



ETUC Resolution Towards a Single market Act – ETUC proposals

Adopted at the Executive Committee on 1-2 December 2010

Introduction

1. On 27 October, the European Commission published its communication “Towards a Single Market Act – For a highly competitive social market economy”. The aim of this communication is to relaunch the single market by opening up new opportunities and by promoting a highly competitive social market policy, regain confidence, propose a new global approach to the single market that embraces all of the players in the market, and increase understanding of, and respect for, single market rules. The communication follows President Barroso’s September 2009 guidelines for the incoming Commission which identified the single market as an essential element in achieving the growth and competitiveness objectives of the EU 2020 strategy; and, also, ex-Commissioner Monti’s May 2010 report which outlined key policy recommendations for the relaunch of the Single Market. The narrative of the Commission’s Communication hints at the history of the EU which is described around the progress of the “four big market freedoms”. The conclusion is that the internal market is more necessary than ever. However, it is as less popular than ever. The Commission concludes that new ambition is necessary to put the politics of internal market at the service of a “highly competitive social market economy”.
2. “Towards a Single Market Act” consists of 50 proposals, about half of which are actual legislative proposals. The proposals are divided into three subject areas: sustainable and equitable growth for business; restoring confidence by putting Europeans at the heart of the single market; and dialogue, partnership, evaluation – keys to good governance of the single market.
3. The Commission invites a debate on these proposals and has opened an on-line consultation which will end on 28 February 2011. Following the consultation and discussions with the other EU institutions, the Commission intends to adopt a final work programme of the Single Market Act in early spring 2011.

What was in the Monti report for the European trade union movement?

4. The ETUC welcomed the report of former commissioner Mario Monti on how the EU should re-launch its single market and on measures to complete the currently unbalanced single market. Monti saw that the single market is at a critical juncture as “integration fatigue” and “market fatigue” develop, while the political and social support is eroding giving way to suspicion and open hostility. Monti’s efforts to address the challenges raised by the ECJ cases are useful in the general context of hostility to ETUC concerns about recent decisions of the European Court of Justice. The ETUC welcomed in particular the recognition that a clarification on the issues raised by the judgments ‘should not be left to future occasional litigation’ and that ‘political forces have to engage in a search for a solution, in line with the Treaty objective of a social market economy’. A central message of the report is that the tensions between market integration and social objectives have to be addressed. These recommendations do not appear by pure accident: Monti was the author of the so-called “Monti Clause” in the Monti-Regulation (1999, no 2679/98) which upheld the right to strike in the context of the free movement of goods (and which has inspired the ETUC proposal for a Social Progress Protocol to be attached to the Treaties).

ETUC assessment

5. For many years, the ETUC has been calling for a stronger social dimension for the internal market but the response has been inadequate. Today a visionary and less market oriented approach is necessary to overcome the current concerns about the impact of the internal market on Europe’s social model. The Commission’s proposals as they stand are insufficient, and, taken together with an unambitious EU2020 strategy and the lack of a new social policy agenda for the next five years, give a worrying picture of the low priority given to Social Europe by some in the Commission and many in the Council of Ministers. If Europe fails to make internal market respect workers’ and citizens’ rights, and if it is perceived as a tool for the social dumping and unfair competition, the basis of the consensus around European integration will erode quickly and the integration process will become harder. Protectionist instincts will become more prominent and the single market will meet more interference.
6. The Monti report was a welcome step forward in recognising the concerns of the ETUC, but its recommendations did not go far enough. In addition to a “Monti regulation” covering all relevant laws on the Internal market there needs to be a Social Progress Protocol to the Treaties, so that the Directives are interpreted in line with social rights, and in addition, the Posted Workers Directive needs to be revised rather than simply accompanied by a Regulation. However, The ETUC supports the recommendations of Monti to address the concerns pro-actively and to adjust the single market rules, to make them sustainable and compatible with fundamental rights. The ETUC regrets the lack of a new vision of the internal market in the communication. We need to tackle the new challenges: respect social rights and fight the ecological crisis by delivering on sustainability. There is ambiguous wording on social rights and no proposals on internalisation of external costs to the environment.
7. The communication claims that the internal market can offer “more growth and more jobs”. The Commission calculates that exploiting fully the potential of the internal

market could deliver extra growth of 4% in the next ten years. This promise remains vague, the maths are speculative and it remains open if there will be “jobless growth” or enough employment to reabsorb the current EU unemployment figure of 23 million.

