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Social Protection Newsletter No 17

This 17th Newsletter reviews the activities and events that marked the ETUC's work in the area of social protection in 2010 and in the first half of 2011. It focuses on four key subjects:

- the ETUC Congress, Athens, 16-19 May 2011 (1)
- the ETUC's internal activity (2)
- topical affairs in the area of social protection (3)
- tackling poverty and promoting social inclusion (4)

We hope it will provide instructive reading.

1) The ETUC Congress, Athens, 16-19 May 2011

The 12th ETUC Congress was held in Athens from 16 to 19 May 2011, in the particular context of the social consequences of the financial crisis in the European Union.

The Congress discussed and validated the ETUC action plan, which includes several chapters on social protection¹.

This Congress also elected an almost completely new team of ETUC leaders. Apart from Jozef Niemiec, who was elected Deputy General Secretary, the General Secretariat in its entirety was renewed.

Bernadette Segol, of UNI Europa, was elected as the ETUC's new General Secretary.

¹ See texts on the ETUC website:

Patrick Itschert, of the European Trade Union Federation for Textiles, Clothing and Leather (FSETHC), was elected Deputy General Secretary.

Four Confederal Secretaries were also elected:

- Judith Kirton-Darling, of the European Metalworkers' Federation,
- Claudia Menne, of DGB,
- Veronica Nilsson, of TCO Sweden and the European Federation of Public Service Unions,
- Luca VISENTINI, of UIL Italy.

Among her other responsibilities, **Claudia Menne** will be in charge of the issues of social protection, combating poverty and social exclusion, disabilities, and equality and non-discrimination.

We would like to take advantage of the publication of this Newsletter to congratulate **Jozef Niemiec** for his election as Deputy General Secretary and to thank him warmly for putting so much effort into the issues of social protection, combating poverty and social exclusion, and disabilities – where he has demonstrated conviction and competence.

Changes were also made in the administrative secretariat.

Barbara Boyle, whom we welcome on board, will now be in charge of these matters.

She replaces **Gabriela Portella**, who is now working on other issues but who was a kingpin in our sector and always acted with competence and a smile. We extend our thanks to Gabriela and wish her every success in her new responsibilities.

2) ETUC's internal activities

2.1. The meeting of the Social Protection Working Group on 23 September 2010

The ETUC convened, on 23 September 2010, the members with responsibility for the issues of social integration and social protection at national level. The debates represented a continuation of earlier analyses and focused on three topical subjects in which the social partners are involved:

- The debate on the Commission's Green Paper on the future of pensions and discussion of a draft resolution by the ETUC Executive Committee
- Analysis of the crisis and its social consequences
- The state of play of the legislative process concerning the proposal for a directive on healthcare
- The European Year for Combating Poverty and Social Exclusion: towards implementation of a minimum income

Four presentations were also made at the meeting, concerning:

- the agreement obtained on the proposal for a directive on cross-border healthcare,
- the third Forum on SSGI, to be organised by the Belgian EU Presidency on 27 and 28 October,
- renewal of the ETUC members in the Pensions Forum
- an initial brief presentation of the EU 2020 Strategy.

The participants debated each of these subjects in turn and the ETUC Confederal Secretary with responsibility for these issues, Jozef Niemiec, summed up each debate.

The first point was a presentation by ETUC Advisor Henri Lourdelle on the Commission's Green Paper on the future of pensions. He identified a number of points that require discussion, according to the trade union movement (the consequences of demographic changes, the possible increase in retirement age, the allegedly inevitable decline in pensions in the future, the role and solvency of private pension schemes, etc.).

This presentation was followed by a debate and airing of views with participants. Some made a point of highlighting the positive elements contained in this document, in particular

- the holistic approach adopted (not limited to a strictly financial and economic approach)
- the importance granted to employment issues in connection with pensions
- the necessity of pension schemes that ensure an "appropriate" (decent) income to retired people
- and the limits (dangers) of defined-contribution pension schemes, which participants claimed have been given too much importance by the Member States and the Commission in the past decade and whose limits were brought to light by the financial crisis, with the socially unfortunate consequences for pensioners...

It emerged from the debate that the Commission's paper does not give sufficient consideration to certain matters, including the need to:

- establish effective indicators, both on the rate of activity of the oldest employees in companies and on real performances in terms of the level of income received by pensioners under private pension schemes;
- adopt a financial regulation on the management of funds held by private pension schemes and their financial solvency;
- end the priority given to "individualisation", which in certain countries has gone too far, according to participants;
- make a clear distinction between "demographic dependence" and "economic dependence", the latter being closely related to the employment market, its evolution and the "quality" (non-precariousness) of available jobs;
- tie the debate on pensions and the impact of the ageing of society to the debate on social services, and in particular social services of general interest (SSGI);
- make changes in certain policies, particularly those concerning the privatisation of pension schemes, given the social consequences of the crisis;
- develop a more ambitious approach in the Union and allocate more resources to social policies.

Henri Lourdelle also noted that the ETUC was steering its activity towards the fight against social injustice, particularly in the framework of the redistribution of wealth produced. This is the essence of the declaration adopted by the latest ETUC Steering Committee and debated at the Mid-Term Conference for ETUC members, held in Paris at the end of May.

This was also the message of the four European demonstrations held on 14 May in Madrid, 15 May in Brussels and 16 May in Berlin and Prague. Through these events, the European trade union movement wished to demonstrate its preoccupations but also to present its demand for a New Social Deal.

The participants' comments confirmed both the ETUC's analysis and the commitment of trade union organisations to combat poverty and promote social inclusion.

In conclusion, this debate revealed that:

- Concerning the description of the situation, the figures are more or less exact;
- On content, the report does not draw sufficient conclusions on the evolution of the situation. Nor does it provide responses equal to

the challenges with respect to the social inclusion of certain disadvantaged groups such as migrants.

