

Current EU affairs affecting employees

Spring 2017

Beyond Brexit towards a stronger Europe?

The European Union evolves as it tackles crises, and 2017 will be marked by the UK's decision to leave the EU. Brexit was a political shock that will hopefully force Europe to address the root causes of populism. This crisis should be seen as an opportunity to turn the Union into a beacon of inclusive economic growth for the rest of the world.

Brexit was supported above all by citizens in economically deprived areas who, together with millions of other Europeans, have had to endure an almost 10-year period of slow growth: unemployment and greater insecurity, sluggish growth in earnings, austerity and the cuts in public services and social security that have come with it.

The Finnish trade union movement wants the EU to prioritise bolstering sustainable economic growth. This means growth that is generated by a skilled, healthy and highly productive labour force. This is exactly what the aim of the future European Social Pillar should be. At the same time, EU research and innovation financing should be increased.

The bigger the market is and the fairer the competition is between companies, the more innovation and economic growth there will be. For this we need more, not less, international competition, both on the internal market and with third countries.

At the same time, unfair competition needs to be eradicated far more determinedly than before. Research has shown that regional support for Brexit, like support for the extreme right around Europe, is greater in areas where disruption to local production caused by Chinese imports is greater. There is still work to be done on the internal market, not least in respect of the rights of posted workers – the principle of "same pay for the same work in the same place" is still not being implemented in practice.

The level of employment regulation varies enormously between the member states, which in turn creates unfair competition. The need for minimum regulation at EU level is particularly apparent in the digital economy, where in no time at all jobs can be transferred in pursuit of low costs to places where the wages paid are not enough to live on and long working hours are an obstacle to a good work-life balance.

Neither economically nor politically can the EU afford to prolong future crises. As such, like other monetary alliances, the euro area also needs to have common resources with which to maintain demand during economic downturns. For example,

it may be appropriate for the euro area countries to establish a stabilisation fund to cope with cyclical fluctuations.

The problems are great, and the willingness and ability of the member states to solve them vary more perhaps than ever before. The EU's credibility has been alarmingly dented by its inability to find a proper solution to the euro crisis and the refugee crisis and also by its inability to prevent Brexit. It may thus be necessary for the EU member states who are prepared to seek common solutions to be able to move forward without being held back by the rest. In early 2017, Germany, France, Italy and others expressed support for the idea of nurturing a multi-speed Europe.

The Finnish trade union movement is actively working to bring about a stronger, fairer European Union that assumes global leadership. Without such a Union Finland cannot succeed either. Finland thus needs to be right at the heart of a multi-speed EU. In this publication we describe the Union projects already underway that are particularly important in the current context for the EU to take the necessary steps in the right direction.

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EU and EMU in support of employment, growth and welfare

EU reform

Brexit has triggered a broad debate on how the EU should be reformed. The EU's capacity to prevent and resolve crises is currently too weak, which makes reforms inevitable. The Finnish trade union movement considers that it is important for the EU to remain as united as possible. For example, EU-level labour legislation that is common to all will be needed in the future too, so that all internal market operators have to comply with the same minimum legislation. However, a multi-speed Europe may be the only way to address the challenges on which there is no consensus among the member states. Finland has to be a constructive player in the EU and also has to remain at the heart of the new multi-speed Europe.

The European Commission published a White Paper on the future of Europe in March 2017. This discussion paper from the Commission sets out five scenarios for how the EU might develop between now and 2025: 1. Carrying on, 2. Nothing but the Single Market, 3. Those who want more do more, 4. Doing less more efficiently and 5. Doing much more together.

The governments of some member states, for example Germany and France, have expressed tentative support for the third scenario. This would entail a multi-speed Europe. The countries of the EU would be divided up into groups of states on the basis of how willing they are to join forces in different policy areas. Decisions are expected by the summit in December 2017 at the earliest, after the elections in France and Germany.

EMU reform

The Commission is due to publish its proposal on EMU reform in May 2017. Growth has returned to the euro area, and now is the time to prepare for the next downturn by bolstering the euro area's ability to prevent and manage crises. There is a particular need for new mechanisms to maintain overall demand in times of recession, for example a counter-cyclical stabilisation fund. At the same time, there need to be stronger incentives for euro area countries to manage their economies sustainably.

