's supervision tasks from its monetary policy tasks. Members of the SSM Supervisory Board must include others than those of the Governing Council appointed by the Executive Board of ECB. The ETUC believes that banking supervision is an essential element of democratic control and that the EP must be given a role in the selection process to include experts of civil society.

The ETUC regards it as perfectly legitimate for the ECB as creditor of the banks to have a close look into the books of its borrowers; however the supervision itself must become more transparent. The ECB in its role as a single supervisor must become fully accountable to the European Parliament. A special Committee of the EP would need to be set up to execute a controlling function over the ECB-SSM.

ECB-SSM and EBA, EU-27/17

Two years ago, the EU adopted a number of Regulations on the European System of Financial Supervision (ESFS), establishing European Supervisory Authorities, including the European Banking Authority EBA, which came into force on 1 January 2011. The ETUC contributed to the legislation process in submitting amendments to the draft regulations to the European Parliament. At that time, the ETUC criticised the national prerogatives in the new system of financial market supervision and proved right. The future SSM appears better suited to fulfil an effective cross-border supervision of the banking system than the EBA, which suffers both from financial restrictions depending on staff and budget allocation by the Commission and from the willingness of national banking supervisors to cooperate.

The modification of the existing Regulation 1093/2010 on the establishment of the European Banking Authority stipulates that EBA will remain as a common banking regulator to develop a single rule book and a single supervisory handbook to preserve the integrity of the single market and ensure coherence in banking supervision for all 27 EU countries. The ETUC demands that EBA must ensure the consistency of its interpretation and implementation inside and outside the European Union.

The ECB is recognized as a “competent authority” (in addition to the national supervisory authorities) for the purpose of the supervisory function. However the ETUC warns against a situation that may arise when the EBA will be unable to impose binding decisions on the ECB, while it could force sovereign states to comply when it mediates in a dispute. The Commission argues that, in the rare event of the ECB failing to comply voluntarily, banks would be bound to comply with EBA decisions. Additionally, EBA decisions concerning regulatory matters (binding technical standards, guidelines and recommendations, decisions to reconsider restrictions on financial activities) and budgetary matters will continue to be taken by the EBA Board by qualified majority of its members. Voting on action in emergency situations will also remain unchanged (taken by simple majority). Notwithstanding these safeguards, the ECB-SSM will come to exercise a very powerful, possibly dominant, role in EBA policy-making.

The ETUC believes that close cooperation between SSM and EBA is insufficient to provide equal treatment between euro area countries and those

outside. The ETUC believes that supervision of banks should follow the same rules and be of the same quality everywhere in the Single Market. The ETUC is convinced that the objectives of maintaining financial stability in an interconnected financial market and of preserving the single market for financial services require that the geographic scope for an EU supervisory mechanism be the entire EU-27. However the ETUC regrets the reluctance of several Member States to cede sovereign powers in the area of banking supervision, which means that the new regime will not encompass the EU-27, but most likely a sub-group of 17, and lead to a two speed Europe in an essential area of the Single Market.

To safeguard the interests of all EU-27 states, the ETUC believes that the voting powers within EBA must be adjusted to prevent EMU countries to overrule those outside. The EBA powers when dealing with matters affecting all EU member states will be strengthened and the voting regime changed, making it more difficult for individual member states to vote against decisions. The impact of the SSM on the operational functioning of ESFS will be examined in the forthcoming review on the functioning of all European Supervisory Authorities to be presented by the Commission at the beginning of 2016.

Recapitalization by and direct access to liquidity of ESM for troubled banks

The euro zone summit in June agreed to let the ESFS/ESM rescue funds be paid to Spanish banks directly instead of via the government, thereby sheltering the weakened sovereign from taking over ever more bad loans and private debt held by the banks, and paved the way for ECB supervision. Against the interpretation of some, the Commission proposals of 12 September and the European Council conclusions of 18-19 October have made the adoption of SSM a prerequisite to enable a direct recapitalization of banks by the ESM. The ETUC is urging the European institutions not to delay the necessary decision making to establish the SSM and make it fully operational as soon as possible in 2013.

The ETUC firmly rejects the view of certain governments who have insisted that the ESM may only deal with troubled banks in the future and should abstain from 'legacy debt' of banks that have existed prior to the enactment of the ESM. Creating a level playing field requires that all banks that are still fundamentally solvent should have access to the ESM. Insolvent 'zombie' banks

however should no longer be let alive artificially. Their resolution must be enacted swiftly, and financed by banks' own resolution funds and shareholder bail-ins. Their recapitalization through European funds should be excluded.

