Employment and prosperity in Europe through global competitiveness – challenges for European social policy

October 2014
Executive summary

The EU is on the right track to manage the crisis. However, to overcome it completely and to stabilise the still fragile recovery, there is a long way to go. Consistent continuation of the double strategy of budget consolidation and growth-promoting structural reforms to improve global competitiveness is an indispensable basis for dismantling unemployment and improving the social situation in the EU’s crisis countries.

It is important and right that the new European Commission has made the social dimension and improving the social situation in Europe one of its top priorities. The task now is to identify and durably address the real causes of the sometimes tense social situation – in particular the causes of high unemployment in the EU.

The tense social situation in EU Member States cannot be traced to too little social policy or insufficient spending on social security. On the contrary, Europe has the most highly developed social systems in the world. The cause of unemployment and social dislocations in the EU is the inadequate attractiveness of Europe as a destination for private investors. This attractiveness can only be restored through a reform policy consistently oriented on global competitiveness. The EU can make an important contribution to restoring competitiveness.

The EU can drive forward structural reforms for open and dynamic labour markets and sustainable social systems through coordination of national economic policies. In this regard, every EU Member State must address its concrete problems through its own reform programme in the framework of the jointly agreed European rules. To offer people in Europe sustainable employment perspectives, in particular non-responsive labour markets must be rendered adjustment-friendly, improved integration of the unemployed in the labour market must be enabled and education systems must be oriented more consistently on the needs of the labour market.

The EU can create a business-friendly European economic area with a high employment intensity through single market regulation oriented on global competitiveness. In this regard, setting minimum standards through European social regulation plays an important role, since this will create a social policy level playing field that prevents possible distortions of competition in the EU. At the same time, EU single market rules on coordination of social security systems promote free movement and mobility of people in Europe. In the field of social regulation, European Commission and Council should use the next five years in particular to support even implementation of the existing rules. Conversely, further social minimum standards which place an additional burden on companies should not be introduced.

European social policy can be structured in a more practical way through intensive involvement of the social partners in the framework of the European Social Dialogue and make an important contribution to the global competitiveness of location Europe. In this context, it is important to respect the autonomy of the social partners. The EU should make the necessary resources available for horizontal and sectoral Social Dialogue.

The EU and its Member States have a duty to create the framework conditions for a globally competitive European economic area which is once more attractive for private investments. The influx of private investment flows is a precondition for a sustainable economic growth in Europe and hence a basis for employment and a sustainable social dimension of the EU.
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1. European social policy faces major challenges

Europe is on the right track to master the challenges of the crisis. Following Ireland and Spain, Portugal has also been able to exit the European Stability Mechanism (ESM). Greece has markedly reduced its budget deficit and has managed to achieve a primary budget deficit for the first time in ten years. According to the European Commission’s estimates, the country could exhibit economic growth of 0.6% already in 2014 and hence put the long recession behind it. This positive trend can also be clearly seen in new Central and Eastern European countries. With expected growth of 3.8% for 2014 and a national debt ratio of 39.5%, Latvia, which acceded to the Euro in 2013, is a textbook example of successful crisis management. A similar situation obtains for economic heavyweight Poland, which is forecast to have growth of 3.2% in 2014 with a decline in the national debt rate to 49.2%. With all these hopeful signs, it must not be lost from sight that there is still a long way to go before the crisis in Europe is completely overcome. In 2013 the EU’s gross domestic product (GDP) was 1.3% lower than the pre-crisis level in 2008. It is therefore right that the new European Commission continues to follow the course successfully set by its predecessor. Consistent pursuit of the dual strategy comprising budget consolidation and growth-promoting structural reforms to improve Europe’s global competitiveness is indispensable. In this connection, it is right and important that the new European Commission has made not only economic recovery but also the social dimension, job creation and improvement of the social situation in the EU one of its top priorities.

Decisive for the success of European social policy will be identifying the real causes of high unemployment and addressing them on a sustained basis. The tense social situation in some EU Member States can be traced not to a deficient social policy or inadequate spending on social security. On the contrary: EU Member States have the most developed social systems worldwide. The population of the EU constitutes 7% of world population, it produces 20% of global GDP, yet its share in global public spending on social protection is 40%.

Thus, the cause of the current situation in Europe lies not in a shortfall in social expenditure but in the declining attractiveness of Europe as a destination for investors. Since the start of the economic and financial crisis in the Euro area and in the EU as a whole, the investment rate has weakened by 4%. Gross investment in plant has sunk by almost 15% since 2008. The share of EU Member States in worldwide foreign direct investment flows between the turn of the century and 2012 has reduced from 40 to 24%. To reverse this trend, the lost confidence of private investors in European economies has to be regained. For this, a reform policy consistently oriented on global competitiveness is needed. It is the duty of governments both to improve the framework conditions for private investments and also not to allow their own expenditure to be eaten up by consumption but use it for public infrastructure investments. Only if this succeeds there will be an increase in investment flows which is essential to improve the economic position and employment situation in Europe.

