

## **For a Europe of social progress**

### ***Preamble***

*The current global recession, caused by a catastrophic failure of our financial institutions, is a wake-up call to European politicians. There must be a re-balancing of priorities, to put Europe's social purpose back at the heart of the European political agenda. In this short paper, the PES Group of the European Parliament sets out some practical steps needed to put Europe on a new and better path, towards a New Social Europe, as an essential part of the PES Group's and PES' claims based on the PES Manifesto 2009 "People First - A New Direction for Europe".*

### **I. Introduction - For a Europe of social progress**

The PES Group stands for social progress in Europe. We want to strengthen social objectives and fundamental rights in the European Internal Market. It must be made clear that the basic economic freedoms of the European Internal Market do not take priority over fundamental social rights and objectives. Where there is a conflict fundamental social rights must come first.

For us this is at the heart of the European Economic and Social Model. This model combines economic growth with social justice and strong employment rights. Essential social rights and involvement of employees in their firms and work places are for us important for social participation, social peace and long term economic success built on high quality jobs. Economic and social progress must support and reinforce each other.

The European Union can succeed only as a Social Market Economy. To make that a reality all the institutions of the European Union must fully recognize the Union's social goals and fundamental rights and ensure that these rights can be exercised effectively by employees and their Trade Unions. Fundamental social rights and standards must not be eroded by competition and liberalisation in the European Internal Market. A progressive view also means respect and guarantee of equality and an inclusive approach for our society.

This is our conviction: only a Europe of social progress can ensure long term prosperity and employment for Europe's people and win their support. This is the future which the PES Group wants for Europe.

### **II. Background - the judgements of the European Court of Justice (ECJ)**

Recent judgments by the ECJ have provoked a European debate over the relationship between economic freedoms and fundamental social rights. The judgements in the Viking, Laval, Ruffert and most recently Luxembourg cases have called into question established employment rights and recognized social standards of Member States. In these decisions the ECJ put the basic Internal Market freedoms, such as freedom to provide services and freedom of establishment, above key and fundamental social rights such as free collective bargaining and the right to strike. Furthermore it held certain national legislation, such as laws on collective bargaining, to be in breach of EU law. In addition, in other judgements the Court

weighed fundamental human rights, such as freedom of expression and freedom of association and human dignity against Internal Market freedoms. This can only fully be put right by changes in primary law.

The ECJ also transformed the Posting of Workers Directive into its opposite. The provisions of this directive establish a hard core of minimum European protections. But the court has now interpreted it as "maximum standards directive", beyond which the levels of protection established by Member States may not go, although the Posting of Workers Directive explicitly sets out the principle that, in the event of conflicting standards, the worker should benefit from the more favourable.

Member States must retain the right to establish higher standards for posted workers. Member States and social partners must be able to lay down, monitor and implement binding standards for posted workers based on their established national collective bargaining systems, e.g. through laws on collective bargaining or public procurement.

### III. A need for political action - common action for social progress

The PES Group believes that a clear political commitment is needed, to ensure social progress in Europe. We therefore welcome the fact that the European Parliament, on an initiative by the PES Group, has paved the way for such a decision. The European Parliament's decision of 22 October 2008 on challenges to collective bargaining in the EU (the Andersson Report) represented a first important step.

But we believe that more remains to be done. To that end, the following key objectives and actions are essential to bring about social progress in Europe:

#### 1. Clarification in European Primary Law; introduction of a social progress clause and revision of the Posting of Workers Directive.

a) The PES Group calls for a clarification in EU primary law that neither economic freedoms nor competition rules take priority over fundamental social rights. Where there is a conflict, fundamental social rights must come first. The way to establish this clearly in legal terms is a Social Protocol.

EU primary law must make clear that the EU has a duty to promote not only economic but also social progress - that is, in concrete terms, the improvement of the living and working conditions of people in Europe. For that reason we welcome the new horizontal social clause in the Lisbon Treaty which, once the Treaty enters into force, will require that in defining and implementing its policies the Union takes into consideration objectives such as the promotion of a high level of employment, adequate social protection, the fight against social exclusion and a high level of education, training and protection of human health.

But we believe that further steps are needed to establish firmly the principle that fundamental social rights - like any fundamental rights - take priority over economic freedoms. We therefore support strongly the ETUC's recent proposal for a social progress protocol, which gives an important new impulse to the continuing debate that is needed over the relationship between fundamental social rights and economic freedoms in the European Treaties.

Such a protocol should also give additional weight to the important social rights highlighted in the EU Charter of Fundamental Rights. In particular, the right of association, free collective bargaining and Trade Unions' right to strike must be recognized in the clearest terms and the ability to exercise these rights in practice must be ensured.

b) The PES Group also calls for the revision of the Posting of Workers Directive. The interpretation of this directive as a "maximum standards" directive did not reflect the will of the legislator. In view of the

recent interpretation by the ECJ the European Commission must present a proposal for revision of the directive in order to remove the ambiguities in the current text. The objective must be to establish in law the principle of "equal pay and equal working conditions for equal work in the same workplace".