While the ESM can buy government bonds in the primary markets of those governments which have already sought its assistance and are, therefore, following the related harsh social conditionality, a direct intervention by the ESM to recapitalize banks could potentially avoid these hardships. However the ETUC demands that any recapitalization of private banks through public money must in turn lead to a transfer of proportional entitlements to ownership.

The ETUC believes that the introduction of SSM would directly address the core of the current crisis in two ways. By enabling the ESM to rescue troubled banks, governments of their home countries would no longer be coerced to take on ever more private banks' debt and thus be in a position to avoid the most brutal forms of budget austerity. As an indirect effect, this could ease the borrowing of governments on financial markets by pushing interest rates down and would be more effective than the ECB's current interventions in the secondary markets. Secondly, the SSM could withdraw banking licenses and start to resolve financial institutions that are in fact zombie banks because technically insolvent, but still alive.

The ETUC demands a strong SSM that works against the prevailing sentiment of uncertainty in the bond markets that has pushed up interest rates to unsustainable highs for some, while bringing down refinancing costs for others, adding to the already existing macro-economic imbalances. It is also hoped that a sweeping banking supervisory authority will help change the most harmful practices in the sector, such as strong incentives for traders and top management to take excessive risks and to exert pressure on bank employees to sell products to their customers who are hardly in their interest. The ETUC therefore welcomes the proposals from the Commission as a step in the right direction that could achieve good corporate governance, high quality customer services and enhance working conditions in the sector. Bank employees must be fully involved in this and consulted with prior to any steps that are being taken.

Completing banking union

While the above sets out the necessary requirements of a functioning banking union, the ETUC believes that they are far from being sufficient. For the

'imperative to break the vicious circle between banks and sovereigns' (Euro Zone Summit Conclusions of 28 June 2012), deposit guarantee schemes and banking resolution frameworks must be put in place without further delay. These would set up the common instruments that are required for a true crisis management in EMU to function.

It is imperative for the ETUC that the blockage by the Council of negotiations on the Directive on Deposit Guarantee Schemes [recast] be lifted and the legislative procedure completed so that the Directive can be applied by each member state. Uniform, common and stringent requirements for all national deposit guarantee schemes must ensure that bank-runs are avoided and customers re-ensured that their money is safe. The Council must ensure that the amount of insured deposits for each individual is raised from 50.000 to 100.000 euro, and higher amounts be guaranteed in particular cases such as insurance redemption, inheritance or real estate sales. In addition, all banks should be obliged to provide for a security fund of 1.5% of the total amount of their deposits. National systems which function as institutional guarantee systems should not be negatively affected by a European standardisation of deposit guarantee systems

The Directive on bank resolution and recovery adopted by the Commission on 6 June 2012 should be adopted as soon as possible to open up the creation of a single European recovery and resolution regime over the medium term which is essential within the banking union. Mechanisms of full protection of savings and tools of resolution and recovery that exist in certain banking sectors (e.g. in savings banks and mutual banks) should be recognized as constituting efficient safeguards against costly bank bail-outs by the taxpayers. Nevertheless, the ETUC demands the banking union to be underpinned by a fiscal backstop that is sufficient to restore confidence in the financial system.

For the banking union to become an important building block towards a resilient EU banking sector, many problems need to be resolved in the structure of the banking system. The most important would seem to make the construction of a banking union conditional on the resolution of the universal banking model of 'Too big to fail' banks. The recommendations of the High Level Group of Experts chaired by the President of the Finish Central Bank, Erkki Liikanen, must be followed-up by the Commission and be used for broad-based consultations with the social partners and civil society at large on the future of the European banking system.

The ETUC demands that these subsequently lead to EU legislation that addresses moral hazard at the European level and the implications on taxpayers' money and distortion of activity and competition by "Too big to fail" banks. Fighting the creation of asset bubbles and the fact that many banks in Europe are above optimal size and seem "beyond resolvability" is tantamount to the political acceptability of the Single Market for financial services and cross-border bank bail-outs. The ETUC calls on the Commission to present legislative proposals in due course and to resist pressure from the banking sector to water down the proposals of the Liikanen Group.