- The report also contains a good deal of self-satisfaction and not enough criticism of policies implemented.
- Lastly, considering the present situation, a debate is needed on financing social protection.

The second point concerned the social consequences of the crisis, particularly on pension systems, based on a note transmitted in advance to the members of the working group.

Jozef Niemiec also introduced this second item of discussion, pointing out that:

- The income of employees retiring at present depends in large measure on the proportion represented by private pension schemes, particularly defined contributions schemes, in their total pension. Certain financial assets (shares, high-risk investments, etc.) have lost up to 30% of their value.
- While all schemes have been affected by the crisis, they are not all affected in the same way. Pay-as-you-go pension plans are faring better than financed-based schemes (in other words, in which the pension amount depends on the financial performance of investments).
- The question that arises is how relevant and effective European regulatory instruments are and whether Europe should move towards more (or better) regulation of financial markets.

Jozef Niemiec also pointed out that the Social Protection Committee was involved in the debate, particularly with regard to European regulations and actions taken at national level.

In winding up the debate that followed this presentation, participants agreed on the need to:

- rethink the "architecture" of pension systems (respective importance of private schemes and public schemes, while giving absolute priority to the latter);
- examine funded retirement schemes, in other words defined contributions schemes, and provide correct information on the risks they present (people expect an unrealistic return, although the return will be the rate at the time of taking retirement, meaning that training is needed in these areas);
- demand a role for trade union organisations that represent employees and pensioners in the boards of pension funds;

- give priority in investments to the criteria of social responsibility and sustainable development;
- and of course fight for the development of employment and quality jobs (fight against precariousness, for "decent" pay, for equal pay for men and women, etc.). This implies the implementation of an economic policy that relaunches the economy through investment policies, particularly in research and development and lifelong training of workers.

The third debate, introduced by adviser Henri Lourdelle, focused on the state of play of the legislative process with regard to the draft directive on cross-border healthcare, also based on a note transmitted in advance to members of the working group.

Henri Lourdelle stressed the importance of the results obtained following the different actions taken by the ETUC with the political groups in the European Parliament, for example:

- the restriction of mobility to patients (it no longer concerns healthcare providers),
- the clarification obtained with respect to the way this directive ties in with the Regulation on the coordination of social security schemes (1408/71, since replaced by Regulation 883/2004),
- reiteration of the principle of equal treatment of national patients and "migrant" patients,
- reinstatement of Member States' competences in the definition of healthcare.

In conclusion, the working group members considered these changes to the directive as positive, but they insisted that at least two further changes still had to be made:

- the first concerns the question of prior authorisation and its consequences on the security and balance of national healthcare and hospitalisation systems;
- the second concerns the importance attached to the social dimension of healthcare systems, and not solely from the angle of the Internal Market, notably by supplementing the legal basis of this directive.

The fourth debate gave rise to an initial exchange of views on "2010, the European Year for Combating Poverty and Social Exclusion".

This discussion brought to light that:

- this question of combating poverty and social exclusion is taking on growing importance in different countries and various national initiatives were discussed (Germany, Luxembourg, etc.) as well as European initiatives (FERPA);
- this importance is magnified by the crisis, the full measure of which has not yet been taken, even if its effects in terms of job losses (or insecure work) are starting to be sorely felt.

A number of questions were also raised:

- Are available resources in Member States or even at European level (European Social Fund, for instance) being used wisely and effectively enough?
- How is the latest Commission recommendation being included and/or taken into account in national discussions?
- Should the population's most pressing needs be ranked in order to achieve objectives in a more relevant way?
- What is the role and importance in these strategies of the social economy and solidarity?

In summing up this debate, Jozef Niemiec:

- insisted that the organisations report to the Secretariat on the initiatives taken during this European Year 2010 and specify their own involvement,
- announced that the ETUC would establish contact in the coming weeks with the European Anti-Poverty Network (EAPN) and the European Disability Forum (EDF), its traditional but non-exclusive partners, to explore possible common and/or complementary actions.

As noted by the ETUC Confederal Secretary, the objective is to give visibility to this European Year 2010 and to avoid confirming the idea that the fight against poverty and social exclusion is the sole competence of NGOs and that the trade union movement does not have a role to play in this effort, provided of course that it takes up this role at every level.

At the end of this meeting, two communications were also released,

- one reporting on the social partners' meeting with the Social Protection Committee on 17 March 2009,
- the other discussing the presentation of the bi-annual report on social services.

2.2. The meeting of the Social Protection Working Group on 11 February 2011

The ETUC convened, on 11 February 2011, the members with responsibility at national level for the issues of social integration and social protection. Their discussions continued earlier analyses and focused in particular on three topical subjects that involve the social partners:

- The launch of the new European Platform against Poverty and presentation of the European Year 2011, "European Year of Volunteering";
- Preparation of the ETUC Congress (Athens, 16-19 May 2011), in particular to review the texts on social protection that will be debated;
- The crisis and its social consequences: the austerity measures adopted as a result.

The Working Group was briefed on four subjects:

- The Council's adoption of the directive on cross-border healthcare,
- The meeting with the Social Protection Committee on 9 February,
- The debate and the ETUC's intervention in the European Parliament on the Green Paper on the future of pensions,
- The announcement of the convening of the joint conference (ETUC and European Disability Forum) to be held on 10 and 11 March in Brussels at the premises of the European Economic and Social Committee on the theme of access to employment and training for people with disabilities.

The meeting debated each of these points, with conclusions being drawn by the ETUC Confederal Secretary with responsibility for these issues, Mr Jozef Niemiec.

The first item of debate was the creation of the European Platform against Poverty, presented by Ms Carparelli, acting Director at DG Social Protection and Inclusion.