Views about what needs to be improved about EMU have so far differed greatly between the northern members of the euro area and its southern members, although the forthcoming French and German elections may change that. An SPD victory in Germany, especially if combined with a win for Emmanuel Macron in the French presidential elections, may make Germany more prepared to accept the new joint structures being called for by France and the other euro area countries in southern Europe. These include a joint budget for euro area countries and a joint deposit guarantee fund, as well as the introduction of a common debt instrument and a counter-cyclical stabilisation fund.

A possible future compromise on how to develop the euro area may correspondingly entail the euro area countries of southern Europe having to accept greater control of euro area economies than is the case today. This control would be exercised by the EU institutions or by the market. In order to reconcile the priorities of northern and southern Europe in a balanced manner, Finland should take an open-minded approach to seeking solutions to the structural problems of the euro area.

European Pillar of Social Rights

In April 2017, the Commission is due to present its proposal for a pillar of social rights for the euro area, which will help to reinforce the application of labour and social rights. The economic governance of the euro area was bolstered during the euro crisis, and this led to some member states being pressurised into dismantling their systems of collective bargaining agreements and other necessary social structures. The social pillar is needed to bring balance to the governance of the euro area countries. In the future, the euro area will have to strive for growth with the help of "social investments", i.e. using social, employment, education and labour market policy measures. For example, new employment directives are needed to get the member states to make social investments.

If the euro area countries are to be given greater direction in social affairs, this has to happen within the framework of current EU competences and with respect for national institutions. The means to achieve this could as a minimum be peer reviews and incentives for member states to undertake reform, since the EU has very limited competences in education, labour market and social policy in particular. The Commission's tentative objective to promote social investments is unlikely to be realistic if it is not accompanied by an increase in the funding opportunities for the reforms.

The social pillar has to be combined with EMU reforms, which will increase national room for manoeuvre in finance and budget policy. A counter-cyclical stabilisation fund according to the model of the International Monetary Fund (IMF) would be a move in that direction and is supported by the Finnish trade union movement: during a recession, a euro area country would receive income transfers from a joint fund. In this way, sufficient levels of social, employment and education expenditure would be maintained, even in times of recession. It is also important to provide incentives to member states to manage their economies sustainably, so that in principle the member states' own fiscal buffers can cope adequately.

In addition to guidance in economic and social affairs, there is also a need for new employment directives which would require member states to make a particular level of social investment and would prevent unfair competition that weakens employee protection. The shortcomings of minimum regulation generate considerable imbalances between the euro area countries and reduce the effectiveness of the common monetary policy. For example, the right kind of reform of the Working Time Directive is important in this context.

One idea particularly worthy of support is the European Parliament's proposal in January 2017 to introduce a framework directive on employment. This would help to guarantee fundamental labour rights for the new categories of workers created by the digital economy, such as platform workers. In the absence of minimum regulation, there is a risk that jobs in the digital economy will spring up in the places where labour costs and thus also the level of worker protection are lowest.

EU investment plan

The Commission has proposed an extension of the European Fund for Strategic Investment (EFSI), an increase in its current financing capacity (or firepower) and a new way of targeting investments. The Finnish trade union movement supports the Commission's efforts to reinforce an EU-level investment fund. However, it should be ensured that public financing is not channelled through ESIF into investments that the market would have made anyway. There also needs to be an improvement in current monitoring of the EFSI's impact on employment and growth.

The investment plan is one of the current Commission's flagship projects and it was launched in 2015. The level of investment fell dramatically at the time of the euro crisis, and the programme has sought to increase investment across the EU.

The programme comprises the EFSI investment fund, technical assistance to member states and action to enhance the investment environment (along with other EU action, such as internal market and trade policy initiatives).

EFSI has granted funding to Finland, for example to the Metsä Group for its bio-product mill in Äänekoski. EFSI funding has also been channelled to SMEs in Finland via the OP-Pohjola bank.

The Commission submitted its proposal to amend EFSI in September 2016. According to the proposal, the operating period of the fund would be extended to 2020 and it would aim to double the level of investment. This would entail increasing EU budget guarantees and capital received from the European Investment Bank. Investments would be targeted in particular on cross-border infrastructure projects, SMEs, climate action and resource efficiency.