Make the **social** market economy become a reality – ETUC demands

8. The ETUC reminds the Commission of the fact that the Lisbon Treaty is today the legal framework of the EU. Therefore the proposals of the Commission have to reflect this framework of a social market economy aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote social justice and protection. Fundamental rights as laid down in the Charter are now legally binding and fundamental rights constitute general principles of the Union’s law. When defining and implementing its policies and activities the Union needs to take into account requirements linked to the guarantee of adequate social protection. Therefore the proposals in the communication being of purely economic nature must be checked concerning the social consequences.
The ETUC is of the opinion that fundamental rights have to be seen as a whole, not only involving the Charter of Fundamental Rights, but also ensuring compliance with ILO and Council of Europe standards.
9. Six main areas are of particular interest to the ETUC.
10. **First**, fundamental rights and the social progress protocol, the revision of the Posting Directive, the Monti II regulation and a special Labour Court at the ECJ: the ETUC continues to attach a very high priority to the introduction of a social progress protocol in the Treaties and for the necessary instruments in secondary law to balance the movement of workers and services, to make the economic freedoms respect fundamental rights. The ETUC also asks for a revision of the Posting of Workers Directive and the creation of a special social chamber of the ECJ. This is in order to have judges, who are specialised in labour and social law and bring a certain knowledge into the court of industrial relations systems in the different national contexts. (Under the Lisbon Treaty the creation of specialised courts is feasible, as it now falls under the “ordinary legislative procedure”.)
11. Two proposals have been brought forward by the Commission concerning fundamental rights and the Posting of Workers Directive (proposal no. 29 and 30).
 - No 29 on ensuring that the rights guaranteed in the Charter of Fundamental Rights, including the right to take collective action, are taken into account; conducting an in-depth analysis of the social impact of all proposed legislation concerning the single market;
 - No 30 on adopting, in 2011, a legislative proposal aimed at improving the implementation of the Posting of Workers Directive “which is likely to include or be supplemented by a clarification of the exercise of fundamental social rights within the context of the economic freedoms of the single market”.
12. The proposal no 29 of the Commission that fundamental rights are taken into account reaffirms duties placed on the European institutions by the Lisbon Treaty, and the fact that the Charter of Fundamental Rights has become legally binding. Missing is an

instrument which explicitly makes economic freedoms respect the fundamental social rights, gives priority to fundamental social rights in case of conflict and protects and upholds the right to collective action and the right to strike as proposed in the social progress protocol or a Monti-style regulation. The Monti report recognised the opinion of the ETUC about the Laval, Viking and other ECJ cases, and aimed to re-balance the single market with fundamental trade union rights. He did not support the ETUC's proposal for a Social Progress Protocol in the Treaty, mainly because, at that stage, he did not believe an early revision of the Treaties was likely, nor would a Social Progress Protocol be acceptable to all Member States. With forthcoming treaty changes likely on economic governance and new accessions, the ETUC will press the Commission to take proactive steps to protect the exercise of fundamental rights, initially by adopting a Monti II regulation and then a Social Progress Protocol in the Treaties.

13. Last minute changes in the communication, after what we understand as protracted internal battle among Commissioners, deleted the specific references to the proposal of a social clause or regulation guaranteeing the right to collective action and the right to strike, and the current wording shows signs of a compromise in the Commission. We want such a guarantee in the Single Market Act to:
 - a) confirm that the single market is not an end in itself, but is established to achieve social progress for the people in the EU;
 - b) clarify that economic freedoms and competition rules cannot have priority over fundamental social rights and social progress, and – indeed that in case of conflict social rights shall take precedence and;
 - c) that economic freedoms cannot be interpreted as granting undertakings the right to evade or circumvent national social and employment laws and practices or for unfair competition on wages and working conditions.
14. The legislator has to end the policy that has led to the situation where the ECJ is given competence to prioritize the economic freedoms over the protection of collective bargaining and collective action. National social models and industrial relations have to be protected as long as these are not discriminatory. Industrial disputes originating from economic conflicts have to be judged in consistency with the exercise of fundamental social rights. It will be essential to press the Commission to realise their promise to “include or supplement by a clarification of the exercise of fundamental social rights within the context of the economic freedoms”; a minimalist way is not acceptable.
15. The proposal No 30 on the Posting of Workers Directive does not, we note, propose a revision, but suggests another legal act on the improved implementation of the Posting of Workers Directive. What is needed is a strong legal instrument to repair the damage done by the ECJ and to provide for member states to be able to keep intact their labour standards and industrial relations systems including the crucial role of collective bargaining in its different forms. It is also important that the principle of equal treatment is upheld. The ETUC made very clear that the short-comings in implementation of the Posting of Workers Directive are part of the problem and that a legislative act next to the Posting of Workers Directive cannot remedy all problems created by the ECJ judgments.