The EU can contribute to improving the global competitiveness and employment situation in Europe at several levels. On the one hand, it can drive forward national structural reforms for open and dynamic labour markets and sustainable social systems through coordination of national economic policies. Given the different structural problems of individual Member States, there can be no one-size-fits-all solutions for the EU. Each Member State must develop and consistently implement its own programme of structural reforms in the framework of jointly agreed European rules.

On the other hand, the EU has a decisive
role in shaping a competitive single market. The goal must be to promote the four fundamental freedoms in the single market optimally through single market regulation, and hence to create a business-friendly and globally competitive European economic area with a high employment intensity.

European social policy has a significant role to play in this. Through European social regulation, minimum standards are set which create a level playing field in social policy in order to prevent possible distortions of competition in the EU. Furthermore, EU provisions on coordination of national social systems promote the mobility of EU citizens and in particular free movement of workers. However, when regulating the single market, the EU institutions must concentrate on their core tasks and exercise their powers responsibly so that EU provisions improve global competitiveness and do not burden companies unacceptably with excessive red tape and costs. In recent years the EU has overextended its competences in this area and overburdened the Member States with a very high degree of regulation. Accordingly, over the next three years the EU should restrict itself to supporting even implementation of the existing rules on social minimum standards and not sponsoring further rules which would additionally weigh on companies. On the contrary, existing rules should be reviewed with a view to possible simplifications and dismantling unnecessary administrative effort. Single market regulation oriented on competitiveness is the only way for Europe to win back the trust of private investors and generate growth and jobs.

Social progress is realised on the basis of economic progress. The most recent example is the development in the new Central and Eastern European Member States where the increase in per capita income in recent years has brought the economic and social situation perceptibly closer to that in older Member States. The European single market with its four fundamental freedoms has contributed significantly to this converge. Against this background, it is right and welcome that the European Court of Justice (ECJ) has strengthened the fundamental freedoms guaranteed in the Treaty on the Functioning of the European Union (TFEU) in the cases Viking, Laval, Rüffert and European Commission./Luxembourg, in particular freedom to provide services and freedom of establishment. With this jurisprudence, ECJ promotes development of the European single market – and thus also strengthens the social dimension and global competitiveness of Europe. Accordingly, extensive demands for fundamental social rights linked to the fundamental freedoms of the single market to be enshrined and prioritised in law should therefore be rejected. The European Commission should not play off fundamental social rights against the fundamental freedoms of the single market.

The goal of a globally competitive Europe is not an end in itself but the central precondition for growth, jobs and sustainable social dimension in the EU. National European economies can only deliver socially if their companies operate successfully in global competition and hence can build the basis for employment and prosperity.

2. Open and dynamic labour markets, practice-based qualification and sustainable social systems promote growth and jobs

The functionality, openness and dynamism of labour markets, the quality of human capital as well as a sustainable and employment-friendly structuring of social security systems are an important precondition for the global competitiveness of European companies and at the same time for a strong and sustainable social dimension of the EU. Only companies which are internationally competitive with motivated and skilled workforces can create prosperity and social security. That in turn calls for investment-friendly investment framework conditions, solid public finances, labour markets capable of rapid adaptation
as well as an education and qualification system which meets companies’ needs.

Above and beyond acute crisis management, Europe faces major structural challenges: demographic change, high indebtedness of many EU Member States and the impact of digitisation and of the transition to a green economy require an adjustment-friendly labour market and social policy which makes better use of employment potential, brings more people into jobs and secures the next generation of skilled workers.

To open up sustainable employment perspectives for people, also above all for the young generation, the following points in particular must be addressed everywhere in the EU:

- Non-responsive labour markets must be rendered adjustment-friendly. An over-regulated labour market with high employment hurdles, e.g. in the form of rigid labour legislation or excessively high labour costs, blocks the route of especially young people without work experience, the low-skilled and the long-term unemployed into employment. Flexible forms of employment such as temporary agency work, short-term work contracts and part-time work make it easier to join the world of work and offer new employment perspectives, also more specifically for the weakest on the labour market.

- What is needed is an effective and efficient labour market policy which is oriented on early and adequate activation of the unemployed and their rapid integration in the primary labour market. This includes a performance-driven labour administration which provides good intermediation and targeted support.