An open and fair internal market

Reform of Posting of Workers Directive

One of the most important ways of promoting a fair internal market is by safeguarding the position of posted workers in the EU. The Commission has tabled a number of legislative amendments that aim to guarantee that posted workers are paid the same as local workers. This important equal pay principle already applies in Finland, but that is not the case in many other member states. The reform is an attempt to protect workers and companies in those countries from unfair competition. From the perspective of the Finnish trade union movement, it is important to support the application of the principle of equal pay on the internal market. At the same time, it is important to ensure that this legislative reform does not in any way undermine the application of the principle in Finland.

The position of posted workers in countries like Finland with universal collective bargaining agreements was clarified in 2015, when the European Court of Justice ruled that Polish workers at the nuclear power station at Olkiluoto in Finland should be paid at the level stipulated in the universal collective bargaining agreement, including all allowances. However, in many other countries it is still possible to pay posted workers at a lower rate than locally recruited workers.

A central aim of the Commission's proposal for a directive from March 2016 is to address national differences in the definition of pay and other allowances and to oblige the posting companies to compensate their workers in full for all of them.

European services e-card

The liberalisation of the trade in goods on the internal market is a key achievement of the EU, and it has supported a rise in productivity and workers' real income for decades also in Finland. There are corresponding benefits to be derived from the growth in trade in services. The Commission is endeavouring to reduce the bureaucracy associated with the export of services with its proposal from January 2017 for a services e-card for companies. In the preparatory work on the card, a greater degree of assurance has to be provided that the cooperation between the authorities in the home and host country can be relied up. A company which is granted a services card really has to be able to meet the requirements in the host country, and its activities in the host country have to be able to be supervised effectively.

According to the Commission, a company would be able to use the card to prove its compliance with certain host country requirements. The services card would be issued by the home state authority, and entrepreneurs would be able to submit the application in their mother tongue. The host member state would retain its current power to apply its own regulatory requirements and to decide whether the applicant is allowed to provide services on its territory.

The electronic card would initially be introduced in the construction sector and for business services, and it would be extended to other sectors later. The card would not affect existing employer obligations or workers' rights in the host country.

Reform of Social Security Coordination Regulation

The Commission has presented a number of changes to the Social Security Coordination Regulation on which debate is just beginning. The Commission aims with this initiative to reinforce and clarify the social security rights of mobile workers on the internal market. This aim is to be supported. Worker mobility is a core internal market right and efforts to facilitate this mobility are welcome. Some of the amendments still require detailed examination.

The Commission's proposal would facilitate mobility by reinforcing the social security rights of mobile workers. Workers who live in a country other than the one in which

they work would be entitled to unemployment benefits in the state of employment after working there for twelve months. Meanwhile, a jobseeker moving to another member state would receive unemployment benefits from the home country for six months instead of the current three months.

The proposal also confirms the approach taken by the European Court of Justice that member states are entitled to restrict the social security rights of citizens of other member states when they are not in employment. However, the Commission does not propose any new restrictions to what is known as benefit tourism. This is the right approach, since research has shown that moving to another EU country to claim social benefits is a marginal phenomenon.

Highly Skilled Employment Directive

The aim of the Highly Skilled Employment Directive is to make it easier for highly skilled workers from third countries to come to the EU for work as holders of a so-called blue card. The Commission intends its proposal to replace the current national schemes altogether. The Finnish trade union movement supports the promotion of labour mobility on condition that compliance with the employment conditions of the state of employment is ensured. Similarly, the role of the social partners in the system should be guaranteed, as indeed should the possibility for a labour market needs assessment.

According to the Commission proposal, there would be an obligation for the member state to grant a blue card if the applicant met certain conditions. One of the conditions for receiving a card could be the possession of equivalent skills as well as of a formal qualification. Work in this area should advance steadily and on the basis of clear criteria. To encourage the establishment of start-up companies, the Commission is proposing that the blue card holder should be given the opportunity to engage in a secondary activity to his main employment. This idea deserves support.