16. **Second**, coordination of taxation (proposal no 19 on improving fiscal coordination). The ETUC favours the application of the 'polluter pays' principle to financial markets and asks the European institutions to work further on a Financial Transaction Tax (FTT) model law at EU level and beyond. In the absence of wider agreement, a Europe-wide tax on financial transactions should be applicable to all traders and as such independent of the location of prominent financial centres. At the same time, significant tax revenues could be generated, which could be used to support social policy at European level in the aftermath of the crisis and also wider development agendas.
17. The ETUC believes that more needs to be done at European level to close tax havens, prevent tax evasion and restore tax justice between capital and labour, and rich and poor. The Commission should work on an all encompassing Savings Taxation Directive, with a view to closing existing loopholes and better prevention of tax evasion, and covering all actors, forms of capital income as well as outreach beyond European borders. In the field of company taxation, the Commission should:
 - push for a new proposal by the European Commission for a directive on a common consolidated corporate tax base (CCCTB). It is, however, essential to open the debate on the tax rates together with the introduction of the CCCTB. And a CCCTB should be compulsory for all legal forms of enterprises. Otherwise the possibilities for tax competition would simply be extended. Not only would 27 member state tax systems be in competition with each other, but there would also be a 28th system;
 - reinforce the current Code of conduct for business taxation;
 - and work towards improved accounting standards that would capture the whole potential corporate tax base by introducing a European reporting system for trans-border companies.
18. **Third**, Social dialogue and participation of social partners: (referred to in proposals: No 32 on launching a consultation of the social partners on a European framework for industrial restructuring, No 44 on the Top 20 of single market actors' wishes, No 48 on consultation and dialogue with civil society, consumers, NGOs, trade unions, enterprises ...).

The ETUC welcomes both the Single Market Act and the Communication on industrial policy reference to a forthcoming consultation of social partners on a European framework for restructuring. This framework should also apply to the public sector and should include sustainability issues.
19. Concerning proposal No. 48 the Commission should consider the specific role given to the social partners, and therefore to ETUC, by the Treaties and the obligation of the Commission to consult the social partners. Social Partners at European level should be consulted in a different way, and with a clearly different weight, to allow them at an early stage to influence the direction of the initiatives to be taken, and to allow them to express their interest to take up the issue themselves for negotiation.
20. Again the Lisbon Treaty brought new developments in this field: "The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems" (Art. 152). Art. 152 is a legal obligation on the Union; it goes further than the consultation obligation on the Commission of Art. 154 and is not

restricted to the social policy field only. Therefore the ETUC insists that the Commission needs to respect the specific role of the social partners in such a political fundamental question as the future orientation of the internal market.

21. **Fourth**, improving European framework for Public Services (proposal No 25 on adoption of a Communication and other measures on Services of General Interest by 2011). The ETUC welcomes in particular the initiatives to support the evaluation of public services and to remove obstacles to universal access. The ETUC expects the Commission to take into account the new Treaty provisions and Protocol on SIG (see ETUC resolution "*Towards a new impetus for public services*"). In particular:

- The aim of the Communication and 'other measures' on public services should be to support Member States develop and improve their public services, in line with the SGI Protocol. The Commission should fully respect the recent ECJ rulings on public-public cooperation.
- The evaluation of public services should include a **critical, in-depth assessment** of previous liberalisations and privatisations, and be carried out with the participation of all major stakeholders. The ETUC maintains its demand for a **moratorium in relation to** liberalisation.

More generally, the EU should develop expertise in its ability to assess the impact of all the Single Market (and other EU) initiatives on public services, in conformity with the SGI Protocol.

