

## AMENDMENT 1

SOC/756

Social Progress Protocol

Replace the whole opinion presented by the SOC section with the following text (explanation/reason at the end of the document):

**Tabled by:**

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### *Amendment*

#### 1. Conclusions and recommendations

- 1.1 The EESC notes that opinions differ among Member States and stakeholders as to whether a Treaty reform to add a Social Progress Protocol is appropriate or necessary. As indicated in the Council's preliminary technical assessment of the report on the final outcome of the CoFoE, the balance between social rights and the four economic freedoms is secured in the Treaties. The EESC believes it is important to keep this balance in the Treaties, without creating a hierarchy between social rights and economic freedoms. Furthermore, giving precedence to fundamental social rights over internal market economic freedoms by adding the Social Progress Protocol to the Treaties aims to change the fundamental principles that the EU is founded on and also amounts to an attack on the foundation of our economy, which has brought prosperity and wellbeing to the EU and its Member States. Thus, such a protocol would risk undermining the very basis for social progress.
- 1.2 Just as there are numerous limitations on economic freedoms, there can also be limits on the exercise of fundamental social rights such as the right to take collective action. According to the case-law of the Court of Justice of the European Union (CJEU), a restriction on economic freedoms can be accepted only if it pursues a legitimate aim compatible with the Treaties and

is justified by overriding reasons of public interest. Even in this case, it still needs to be suitable for achieving the objective pursued and must not go beyond what is necessary in order to attain that objective. This can be guaranteed by applying the existing principles of proportionality and subsidiarity at EU level.

- 1.3 The EESC considers that the employment and social policy objectives should continue to be addressed within the current Treaties and the existing legislative and policy framework at EU and national level, while fully respecting the autonomy of the social partners; the Committee is at the disposal of the upcoming Spanish Presidency to contribute to this process.
- 1.4 Rather than the EU coming up with a Social Progress Protocol which would distort the balance between economic freedoms and social rights and interfere with well-defined EU and national competences, it is important to progress towards a shared understanding of what constitutes the added value of the EU in terms of employment and social policies.
- 1.5 It is essential for the EU to continue developing in a way that addresses economic and social challenges in an integrated manner. As already stated by the EESC, competitiveness and higher productivity based on skills and knowledge represent a sound recipe for maintaining the well-being of European societies. Economic growth and a well-functioning internal market are an important element for strengthening the social dimension of the EU. We need to reinforce the strengths of our European social market economy system while removing its weaknesses, and thus adapt it to face the challenges ahead<sup>1</sup>.
- 1.6 Social policy decisions should be taken as close as possible to the citizens of the EU and with full respect for the competences shared between the EU, the Member States and the social partners. This is what is needed to achieve positive outcomes for citizens, workers, businesses and society as whole. Well-articulated and well-balanced policy debates on the economic and social dimensions of the EU should be secured in future. The fact that economic development in the Member States is heterogeneous should also be better accounted for in European debates on the social dimension, to allow for realistic expectations and progress in terms of European economic and social convergence. It also means that measures leading to a regression of labour and social standards might sometimes be necessary in the short term, to allow governments to avoid even worse consequences of serious economic and fiscal downturns at national level. The assessment of the need for such measures should continue to be at the discretion of the national authorities.
- 1.7 For the reasons described above, the proposal to revise the Treaties in order to create a Social Progress Protocol is unacceptable and is not supported by the EESC Employers' Group.

## 2. **Background, EU and national context and institutional and legal framework**

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<sup>1</sup> [EESC contribution to the Porto Social Summit](#) , point 7.

- 2.1 The EESC has prepared opinion SOC/756 following a request for an exploratory opinion by the upcoming Spanish Presidency of the EU Council, in order to provide responses to the questions presented in that request<sup>2</sup>.
- 2.2 The upcoming Spanish Presidency's request refers to the European Trade Union Confederation (ETUC) proposal for a Social Progress Protocol<sup>3</sup>, in the context of the outcomes of the Conference on the Future of Europe<sup>4</sup>, and the European Parliament resolution of 9 June 2022 on the call for a Convention for the revision of the Treaties<sup>5</sup>, which calls on the Council, amongst other things, "*to adapt the competences conferred on the Union in the Treaties [...] in social and economic policies; to ensure the European Pillar of Social Rights is fully implemented and to incorporate social progress in Article 9 TFEU linked to a Social Progress Protocol into the Treaties*".
- 2.3 The ETUC proposal<sup>6</sup> for a Social Progress Protocol contains four main provisions to be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union. It establishes the principles (Article 1), the definition of social progress and its implementation (Article 2), the relation between fundamental social rights and other Union policies (Article 3) and the EU competences (Article 4) to ensure social progress.
- 2.4 According to the ETUC proposal:
- "*Nothing in the Treaties, and in particular neither economic freedoms nor internal market, competition or other Union policy measures, shall have priority over fundamental social rights and social progress as defined in Article 2 of this Protocol. In case of conflict, fundamental social rights shall take precedence.*" (Article 3)
  - "*No Union policy measure, in particular in relation to the economic freedoms, shall be interpreted in such a way as restricting or adversely affecting the exercise of fundamental social rights as recognised in the Member States, by Union law as well as by any other international instrument, in particular the ILO Conventions and the Council of Europe European Social Charter.*" (Article 3)
- 2.5 The EESC notes that ETUC's initial proposal for a Social Progress Protocol in 2008 was developed as a result of CJEU rulings in the Viking, Laval, Rüffert and Luxembourg cases. It also notes that, in 2010, the European cross-industry social partners issued a report on joint work of the European social partners on those rulings, in which they agreed that economic freedoms and fundamental social rights interact within their own field of competence. They have different views on the concrete implications of this interaction and especially what this

