

EXTRAORDINARY EXECUTIVE COMMITTEE
Brussels, 06 September 2016

ANNEX 1 to the European Pillar of Social Rights (draft position)

Draft Response to the EU Commission Annex 1

On the 8th March the Commission began a public consultation on the European Pillar of Rights. One of the key text was an Annex 1 setting out a first preliminary outline of the European Pillar of Social Rights (EPSR).

The Annex 1 contains 20 clear articles or 'policy domains' - subsequently described as non-exclusive principles - which are divided into three chapters. The ETUC has therefore developed responses to each of these to assist the ETUC and affiliates to respond to the ongoing consultation. As we have repeatedly stated, our expectations and demands in relation to the EPSR are not confined to a reactive approach to this document and this view is shared by the Commission. Our priorities are clearly set out in the relevant document but nonetheless this paper gives an outline of the parts of the annex with which we agree and those that concern us. Below are the chapters including the released proposals and initial responses from the ETUC.

CHAPTER I: EQUAL OPPORTUNITIES AND ACCESS TO THE LABOUR MARKET

1 Skills, education and lifelong learning

All persons shall have access to quality education and training throughout the life course to acquire an adequate level of basic skills and key competences for active participation in society and employment. Low skilled young people and working age adults shall be encouraged to up-grade their skills.

From a trade union perspective there is a great deal to welcome in this principle but we would add a few points. Firstly, the ETUC demands a "*professional skills guarantee*" for low-skilled adults to acquire the minimum skills required on the changing labour market. Secondly, a "*European right to paid educational leave*" in order to cover the training and education requirements throughout working life. Thirdly, we must ensure training provision for workers inside and outside of workplace. In the case of the former via collective agreements, building on legal provisions where necessary. Unions must be involved in the design of companies' strategy on skills, for example. For the latter, outside 'classical workplaces' for non-standard workers, by collective agreements if not by law to ensure them training right and provision regardless of their status (self-employed, platform, freelancers, etc.)

Recommendation: We can generally support this item, notwithstanding our above demands.

2 Flexible and secure labour contracts

a. Equal treatment shall be ensured, regardless of employment contract, unless different treatment is justified on objective grounds. Misuse or abuse of precarious and non-permanent employment relationships shall be prevented.

b. Flexibility in the conditions of employment can offer a gateway to the labour market and maintain employers' ability to swiftly respond to shifts in demand; however, the transition towards open-ended contracts shall be ensured.

Equal treatment as phrased here may prove problematic and so needs to be clarified. The term “employment contract” should read ‘status’ or at least ‘employment relationship’. The term “treatment” is too vague. In addition, the idea of the “single contract” might be looming behind some of the thinking for point a.

Implicit in the two-part structure of this item is the return of the discredited concept of flexicurity. This is disappointing and point b should be largely rejected on the grounds that every single member state has more flexible labour markets today than in the past and this bear significant responsibility for the social crisis that the EPSR seeks to address.

Recommendation: Point a is to be improved but b should be strongly challenged.

3. Secure professional transitions

a. All working age persons shall have access to individualised job-search assistance and be encouraged to take up training and up-skilling in order to improve their labour market or entrepreneurial prospects and faster job and professional transitions.

b. The preservation and portability of social and training entitlements accumulated during the career shall be ensured to facilitate job and professional transitions.

Wording could be stronger as it omits, for example, any reference to financial support in providing greater assurance on access but generally positive contribution. Links to existing initiatives like the Council Recommendation on Long-Term Unemployment would strengthen the case.

Recommendation: Generally support the need for secure transitions but much more needs to be provided.

4. Active support to employment

a. All people under the age of 25 years shall receive a good-quality offer of employment, continued education, an apprenticeship or a traineeship within a period of four months of becoming unemployed or leaving formal education.

b. It shall be equally ensured that registered long term unemployed persons are offered in depth individual assessments and guidance and a job integration agreement comprising an individual service offer and the identification of a single point of contact at the very latest when they reach 18 months of unemployment.

