

ETUC proposal for a Protocol on the relation between economic freedoms and fundamental social rights in the light of social progress ('the Social Progress Clause')

THE HIGH CONTRACTING PARTIES,

HAVING REGARD to Article 3(3) of the Treaty on the European Union,

CONFIRMING their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers,

RECALLING that the Union shall work for a highly competitive social market economy, aiming at full employment and social progress (*Article 3(3) sub par. 1 of the TEU*),

RECALLING that the single market is a fundamental aspect of Union construction but that it is not an end in itself, as it should be used to serve the welfare of all, in accordance with the tradition of social progress established in the history of Europe,

WHEREAS, in accordance with Article 6(1) of the Treaty on the European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights and in particular the fundamental social rights enshrined in this Charter,

BEARING IN MIND that, according to Article 9 (*new horizontal social clause*) of the Treaty on the Functioning of the EU, in defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health,

HAVING IN MIND that the Union and the Member States shall have as their objective the improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained (*Article 151(1) TFEU*),

RECALLING that the Union recognises and promotes the role of social partners, taking into account the diversity of national systems, and will facilitate dialogue between the social partners, respecting their autonomy (*Article 152 TFEU*),

WISHING to emphasise the fundamental importance of social progress for obtaining and keeping the support of European citizens and workers for the European project,

DESIRING to lay down more precise provisions on the principle of social progress and its application,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union:

Article 1 [Principles]

The European social model is characterised by the indissoluble link between economic performance and social progress, in which a highly competitive social market economy is not an end in itself, but should be used to serve the welfare of all, in accordance with the tradition of social progress rooted in the history of Europe and confirmed in the Treaties.

Article 2 [Definition of social progress and its application]

Social progress and its application means in particular:

The Union improves the living and working conditions of its population as well as any other social condition, ensures the effective exercise of the fundamental social rights and principles, and in particular the right to negotiate, conclude and enforce collective agreements and to take collective action, in particular protects workers by recognizing the right of workers and trade unions to strive for the protection of existing standards as well as for the improvement of the living and working conditions of workers in the Union also beyond existing (minimum) standards, in particular to fight unfair competition on wages and working conditions, and to demand equal treatment of workers regardless of nationality or any other ground, ensures that improvements are being maintained, and avoids any regression in respect of its already existing secondary legislation.

The Member States, and/or the Social Partners, are not prevented from maintaining or introducing more stringent protective measures compatible with the Treaties, when implementing Union secondary legislation, avoid any regression in respect of their national law, without prejudice to the right of Member States to develop, in the light of changing circumstances, different legislative, regulatory or contractual provisions that respect Union law and the aim of social progress.

Article 3 [The relation between fundamental rights and economic freedoms]

Nothing in the Treaties, and in particular neither economic freedoms nor competition rules, shall have priority over fundamental social rights and social progress as defined in Article 2. In case of conflict, fundamental social rights shall take precedence.

Economic freedoms cannot be interpreted as granting undertakings the right to exercise them for the purpose or with the effect of evading or circumventing national social and employment laws and practices or for social dumping.

Economic freedoms, as established in the Treaties, shall be interpreted in such a way as not infringing upon the exercise of fundamental social rights as recognised in the Member States and by Union law, including the right to negotiate, conclude and enforce collective agreements and to take collective action, and as not infringing upon the autonomy of social partners when exercising these fundamental rights in pursuit of social interests and the protection of workers.

Article 4 [Competences]

To the end of ensuring social progress, the Union shall, if necessary, take action under the provisions of the Treaties, including under Article 352 of the Treaty on the Functioning of the European Union.