European Commission communication “Towards a Single Market Act – for a highly competitive social market economy”

Response from LO

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Introduction

The most important proposals for LO are the Commission’s proposals Nos. 29 and 30 which deal with fundamental trade union rights. Therefore these proposals will be closely reviewed in our opinion, although comments will be made on other issues of the Commission’s action programme, which are of importance to LO.

The Commission’s action programme for the internal could be seen as an implementation of Mario Monti’s report on a new strategy for the internal market. Monti’s report centers on the issue of how the Commission should act in order to gain wide support for the further integration of the internal market. It is natural to focus on this issue since the internal market – to quote Monti’s own words – “is less popular than ever, while Europe needs it more than ever”.

LO is of the opinion that the reinforcement of the internal market only can be developed if the political institutions of the European Union manage to gain wide support for continued integration. The support is wavering considerably today, large groups in society are, for different reasons, suspicious of the development of the European Union.

Historically, the European Union has managed to evoke support from social democrats, as Willy Brandt and Jacques Delors, and at the same time to gain support from conservative leaders such as Helmut Kohl and Charles de Gaulle. The European trade union movement also joined this group of supporters. There were several reasons for this. Historically seen, there has been a genuine and often self-experienced awareness of the horrors of war and the necessity to intertwine the national states by way of economic and, to a certain extent, political integration in order to avoid future conflicts.

But the historical compromise, which the European co-operation is based upon, is equally important for gaining wide support.

The historical compromise entails that the European Union shall have independent institutions within the free trade sector. As regards sectors related to welfare, labour legislation and trade union rights, the concept is, on the contrary, that the member states are to be autonomous to a great extent. Major political, social and economic issues of delicate nature shall continue to be dealt with within the member states’ own democratic systems. This is important for several reasons, but decisive is the fact that
these issues constitute the very essence of national democracy. The main reason for inciting people to voting are welfare and labour market issues.

The European Court of Justice has, in the last few years, in a number of judgements (Laval, Viking, Rüffert and Luxemburg cases), with reference to the economic freedoms, infringed on sectors – i.a. wage formation – which, according to the treaties, must be considered to be well within the frameworks of the Member States’ own competence.

This is ill-boding. Strong trade unions contribute to the formation of functioning welfare states and active democracies. There are also reasons for concern among market liberals. The development threatens the extensive support of the European Union as a project. If the institutions of the European Union continue to systematically place economic freedoms above fundamental trade union rights, the citizens’ confidence in European co-operation is jeopardized in the long run. The hazard is that future development of the internal market will be impossible.

LO is of the opinion that the member states’ autonomy in sectors related to welfare, labour legislation included, must be restored. This requires, in the long run, a revision of the Treaty, but even at short and medium terms, there are measures which the political institutions of the European Union could resort to in order to strengthen the member states’ autonomy in the above mentioned sectors.

LO is of the opinion that the Commission’s proposals dated October 28, 2010, are not sufficient. Neither the LO, nor the European trade union movement can support further integration of the internal market if distinct measures to reinforce trade union rights are not taken.

**Fundamental trade union rights**

The Commission’s action programme contains two non committing proposals to strengthen fundamental trade union rights.

**Proposal No 29: Pursuant to its new strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, the Commission will ensure that the rights guaranteed in the Charter, including the right to take collective action, are taken into account. The Commission will first of all conduct an in-depth analysis of the social impact of all proposed legislation concerning the single market.**

It cannot be considered as something new that the Commission intends to implement the Treaty and the charter of fundamental rights which has become legally binding after the approval of the Lisbon Treaty. The Commission is the guardian of the treaty so to enforce the treaty and guarantee the respect of it, can hardly be considered as a proposal to be included in an action plan.

The proposal to conduct social impact assessments ahead of the Commission’s submission of proposals for new legislation is positive but nothing new. The President of the Commission, Mr. Barroso, has already notified this and the Commission is, in principle, already bound to do this in the existing interinstitutional agreements regarding the conduct of impact assessments.
LO is of the opinion that the only real method to guarantee these rights, which are covered by the Treaty, is by way of amending the Treaty: a social progress protocol which lays down that fundamental human and trade union rights are not secondary to economic freedoms. And in cases of conflict, fundamental rights are to be given preference over economic freedoms.

*Proposal No 30: In 2011, the Commission will adopt 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.*

Commission’s proposal nr. 30 consists of two parts. The first part refers to the revision of the Posting of Workers Directive. The second part refers to the adoption of a regulation which controls the relation between economic freedoms and fundamental rights in the internal market.