Again, this is a positive contribution and with modest additions we would accept. Firstly, it needs to specify developing measures to get into the labour market NEET young people, especially those in situation of social exclusion, given what we know of the potential long-term effects that this can have. Secondly, there should be greater ambition on timings. If measures to help long-unemployed people are only taken when they reach 18 months of unemployment, a scarring effect in the professional career of the worker would have already taken place. Measures should be taken at an early stage. The period observed by the Youth

Guarantee schemes might be taken into consideration here (4 months). Finally, we would push for specific reference to the European Social Fund in implementation.

Recommendation: Support this section but amend it with more ambitious objectives.

5. Gender equality and work life balance

- a. Gender equality in the labour market and education shall be fostered, ensuring equal treatment in all areas, including pay, and addressing barriers to women's participation and preventing occupational segregation.
- b. All parents and people with caring responsibilities shall have access to adequate leave arrangements for children and other dependent relatives, and access to care services. An equal use of leave arrangements between sexes shall be encouraged, through measures such as the provision of remunerated leave for parents, both men and women.
- c. In agreement between employers and workers, flexible working arrangements including in the area of working time shall be made available and encouraged, taking into account both workers and employers' needs.

The importance of gender equality means that it should supersede rather than add to individual points within the annex. The points here are also misguided and so move away from tackling the actual challenges as they now stand. On point a, for example, women are 60% of undergraduates in Europe and so we can deduce that generally it is not education attainment which is lagging; rather a fair distribution of labour market opportunity thereafter. Point c needs to be amended to include the need to bring forward a proposal to revise current legal framework to address the gender pay gap.

Recommendation: The proposal needs to be significantly amended as it is not sufficient to bring about the type of change needed. In addition, there needs to be a commitment to ensuring gender equality as founding principle that runs through the whole EPSR.

6. Equal opportunities *Labour market participation of under-represented groups shall be enhanced, ensuring equal treatment in all areas, including by raising awareness and addressing discrimination*

There is nothing to disagree with here, but it is unclear why disability is addressed separately in point 16 and gender previously. In addition, we would have real problems if this was used a pretext to attack retirement ages and rights in the context of encouraging older workers back onto the labour market against their will. All discrimination grounds should be spelled out here or, better still, as a founding principle.

Recommendation: The ETUC supports the move make labour markets more accessible but seek greater clarity on the approach to integrate under-represented groups more broadly.

CHAPTER II: FAIR WORKING CONDITIONS

7. Conditions of employment

- a. Every worker shall be informed in written form prior to the start of employment on the rights and obligations derived from the employment relationship.*
- b. If there is a probation period, the probation period shall be of a reasonable duration; prior to its start, workers shall receive information on its conditions.*
- c. Dismissal of a worker is to be motivated, preceded by a reasonable period of notice, and there shall be an adequate compensation attached to it as well as access to rapid and effective appeal to an impartial dispute resolution system.*

It is progressive that the Commission sees as problematic self-organised forms of work and the low awareness of rights and unclear information requirements for employers that this can engender. But it is not only a question of awareness but also a question of introducing new rights and adapting existing ones in relation to changing labour markets.

Point a is a positive contribution, as is point b, though we would want to see 'reasonable' probation period more clearly defined. Point c concerns individual dismissal protection the proposal is insufficient as employers must give valid reasons for dismissal. Unfair dismissal and worker abuse cannot be rectified by simple compensation. The right to reinstatement needs to be ensured. (It needs to be kept in mind that the Council acts unanimously on dismissal protection and the EP is only consulted.) In addition, the principle of non-regression and most favourable interpretation for the worker must be an overarching principle.

Recommendation: Mixed. Point a should be welcomed, b amended and enhanced, while the idea in c of dismissal protection should be pursued in a way that ensures the interests of workers and does not lead to a worsening of any workers' situation.