The Finnish trade union movement's objective for the blue card system is pay equality: each member state has to define a pay threshold below which an applicant's pay may not fall. Compliance with the pay threshold and with working conditions in the country of employment should also be required in cases where a blue card holder exercises mobility within the EU.

An open and fair international market

Brexit negotiations

The government of the United Kingdom has announced that it will be breaking away from the regulation and jurisdiction of the EU by leaving the EU and its internal market. The aim of Prime Minister Theresa May's government is to maintain a close relationship with the Union even after Brexit on the basis of a bilateral free trade agreement. The EU cannot grant the UK special dispensations that would encourage other member states to leave the EU. The objective should be an ambitious and comprehensive free trade agreement which minimises the economic disruption caused by Brexit and would commit the UK to continuing to maintain EU standards in their employment and other legislation.

The Brexit negotiations are due to be launched in March 2017, when the UK has said that it will issue its notification of withdrawal. The forthcoming negotiations are likely to include three different components: 1. The terms of the actual Brexit, including the UK's financial obligations to the EU; 2. A bilateral free trade agreement; and 3. An agreement on transitional arrangements that would apply after Brexit in March 2019 and until the new free trade agreement enters into force.

Theresa May has announced that if the negotiations are conducted in a constructive spirit, then the UK would comply with EU employment legislation and a large part of the rest of EU regulation even after it has left. This would be a good starting point for future trade relations, since the risks of unfair competition would be small with both sides subject to broadly the same regulation. At the same time, regulatory barriers to trade would be minimised. As in its previous trade agreements, the EU should insist on the inclusion of a clause in the free trade agreement with the UK that bans weakening employment legislation as a means of improving competitiveness. In this way, the UK could be prevented from watering down its employment legislation at a later stage.

Reform of trade defence instruments

In the same way as the USA, the EU has to wake up to the problems caused by the unfair trade engaged in by China. This is important also from the standpoint of jobs in Finland, because China is striving aggressively to become a world leader in shipbuilding, for example. The Commission has proposed a reform that would do away with the distinction between market economies and non-market economies, while at the same time introducing a partial waiver to the so-called lesser duty rule. The proposal is not sufficiently strong in all aspects. It would impair the EU's scope for protecting itself against unfair competition from China. The lesser duty rule should be waived more extensively to allow the EU to protect all its industries if required.

Products imported from China to the EU are often cheap because the Chinese state supports its companies using direct and indirect means that are banned in the EU and other market economies. EU industry is protected from unfair competition by means of trade defence instruments, which include various reinforced procedures in respect of China and other non-market economies. These may have to be abolished as a result of China's WTO accession treaty.

If the Commission is able to demonstrate that the manufacturer of a product imported to the EU has been benefiting from artificially low prices, it can impose anti-dumping duties on that product. These duties are used in practice to increase the price of the product on the EU market. However, the Commission does not raise the price of the product to a level that would correspond to the price of a similar product offered at market terms, but rather sets the level just high enough to prevent direct harm to EU industry. The practice followed by the EU is called the lesser duty rule.

WTO rules do not require compliance with this rule, nor is it followed by the EU's competitors, such as the USA. This is why the anti-dumping duties imposed on Chinese steel are as much as 10 times higher in the USA than in the EU. The EU shipbuilding industry, which uses a lot of steel, is one of the industries that gain a competitive advantage in this way from using Chinese steel. The EU's policy is nevertheless short-sighted. The lesser duty rule encourages China to continue its unfair practices and to further extend its exports to the EU to new sectors with a high degree of processing. One of the targets set out in China's new five-year plan is to become a market leader in the shipbuilding industry.

The Commission's proposal contains a possibility to waive the lesser duty rule. The proposed calculation method allows the rule to be waived only for low-grade steel and for other products with a lower degree of processing.

The Commission proposal also says nothing about taking social criteria into account. When US anti-dumping duties are calculated, account is taken of whether workers in the country of origin of the product have the right to negotiate their wages freely. Pay levels and thus also price levels in China would be higher if Chinese workers could freely negotiate collective agreements.