- The education of young people must be consistently oriented on their individual capabilities as well as on the concrete needs of the labour market. Good interaction between schools and the work milieu as well as practical training with close involvement of the social partners guarantee needs-based qualification and hence rapid and sustainable integration of young people in the labour market. In addition, lifelong learning needs to be promoted in order to secure the employability of workers in all phases of working life.

- Lastly, sustainably affordable social security systems are needed which ensure that the individual has access to reliable basic security in the event of unemployment and prevents a descent into the abyss.

Labour market and social policy lies within the responsibility of the Member States. They have a duty to reform their labour markets and social systems. Each national economy and each country has its own specific features so that nobody could take the blueprint of another country and copy its reform route. Ultimately, each EU Member State has to develop and consistently implement its own programme of structural reforms in the framework of jointly agreed European rules. And yet countries can also learn from each other and draw advantage from looking beyond the confines of its own borders and allowing itself to be inspired by the good experience of others. The task of the EU is to stimulate this learning from each other, and to flank and support the reform efforts of individual countries.

With the newly introduced mechanisms for strengthened economic and employment policy coordination in the framework of the European Semester, the foundation has been created for more coherence in European reform policy. The aim now must be to see this coherence more strongly reflected in Member States’ reform policy. Structural reforms should not only be announced at political level but also implemented on the ground.

The European Semester must be oriented even more strongly than hitherto on a root-and-branch assault on the structural causes of deficient competitiveness. Labour market reforms as described in the country-specific
recommendations focus on the right priorities. Massive shortfalls in implementation of the country-specific recommendations have, however, hitherto impeded the success of the European reform strategy in the framework of the European Semester.

According to estimates by the German Federal Government, on average only 10% of the European Commission’s economic policy recommendations have so far been implemented by Euro countries as part of the European Semester. This applies expressly also for Germany. Thus, in this year’s recommendations the European Commission invites Germany to secure the stability of its public pension system and in this context sharply criticised both maternity-linked pension rights and also the pension at 63 without this being taken on board by the Federal Government. Irrespective of the sometimes very different starting situation in the individual Member States, it is therefore of decisive importance that in future the country-specific recommendations are better implemented on the basis of binding agreements between Member States, European Commission and Council with appropriate involvement of national parliaments and social partners. These “reform contracts” would also enable financial incentive measures to strengthen structural reforms. However, financial incentive measures must be time-limited and serve to support implementation of structural reforms.

Reform contracts based on a “carrot and stick” approach do not define European solidarity as a one-way street. They support Member States in their implementation of necessary structural reforms and at the same time maintain the reform pressure. By contrast, financial transfer mechanisms which are not linked to any conditionality and establish long-term financial transfer flows send the wrong signal and impede the necessary structural reforms in the Member States.

The EU can already deploy numerous financial solidarity mechanisms. However, these must be targeted more effectively than hitherto on combating the structural causes of deficient competitiveness in the Member States:

- The financial resources made available at EU level in the framework of the so-called “youth employment initiative” must be used in a targeted way to spur necessary structural reforms in the Member States and thus to address the causes of weak economic dynamism and high youth unemployment everywhere in the EU. So that the resources can also actually be drawn down, what is first needed is development of the requisite infrastructure – in the shape of performance-driven labour administrations – in the Member States in question. At the same time, drawing down resources must not unnecessarily be made more difficult through excessive red tape in the application and authorisation procedures at EU level. Distribution of financial resources in a scatter-gun fashion is ineffective. This was also expressly recognised by German Federal Labour Minister Nahles at the most recent EU employment summit in Milan on 8 October 2014: “We have enough money, it has just not yet found its way to young people”. It is therefore “not a good idea simply to call for more money at this point in time”. The Chairman of the German Federal Labour Agency’s Executive Board (Bundesagentur für Arbeit) and newly elected Chairman of the Board of Public Employment Services, Frank-Jürgen Weise, has warned against the wish to combat the problem of youth unemployment in the first line with money: “My experience is that it is wrong to throw money at unresolved problems”.

- The European Social Fund (ESF) should be oriented more strongly than hitherto on realising the Europe 2020 Strategy’s employment objectives and accordingly use funding from the structural funds in a more targeted way. Furthermore, the effectiveness and efficiency of resource
use should also be improved through a systematic evaluation of results achieved. The introduction of a “macroeconomic conditionality provision” in the European Semester whereby payments out of the structural funds can be partially suspended or cancelled in the case of non-compliance with the Stability and Growth Pact is expressly welcomed.