8. Wages

- a. All employment shall be fairly remunerated, enabling a decent standard of living. Minimum wages shall be set through a transparent and predictable mechanism in a way that safeguards access to employment and the motivation to seek work. Wages shall evolve in line with productivity developments, in consultation with the social partners and in accordance with national practices.*

There are significant differences among Member States on how minimum wages are set. These differences need to be respected along with relevant ILO Conventions and instruments on wage setting mechanisms. Social partners have to be free to agree on mix of sources that fix minimum wage floors and minimum wages should be no less than 60% of the national median wage.

However, wages established through collective agreements better respond to the objectives and spirit of the EPSR and are more likely to be fair and decent. Increased coverage can be achieved by extending the effects of collective agreements. This can be achieved through measures to promote capacity building, developing benchmarks and ensuring that the country specific recommendations in the EU Semester increase the number of workers covered by a collective agreement.

In relation to the precise wording above, we need to be cautious of the wording 'predictable' as the social partners need to be free to negotiate. Likewise, 'wage increase with productivity' because it is *real* wages, which have to follow productivity and there is a lot of

catching up to be done to address the existing productivity gap. Workers deserve a fair share of the profits they help to create and poverty wages, often created by providing the worker with too few hours of work, also need to be addressed.

Recommendation: Amend this section to safeguard Member States' systems and to promote an increase in the number of workers covered by a collective agreement and to ensure that workers and their unions are not restricted in their capacity to negotiate and conclude collective agreements on wages.

9. Health and safety at work

a. An adequate level of protection from all risks that may arise at work, with due support for implementation, notable in micro and small enterprises, shall be ensured.

This point is very vague but attention must be paid to the argument on SMEs. The Better Regulation agenda may be a threat in this regard. It is unacceptable that health and safety protection depends on the size of the company and it is problematic to use the wording "adequate". Since the very beginning, EU policy in health and safety has been a harmonization process with common minimal requirements, trying to expand best standards across the EU (it is quite specific for OSH, the same dynamic does not apply to salaries, pensions, etc.). "Adequate" could be interpreted as "adapted to the national conditions" and justify unequal levels of protection from one country to another one. The principle must be guided by seeking the prevention of work related accidents and illnesses as well as a greater recognition and support for workplace safety reps. It must furthermore promote the development of systems relating to occupational accidents and illnesses to ensure that realistic and equitable mechanisms exist to deal with personal injuries claims and occupational accident and illness benefits in an efficient and effective manner.

Recommendation: This may be a helpful approach as long as 'support SMEs' doesn't mean 'absolve SMEs'. 'Adequate' to be replaced by 'best' and the focus on 'prevention' of harm to the health and safety of the worker as the standards plus/or the addition of on the basis of the implementation and enforcement of harmonised minimum requirements across the EU.

10. Social dialogue and involvement of workers

a. Social partners shall be consulted in the design and implementation of employment and social policies. They shall be encouraged to develop collective agreements in matters relevant to them, respecting national traditions, their autonomy and right to collective action.

b. Information and consultation shall be ensured for all workers, including those working digitally and/or operating across borders, or their representatives in good time, in particular in the case of collective redundancies, transfer, restructuring and merger of undertakings.

Rebuilding social dialogue and collective bargaining means reversing the role that the EU has played in dismantling these systems at Member State level. Collective bargaining and social dialogue are strongly correlated but they operate at two different and complementary levels. The EPSR should promote both.

Crucially, social dialogue needs a balanced representation of interests between employers and trade unions, recognising that workers and their unions are the weaker party. Capacity building has to be aimed at establishing a level playing field and thus be more result oriented.

Worker participation is unlikely to be genuine in a context where collective bargaining is absent. Clarification is required on the meaning behind the wording as 'consultation' is less ambitious than the initial proposal which had "workers' representation". Taking only information or consultation directives will dramatically downgrade the current acquis. This wording does not even cover the existing acquis on Information and Consultation (I&C) which is not the general framework on I&C, but also the Directive on European Works Councils (EWCs) which is currently under review. Also missed is the directive on the European company statute (SE), which establishes SE-EWCs and also representation in the company boardroom. The ETUC regrets that the SE-Directive simply prolongs national rules into the European sphere, in other words: when there is workers' representation in boards in a Member States, there will be reps in the SE, but if in the Member State of the headquarter no such rules exist, there will be nobody in the board. The proposal should be for a European standard ensuring against unequal treatment of workers across Europe.