After pointing out that one European in five is at risk of poverty today, i.e. some 116 million women and men, Ms Carparelli explained that the Platform is not a new structure. It serves as a framework for all European measures to combat poverty and social exclusion. In other words, to use

her image, this Platform is meant to "map out" all the measures being taken to fight against poverty in four areas:

- First, by mobilising all policies (this problem is not the concern of DG Social Affairs alone)
- By developing a new approach that involves players other than the public sector, the social economy sector for example, and that gives precedence to social innovation
- By making better or greater use of European Union finances (European Social Fund, Structural Funds, etc.)
- By strengthening the role of the Open Method of Coordination (OMC): the Platform should give it more visibility and place greater emphasis on the importance of social protection systems in combating poverty.

A discussion with participants followed this presentation. Several working group members stated that the impetus given by these measures seemed very satisfactory but that:

- it was important not to overlook the macro-economic context, which is being reflected in all countries by the first budgetary restrictions on social affairs budgets,
- the social cost of the crisis is growing.

Others asked about the influence of the EPSCO Council (Employment and Social Affairs) by comparison with Ecofin. They mentioned the EPSCO's limited means in terms of analysis compared with those of the financial institutions and the fact that statistics are only available after a period of three years.

In her response, the Commission's representative first pointed out that social expenditure accounts for 70% of public spending. She used the term of "decent austerity" with a forward-looking vision...

She also stressed the importance of using "human potential" and the necessary involvement of the trade unions via employment and the EU 2020 Strategy.

Ms Carparelli agreed that the "obsession with subsidiarity" did nothing to contribute to achieving social objectives.

She then went on to discuss "2012, the European Year of Volunteering".

She first explained that this initiative was not within the remit of her Directorate-General, but under the responsibility of DG Justice, Fundamental Rights, Citizenship and Communication.

Ms Carparelli then stated that work in this context would take place mainly at national level, which explains the relatively modest budget

allocated to the initiative: 8 million euro, compared with 17 million euro for the 2010 European Year. The European level will link up the different national situations and give "people a role", she explained.

The second item addressed by Confederal Secretary Jozef Niemiec concerned preparation of the ETUC Congress. Mr Niemiec presented the document containing the draft resolutions and highlighted the points that have an impact on or a connection with social protection and the fight against poverty and social exclusion.

He stressed how important it is for the Member States to be capable of financing social protection systems or even of releasing new resources.

Mr Niemiec also explained that advances were needed on more specific points without rewriting everything already decided.

There will consequently be an "our messages" section in the document, followed by a section entitled "our commitments".

A rich exchange of views followed this presentation. All the member organisation representatives described the difficulties being encountered in their country and suggested the points to be emphasized over the next four years, for example:

- pay, which should not play the role of balancing item;
- the essential role of social protection in providing career security;
- the introduction of a guaranteed minimum wage throughout the EU;
- the urgency of implementing the social partners' agreement of 25 March 2010 on an "inclusive labour market";
- the need for a change of strategy at European level: analysis is required and answers have to be found to change the direction of today's approach based exclusively on reducing costs towards one of raising revenues.

In winding up this debate, Jozef Niemiec accepted these comments, saying they would be included in the Congress document in a form to be determined by the Secretariat.

The third debate gave the floor to participants, with each describing the difficulties encountered by workers and/or retired people in their country, difficulties magnified by rising unemployment almost everywhere. Among the measures discussed:

- the freeze of the income threshold eligible for social benefit/allocations (Poland);
- the freeze in minimum income (Bulgaria)
- the nominal reduction in civil servants' salaries (Portugal)
- the increase in indirect taxes such as the consumption tax (Portugal)
- the decrease in salaries in the private sector (Estonia and Lithuania)
- the reduction in pensions (Lithuania)
- etc.

Summing up this debate, Jozef Niemiec said he shared the participants' concerns but he drew the Working Group's attention to the negative consequences that would inevitably result from the Competitiveness Pact supported by Germany and France. This pact is supposed to help the euro zone countries in difficulty but would impose particularly drastic conditions with painful social consequences:

- introduction of wage control mechanisms with a recommendation for wage reduction;
- elimination of wage indexing systems (which calls into question the autonomy of the social partners' negotiations);
- reform of pension systems, with a reduction;
- reduction of social benefits, etc.

He urged participants to take action, which is expected to materialise in the debates at the next Congress.

The floor was then given to ETUC Adviser Henri Lourdelle, who provided information on:

- the Council's adoption of the directive on cross-border healthcare (the member states have two years to transpose it into their national legislation);
- the European Parliament's debate on pensions, in which he participated on behalf of the ETUC, summing up the main points of the resolution on this subject adopted at the latest Executive Committee;
- the meeting with the Social Protection Committee, where he expressed the ETUC's reservations with regard to the Commission's document (COM(2011) 11 final), concerning for example the freeze on wages, pension reform, etc.
- the announcement of the seminar on 10 and 11 March at the premises of the European Economic and Social Committee, organised jointly with the European Disability Forum, on access to

training and employment for people with disabilities, in particular in the light of the social partners' agreement of 25 March 2010 on an "inclusive labour market".

3) Current European issues in the field of social protection

3.1. Meeting of the Pensions Forum (24 September 2010)

3.1.1. Election of the president and vice-presidents

The Forum, in accordance with its by-laws, organised the election for a two-year term of its president and two vice-presidents.

The following were unanimously elected:

- As President: Mr Georg Fischer, new Director of the Directorate for Social Protection and Integration (succeeding Jérôme Vignon, who has retired)
- As Vice-Presidents: Mr Henri Lourdelle (ETUC) and Mr Handels (BusinessEurope)

3.1.2. Presentation of the Green Paper and debate

After approving the agenda and the minutes of the previous meeting (19 June 2009), Mr Fischer presented the Green Paper on the future of pensions, published by the Commission in July.

