

COMMUNICATION FROM THE COMMISSION ON THE SOCIAL AGENDA**UNICE POSITION PAPER*****Summary***

UNICE strongly supports the Commission's efforts to refocus the Lisbon strategy on growth and employment. It fully agrees with the objective of supporting growth and employment by adopting an EU social policy agenda aimed at modernising Europe's social systems.

However, in UNICE's view, some of the proposals contained in the EU social agenda are not compatible with the proclaimed aim of prioritising growth and employment. Contradictions concern in particular the following issues.

- Restructuring and European works councils: restructuring is a necessary phenomenon in continuously changing economies and societies. The best way to address legitimate concerns about negative social consequences lies in devising policies to help workers adapt their skills and to promote the creation of new jobs. A second consultation of the social partners on restructuring and European works councils will undermine the current work of the social partners in the framework of the EU social dialogue on those issues.
- Optional EU framework of collective bargaining: there is no need for an additional layer of EU collective bargaining over and above the national, sectoral, regional or company level, and the current Treaty provisions on EU social dialogue provide the right basis for the development of EU social dialogue.
- Transfer of undertakings and collective redundancies: modernisation of the directive on the transfer of undertakings and the directive on collective redundancies will help employment if this results in a genuine simplification. European business will strongly oppose it if instead it creates additional constraints on European companies.
- Information and consultation: the idea of codifying existing legislation on information and consultation disregards the fact that information and consultation vary depending on the issue and level at which it is best organised.

The content of future Commission proposals on these four highly sensitive issues will be crucial to demonstrate a real commitment to focusing on growth and employment. In accordance with the Commission's overall policy for better governance, an in-depth impact assessment must be made before any decision is taken on specific EU initiatives. If the impact assessment reveals adverse effects for growth or employment, UNICE insists that this action should not be taken and the approach should be fundamentally rethought.

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1. On 9 February 2005, the Commission published a communication setting out priorities to guide EU actions in the social policy field for 2005-2010. The aim of this document is to complement and support efforts to refocus the Lisbon strategy on growth and employment. It announces some 33 initiatives grouped under two main headings: employment on the one hand, and equal opportunities and inclusion on the other. In UNICE's view, some of the proposals contained in the EU social agenda are not compatible with the proclaimed aim of prioritising growth and employment.

General comments

2. UNICE fully agrees with the objective of supporting growth and employment by adopting an EU social policy agenda aimed at modernising Europe's social systems. It is in the interest of Europe as a whole to design EU policies in a way that supports Member States in their efforts to do so. However, it is important not to lose sight of the fact that most of the necessary actions to modernise social systems fall under the competence of national players.
3. In UNICE's view the social agenda communication has three major shortcomings:
 - it does not present a coherent picture of a social agenda designed to promote growth and employment and even contains some initiatives which could undermine growth and employment,
 - it is not underpinned by any serious analysis and document SEC (2005) 177 is not a proper impact assessment,
 - it is based on a fundamental misconception of the social dialogue and of article 138 of the Treaty in particular.
4. The communication puts a strong emphasis on social dialogue as a tool of EU social policy in the context of the renewed European partnership for change launched during the Irish presidency. UNICE fully agrees that social partners can make important contributions towards enhancing growth and employment by supporting necessary reforms and taking appropriate actions in their own field of responsibility. However, such a renewed partnership for change can only materialise in the Member States if the Commission does not seek to centralise collective bargaining at EU level. An optional EU framework for transnational collective bargaining is neither desirable, nor necessary.

5. UNICE deeply regrets that some of the initiatives announced in the social agenda could undermine current work in the EU social dialogue. UNICE insists that, in accordance with EU treaty requirements, the Commission should fully respect the autonomy of both the interprofessionnal and the sectoral social dialogue at EU level. This implies refraining from taking any action when an issue is being discussed in the EU social dialogue. Failing that, the Commission will simply hamper the development of the EU social dialogue.
6. In addition to its general comments, UNICE also calls on the Commission to take account of its comments on specific proposals of the EU social agenda set out below.

On the strategic approach to manage change

7. UNICE fully agrees that, against the background of intensified global competition, the EU must be capable of anticipating, triggering and managing economic change more effectively. However, it is strongly opposed to the fourfold strategy envisaged by the Commission.
8. Restructuring is a necessary phenomenon in continuously changing economies and societies. Delays or failure to adapt to market changes undermines companies' competitiveness and erodes the basis of Europe's future growth and employment. The best way to alleviate possible negative social consequences of restructuring lies in devising policies to help workers to adapt their skills on the one hand and to promote investment leading to the creation of new jobs on the other hand. Taking a legislative approach, for example by proposing a revision of the EWC directive, will be counterproductive.
9. IN UNICE's view, any strategic approach proposed by the EU must
 - aim at promoting a positive attitude to change,
 - be underpinned by accurate and serious analysis of Europe's weaknesses in coping with the consequences of change,
 - fully respect the autonomy of social dialogue work in this field.
10. Concerning the proposal to launch a second consultation of the social partners on restructuring and European works councils, if the Commission does not intend to legislate, launching an article 138 consultation is not necessary. Moreover, it would send a misleading signal. Furthermore, such a consultation could undermine UNICE efforts to foster a positive dialogue on a non-regulatory approach to these sensitive issues with ETUC and could endanger ongoing work in the EU social dialogue.
11. As announced in the joint letter of UNICE/UEAPME, CEEP and ETUC of 29 October 2003 transmitting the orientations of reference for managing change and its social consequences to the Commission, the EU social partners are pursuing their work on this topic through joint seminars on the implementation of the EWC directive after enlargement on the one hand and a study on restructuring in new Member States on the other hand. Joint conclusions on EWCs will be finalised in April 2005 and the conclusion of the joint discussions on economic and social change in the enlarged EU on the basis of the study on restructuring in new Member States is scheduled for July 2006.
12. Publication of a second consultation of the social partners on restructuring and EWCs would be totally inappropriate. It could influence attitudes on either side and interfere with the autonomy of the social dialogue. Bearing in mind that article 138 of the Treaty explicitly requires that the Commission ensures balanced support to the parties when facilitating the social dialogue, UNICE insists that the Commission should not launch a