ETUC POSITION ON THE SINGLE MARKET ACT II

Adopted by the Executive Committee of 5-6 December 2012

Introduction

Celebrating the 20th anniversary of the Single Market, the European Commission launched in October 2012 the Single Market Act (SMA) II¹ as a follow-up to the first SMA presented in April 2011. The SMA II focuses on a second set of 12 levers to drive growth and develop the Single Market in four areas: 1) developing fully integrated networks in the Single Market; 2) fostering mobility of citizens and businesses across borders; 3) supporting the digital economy across Europe; and 4) strengthening social entrepreneurship, cohesion and consumer confidence.

ETUC position

The ETUC regrets that the Commission's internal market strategy continues to be based on further liberalisation and privatisation and appears to ignore the importance of public services. The new SMA does not contain any proposals to strengthen the social dimension. The ETUC has always insisted that the European Single Market must serve the workers and citizens by guaranteeing workers' rights and social protection. The Single Market is not an end in itself, but a tool for achieving social progress.

The Single Market will never be complete if the social dimension is not taken seriously. The Single Market should reflect a social market economy aimed at full employment and social progress, and a high level of protection and improvement in the quality of the environment and the promotion of social justice and protection as set out in the Treaty.

1 COM(2012) 573 final

A Social Progress Protocol

In the SMA I, the Commission made a commitment to clarify the exercise of freedom of establishment and the freedom to provide services alongside fundamental social rights, which resulted in the proposal for the Monti II Regulation. Although the ETUC welcomed the withdrawal of the proposal, the problems created by the judgments of the European Court of Justice (ECJ) remain. The Commission should therefore honour its commitment by making it absolutely clear that all free movement provisions of the Treaty must be interpreted in such a way that fundamental social rights are respected. The ETUC believes that the only solution is to attach a Social Progress Protocol to the Treaties ensuring that fundamental social rights take precedence over economic freedoms.

Developing fully integrated networks

The financing of public services has to be ensured as an investment in the future of European social market economies. Developing fully integrated networks for rail, maritime, air transport and energy, by pursuing vigorous enforcement of the competition rules alone will not guarantee the quality of services nor universal access to these services.

The ETUC has already made it clear that the development of an internal market for transport requires a strategy that takes into account not only economic and environmental challenges but social ones as well². The Commission should impose rules based on safety, quality, accessibility and respect for working conditions and the environment on all operators in the European transport market. For this, it is necessary to move away from the current ideological approach, according to which the liberalisation of the transport sector is a key principle, when experience already shows that a free market approach does not necessarily lead to an effective running of public services (for instance the impact of liberalisation measures in the energy sector).

The ETUC therefore urges the Commission to adopt a radically new approach, taking into account the general interest dimension of the transport sector, and to look at labour standards, not as a barrier to further liberalisation, but as an essential component for the quality and the sustainability of the sector. Free

² ETUC resolution on the European Commission's Transport White Paper adopted on 19-20 October 2011

markets alone do not generate sufficient incentives to ensure the fulfillment of public service obligations.

The ETUC is reiterating its call for a moratorium on liberalisation until a proper evaluation of previous liberalisations and privatisations has been conducted.

The ETUC demands an effective European energy policy promoting a smart grid for European electricity and gas production and transmission to ensure a sustainable energy mix with a higher share of renewables, guaranteeing security of supply and affordability for industry and household consumption. This demands a re-evaluation of the Commission's strategy on the liberalisation of energy markets with an increased role for European and national public authorities in energy markets, through a European Energy Agency. National planning and the initiation of new major and decentralised energy production projects are needed to ensure the long term supply of electricity, as well as investment in energy efficiency, improved energy technologies and the social anticipation and management of related industrial change.

The ETUC calls for measures to prevent negative social impacts of rising energy prices, the priority being to reduce energy needs by investing in energy efficiency for social housing and affordable low-energy alternatives for vulnerable consumers. The ETUC urges the Commission to assess the social consequences of the climate change package within the context of the opening up of the electricity and gas market, addressing in particular the impact on vulnerable consumers and electricity public service obligations. Especially, due to the possible increase of 15 to 20% in electricity prices by 2020 as a consequence of the climate change package. Universal access to essential energy services needs to be secured to all people living in Europe, notably through the provision of social tariffs and through public services. Therefore, enforcing the implementation of the requirement for universal and affordable access to services in existing EU sectoral directives is required, such as through additional provisions on access to a minimum supply of energy, to secure the energy provision of the poor and protect them from power disconnection through establishing a right to energy supply.

Fair mobility

A European labour market requires European 'rules of the game', combining open borders with adequate protection. These key conditions are equal wages and working conditions for work of the same value on the same territory;

respect for national collective bargaining and indispensable industrial relations systems and dynamic tools to manage change in a democratic way; equal access to social benefits for all workers; proper instruments and tools for the monitoring, enforcement and application in practice for stakeholders at all relevant levels, including the social partners.