- The European employment services network EURES can and must in future operate perceptibly more effectively so that it can contribute better to the urgently needed strengthening of professional mobility in Europe. A decisive condition for the success of the EURES network is the presence of performing public and private labour market service providers in the Member States within the network. Improving the exchange of experience in the network of public labour administrations is therefore welcome. Employers expect that the processes stimulated by this will make a contribution to more efficiency and an increase in the quality of placement services across Europe.

Conversely, the idea of a European unemployment insurance scheme (EUI) discussed by the old European Commission is inappropriate to tackle deficient competitiveness in individual countries and thus help to dismantle unemployment. Rather, EUI would give wrong incentives and impede necessary reforms in countries with structural problems on the labour market, and could even make these problems worse. Even a partial pooling of the costs of unemployment, which is often also the consequence of a failed national economic, finance, education or labour market policy, would be very difficult to explain in particular to people in Member States which themselves have already successfully implemented painful labour market reforms. Moreover, social security systems and labour market orders in the individual Member States are so diverse that it is completely unclear how an EUI could be coordinated. Correspondingly, the Self-Government Board of Bundesagentur für Arbeit, comprising representatives of employees, employers and public bodies, has spoken out firmly against an EUI financed out of national social contributions.

3. Social dimension in the European single market

3.1. Free movement promotes open and dynamic labour markets

Free movement of workers which enables workers to choose their place of employment freely within the EU is one of the four fundamental freedoms of the EU single market. This is intended to promote the mobility of individual workers and open national labour markets as well as to increase the dynamism of the European single market generally. In particular where labour market situations are difficult in the home country, free movement offers workers the opportunity to seek employment in other European countries and through their work to make a positive societal and economic contribution in regions suffering a shortage of skilled workers. The cross-border dimension allows employment possibilities to be optimised and ultimately transforms a personal conflict into a benefit for society generally. Hence, exercise of the free movement of workers leads to a “geographical win-win situation” for every individual EU citizen and should not be understood merely as a formal fundamental freedom in the European single market. Rather, it can make an important contribution to combating unemployment and matching skills requirements, cultural diversity and competitiveness.

As compared with other regions of the world, the degree of mobility in the EU is very low. In 2013 only 3.3% of Union citizens worked and lived in another EU country. This low percentage is an indicator that there are still barriers to the exercise of free movement of workers. Alongside better promotion of language learning, easier recognition of professional qualifications and targeted information for workers and employers, the priority task
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of EU social policy therefore has to be optimally to promote free movement through coordination rules for national social security systems. This also means that the European coordination rules should be adapted to economic realities in the EU in order to eliminate the scope for abuse which threatens political acceptance. In particular following the EU’s two most recent enlargement steps, there are large differences between the benefits available under national social systems whereas living standards and prosperity levels are adjusting only slowly. Exploiting EU coordination to gain unjustified access to social benefits in other Member States can perceptibly undermine political acceptance of free movement and of the EU as a whole – this was clearly demonstrated in the polarised debates in the run-up to the European election. What is decisive here is not the manageable number of actual cases of abuse but the fact that abuse is possible at all in the European legislative framework which is perceived to be unjust by the population. European social policy must ensure that such circumventions are addressed, in the interest of free movement.

Free movement of workers as already enshrined since 1957 in the European Treaties does not allow any unrestricted immigration into national social systems. The EU must therefore react to the problems arising in some Member States with regard to benefit claims and keep European legal rules under constant review for regulatory gaps in order to remove existing possibilities for abuse. The upcoming revision of regulation no. (EC) 883/2004 on coordination of social security systems should be used to carry out this necessary repair work and launch a solutions-oriented dialogue among the Member States under the motto “counter social abuse effectively to preserve free movement”.

The fact that foreign workers are partly better treated than domestic workers in terms of the calculation and transfer of unemployment benefits and sometimes also other social benefits under European coordination rules is unjustified and offers possibilities for abuse which must be removed urgently. Similarly, the controversial interaction between coordination regulation no. (EC) 883/2004 and free movement directive 2004/38/EC on the right to social benefits needs to be urgently clarified. While the final ECJ ruling in the “Dano” case has not yet been delivered, the restrictions on social benefit claims for jobseekers that the European Court of Justice’s Advocate-General deems permissible in his conclusions as well as the lively discussions in many Member States on “social tourism” have created a new sensitivity which political institutions cannot disregard.