The first part of the proposal regarding the Posting of Workers Directive is insufficient. It doesn’t suffice to correct the problems included in the implementation of the directive. The problems relating to the European Court of Justice’s *interpretation of the directive must also be addressed*. LO is of the opinion that this ought to done by revising the directive. The President of the Commission, Mr. Barroso, also pledged himself, on the occasion of being re-elected President, to submit a legislative proposal which was to deal with the problems regarding the implementation as well as the interpretation of the directive. This was the precondition for large groups of the European Parliament for not opposing the candidature of Mr. Barroso. The now proposed initiative is, according to LO, to be considered as the Commission’s President’s is breaking his vow to the European Parliament.

LO is of the opinion that a future revision of the Posting of Workers Directive also must comprise the problems which the European Court of Justice’s interpretation of the directive has caused.

However, LO considers that the second part of proposal 30 is an important commitment to improve the current legal situation. The Commission announces that the proposal regarding the Posting of Workers Directive “is likely to include or to be supplemented by a clarification of the exercise of fundamental social rights within the context of the economic freedoms of the single market”.

This commitment must however materialize within the four months during which the proposal is circulating for consultation. LO is of the opinion that the Commission must implement the second part of proposal 30 and undertake to submit a regulation which controls the conditions between fundamental trade union rights and the economic freedoms of the European Union in order to achieve extensive support for the internal market.

Such a regulation should, according to LO, include three elements. Firstly, the proportionality assessments of the conflict measures, in which the Treaty’s regulations
on free movement are concerned, as for example in the Laval case, should be reinstated at national level in order to be dealt with by the national judicial system. Secondly, the threshold for what is considered to be obstacles to the free movement in sectors regulated by collective agreements must be raised. Thirdly, the regulation must draw up a basic system for exchange of information in cases of conflict measures with cross-border consequences.

Such a proposal may pave the way for the European trade union movement to back further integration of the European Union’s internal market.

The LO support for a Regulation does not however imply abandoning the request for a social progress protocol be added to the Treaty of the European Union. LO demands, together with the rest of the trade union movement in Europe, that a social progress protocol be adopted on the occasion of the next amendment of the Treaty. Besides, LO maintains the request for a revision of the Posting of Workers Directive. However, a Regulation to reinforce trade union rights should, at short term, bring about preconditions for restoring trade union confidence in the cooperation within the European Union.

To summarize, LO is of the opinion that the Commission, after the now on-going consultation, must submit concrete measures which will reinforce fundamental trade union rights. If this is not to take place, there are, exactly as Mario Monti prophesied, no reasons for the trade union movement to back the future integration of the internal market.

**Other issues**

To develop the internal market in services

**Proposal No 4:** The Commission and the Member States will cooperate in continuing to develop the internal market in services on the basis of the 'mutual evaluation' process set out in the Services Directive and currently implemented by the Member States and the Commission. In 2011, the Commission will indicate specific measures to this end, including in the business services sector.

As the Commission wishes to continue to develop the internal market for services, it is important to establish wide-ranging consultation with other actors than undertakings. Earlier consultation with regard to the Services Directive has been one-sided. It has left little or no room for employee organisations to express their opinions and interests. Future consultation must not one-sidedly provide companies with the opportunity to report national regulation perceived as restrictive. The implementation of the Services Directive must not become a witch-hunt against national regulations.

In this context, it is necessary to recall Article 16.4 of the Services Directive, which lays down that the Commission shall, by December 28, 2011 at the latest, after consultation with Member States and the social partners at the EU level, submit a report to the European Parliament and the Council on the application of this article (Article 16), in which the Commission will take account of harmonisation measures in terms of services activities covered by this directive. Thus the consultation must also include employee organisations.
Proposal No 7: In 2011 the Commission will adopt a White Paper on Transport Policy, which will propose a series of measures intended in particular to remove the remaining obstacles identified between means of transport and between national systems of transport.

LO is of the opinion that transportation policy is important in order to manage growth and job creation as well as transition towards a sustainable society. LO wishes however to express its opposition against the ideas presented by the EU Transport Commissioner Kallas at a European Parliament inquiry on November 9, 2010.

Commissioner Kallas announced that a proposal would be submitted during 2012, concerning further liberalisation of the market for road transport, with the explicit purpose of eliminating the restrictions on cabotage. It is of vital importance that the Swedish government should oppose such initiative.

Joint EU rules on cabotage, which apply as from May 14, 2010, are significant for creating order on the European transport market. During the coming years, focus should be put on implementing and securing the observance of the rules. To set cabotage free would create an intolerable competitive situation for the Swedish road carriers and bring on unfair competition on pay and working conditions on the market for road transport. Such proposal would additionally undermine the support for the further integration of the internal market and thus be directly counter-productive.