22. **Fifth**, the ETUC welcomes the Commission's commitment to enhance corporate governance with the specific goal of increasing employee involvement and improving the transparency of information provided by businesses (proposal 38). In particular, the Commission should adopt a coherent approach setting high minimum standards and promoting information and consultation rights for employees and their representatives as well as participation rights in board rooms.

23. Any initiatives for a European Private Company Statute (SPE) should ensure that this company form is not used as a mechanism to circumvent participation rights defined at the national level. As a minimum, the SPE Statute should guarantee the same worker participation rights as the standards set in the European Company Statute (SE). The operative headquarters and the seat of registration must be in the same country and the SPE must have a high minimum capital and genuine cross-border dimension. A European register for the SPE (as well as the SE and SCE) should be established and negotiations on the form of worker participation must be completed before the SPE is allowed to register.

24. Furthermore, the Commission has recently published a report and staff working document on the application of the SE Statute and is currently reflecting on potential amendments with a view to making proposals in 2012. Any such amendments should not undermine employee rights and should be accompanied by a revision of the SE Directive on worker involvement to strengthen worker participation rights.

25. **Sixth**, public procurement (proposals No 17 on legislative proposals relating to public procurement based on the ongoing assessment of EU public procurement legislation, and No 24 on an instrument for external public procurement).

26. Since the start of the single market project in the mid 1980s the ETUC has taken a strong stand for the integration of a fundamental social clause in the rules. Our demands have been met during the revision of the procurement rules in 2004. However, recent ECJ rulings have watered down the applicable social legislation and the possibilities to control contract compliance by the Member States, notably the competence for Member States to formulate mandatory labour standards and provisions to be respected by all undertakings and for all those that are pursuing paid work within the territory. There have been ruled out by the Rüffert and the Luxemburg cases. In addition, parts of the national regulatory frame (of labour standards and working conditions), based on labour legislation and collective bargaining, are unilaterally ruled out by the ECJ.
27. The recent ECJ judgments create a situation whereby foreign services providers do not have to comply with mandatory rules that are imperative provisions of national law and that therefore have to be respected by domestic services providers. This policy has also led to a selective and partial applicability of ILO Conventions. In a footnote of the guide “Buying Social: a guide to taking account of social considerations” the European Commission limits the applicability of ILO Conventions for work pursued with posted workers in the public procurement area to eight core ILO Conventions that have been ratified by all 27 EU Member States. As a consequence, ILO Convention 94, formulated and concluded as early as 1949 and ratified by several Member States (but not all MS), and of a high relevance for fair public procurement procedures, is brought into question.
28. The ETUC strongly opposes this primacy of economic principles over fundamental social rights. The review the EU public procurement directives should improve the current framework for the strengthening of social criteria in public contracts, which are lagging behind and indeed called into question.
29. In addition, we have an interest in external trade issues (No 23, 24):
- No 23 aims at promoting regulatory convergence with third countries and to push for wider adoption of international standards. In that context, the ETUC insists that all bilateral and inter-regional trade and investment agreements should include robust and actionable sustainable development chapters promoting in particular the effective implementation of ILO standards the Decent Work Agenda as well as other codes such as the OECD Code of Conduct for Multi National Enterprises, as well as the best environmental and sanitary and phytosanitary (SPS) standards.
 - No 24 proposes to enhance the Community’s capacity to ensure symmetry in access to public procurement in the industrial nations and the major emerging economies. The ETUC supports the objective of obtaining an even playing field and fair competition across the board with those groups of countries, including through the maintenance of strong Trade Defence Instruments, while bearing in mind the need to assist and promote development in the poorest.

Conclusion

30. Action is needed to advance Europe's social objectives, in particular through an ambitious social policy agenda providing amongst others for equal treatment in terms of wages and working conditions applying to the place where the work is done. Our main claims are:

- The introduction of a Social Progress Protocol in the Treaties;
- The revision of the Posting of Workers Directive;
- A vigorous follow up of the ideas in the Monti report on a
 - Monti II regulation;
 - further European tax coordination/harmonization to prevent tax competition;
- The respect of the specific role of the social partners and the enhancement of corporate governance with the specific goal of increasing employee involvement;
- The improvement of the European framework for Public services;
- The improvement of the current framework of public procurement for the strengthening of social and environmental criteria in public contracts.