He explained that the Commission had adopted a holistic approach that involves three Directorates-General (Employment and Social Affairs, Internal Market, and Economic and Financial Affairs). Mr Fischer added that the Green Paper does not call into question Member States' prerogatives on pensions, but that it seeks to develop a framework for pensions at European level in order to improve its support for Member States.

Its publication opens a four-month consultation period that will close on 15 November 2010.

He then outlined the main thrust of the document.

His colleagues from DG Markt and DG EcFin also presented various observations on the areas within their competence.

A debate followed this presentation. Among the points made were the following:

- The representative of **BusinessEurope** welcomed the recognition of ties between viability and adequacy. She also pointed out that pay-as-you-go pension plans are also vulnerable and complex. Concerning institutions for occupational retirement provision, she considers that no changes are needed for the moment. She also applauded the OMC for its effectiveness and said its objectives are relevant.
- The **EFRP** praised the Green Paper's holistic approach. The representative nevertheless noted that it minimises the problems faced by pay-as-you-go pension plans.
- Several other persons also stressed the usefulness of this holistic approach and the role of the OMC.
- The **ETUC** representative welcomed the broad consultation launched by the Commission, while pointing out that the question of pensions is a Member State competence. He announced that the ETUC Executive Committee would be addressing this issue at its next meeting in October and adopting its position. He added that the Forum's role is technical and not political (it is not charged with defining which policies should be implemented at Member State level). Its task is to explore technical options that could be implemented for occupational pensions to remove obstacles to mobility in this area. It should also explore ways of improving their solvency and the quality of information to be provided to pensioners and future pensioners, etc.

To wind up this debate, Mr Fischer stated that Parliament would be taking up this matter. Following the consultation, the Commission will publish – probably in the second half of 2011 – a White Paper that will contain proposals for initiatives.

3.1.3. Revision of the Directive on Institutions for Occupational Retirement Provision

The Commission's representative (DG Markt), after discussing the financial importance these institutions represent, announced a revision of the Directive on Institutions for Occupational Retirement Provision.

Several speakers, including the ETUC representative, but also BusinessEurope and the EFRP, expressed surprise over this announcement, which they consider premature at best, considering that the consultation opened by the Green Paper has barely begun.

The Commission representative explained that the main question raised is that of the solvency rules to be applied to occupational pension schemes in connection with the "Solvency II" provisions applied to the insurance sector.

3.1.4. Information on the Insolvency Directive

This was an information item and a progress report on the study launched by the Commission. It was considered too early to draw any conclusions at this stage.

3.1.5. Interim report on the joint work of the EPC (Employment) and SPC (Social Protection)

This was also an interim report, but Forum members welcomed this joint work and stressed its importance: employment policies determine the future of social protection systems. The ETUC highlighted the need for consistent prudential standards in the interest of pensioners and future pensioners and the need to inform workers correctly about risks.

3.1.6. Presentation of Portugal's pension system

In keeping with its tradition, the Forum concluded with a presentation by one of the Member States on its national pension system. Portugal took its turn at this meeting, outlining its system and the reforms in progress. The reform process began in the 1990s with a White Paper and, in 2002, the pension calculation was changed. Pension reform has been on the political agenda for the last ten years and involves the different partners. The ETUC nevertheless pointed out the paradox of trying to keep people at work longer even though the rate of unemployment is high and may well go even higher due to the crisis. Portugal's representative confirmed that unemployment stood at 10.8% in July 2010 and that it is expected to rise further...

In response to a question, he said the current insurance system requires a contribution of 34.75% of the salary (11% charged to the employee and 23.75% to the employer).

3.1.7. Other business and date of next meeting

- The President announced that only a brief summary of the meeting (not minutes) would be sent to Forum members in the future, to which members agreed.
- He also announced the date of the next meeting, initially set for Friday, 17 June 2011 (however, in consultation with the two Vice-Presidents, this date was postponed until the second half of 2011, to have the Forum meeting coincide with publication of the White Paper on pensions).

3.2. Adoption by the Council of the proposal for a directive on cross-border healthcare

The Council of Ministers of the European Union approved by a large majority², on Monday, 28 February 2011, the European Parliament's amendments to the draft directive aimed at facilitating access to safe and high quality cross-border healthcare and promoting cooperation in this area among the Member States.

In accordance with Article 294 of the Treaty on the Functioning of the European Union (TFEU or "Treaty of Lisbon"), this directive on cross-border healthcare was therefore adopted. The Member States have 30 months to transpose the directive's measures into their national legislation.

"Exit" prior authorisation!

Under the provisions of the Regulation on the coordination of social security schemes (Regulation EC 1408/71, replaced by 883/2004), it has always been possible to obtain healthcare in another Member State in the following two cases:

- unplanned care (illness or accident occurring during travel in the European Union) provided, in order to benefit from coverage and/or reimbursement by the sickness fund in the home state, the person is in possession of the famous form E111, issued prior to departure by the local sickness insurance fund.

² The Austrian, Polish, Portuguese and Romanian delegations voted against and Slovakia's delegation abstained.

- planned care, provided "prior authorisation" has been granted by the sickness insurance fund in the home country, certified by form E 112.

However, as a result of a legal action brought by two Luxembourg nationals, Messrs Kohll and Decker, after their sickness fund refused to reimburse care provided in Belgium without prior authorisation, the Court of Justice of the European Union handed down two famous judgments³, in April 1998, based on one of the four fundamental freedoms of the European Union⁴ (freedom to provide services). The Court authorised reimbursement of the treatment on the basis of Luxembourg's rates.

Following this judgment, other cases were brought before the Court of Justice of the European Union⁵ and were obviously decided along the same lines. The formality of prior authorisation therefore fell into disuse, which led the Union and notably the European Commission to put a new system into place. It should be noted, however, that "prior authorisation" remains mandatory for hospital care abroad.