Recommendation: The proposal needs to be amended and the Commission should come up with an initiative to create a level playing field, equal treatment for all workers and gender balance in company board rooms, in particular after the big crisis linked to a failure of corporate governance based on the shareholder model instead of the concept of sustainable company and a stakeholder approach. The ETUC proposes a directive for an overarching architecture on information, consultation and board-level representation.

CHAPTER III: ADEQUATE AND SUSTAINABLE SOCIAL PROTECTION

11. Integrated social benefits and services

a. Social protection benefits and services shall be integrated to the extent possible in order to strengthen the consistency and effectiveness of these measures and support social and labour market integration.

The ETUC favours the integration of social benefits and services so long as such integration does not imply any reduction in coverage or further liberalisation and privatisation of services. Article 14 TFEU together with the Protocol 26 on services of general interest, imposes an obligation on the Commission to act to promote and defend high quality public services. Integration must therefore be targeted to put the individual requirements at the centre of the system. The universal funding and collective organisation of social benefits and services, under a strong public control ensures better and financially sustainable performances. The management and policy direction of services to grant access to employment, for example, must be public. Where this is not the case, it is essential that they integrate services in order to perform as accountable a co-ordination role as possible.

Recommendation: This proposal can be supported if improved, on the basis of no further regression or deterioration of overall entitlement.

12. Healthcare and sickness benefits

- a. Everyone shall have timely access to good quality preventive and curative health care, and the need for healthcare shall not lead to poverty or financial strain.*
- b. Healthcare systems shall encourage the cost-effective provision of care, while strengthening health promotion and disease prevention, in order to improve the resilience of healthcare systems and their financial sustainability.*
- c. All workers, regardless of contract type, shall be ensured adequately paid sick leave during periods of illness; the participation of the self-employed in insurance schemes shall be encouraged. Effective reintegration and rehabilitation for a quick return to work shall be encouraged.*

The ETUC agrees that healthcare access should be universal and completely uncoupled from the ability to pay. However, the pursuit of cost efficiency must not imply a lower quality of care or delayed access to diagnosis and care on the basis of cost reduction. Preventive care must be encouraged with due investment and consistent policies. In particular, vulnerable workers with disabilities and long-standing conditions must be provided for and reintegrated into labour markets only when they are ready – as agreed by themselves, their union representation and medical professionals. It is essential that all workers including self-employed have access to much-needed benefits on the basis of the contributory principle. In addition, workers must be covered from day one of their certified illness leave.

Recommendation: Amend to improve access and coverage of benefits.

13. Pensions

- a. Pensions shall ensure all persons a decent standard of living at retirement age. Measures shall be taken to address the gender pension gap, such as by adequately crediting care periods. According to national specificities, the participation of the self-employed in pension schemes shall be encouraged.*
- b. Pension systems shall strive to safeguard the sustainability and future adequacy of pensions by ensuring a broad contribution base, linking the statutory retirement age to life expectancy and by closing the gap between the effective retirement and statutory retirement age by avoiding early exit from the labour force.*

Increased protection for the self-employed and women is clearly welcome. Contribution gaps and inequalities should be firstly addressed ensuring the effective and quick implementation of the principle of ‘equal pay for work of equal value’. The gender pay gap is prominent, however the problem concerns in fact also various categories of workers, whose pension adequacy and coverage is harmed by—for example—involuntary part-time, fixed-term employment, specific employment conditions, as well as (bogus) self-employed and undeclared work.

In para. 13b, reference is not made to social right, but to restrictive and negative conditions pertaining to the “statutory retirement age linked to life expectancy”. No reference is made to pension adequacy when poverty among older people is a real and growing problem. This will be exacerbated in the future when the effects of the crisis years and mini-jobs without pension rights will reappear in the form of lower pensions. There is no mention in the text of the relevance of long-term unemployment, which significantly erodes pension levels, because they are calculated largely on long-term rather than interrupted work records. There is no point in a policy response to work longer without finally taking into any serious consideration improved working conditions, access to lifelong learning and a decent life.