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<sup>2</sup> 1. What is the EESC's assessment and position on this proposal, at a time when the current President of the European Commission has opened up the possibility of discussing reform of the treaties in the latest EU speech? 2. Does it consider it opportune and convenient for the progress of this proposal to introduce this aspiration on the Spanish Presidency's agenda? 3. If so, at what competence levels would it be interesting to include it (European Summit, Council of Ministers for Social Affairs, expert level, technical level!?)

<sup>3</sup> Initially [proposed in 2008](#) and [updated in 2022](#).

<sup>4</sup> [Report on the final outcome](#).

<sup>5</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2022-0244\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2022-0244_EN.html).

<sup>6</sup> [ETUC proposal for a Social Progress Protocol, updated in 2022](#).

would mean in terms of setting limitations on the right to take collective action and/or the freedom of establishment and the freedom to provide services<sup>7</sup>.

- 2.6 The EESC also draws attention to the failure of the Commission's proposal for a Regulation COM(2012) 130 ("Monti II")<sup>8</sup> and the strong reaction this initiative provoked from national parliaments in 2012<sup>9</sup>: they defended national competences, in line with the principle of subsidiarity, which shows the continued validity of Article 153(5) TFEU. That article makes it clear that the EU has no competence on the right of association, the right to strike or the right to impose lock-outs.
- 2.7 In the context described above, the EESC notes that views differ among Member States and stakeholders as to whether a Treaty reform to add a Social Progress Protocol is appropriate or necessary. This has been reflected for instance by the Danish Minister of Justice Peter Hummelgaard: *"I have on numerous occasions in meetings with my European colleagues and the Commission highlighted the government's long-term vision to introduce a social protocol. The introduction of a social protocol in the treaties requires a treaty change. The government does not think that the time is ripe for a drawn-out treaty change process, but instead we want to deliver concrete results on the challenges faced by European citizens and companies"*<sup>10</sup>.
- 2.8 The EESC points out that the issues that emerged in the context of the Viking, Laval, and Ruffert rulings in 2007-2008 were resolved through the revision of the Posting of Workers Directive in 2018. As the revised Posting of Workers Directive includes the principle of equal pay for equal work at the same location, in a situation similar to those referred to in the Viking and Laval judgments it would be legitimate to have recourse to the right of workers to take collective action to seek equal pay with local workers.
- 2.9 The request to include a Social Progress Protocol was once again put forward in the context of the Conference on the Future of Europe. In this respect, the EESC highlights the view, set out in the Council's preliminary technical assessment of the CoFoE, that the balance between social rights and the four economic freedoms is already secured (e.g. Article 3 TEU, Articles 9, 151 and 153 TFEU). The EESC fully shares this view expressed in the Council's preliminary technical assessment and does not consider it necessary to revise the Treaties in order to create a Social Progress Protocol.
- 2.10 The EESC regards this opinion as an opportunity to reconfirm what is stated in Article 3(3) TEU, i.e. that the EU shall establish an internal market and it shall work for the sustainable development of Europe based on balanced economic growth and, *"a highly competitive social market economy, aiming at full employment and social progress"*.

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<sup>7</sup> [Report on joint work of the European social partners on the ECJ rulings in the Viking, Laval, Ruffert and Luxembourg cases..](#)

<sup>8</sup> Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services.

<sup>9</sup> Twelve out of 40 national parliaments or chambers of parliaments (19 out of 54 votes allocated) considered that the content of the proposal was not consistent with the principle of subsidiarity. The Commission ultimately withdrew its proposal.

<sup>10</sup> At a discussion in the Danish Parliament's EU committee.