In the wake of this judicial intervention in the organisation and in particular in the reimbursement of healthcare in the Member States, but also to prevent abuse in claims for reimbursement of care provided outside the home Member State, the Commission introduced the "European sickness insurance card". This card enables its holder⁶, subject to entitlement to sickness insurance in the home Member State, to obtain healthcare (non-hospital care) anywhere in Europe, without having to present a form and/or to request prior authorisation.

By the same token, the European Commission, on the initiative of the Directorate-General Health and Consumers, presented – in the framework of the "Renewed Social Agenda" of 2 July 2008 – a proposal for a directive on the application of patients' rights in cross-border healthcare. Officially, the aim of the proposal was to spell out how patients can exercise their rights recognised by the European Court of Justice to obtain care in other Member States.

³ Kohll and Decker judgments (April 1998: C-120/95 and C-158/96),

⁴ Freedom to provide services, freedom of establishment, free movement of goods and services and free movement of persons

⁵ Vanbraekel (July 2001), Smits and Peerbooms (July 2001), Müller-Fauré and Van Riet (May 2003), Watts (May 2006).

⁶ Issued by the sickness insurance fund in the home country upon request. In France, it is valid one year and must therefore be renewed on request.

In fact, however, the intentions – and the proposal – reside elsewhere: the idea was to open the healthcare sector to "market laws".

Indeed, the approach adopted in this proposal for a directive, which the ETUC denounced, was in keeping with a logic of consumerism – the possibility to go "healthcare shopping" – based on meeting individual needs, the sum of which cannot define the general interest. This individualistic consumerist approach represents the negation of the principle of solidarity, on which European social protection systems are founded, and healthcare systems in particular.

Furthermore, theoretically, the Member States remained in control of the organisation of their healthcare systems, including in terms of hospitalisation. For hospital care, they could implement mechanisms to plan and regulate patient flows through the system of prior authorisation. However, this assertion seemed to be essentially a position of principle because, as the draft directive stated, this authorisation could only be requested in exceptional cases and would be limited "to what is necessary and proportionate and shall not constitute a means of arbitrary discrimination". The ETUC also observed that this wording introduced a new element of legal uncertainty – contrary to what the proposal claimed to resolve – concerning the causes that the Member States could have evoked for introducing prior authorisation.

Likewise, specialised care that did not require hospital treatment could be reimbursed if contained in a list drawn up by the Commission. This provision posed two types of problems: first, that of the Commission's competence in this area; and second, as already stated, that of encroaching on a responsibility of Member States (the organisation of their own healthcare system, and in particular what constitutes out-patient healthcare and its reimbursement, and what constitutes hospitalisation). It also entailed the risk of calling into question, in a restrictive sense, certain medical practices used in the States.

By facilitating patient mobility, this initiative could have another perverse effect: that of not giving the Member States incentives to make quantitative and qualitative improvements to their own healthcare system, despite the need for such improvements and/or the existence of waiting lists in certain states. Encouraging mobility thus offered a less costly way for the states to resolve these problems, but at the expense of national patients who lack the financial possibility to take advantage of this mobility.

There was yet another risk in this proposal: that of an exodus of healthcare professionals from certain Member States. Indeed, the text encouraged the mobility not only of patients but also of healthcare practitioners!

For the ETUC, there was also the risk of seeing the development of a two-tier European healthcare system .

As drafted, and in particular the fact that patients had to pay up front for treatment received in another Member State but also because no provision was made for reimbursement of the costs of transport and possible accommodation, this proposal would de facto create a "two-or-more-tier European healthcare system" by offering opportunities for the wealthiest at the expense of the others. There was a risk of strengthening one-way migrations:

- for patients: migrations of patients from the costliest healthcare systems to the least costly, since ex post reimbursement would be based on costs in the home state;
- for healthcare practitioners: from countries where remuneration is lowest to those where it is higher, with a dual risk, that of depriving the home state of its best practitioners and of upsetting the balance of care provision in the host country.

Other consequences were disregarded:

- on the essential question of patient safety – the necessity of medical monitoring (post-treatment) – and the appropriate protection of patients' personal data;
- on healthcare professionals, both those working in healthcare systems faced with an influx of foreign patients (working conditions, training – including in languages) and those working in systems weakened by massive departures of certain categories of professionals, which risked weakening the quality of care provided;
- on tensions that might exist within systems, including in terms of investments in structures for receiving these new patients, and which would have been a burden on the Member States confronted with a major influx of foreign patients;
- on the very organisation of healthcare systems, which risked being weakened or even dismantled, particularly those having regulations on the number of practitioners or healthcare institutions (limited admissions systems).

This directive could also lead to indirect discrimination in terms of meeting the needs of national patients by comparison with those of migrant patients, since certain hospitals in particular, but also certain professionals, might be tempted to "specialise" – which is already the case, but the phenomenon would be reinforced – in the financially more lucrative and/or growth branches, assigning or drawing the most competent personnel to these areas and – because budgetary allocations are not inexhaustible – neglecting other branches or sectors.

To sum up, the ETUC considered that a distinction had to be made between "free movement of persons" (on which everyone agreed) and "free movement of services", which comes under the laws of the internal market (i.e. freedom of entrepreneurship, freedom to provide services). The ETUC therefore reiterated that healthcare had to be considered first and foremost from the perspective of the general interest. It was thus clearly opposed to subordinating healthcare services to single market rules, which was likely to accentuate privatisation and the marketing of such services in the Member States. For the ETUC, the states had to keep control over how they are regulated, to guarantee the quality and accessibility of these services taking account of limited financial resources.

In conclusion, the unions observed that patients were no longer at the heart of the debate; they had been replaced by consumers. Indeed, the initiative is not the same when obtaining care when travelling or working in another Member State as when deciding to go healthcare shopping among the range of treatments available abroad! The social approach is thus eclipsed by the consumerist approach. The question already raised therefore remains: What would become of healthcare systems based on solidarity?