Arduous work is not taken into account, here, nor clearly defined and offset through provisions for early retirement.

Fixing the legal retirement age via mathematical formulae referring to criteria such as life expectancy is not effective because not all long working lives are also healthy; exposure to arduous working conditions must be taken into account; many workers (especially older ones) are involuntarily unemployed. There is no mention to the economic dependency ratio, which is relevant while exceptionally large numbers of EU citizens are unemployed. There is no mention to the right to pension indexation and protection of its purchasing power.

Recommendation: This section needs a different approach and significant amendment.

14. Unemployment benefits

a. Action to support the unemployed shall include the requirement for active job search and participation in active support combined with adequate unemployment benefits. The duration of benefits shall allow sufficient time for job search whilst preserving incentives for a quick return to employment.

In relation to unemployment benefit it is promising to see reference to the connection between benefit duration and labour market conditions, though—as with other items—enforcement ideally via social dialogue and union involvement remains the concern. Implicit within the above text is the ability and willingness of the state to intervene in supporting jobseekers back into work – which is extremely patchy across Europe. This is also not cheap and so the resources must be made available. Gaps in the social protection safety net have become increasingly common due to stricter eligibility criteria in schemes like unemployment benefits, while at the same time more people need assistance from social protection systems, as a result of the crisis. Furthermore, the adequacy of unemployment benefit itself is very uneven across Europe. The ETUC consequently demands improvements in levels of benefits in order to ensure income security and prevent poverty for people who cannot work.

Recommendation: We can support so long as resources are adequate to deliver and adequate provisions are introduced or maintained.

15. Minimum income

a. Adequate minimum income benefits shall be ensured for those who lack sufficient resources for a decent standard of living. For those of working age, these benefits shall include requirements for participation in active support to encourage labour market (re)integration.

Minimum income schemes, at an adequate level, should be introduced in all national social protection legislation, as part of an overall policy to strengthen social protection systems. A European framework directive on an adequate minimum income should establish common principles, definitions and methods for minimum income schemes in the Member States. Common European principles should be agreed to ensure a decent standard of guaranteed income for everyone in the EU taking into account the fact that such schemes need to be inclusive and embedded in a broader EU and national policy response, while combining income support with active inclusion and access to quality services. Setting up such a

framework will imply the acknowledgement of different national systems, analysing their main features, and engaging a benchmarking exercise, based on trade union priority vision.

Recommendation: The ETUC could support this section once amended.

16. Disability

a. Persons with disabilities shall be ensured enabling services and basic income security that allows them a decent standard of living. The conditions of benefit receipt shall not create barriers to employment.

As identified in chapter I, this point should be part of the paragraph on equal treatment and non-discrimination (see above). Furthermore, the point reiterates previous positions. To promote employment for disabled people on an equal basis with non-disabled colleagues and in compliance with the terms of the UN Convention on the Rights of Persons with Disabilities (to which the EU is a signatory). The EPSR must consider a more holistic approach to the need of assistance and long term care of people with disabilities – in this regard there is a great deal of cross-over with the item on healthcare. Indeed, there is a strong case for combining the two. Finally, again investment is needed in training for highly skilled carers and supporting the profession.

Recommendation: Support but with clearer integration with related items and funding.

17. Long-term care

a. Access to quality and affordable long-term care services, including home-based care, provided by adequately qualified professionals shall be ensured.

b. The provision and financing of long-term care services shall be strengthened and improved in order to ensure access to adequate care in a financially sustainable way.

Long-term care should be an established right, embodied in a common European standard as the provision of care for dependants (the elderly – a rapidly developing policy area due to demographic change – and also for not self-sufficient people such as people with disabilities) is a long-term challenge for European societies. Regarding the promotion of the provision of elderly care and care for dependants, the ETUC has already proposed in the past the introduction of a new target to be set by the EU Council (similar to the Barcelona target) but with monitoring tools, possibly within the European Semester.