second consultation of the social partners. Instead it should publish a communication describing how it intends to promote a positive attitude to change across Europe and support companies and workers in their efforts to adapt.

13. Concerning the proposal to institute a high-level forum of all players and stakeholders, to move in the direction of a greater interplay between EU policies to encourage and accompany restructuring, UNICE questions the added value of such a forum as accompanying restructuring to alleviate short term negative consequences is done at local level. In any event, announcing the creation of such a forum is premature in the absence of any concrete proposals of what its tasks would be.
14. Finally, the proposal to establish “a stronger link between the European Employment Strategy, development of the legal frameworks and social partners’ agreements” is simply not comprehensible if the Commission does not intend either to legislate in this field or to interfere in the autonomous social dialogue.

On the new dynamic for industrial relations

15. The Commission groups a variety of proposals under this heading. Most of them concern legislation on working conditions rather than industrial relations. By contrast, some actions envisaged that truly concern industrial relations issues are wrongly included under the heading “towards a European labour market”. UNICE will therefore comment on these two headings simultaneously.
16. Concerning the proposed updating of the directive on transfer of undertakings and of the directive on collective redundancies, UNICE would like to draw the attention of the Commission to the following points:
 - A consolidated text of directive 77/187/EEC on transfer of undertakings as amended in 1998 was published in 2001. The Commission presented a report on the implementation of the directive in 1992. The report on the amended version is required by July 2006. Directive 75/129/EEC on collective redundancies was amended in 1992. The Commission presented a report on the implementation of the amended version of the directive in 1999.
 - With 10 new Member States making huge efforts to implement this important legal acquis, UNICE finds the moment ill-suited to propose modifications of this legislation. Furthermore, the Commission must start by publishing an up-to-date assessment of the implementation of these directives in the EU 25. Failing that, it will be impossible to distinguish between purely national problems and genuine Europe-wide issues deriving from the EU text itself.
 - In any event, modernisation of the directive on the transfer of undertakings or the directive on collective redundancies will only be compatible with the overall objective of enhancing growth and employment if this results in genuine simplification. European business will strongly oppose any moves to impose new constraints on European companies in these areas.
17. Concerning the proposal to consolidate various provisions on workers’ information and consultation, UNICE will strongly oppose any moves going beyond a genuine codification of existing legislation on information and consultation. Information and consultation vary depending on the issue and level at which it is organised.
18. Concerning the idea of proposing an optional EU framework for transnational collective bargaining, there is no need for an additional layer of EU collective bargaining over and

above the national, sectoral, regional or company level, and the current Treaty provisions on EU social dialogue provide the right basis for the development of EU social dialogue.

19. This proposal, combined with the amalgam between industrial relations issues and legislation on working conditions in the communication on the EU social agenda is in clear contradiction with the proclaimed favourable attitude of the Commission towards the autonomy of social dialogue and is bound to hamper rather than facilitate the development of social dialogue in Europe.
20. Last but not least, the Commission must move away from a profound misconception concerning article 138 consultations. Contrary to what the Commission text implies, the social dialogue is not a tool at the disposal of the Commission. Article 138 was introduced into the Treaty at the joint request of the EU social partners. The aim was not to turn social dialogue into a tool at the Commission's disposal but to protect an essential feature of the European social model: the social partner's right to negotiate on working conditions and other matters on which the EU has acquired competences as a result of the development of the social chapter of the Treaty. If the Commission continues to consider the social dialogue as a tool at its disposal and does not go back to a correct use of article 138 consultations, it will destroy the social dialogue.
21. As stated in UNICE's position on the Commission communication on the EU social dialogue, the Commission policies to promote the social dialogue must be based on a genuine respect of:
 - the autonomy of the European social partners, which means recognising that they are responsible for the organisation of social dialogue, both interprofessional and sectoral, within the framework of the existing Treaty provisions,
 - the principle of subsidiarity, which means recognising that industrial relations remain essentially national and that interaction between the EU and national levels is not a hierarchical relationship but one of complementarities and can be of a different nature depending on the issue.
22. Finally, the inclusion of the promotion of corporate social responsibility as an industrial relations issue is grossly misleading. CSR policies are voluntary initiatives by companies. Even if they can be developed, when appropriate, with relevant external stakeholders, they involve other players than the social partners and should not be considered as industrial relations.

Conclusion

23. UNICE appreciates that the social agenda communication defines issues on which the Commission intends to launch debates, without pre-judging of the nature and content of the action to be taken.
24. In accordance with the Commission's overall policy for better governance, an in-depth impact assessment will be made before taking any decision on specific policy proposals. If the impact assessment reveals adverse effects for growth or employment, UNICE insists that the action should not be taken and the approach should be fundamentally rethought.