The ETUC and its member organisations therefore took action to change the orientation of this draft directive and managed to secure significant advances!

With the European Parliament, the ETUC strived to:

- Correct the "consumerist" and "market" logic of this proposal;
- Put patients back at the heart of the initiative;
- Permit the development throughout the European Union of quality healthcare systems, accessible to all, based on a genuine public

health policy and ensuring better use of existing human competences and the release of sufficient financial means.

After two readings/debates in the European Parliament, the directive was approved by the Council on 28 February 2011.

The following are some of the main advances obtained:

- Mobility is limited to patients.
- The social and health dimension of healthcare is taken into account, in particular through the decision to change the legal base of the directive – initially based solely on Article 114 on the Internal Market – by adding Article 168 on Public Health (which will be essential in case of a legal dispute and which fills a legal vacuum: the concept of internal market alone shall not be taken into account in decision-making).
- Patient safety and guaranteed reimbursement for treatment in another Member State will be at the same level as in patients' state of affiliation.
- Member States' responsibility in the organisation, financing and development of their healthcare system is recognised, as well as their responsibility for regulating patient flows.
- Hospital care and hospital systems are kept out of the system through the requirement of prior authorisation.
- Member States will have the possibility to choose to pay the healthcare provider directly rather than reimbursing the patient subsequently.
- Member States will have the obligation to set up national contact points responsible for providing information to patients on their rights to cross-border healthcare and on certain practical aspects (information on healthcare providers, the quality of care, access to hospitals for people with disabilities, etc.).
- Cooperation between Member States on healthcare is strengthened, for example in the area of online healthcare and rare diseases.

However, this directive does not settle everything.

The following do not come within its scope:

- The sale of medicinal products and medical devices over internet,
- Access to organs and their attribution for transplant purposes,

- And above all, everything related to long-term healthcare (dependence) in retirement homes.

Other problems remain, in particular related to the need for Member States to improve their national systems so as to meet growing demand, especially resulting from the ageing of the population, and the need to ensure access for all to quality local healthcare systems.

Josef Niemiec, ETUC Confederal Secretary with responsibility for this matter, summed up as follows: *"We will remain vigilant that this possibility for patients to obtain care outside of their home state does not serve as an alibi or an exemption for Member States to undertake the necessary reforms of their national healthcare systems founded on solidarity."*

One thing is certain, however: with their European sickness insurance card, patients can make use of the opportunity to obtain care abroad or even to avoid long waiting lists for certain specialised care such as ophthalmology or dental care, for example. This directive goes even further than offering this option, however. Under pressure from the trade union movement, it also gives patients a number of qualitative or social guarantees, particularly affecting reimbursement.

3.3. The ETUC and the Social Protection Committee (SPC)

3.3.1. Meeting between the ETUC and the Bureau of the Social Protection Committee

On 9 February 2011, Henri Lourdelle, representing the ETUC, participated in the meeting organised with the social partners by the SPC Bureau, for the purpose of gathering their views on the response to the crisis in the light of the Commission's Communication (COM(2011) 11 final).

In his opening remarks, the ETUC representative stressed the organisation's positive assessment of the fact that the Commission reiterates its recognition of the role played by social protection systems in cushioning the consequences of the crisis on European societies.

He also confirmed that the organisation was aware of the acute nature of the problem of unemployment and that it agreed on the need to stimulate growth...

However, Mr Lourdelle also stressed the six measures proposed by the Commission with which the ETUC disagrees.

- 1) The need for "rigorous fiscal consolidation". Who will pay the price of such consolidation? Public budgets, whose growth will in some cases have to remain below GDP growth! Public budgets are those for education, research and innovation, energy, but they are also social budgets, support for employment, and so on. How can growth be relaunched by reducing households' consumption capacity, placing the burden of the crisis on the neediest and weakening the others, namely those who will be obliged to reduce their activity or who may simply end up unemployed? Where is the consistency with the initial finding of the recognised cushioning role of social protection systems? With this approach, Europe seems to be "sawing off the social branch on which it is seated"?
- 2) With a great deal of caution, the ETUC expressed satisfaction with the Commission's effort to raise a subject that is taboo in many countries, namely the need to increase taxation. However, the ETUC expressed its disagreement with the proposal to do so only from the angle of indirect taxation, meaning taxation on consumption. Such taxation is socially unfair since it taxes individuals uniformly regardless of their resources, thus placing a heavier burden on the weakest, and since it can constitute an additional factor of discrimination in access to goods and services.
- 3) What the organisation finds most unacceptable is the recommendation to Member States to apply strict wage moderation and to revise indexation clauses in wage bargaining systems. This recommendation represents unacceptable interference in social policy and in social bargaining! Once again, said Mr Lourdelle, "we come face to face with a double-edged discourse". On the one hand, there is praise for social dialogue, the social partners and the

promotion of so-called civil society. On the other, its autonomy is undermined, it is placed in a purely economic yoke.

- 4) He expressed the ETUC's agreement on "mobilising labour markets and creating job opportunities" and the social partners demonstrated their will to advance in this area by signing a difficult agreement in the framework of social dialogue for an inclusive labour market (25 March 2010). However, he asked, what is meant by "reforming the labour market"? Does this mean making it more precarious, more vulnerable? Today, there are one million vacant posts in Europe. However, there are also 20 million unemployed: what happens to the others???

Or does reforming the labour market mean providing support for those outside the labour market through income support and training so that they can enter or re-enter the market? If so, yes, the ETUC supports it.