Therefore LO welcomes the fact that the Commission’s draft White Paper from August of 2010 is closer to the LO position on this issue. The Commission states in the document that significant differences between Member States with regard to taxes, wages and working conditions would entail such a big reshuffle of job opportunities that the abolition of cabotage should be postponed to the future.

Public procurement
Proposal No 17: After the currently ongoing assessment of European public procurement legislation, and based on wide-ranging consultation, the Commission will make legislative proposals in 2012 at the latest with a view to simplifying and updating the European rules to make the award of contracts more flexible and to enable public contracts to be put to better use in support of other policies.

LO welcomes a review of contract award rules within public procurement. Public procurement has over time become a complex administrative procedure that formalises the relation between the contracting partners to an unnecessary high degree. In the long run, it may prove necessary to simplify procurement rules in order to be able to apply them at all. It is essential for the LO that future legislative proposals in a clear manner enable the contracting partner to require social clauses in procurement. It should also be clarified that terms of collective agreements may (and should) be required in public procurement.

Services concessions
Proposal No 18: In 2011 the Commission will adopt a legislative initiative on services concessions. Clear and proportionate rules will improve market access for EU undertakings by ensuring transparency, equal treatment and a level
LO supports the Commission initiative on services concessions. LO considers that it is of importance that EU political institutions do not transfer such issues to the European Court of Justice.

LO’s support is based on a number of principles that should always be applied in public procurement, irrespective of its form. These principles should also be integrated into the Commission’s legislative initiative. The principles, based on ILO Convention No. 94, are as follows:

- A public authority must always have the possibility of including social and environmental considerations in the procurement procedure. This must apply whether it is a regular procurement, public/private partnership or services concessions.

- The principle of non-discrimination and equal treatment of companies must apply.

- Labour standards applicable to respective branch must be followed, whether regulated by law or collective agreement. The contracting authority should require a clarification in the procurement document on how the employer deals with such responsibilities as employment security, working conditions as well as health and security in the workplace.

- Employee participation in the economic activity must not be undermined.

- The results of the economic activity over the medium to long term should be taken into consideration. Incentives aimed at authorities and companies to create long-term joint interests should be stimulated.

**Pensions**

*Proposal No 31: The Commission will re-examine the Directive on the activities and surveillance of pension funds in 2011 and will develop other proposals based on the July 2010 Green Paper on pensions, inter alia in order to remove obstacles encountered by mobile workers when making arrangements for their retirement.*

LO supports the objective of eliminating obstacles for workers’ free movement, but considers the compulsory and full right to transfer all occupational pensions (the 2nd pillar) to be the wrong way to go. It is important that accrued pension rights are not lost when workers change jobs. However, it may well be done in the form of the so-called paid-up policy, whereby pension rights are protected and index-tied until disbursement. Transfer of capital is expensive and subject to financial risks. It is individuals who pay these costs and take these risks. Therefore LO is of the opinion that workers’ pension rights should be guaranteed in case of change of job, but this should not be accomplished by way of EU legislation on mandatory right to transfer pension capital.
There is a further reason why LO opposes the free transfer of pension capital. In Sweden, occupational pensions are generally based on collective agreements, which also, after careful evaluation (procurement), indicate possible pension fund administrators. It is already allowed to transfer pension capital between these approved administrators. Full right to capital transfer outside the procurement circle would not serve its purpose and would probably lead to higher administrative costs than today.

Restructuring

Proposal No 32: The Commission will launch a consultation with the social partners in order to create a European framework for the advance planning of industrial restructuring.

LO welcomes the fact that the Commission is ready to launch an initiative in this important issue. The ongoing crisis has shown that the social consequences resulting from companies' need of downsizing and delocalisation of production have been dealt with in an unacceptable manner in parts of the EU.

LO however wishes to point out that a commitment of this kind should be assumed with due regard for the social partners' as well as Member States' autonomy in these matters.

Action in the field of restructuring must also be linked to the changes facing us in connection with transition to more sustainable patterns of production. Changes resulting from the necessity of climate and resource efficiency can generate new job opportunities, while implying, on the other hand, the loss of jobs in existing industrial sectors. Environment-related change is therefore not different from other structural change. For the trade union movement it is of importance that the transition takes place in just and socially acceptable forms, not resulting in exclusion or distortion of competition in Europe. Therefore the forms of accomplishment of the "green shift" in the EU must be addressed in the Social Dialogue between social partners.