- 2.11 The proposal to incorporate the Social Progress Protocol in the Treaties would change the nature and functioning of our EU social market economy by introducing the primacy of social rights over economic freedoms. By contrast, the EU Charter of Fundamental Rights has followed the right approach by protecting social rights and economic freedoms as part of the same instrument of the same legal value. Giving general priority to social rights over economic freedoms would be as wrong as giving general priority to economic freedoms.
- 2.12 The EESC underlines the importance of keeping the existing balance in the Treaties between social rights and economic freedoms, without creating a hierarchy between them. As stated for example in the Laval case<sup>11</sup>, while the protection of fundamental rights is a legitimate interest which, in principle, could justify a restriction of fundamental freedoms guaranteed by the Treaty, such as the freedom of establishment or freedom to provide services, the exercise of the fundamental rights does not fall outside the scope of the provisions of the Treaties, and such exercise must be reconciled in accordance with the principle of **proportionality**<sup>12</sup>.
- 2.13 Giving precedence to fundamental social rights over the internal market economic freedoms by adding the Social Progress Protocol to the Treaties aims to change the fundamental principles on which the EU is founded and also amounts to an attack on the foundation of our economy, which has brought prosperity and wellbeing to the EU and its Member States. Thus, such a protocol would risk undermining the very basis for social progress. Rather than the EU starting the process with the intention of coming up with a Social Progress Protocol which would distort the balance between economic freedoms and social rights, and interfere with well-defined EU and national competences, it is important to progress towards a shared understanding of what constitutes the added value of EU in terms of employment and social policies.
- 2.14 The EESC has already acknowledged that the European economic and social model is based on the shared understanding of the importance of increasing employment, social progress and productivity, as the underlying key factors for sustainable economic growth, which benefits everyone in a fair manner<sup>13</sup>. The employment and social policy objectives should continue to be addressed within the current Treaties and the existing legislative and policy framework at EU and national level while fully respecting the autonomy of the social partners.
- 2.15 It is essential for the EU to continue developing in a way that addresses economic and social challenges in an integrated way. This is what is needed to achieve positive outcomes for citizens, workers, businesses and society as whole. Well-articulated and well-balanced policy debates on the economic and social dimensions of the EU should be secured in future. The fact that economic development in the Member States is heterogeneous should also be better accounted for in European debates on the social dimension, to allow for realistic expectations and progress in terms of European economic and social convergence.

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<sup>11</sup> [Case C/341/05](#), points 91 and 93.

<sup>12</sup> Under the principle of proportionality, the content and form of Union action must not exceed what is necessary to achieve the objectives of the Treaties.

<sup>13</sup> [OJ C 125, 21.4.2017, p. 10](#), point 2.6.

- 2.16 While striving to achieve social progress, we must also admit that there are situations where measures must be taken to address economic and fiscal situations at national level in order to prevent serious distortions on the labour market and economic development in the medium term. This may in some cases lead to a regression of social rights. Although lowering level of social standards is not the main goal, national governments sometimes need to be able to make use of this instrument in order to avoid even worse consequences of economic and fiscal downturns.
- 2.17 Rather than trying to solve labour market challenges across the board at European level, the EU's primary role is to provide information, possible solutions, incentives and know-how to help Member States and social partners to design, implement and evaluate policies that really address the structural labour market challenges they face, in a way that is understood by and acceptable to their societies.
- 2.18 Social policy decisions should be taken as close as possible to the citizens of the Union and with full respect for the competences of the Member States and social partners. On the labour market in particular, many decisions are best taken by or as close as possible to the employer and employees concerned.
- 2.19 In this respect, the recently published EU social dialogue initiative<sup>14</sup> is a step in the right direction, as it can pave the way to stronger social partners' organisations where this is needed in the EU, and can create more space for social partners to negotiate autonomously at the appropriate levels in the Member States with the support of their national governments.
- 2.20 Furthermore, it is important to adapt to the diverse ways in which Member States prioritise and shape social policy interventions in light of deeply rooted constitutional setups, political choices, policy approaches and cultural traditions in the Member States. That is why the subsidiarity principle, as enshrined in the Treaty, should remain at the centre of policy orientation.
- 2.21 As part of this, it is essential to recognise that the EU has a different nature than international organisations such as the Council of Europe and the International Labour Organisation. Therefore, it is not a relevant benchmark to use the frameworks deriving from these international organisations as a basis for implementation in the EU. The EU should come up with policies that are well in line with its own specific nature. At the same time, as stated in Article 6(3) TEU, fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

#### Reason

This text comprises an amendment which aims to set out a generally divergent view to an opinion presented by the section and is therefore to be described as a counter-opinion. It sets out the reasons why the EESC considers it unnecessary to revise the Treaties in order to create a Social Progress

<sup>14</sup> [See also the EESC opinion on \*Strengthening social dialogue\* \(not yet published in the OJ\).](#)

Protocol. Rather than the EU coming up with a Social Progress Protocol which would distort the balance between economic freedoms and social rights, and interfere with well-defined national competences, it is important to progress towards a shared understanding of what constitutes the added value of EU in terms of employment and social policies.

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