- 5) He then expressed surprise to discover in the chapter on employment the aim of "reforming pension systems". The debate seems to be limited to raising pensionable age, in which case in many Member States this will be tantamount to playing "budgetary cavalry", meaning transferring retirement budget to other social budgets (unemployment, health, invalidity, etc.). Moreover, it is not enough simply to "decree that we have to work longer and longer". There have to be jobs (investment strategies, support and creation of favourable infrastructures in Member States) and they have to be quality jobs, i.e. not precarious.
- 6) On the other hand, as stated at the EMCO Council, he pointed out that the ETUC supports any measures (training, income support, coaching, etc.) that would lead to an effective increase in retirement age, taking into account, of course, the strenuousness of certain jobs. The ETUC's support is not limited, however, to prolonging the duration of activity solely from the angle of exit (the oldest employees). It must also be prolonged from the standpoint of entry, i.e. enabling young people to obtain a (non-precarious) and correctly paid qualifying job.

To conclude, he stressed the SPC's invaluable support for the work of the Commission and Council in these areas, to keep from having to admit defeat at the hands of DG ECFIN and the Council of Finance Ministers. There cannot be a lasting recovery if the social dimension is sacrificed in the process. The economic and social dimensions are equal and represent the two pillars of growth.

3.3.2. ETUC response to the SPC consultation on the future of the Social OMC

On 20 April 2011, the ETUC responded to the consultation launched by the Social Protection Committee on the future of the Social Open Method of Coordination.

First, it stated that the Social OMC in the framework of the Europe 2020 strategy must maintain the dynamic being built with implementation of the decisions taken in Lisbon in 2000. This means that it must acquire and improve its visibility on the one hand and, on the other, have more influence in the choices made by the Council – which must therefore not be financial choices alone.

For the ETUC, this is probably where the challenge lies: succeeding in going beyond studies – which are certainly useful but not sufficient – and becoming the expression of Member States' "social" ambitions. The ETUC is aware that, in today's context of often drastic cuts in social budgets, these comments might seem anachronistic. Only on this condition, though, will Europeans come to believe once again in a Europe that also exists for them.

With regard to the objectives of the Social OMC, for the ETUC, the process must be the reflection or even better the tool for building a truly social Europe. This approach therefore goes well beyond the approach limited to procedures, because through the OMC the Member States build convergence in their policies and in the means they implement to attain the objectives they have set together, whether on pensions, combating poverty or health. The Europe 2020 strategy – which limited the number of objectives, in particular in the social sphere – must be based on the

Social OMC and make full use of its potential to make a success of its goal of tackling poverty and promoting social inclusion.

This therefore implies, and represents another challenge in today's context, that the Social OMC – in particular through the studies it conducts, to which we have already referred – can claim resources enabling social protection systems to play their role, to perform their functions. This includes in particular demonstrating that it is not by impoverishing people or placing them in situations of precariousness that a growth dynamic can be restored, as sought in the 2020 strategy.

This also implies, in terms of methods, that stakeholders must be consulted throughout the process and not just at its end in the form of "information to stakeholders". In other words, they must be involved at the start and throughout the process, but also in follow-up and evaluation of measures recommended and/or implemented.

This brings us back to the initial question: What is the Social OMC? A "procedure" like so many others or the impetus of a "dynamic"? The ETUC prefers the second conception.

The ETUC considers that the Social OMC has moved closer to a balance between effectiveness and efficiency through the streamlining process which should allow the inclusion of all important areas of social protection.

The ETUC also pointed out that the approach taken in recent years of emphasizing specific targets is useful. At the same time, however, juxtaposition should be avoided. This implies establishing a plan of priorities that should be adaptive and discussed with stakeholders. Each party will obviously try to defend its own priorities, but these will have to be examined in the light of the priorities set by the Council in the framework of the 2020 strategy, so as to be consistent and intelligible. The idea is not to pose as lobbyists, but to have integrated policies.

At the same time, it is important not to water down the specific characteristics of each policy area (pensions, healthcare, etc.) or to weaken the dynamics created. This concern was already expressed in the attached joint letter from the social partners prior to implementation of the process of streamlining the OMC.

The European trade unions also specified that strengthening stakeholder involvement is not necessarily synonymous with having to increase their

number: they must be representative and not consider themselves exclusive owners, not "confiscate" a given area, whether the "poor", the "elderly", etc. This is why we insisted earlier on the need for an integrated and comprehensive approach and policies, which does not rule out having very precise objectives, even target figures. Nor does it mean increasing the number of discussion bodies or forums where responsibilities are not clear and where no one, after expressing a point of view, feels truly committed.

All the possible entries are of course useful, but the ETUC considers it important to give precedence to two, namely, peer reviews and joint reports.

With peer reviews, learning is possible not only because participants acquire knowledge of what takes place in the field, but also because they can take inspiration from the exercise and can measure its limits: this is what is often referred to as mutual learning.

With joint reports, the idea is also to evaluate what is being done based on precise and comparable national reports: the relevance and usefulness of measures, whether or not they are successful in achieving objectives. The Committee should not draw up rankings, but could sometimes be – in the ETUC's view – more incisive in its evaluations.

Moreover, these two instruments contribute to the "Europeanization" of the approach, whereas the tendency today is more towards a "nationalisation". Europe succeeded – not without difficulties, of course, which continue to emerge today – in creating a European currency, so why shouldn't it manage to advance more modestly but not less firmly towards a European approach to social policies?

To sum up, for the ETUC, improving stakeholder involvement implies associating them at every stage of the process and not simply when it is about to be concluded, thus making the process more transparent. It also implies a clear definition of the objectives sought and the means (to be) implemented. The ETUC is aware that this also takes time – dialogue takes time of course – but when it is carried out well and becomes the rule and not the exception, everyone stands to gain.

To conclude, the ETUC would like to highlight two observations that go beyond the framework of the questions raised, but which it considers important.

The first, already mentioned, is evaluation: taking the time – and having the means – to evaluate working methods – which the Committee does today and once again, we thank it for that – but also the reforms

undertaken: their impact on the lives of the people concerned, their effectiveness in the light of the stated objectives, whether on pensions, health, social inclusion or combating poverty.