Training options and other organisational arrangements are to be provided to workers affected by the transition so as to enable them to fully make use of new technology and new methods. This, combined with generous social protection schemes, will create competitive societies favourable to change.

Corporate governance

Proposal No 38: The Commission will launch a public consultation (Green Paper) on corporate governance. It will also launch a public consultation on possible ways to improve the transparency of information provided by businesses on social and environmental matters and respect for human rights. These consultations could lead to legislative initiatives.

LO welcomes the Commission's proposal to launch a public consultation on corporate governance. This issue has attained additional focus as a consequence of the economic crisis and of the lack of insight and management in certain companies, especially in the financial sector. The actors in the market must now restore their credibility with employees, consumers and the surrounding society. Therefore, it is important that a policy for better corporate governance be outlined by the EU. Remuneration systems for those in leading positions as well as the composition of
boards as regards gender equality and worker representation are issues of particular
importance in the field of corporate governance.

LO also appreciates the initiative to launch a public consultation on the information
provided by companies as regards social and environmental matters and human rights
issues.

The recent decades have signified increased focus on Corporate Social Responsibility,
which is essentially very positive. Previously, there has been some justified
scepticism about the concept of CSR. The reason is that CSR has rather been used as a
PR instrument by individual companies, with no effect in practice. Over the past years
however, a process of maturity has started, having entailed permanent changes in the
business sector. The slightly over 80 international framework agreements which have
been concluded between global unions and multinational companies and which
regulate the issue of human rights in working life, illustrate the fact that companies
have assumed a more serious approach.

The issue of corporate sustainability reporting is another example of a new phase in
the CSR work. During 2009-2010 the Commission carried out a number of
workshops on ESG disclosure in which the ETUC, LO and several other trade union
organisations participated. On these occasions, discussions took place on mandatory
European rules on sustainability reporting, which LO finds positive.

Obligations on companies to submit reports on environmental, social and governance
performance can be, if properly formulated, a way to achieve a more socially
responsible and confidence-building market economy. Human rights in working life,
as defined in the ILO core labour standards, including the issue of subcontractors as
well as information to and consultation of workers' organisations, are matters of
particular importance in this context.

LO is of the opinion that if the Commission proposes legislation, sustainability reports
must be submitted to consultation with the social partners as regards contents and
form.

Social dialogue.
Proposal No 48: The Commission will increase consultation and dialogue
with civil society in the preparation and implementation of texts. Particular
attention will be paid to taking into account the points of view of consumers,
NGOs, trade unions, businesses, savers, users and local authorities in the
consultations prior to the adoption of proposals and, in particular, with
regard to the work of expert groups.
LO welcomes the fact that the Commission aims at improving dialogue with the civil
society. It is however important to make a distinction between the particular role
assigned to social partners in the Treaty and the rest of the civil society. This specific
status is clear in the Treaty; the Commission has the task to promote cooperation with
the social partners and to take necessary measures to facilitate their mutual dialogue
by means of well-balanced support to both parties.

Pursuant the Treaty, the Commission shall consult the social partners before
submitting proposals related to the labour market (Article 154). It is not acceptable
that the Commission circumvents this stipulation with reference to technicalities. One example is the presentation, in July 2010, of two legislative proposals concerning migrant labour.

The two Directives are suggested to address the reception of third-country residents who enter the EU in order to work as seasonal employees or as intra-corporate transfers. The Commission chose to consider this as solely a migration issue - Article 79(2) in the Treaty – and therefore did not consider itself being obliged to consult the social partners. Had the Commission in this case resorted to a twofold legal basis – Articles 79(2) and 153 – it would have been obliged to consult the partners. The Commission's way of acting can possibly be acceptable in the legal sense but it undermines the spirit of the Treaty, since these two Directives are to be considered having immediate effect on the European labour market as well as on national labour markets in the EU.

Neither can the dialogue with the social partners be replaced with the kind of open consultation that the Commission deploys to an increasing extent.

**Conclusion**

LO's opinion deals with the initiatives proposed by the Commission that we consider being the most important ones to highlight. The way in which issues related to fundamental trade union rights are addressed by EU political institutions will be of decisive importance for the future of the European Union.

The fact that specific proposals from the Commission are not commented on in this opinion should not be interpreted as if being considered of minor importance by the LO, or as a sign of lack of opinion. For instance, the European trade union movement has for years demanded a framework Directive on services of general economic interest and awaits with interest the series of measures regarding SGI announced by the Commission (proposal No. 25).

Yours Sincerely

The Swedish Trade Union Confederation (LO)