## 2. A common agreement on social progress

In order to prepare for the introduction of a Social Progress Clause into EU primary law and the revision of the Posting of Workers Directive, and in order to ensure already the necessary clarification, recognition and reinforcement of social rights in the EU, the PES Group calls on all European institutions to make a commitment to social progress in Europe.

We call for a declaration by the European Council, followed by a common agreement between the European Parliament, the Commission and the Council, committing them to social progress. This agreement should already make clear, as set out in the previous paragraphs on the social protocol, that economic freedoms do not have priority over fundamental social rights. This declaration and agreement must be respected by all European institutions, including the ECJ in its future decisions.

The Employment and Social Affairs Council should make a declaration that an interpretation of the Posting of Workers Directive as a "maximum standards" directive contradicts the will of the legislator. The ministers should make clear that they would welcome a European Commission proposal to revise the directive to allow Member States to implement higher standards of protection for posted workers than the minimum standards established in the directive. The protection of employment rights and the prevention of undercutting of established social standards should be established as a common European responsibility. Equal pay and equal working conditions for equal work in the same workplace - this principle must be binding throughout Europe.

We also demand that the new European Commission strengthens the systematic social impact assessment of European legislation in consultation with the social partners and takes full account of social impacts in its actions.

Furthermore, the new Commission needs to strengthen its action against the specific injustices that threaten women in Europe, especially regarding workplace discrimination, the persistent pay gap and the difficulties of balancing professional and private life. To do this the Commission should propose a new Women's Rights Charter to improve the rights and opportunities of women.

## 3. What we want from the new Commission

**To achieve these changes and see a clear shift towards a New Social Europe, the PES Group will fight for a new European Commission led by a progressive President, drawn from our political family.**

**We recommend to the PES Group in the new legislature to make the appointment of a new President and other members of the European Commission dependent, as one of the essential conditions, on their commitment to an agreement on social progress with the European Parliament and Council, to bring about far-reaching change in the relationship between the European Union's economic and social objectives and obligations and a new deal for social Europe.**

**The pre-eminence of social goals over economic goals and the consistency of those goals must take into consideration and assure social and territorial cohesion within the EU by guaranteeing, among others, both equal opportunities and mobility of labour without protectionism, in the spirit of solidarity among all Europeans.**

**Declarations in favour of fundamental social rights, a Social Progress Protocol and revision of the Posting of Workers Directive to establish in law the principle of "equal pay and equal working conditions for equal work in the same workplace" are central demands from the PES Group to the new Commission and its President. A common agreement on these matters will be an essential stepping stone.**

**The PES Group also expects a gender balanced composition of the Commission, reflecting the society.**

**A new deal for social Europe must also mean an end to the hesitations of a majority of Commission members regarding social legislation throughout most of the current legislature. There must be a commitment from the Commission to put its full weight behind an unblocking of progress on much-needed social legislation which has been blocked for years by Council, Commission or both.**

In 2000, a Left majority in the EU set the Union a new strategic goal:

*"to become by 2010 the most competitive and dynamic knowledge-driven economy in the world, capable of sustainable economic growth, with more and better jobs and greater social cohesion."*

The strategy was then hijacked by the Right and this broad vision was lost. The new Commission must undertake to return to that vision and take it further - addressing the gaps in social Europe through an ambitious programme of legislation on employment security, workplace rights and working conditions, social protection and social inclusion. Existing social legislation must be fully implemented and policed. And there must be priority for an expansion of high-quality childcare, education and life-long learning, and action against poverty and discrimination,

#### IV. Further steps towards social progress in Europe

The PES Group will continue to work, in consultation with the ETUC, on the following points:

- Elaboration of the detailed content of a common agreement between the Council, Commission and Parliament and in the first instance a preparatory declaration by the European Council;
- Establish a common agreement on a Treaty protocol on social progress;
- Promote our proposals within the European institutions and in a wider public debate;
- Organise events which will highlight effectively, both for a specialist audience and for the wider public, the significance of the fundamental social rights and objectives of the European Union and promote a debate on the content of the necessary declarations and the protocol on social progress;

#### V. An essential condition

The above call for social progress in Europe is one of our - the PES Group/PES' - essential conditions for the appointment of a new president and other members of the European Commission. The others are:

- A new, strong recovery plan for Europe, with coordinated investments in jobs and green growth.
- A European Employment Pact to safeguard employment, create new jobs, fight mass unemployment, and strengthen workers' rights, working conditions and equal treatment.
- A Social Progress Pact to tackle the full social consequences of the crisis, preventing a rise in poverty, inequality and exclusion.
- Effective regulation of the financial markets, covering all financial actors and instruments.
- New mutual solidarity across European member states – between East and West, North and South – ensuring a common roadmap out of the crisis.