This also supposes, and this is our second observation, the availability of relevant qualitative and quantitative indicators. A simple example to conclude: How can poverty or the risk of poverty really be evaluated today? Based on what factors, what observations? We know that situations evolve and that there is a constant need for updates in the ways realities are apprehended. A sub-working group is already exploring these issues and is constantly looking for ways to improve them. We encourage it to continue these efforts.

3.4. Joint letter from the ETUC – BusinessEurope – EFRP on solvency rules

On 13 April 2011, the ETUC, BusinessEurope and the European Federation for Retirement Provision (EFRP) sent a joint letter to Commissioner Andor (DG Employment) and Commissioner Barnier (DG EcFin) following the announcement that the White Paper might suggest a revision of the directive on the activities and supervision of institutions for occupational pension provision.

The signatories of the letter expressed serious concern that this may be a simple copy-paste to pension schemes of the solvency rules (Solvency II) applied to the insurance sector.

If so, the move would result in a prohibitive and useless increase in contributions, given the volume of hedging capital that would have to be constituted.

Hedging rules already exist and are followed by the social partners, who are often behind the organisation of such occupational pensions.

The organisations are not opposed to an evaluation of existing rules, but are opposed, in the interest of their members, to automatic application of the Solvency II rules.

On 22 June, the two commissioners replied to the three organisations, explaining that it was not the Commission's intention to apply the Solvency II rules to occupational pensions.

4) Tackling poverty and promoting social inclusion

4.1. Joint seminar organised by ETUC and the European Disability Forum (EDF)

The European Trade Union Confederation (ETUC) and the European Disability Forum (EDF) organised in the framework of the European Year 2010 for Combating Poverty and Social Exclusion, and with the support of the European Commission, a seminar held on 10 and 11 March at the premises of the European Economic and Social Committee. The theme of the seminar was "access to employment and training for people with disabilities".

The aim was to continue raising awareness and encouraging action by those on the ground, namely the social partners and in particular the trade unions, but also associations active in this area, in order to promote equal opportunities in employment and access to training for people with disabilities, with emphasis on the employment and vocational training factor.

This initiative also tied in with implementation of the Joint Declaration, adopted on 28 October 2007 at their joint seminar in Lisbon. It allowed a review of progress towards achieving the eight commitments made at the time and fleshed them out in the light of progress made.

This joint action also tied in with implementation of the agreement signed by the social partners on 25 March 2010, "For an inclusive labour market".

In order to achieve these objectives, a questionnaire drawn up by a restricted steering committee (made up of the two secretariats) was sent to the organisations. It asked them to report progress achieved, innovative measures and problems experienced with implementing the social partners' agreement, and to make suggestions. The results of the survey served not as an end-point but as new impetus for better integration of people with disabilities in both the workplace and society.

The conference, initially planned for the end of 2010, ended up being held, with the Commission's agreement, in Brussels on 10 and 11 March at the Economic and Social Committee. It drew representatives of trade unions and associations for people with disabilities from the different EU Member States.

The proceedings opened with remarks by Miguel Angel Cabra de Luna of the ETUC, ETUC General Secretary John Monks and EDF President Yannis Vardakastannis.

The Hungarian Presidency of the European Union, represented by Péter Györkös, the European Commissioner for Employment, Social Affairs and Inclusion, Laszlo Andor, and Staffan Nilsson, President of the European Economic and Social Committee, also addressed the conference.

The ETUC (represented by Adviser Henri Lourdelle) then presented the social partners' agreement of 25 March 2010 on "An inclusive labour market".

After this presentation and a question-and-answer session, a round table was held with the participation of employers (BusinesEurope, CEEP, UEAPME), an EDF representative and a trade union representative (Joël Delvaux of the ÖGBL). The participants explained how they viewed or participated in implementation of this agreement at their level.

The questionnaire results were then summarized, showing both the progress made since the last meeting, but also the advances still needed.

Three working groups were set up (an English-speaking group, a French-speaking group and a multilingual group) to discuss how to implement the social partners' agreement.

After their discussions had been summed up, the principal conclusions were written into the joint declaration⁷, which was presented, debated, amended and adopted by the participants.

The seminar concluded with remarks by Josef Niemiec, ETUC Confederal Secretary, and Donata Vivanti, EDF Vice-President.

5) Other information:

⁷ See ETUC site

- **Extension to third-country nationals of the new Regulation on the coordination of social security schemes:** Since 1 January 2011, Regulation 1231/2010 extends the provisions of Regulations (EC) 883/2004 and 987/2009 to third-country nationals who are not already covered by these regulations solely as a result of their nationality, and to members of their family and their survivors, provided they reside legally in a Member State. Regulation 1231/2010 applies in all European Union Member States apart from Denmark and the United Kingdom.
- **Adoption by the Council on 24 June 2010 of a Directive (2010/41/EU) that strengthens social protection for the self-employed and their assisting spouses** with a view to consolidating the principle of equal treatment for men and women wishing to take up or extend a business activity. For the first time, this new directive grants the right to maternity benefits to women engaged in a self-employed activity and assisting spouses of self-employed workers. It creates autonomous social protection rights for the assisting spouses of self-employed workers.
- **Discrimination in dismissals based on gender:** On 18 November 2010, the Court of Justice of the European Union handed down a judgment (C-356/09) in which it rules that differentiated dismissals between men and women based on the age at which they are entitled to a retirement pension constitutes discrimination on grounds of gender.
- **Calculation of seniority between part-time and full-time workers:** In a judgment handed down on 10 June 2010 in joined cases C-395/08 and C-396/08, the Court held that the calculation for retirement pensions may not discriminate between part-time and full-time workers.
- **Compensatory rest periods for occasional workers:** In the judgment handed down on 14 October 2010 (C-428/09), the Court ruled that compensatory rest periods must also be guaranteed for occasional and seasonal workers.

Henri LOURDELLE