The EU needs a rigorous commitment from its Member States to base the free movement of workers provisions of the Treaty on the host country principle (equal treatment and non-discrimination of workers and companies in the place where the work is done).

The ETUC welcomes the aim to improve labour market mobility and to make EURES more effective. However, it must not be reduced to a simple recruitment, job matching and placement tool, whilst neglecting its role as an advisory and information tool for mobile workers and a forum for cross-border social dialogue, which is fundamental to removing obstacles to mobility and preventing social and wage dumping across borders.

The ETUC agrees that a European solution is needed for the issue of the portability of supplementary social security rights, which is a real obstacle to mobility. Such a solution, however, must respect the role of the social partners and collective bargaining agreements. It is crucial that the rights that have been acquired cannot be lost.

Access to finance

The Commission argues that the cross-border mobility of businesses is hampered by difficulties in funding new business projects and the administrative burden, in spite of the fact that the Commission has already taken action on the bulk of the legal acts that it considers burdensome. Furthermore, the administrative burden of regulation cannot be treated in isolation from the benefits to society.

With regard to facilitating access to long-term investment funds, the ETUC is of the opinion that this should be constructed in such a way that the key principle of neutrality towards the public or private nature of the ownership of investment projects is being strictly respected. In practice, this implies that these investment funds have to be open to 100% public initiative investment. The latter would also help in countering the ongoing and perverse trend of public investment cuts, driven by the strategy of austerity.

Although access to finance has become more difficult, the problem is not limited to long term investment only. One important characteristic of the crisis in Europe is that many companies have restricted access to credit and/or are ridden with high debt loads. This implies that companies try to replace credit with accumulated profit retention. By deregulating wage formation systems and promoting a downwards flexibility of wages, European and national policymakers are currently giving companies the possibility to rise their profit margins at the expense of the workers. This policy fosters neither competitiveness, nor investment. This is a policy that is not only creating new and even higher inequality; it is also a policy that threatens to undermine aggregate demand. The Commission should urgently address this problem. Corporate governance and insolvency rules

The ETUC regrets the Commission's lack of vision for a sustainable corporate governance model in the Single Market. EU company law overemphasizes businesses' and shareholders' needs to the detriment of the interests of workers and other stakeholders. Furthermore, the current piecemeal approach and lack of global vision for EU governance lead to regime competition between the Member States and short-term business strategies throughout Europe. EU company law should focus on promoting a coherent, sustainable and forward-looking corporate model, including an EU framework instrument on workers' involvement.

The ETUC is in favour of a revision of the EU insolvency rules. The protection of workers against the threat of insolvency needs to be improved and the position of workers in the case of insolvency needs to be strengthened. Furthermore, "regime shopping" must be avoided so that companies cannot seek out the national insolvency regime which is the most disadvantageous to worker interests.

Financial coordination and tax justice

A Single Market requires effective regulation and supervision of the financial sector. The Commission should ensure that it contributes to sustainable economic growth and social development.

Measures should be taken at European level to close tax havens, prevent tax evasion and fraud and restore tax justice between capital and labour and rich and poor. There is a need for greater tax policy coordination in order to avoid tax and regime competition, which undermines welfare states, social protection, and the financial stability of public expenditure. The primary objective of the harmoni-

zation of corporate tax law and minimum rates of taxation for companies should be the stabilization or increase of public revenue.

The ETUC is also reiterating its call for a financial transaction tax to ensure that the financial sector contributes fairly towards economic recovery, since substantial costs and consequences of the financial crisis are being borne by the real economy and in particular, the workers and taxpayers.

Restructuring

The ETUC demands concrete action from the Commission to create a strong legal framework on the anticipation of change: 1) preparing and enabling workers is the key role of education and training; 2) maintaining and creating jobs is the key role of industrial policy and a sound public investment policy; 3) information, consultation and participation play a key role in giving workers a voice and place in strategic decisions-making; 4) within a European legal framework there should be a key role for collective bargaining; 5) providing a safety net is the key role for active labour market policies, social protection and support measures.³

³ ETUC Resolution "Anticipating change and restructuring ETUC calls for EU action", March 2012

ETUC POSITION ON DIRECTIVE 2004/25/EC ON TAKEOVER BIDS

07

Adopted at the Executive Committee on 5-6 December 2012

Directive 2004/25/EC on takeover bids is currently under review. A takeover bid should be understood as a public offer to the holders of a company to acquire all or some of their securities with a view to acquire control of that company. The ETUC challenges the philosophy underlying the Directive, according to which takeovers enable needed restructuring and improve the efficiency of the European economy, and should thus be promoted.