Reinforcing labour provisions in EU trade agreements

Alongside their positive effects, the free trade agreements concluded by the EU have exposed workers in the EU to social dumping. Labour obligations incumbent on our trade partners have been written into agreements, but they are not adequately enforced, and economic sanctions are not even incurred in cases of serious infringements, such as the systematic use of forced and child labour. The possibility to impose sanctions should be included in EU trade agreements.

The EU, USA and Canada have included labour provisions in their free trade agreements. All three have required compliance with inter alia fundamental workers' rights as agreed at the International Labour Organisation (ILO).

The USA and Canada have applied the same dispute resolution arrangements to these provisions as they have to the other contractual obligations, and this means that financial penalties can be imposed in cases of infringement. The EU rejected this "sanction model" in the TTIP negotiations between the EU and the USA and in the CETA negotiations between the EU and Canada. The Commission and many other member states considered that the EU's own so-called cooperation model is a more effective model. The aim of the cooperation model is to encourage the trade partner to carry out labour reforms in cooperation with governments and civil society. However, research has provided no evidence that the EU model is any better. In many cases, EU cooperation has proved to be ineffective.

Combining the possibility of imposing sanctions with close cooperation would bring about the best results. This has been the approach taken by the USA in Colombia. Using genuinely binding labour provisions in the trade agreements, the USA has got an unwilling Colombian government to commit to significant labour reforms. A large number of the reforms have also been implemented because the USA has provided both technical and financial support to local administrations and the social partners in various cooperation projects to improve labour regulation and enforcement.

As a condition for accepting CETA, the EU committed to reinforcing the implementation of the labour and environment provisions in the agreement soon after its entry into force. The Commission has announced that the aim is to come up with a

new joint model that both the EU and Canada would endeavour to include in their future trade agreements.

A safe working environment

Protecting workers from carcinogens

Cancer is the most common cause of work-related deaths in the EU and is thus the greatest health risk to workers. The Commission has proposed a number of new and revised limit values for cancer-causing chemicals to be included in the Carcinogens and Mutagens Directive. These values will oblige employers to protect workers more effectively than at present. The initiative is most welcome, and it is important to ensure that this legal reform is implemented.

The limit values of the Carcinogens and Mutagens Directive are used to define binding upper limits for concentrations of chemical carcinogens in the air breathed in at the workplace. Furthermore, mandatory thresholds are defined on the basis of the Chemical Agents Directive for member states and their workplaces. These thresholds are the equivalent of the non-binding, harmful concentration levels used in Finland. In Finland there are also binding limit values in force for several substances.

The Commission has promised a total of three lists of new or updated limit values. The first of these was adopted in May 2016, the second in January 2017 and the third is expected in 2018.

Reform of occupational health and safety legislation

The Commission has drafted a modernisation programme for occupational health and safety legislation, the main purpose of which is to delete or update obsolete EU provisions. It is important to bring the legislation up-to-date, but the reform should be taken forward cautiously to ensure that the level of worker protection does not fall. The social partners should play an important part in work to update the rules.

A large part of the member states' occupational health and safety legislation is based on EU provisions, many of which were enacted decades ago. Working life has

changed a great deal since the laws were enacted, so reform of the old rules is necessary.

Changes in working life have also generated wholly new risks to the health and safety of workers. Known risks have also become more significant over time. Problems associated with the psychosocial work environment in particular have affected ever more Europeans. As such, the Commission should also present other legislative initiatives in addition to the reform of the carcinogens directive.

Protecting whistleblowers

On the subject of protecting whistleblowers, 2017 will see an ongoing public consultation organised by the Commission and a mapping exercise to examine the possible effects of legislation. The Finnish trade union movement supports the idea of better protecting whistleblowers and of introducing legislation to protect them. It also considers it important for the benefits of the legislation to be felt as widely as possible in both the private and public sectors.

Protecting whistleblowers is all about situations in which workers speak out about abuse and irregularities that they have observed at the workplace and end up suffering undesirable consequences as a result.

In spring 2017 the Commission is conducting a public consultation on the subject which is open to all. It is not known at this stage if the Commission is planning to present sectoral or broader legislation to protect whistleblowers or whether it will take a more light-touch approach.

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FinUnions represents 1.7 million Finnish workers in the European Union. Its member organisations are SAK, STTK and YTN.

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