Data on care of dependants is scarce and there is a critical lack of provision for the care of older people. A large majority of this work is done by women, and is either provided on a voluntary basis or in informal employment relationships, including undeclared work. Demand for this type of care is on the increase and there is a projected shortage of a million long-term care workers in Europe by 2020. It is essential that a resourced, comprehensive and proactive European employment strategy for this sector is developed, which prioritises quality, regular, declared and professional jobs, education, training, skill-renewal and recognition of competences, as vital to improving the quality, affordability and accessibility of long term care.

As with the previous item on disability there is a case for integrating this fully with rights to healthcare. These can then in turn be regulated according to service users and medical

professionals rather than economic determination. The ongoing issue in the wording above is that it implies significant investment – which we would of course welcome. Investment is needed for assistance and services designed around people, on the basis of a personalised evaluation of needs, delivered by trained and highly-skilled carers. We must also monitor caring structures and their full compliance with highest standards of professionalism and competence, including strict standards for private providers operating in partnership with public authorities.

Recommendation: The ETUC could support this proposal on the basis of a broader investment plan.

18. Childcare

a. Access to quality and affordable childcare services, provided by adequately qualified professionals, shall be ensured for all children.

b. Measures shall be taken at an early stage and preventive approaches should be adopted to address child poverty, including specific measures to encourage attendance of children with disadvantages backgrounds.

The wording above is positive but would be stronger if explicitly linked to commitments from the employers as well as the state. The Barcelona targets on childcare, which were introduced in 2002, have not yet been achieved and in the ETUC's opinion the Commission should bring forward country specific recommendations to member states lagging behind the targets until they fully meet them. This means investing in training carers and monitoring caring structures and their full compliance with highest standards of professionalism and competence.

Recommendation: The ETUC supports this section with improvements. Policies to support childcare and other care commitments are a cornerstone of future social and economic progress and are essential for workers who rely on them. Accordingly, the EPSR should set benchmarks to further national economic and social policy measures to ensure the availability of child and other care services, reconcile work and family life, including driving more family-friendly policies in employment.

19. Housing

a. Access to social housing or housing assistance shall be provided for those in need. Protection against eviction of vulnerable people shall be ensured, and support for low and medium income households to access home property provided.

b. Shelter shall be provided to those that are homeless, and shall be linked up to other social services in order to promote social integration.

The extent to which EU workers housing needs are met is a crucial benchmark by which workers judge their quality of life. The inclusion of housing as a policy priority is welcome but should go further to recognise the intrinsic quality of housing as a key part of the economy, labour market and social fabric. In the first instance housing shortages create homelessness as stocks fail to meet demands, particularly in areas with a structural shortage; and it drives up the cost of the housing that is available. This in turn stretches wages and other incomes across the board, given that housing is the greatest single cost for most households.

This needs strategic investment (please see the ETUC position on infrastructure investment) in social housing. Above all, it entails investment and strategic planning, with the leading role of public authorities in coordinating necessary steps with other stakeholders. Recent Eurofound research requested by the European Parliament, for example, has found that inadequate housing is costing EU economies nearly €194 billion per year in terms of both direct costs associated with healthcare and related medical or social services, as well as indirect costs such as lost productivity and reduced opportunities. They furthermore estimate that investing to alleviate this would pay for itself in around 18 months.

Recommendation: Housing provision needs to be ensured as part of a wider investment strategy.

20. Access to essential services

a. Affordable access to essential services including electronic communications, energy, transport, and financial services, shall be ensured for all people. Measures to support access to these services shall be available for those in need.

The ETUC agrees with the wording above but would extend to include, amongst other essential services, water. No more privatisation of essential services. Essential services being human rights, like water, should remain as public services.

Recommendation: Replace 'affordable access' with 'universal access'. If services are essential, then by definition they need to be available to all – regardless of 'affordability'.