The ETUC does not support the further liberalization of the current legal framework, in particular having regard to hostile takeovers. It is therefore essential that adequate defensive mechanisms remain in place. With regard to the board neutrality rule, it should be clarified that the board of the offeree company must act in the long term interest of the company and its stakeholders.

Furthermore, a complete rethinking of the provisions on workers' rights is urgently needed, with a view to bring the Directive in line with the rest of the Community acquis. In particular, the ETUC calls for:

- a clear reference to Directive 2001/23/EC on safeguarding of employees' rights in the context of transfer of undertakings;
- effective sanctions. In case of serious violations of employees' rights, legal effects of the takeover bid should be suspended until all the obligations have been adequately fulfilled;
- consultation rights with both the offeror and the offeree, with a view to reach an agreement before any decision can be finalized;
- the takeover Directive should grant employees' representatives a right to expertise. The cost should be borne by management and only employees' representatives should be able to select the most appropriate experts.

Annex 1: Background

A takeover bid should be understood as a public offer to the holders of a company to acquire all or some of their securities with a view to acquire control of that company. In June 2012, the Commission has published a report on the application of Directive 2004/25/EC on takeover bids, making recommendations for possible revision. This report is based on the findings of a study, to which the ETUC contributed in October 2011¹. Member States, the European Parliament, the European Economic and Social Committee and other interested parties are now invited to submit their views. Accordingly, the European Parliament is about to start discussions in an own initiative report.

In this context, the ETUC wants to positively contribute to the debate with concrete proposals for a revision. In spite of takeovers having a significant impact on working conditions throughout Europe, the Directive contains very weak provisions on workers' rights. A revision of the Directive is clearly required, with a view to change the current shareholder value model into a broader stakeholder approach. This means in particular that the provisions on workers' rights need considerable strengthening.

The impact of takeovers on stakeholders and the EU economy

Takeovers on the whole must be seen critically with respect to their impact on stakeholders and the economy. The main benefactors of takeovers appear to be the shareholders in the company being taken over (the so-called "offeree company") and the top managers of the acquiring company (the so-called "offeror company"). Typically, share prices of companies subject to a takeover bid increase by 20-30 percent in the short run. Top managers in the acquiring company also reap substantial benefits, since remuneration is to a great extent determined by the size of the company managed, and can thus be expected to rise after the takeover is completed. Top managers in the company being taken over may also benefit substantially, to the extent that they have "golden parachutes" or own shares or options in their own company.

These benefits however do not appear to be shared by employees and society as a whole. Takeovers frequently involve significant decreases in employment

¹ http://ec.europa.eu/internal_market/company/takeoverbids/index_en.htm

levels and working conditions. One of the key motives for many takeovers is cost reduction through reducing employment levels and benefits (such as wages and pension benefits), increasing work intensity and reallocating production to “cheaper” sites. Research on the employment impact of takeovers also shows that, on average, employment declines in a 2-3 year period after the takeover.

Although not yet systematically investigated, the high levels of debt taken on to finance many takeovers, e.g. for very large private equity takeovers (so-called “mega buyouts”), should also be mentioned as a cause of concern. The financial pressure on highly leveraged companies to meet interest payments during crisis conditions may lead to greater reductions in employment and investments (such as research and development) compared to companies with lower debt levels. Many of these companies also face substantial difficulties in refinancing their debt in the near future.

A final point is that many companies that are acquired are better-performing, faster growing companies. The view in economic theory that takeovers (particularly hostile takeovers) are primarily a corrective for underperforming companies by replacing management therefore does not appear correct.

The key assumption underlying the takeover directive, namely that takeovers are on the whole in the interests of the European economy and should therefore be encouraged, is therefore challenged by the evidence. Many takeovers appear to be motivated instead by “empire building”, that is, the interests of top managers in increasing the size of the company they run. The tendency of takeovers to occur in waves at the peak of business cycles (when cash levels at companies are high and bank lending conditions generous) also suggests that takeovers are to a large extent determined by financial as opposed to operating factors.

In the review report, the Commission considers that the Directive is working satisfactorily. Nevertheless, some “clarifications” are envisaged with regard to the concept of “acting in concert”², national derogations to the mandatory bid rule³, board neutrality and breakthrough rules⁴.

2 Art 2 (1) (d) of the Directive defines acting in concert as the cooperation with the offeror or the offeree on the basis of an express or tacit agreement aimed at acquiring control of the offeree company or at frustrating the successful outcome of a bid.

3 Art 5 stipulates that if an entity acquires control over a company, it is obliged to make a full takeover bid for all the remaining voting securities at an equitable price.

4 The board neutrality rule provides that during the bid period, the board of the target company must obtain prior authorisation of the shareholders before frustrating the bid (Art 9). The breakthrough rule neutralises pre-bid defences such as share transfer or voting restrictions during a takeover (Art 11).

The ETUC does not support further liberalization of the current legal framework, in particular having regard to hostile takeovers. It is therefore essential that adequate defensive mechanisms remain in place. With regard to the board neutrality rule, it should be clarified that the board of the offeree company must act in the long term interest of the company and its stakeholders.

An inadequate protection of employees' rights

The Commission acknowledges in its report that employee representatives are not satisfied with how the takeover bids Directive protects the rights of employees and that it will pursue its dialogue with a view to exploring possible improvements. The ETUC very much welcomes the broadening of the discussions to include workers' rights and stresses that cosmetic changes will not suffice. A complete rethinking of the provisions on workers' rights is urgently needed, with a view to bring the Directive in line with the rest of the Community acquis.

In particular, the ETUC calls for:

- a. A clear reference to Directive 2001/23/EC on safeguarding of employees' rights in the context of transfer of undertakings:

Directive 2001/23/EC is one of the cornerstones of European labour law. According to this instrument, a transfer of undertakings does not in itself constitute valid grounds for dismissal. This means that unless dismissals can be motivated for economic, technical or organisational reasons not connected to the transfer, rights and obligations arising from an employment relationship shall be maintained after the transfer. Information and consultation about the proposed transfer must also be carried out beforehand.

Currently, workers who are the subject of a transfer where the legal personality of the company has not been changed (which is the case of a share sales) do not benefit from the protection of Directive 2001/23/EC. The ETUC has repeatedly called for a uniform application of this Directive to all workers in the EU. It is absurd that workers in a similar situation should be treated differently depending on whether or not their company is listed.

b. Consultation rights

Worker “voice” during a takeover bid is extremely weak. Currently, employee representatives can express their opinion, and this opinion is supposed to be forwarded by management to the shareholders of the offeree company. However, only the shareholders in the “target company” have the right to decide on whether or not to accept the takeover offer. These shareholders will typically not share the interests of employees in the long-term sustainability of the company. Instead, they have a great incentive to “cash in” on the premium in the takeover bid and “exit” the company by selling their shares.

A specific right to consultation must be introduced in the Takeover Directive. “Consultation” should be understood as the establishment of a meaningful dialogue between employees’ representatives and both the offeror and the offeree, with a view to reach an agreement on the proposed measures. It is very important that this dialogue takes place before any decision is finalized and that both existing management and the acquiring company are involved.

c. Effective sanctions

Currently, the takeover Directive merely relies on the Member States to determine effective, proportionate and dissuasive sanctions for the infringement of the Directive. This provision is clearly insufficient and has failed to guarantee proper implementation.

The Directive contains obligations to inform employees’ representatives about certain aspects of the bid, in particular with regard to the repercussions on employment. Although offerors are required by the Takeover Directive to provide information on their “intentions with regard to the future business of the offeree company”, including employment levels and conditions, these stated intentions are frequently not fulfilled in practice, and there are no effective sanctions for this non-fulfillment.

The takeover Directive also foresees that the rules on information and consultation contained in other EU instruments such as the European Works Council Directive must be applied. However, these obligations are frequently not respected in practice.

The ETUC considers that the only way to guarantee the respect of the obligations contained in the Directive is to provide that the legal effects of the takeover should be suspended until all the obligations have been adequately fulfilled. This should be the case in particular in instances of serious violations of employees' right to information and consultation.

d. The right to expertise

In order to provide a valuable and well informed input, employees' representatives often need to have recourse to expertise because of the complexity of questions surrounding bids for take overs. Experts can be specialist – lawyers, economists etc. – depending on the subject matter. Experts can also play a monitoring and supporting role. In this regard, expert can be trade union representatives.

The takeover Directive should grant employees' representatives a right to expertise. The cost should be borne by management and only employees' representatives should be able to select the most appropriate experts.



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