3.2. Open European labour markets for qualified workers from third countries

The demography-related decline in the domestic working-age population poses enormous challenges for EU labour markets and social systems, even if demographic change is proceeding in Member States with a varying intensity. Not all countries are suffering structural skills bottlenecks as is partly the case in Germany. But the ageing society will sooner or later have consequences in all Member States. According to the business survey of European companies carried out by Eurofound in 2013, 40% of companies in the EU are having difficulties in finding workers with the right qualifications. To secure Europe’s economic and social interests in the long term, mobility obstacles on Europe’s labour markets must be dismantled, also and especially regarding access of third-country workers in the EU. OECD also points out in a report published in September 2014 with the European Commission that migration is decisive for coming to grips with demographic challenges in the EU. Improved activation of national and intra-European potential (women, older people, migrants and the unemployed) is insufficient for this. Targeted immigration of skilled workers from other regions of the world can make an important contribution to more economic dynamism overall and thus also to more employment
possibilities and prosperity for the domestic population. An important task for European social policy is therefore to develop a forward-looking policy for immigration from third countries which fosters economic and social development in the single market.

The decisive challenge for the EU will be to communicate this commitment to openness to the outside world, to take a policy position and to underpin it with corresponding legislative acts. The EU can only survive successfully in worldwide competition for the best brains if a shift is made to real “welcoming culture” in all areas of life. Migration can make a contribution to reducing unemployment in emigration region without this necessarily involving a “brain drain” and a loss of capital. But the welcome signals to be sent out must also be seen in third countries. Migration and integration should no longer be perceived primarily as a problem but as an opportunity for a diversity of talents and greater intercultural competence. Only if integration in social life succeeds international skilled workers will see a longer-term perspective for themselves in the EU. At national and European level alike, all players in politics, business and society have a role to play here.

The objective of national and European immigration provisions must be to enable targeted immigration of needed workers flexibly and without long delays, and to limit uncontrolled immigration into social security systems. Germany could book the first successes with its skilled worker plan and relaxations in immigration law. Partly under pressure from business, immigration law has been repeatedly reformed in recent years in the direction of a welcoming culture, and has perceptibly opened the labour market for qualified skilled workers who have found a job in Germany as well as in professions with shortages. But to secure skilled workers in the long term, immigration law should be further developed, above all for international skilled workers who do not yet have a concrete job but who do have the qualifications and necessary language skills to find employment in Germany rapidly.

At EU level, the new directives on intra-corporate transfers of third-country nationals (ICT) and seasonal workers together with the Blue Card directive go in the right direction. Nevertheless, these directives need to be better known and implemented in a more practical way and/or considerably better enforced as in the case of the Blue Card directive. In addition, the professional experience and good qualifications that are often held by asylum-seekers and others with a dispensation already living in the EU should be better used. This will contribute to those in question rapidly earning their own living and no longer having to depend on social benefits.

3.3. Freedom to provide services: fair competition through consistent implementation of the posting of workers directive

In the European single market, companies enjoy the freedom to provide services in other Member States. This also includes the possibility to post workers temporarily to other Member States to perform these services. The posting of workers directive was adopted in 1996 to ensure fair competition for the single market in the area of services on the one hand and to specify measures which guarantee respect for the rights of employees when performing a service abroad on the other hand. A “hard core” of employment conditions was stipulated which the service provider must meet for the duration of the posting to the destination country. The purpose is that the social rights of posted workers are safeguarded and social dumping is prevented with these protection clauses.

As a reaction to the extremely controversial debate surrounding the consequences of the ECJ’s ruling in the “Laval” case, in 2012 the European Commission presented a proposal for a directive on better practical enforce-
ment of the existing posting of workers directive (enforcement directive). In so doing, it consciously refrained from a complete overhaul of the current posting of workers directive and concentrated instead on better enforcement of the directive.

This is because the “deficiencies” regarding posting of workers are not due to shortcomings in the substance of the directive but can be traced to inadequate practical transposition, implementation and enforcement by Member States on the ground. In particular, cross-border administrative cooperation between authorities has been rendered more difficult by occasional conflicts of interest between Member States and targeted combatting of abuse has been impeded by different legal cultures. These implementation problems have been appropriately tackled with the enforcement directive that has now been adopted. The enforcement directive, to be implemented by mid-2016, will improve cooperation between Member States’ authorities on posting of workers and enable effective controls of work and employment conditions in the destination country.

Protection of workers’ rights when performing cross-border services in the single market is ensured in an appropriate manner by the 1996 posting of workers directive and the 2014 enforcement directive. Renewed calls for a revision of the posting of workers directive to prevent “social dumping” are not comprehensible, especially against the background of the very recent adoption of the enforcement directive after long and difficult negotiations. This would merely be a step backwards: the enforcement directive was adopted precisely with the aim of improving practical implementation of the framework conditions set out in the posting of workers directive. The new enforcement directive should be given time so that it can deploy its full effect and the renewed call for an overhasty revision should not be heeded.

German business therefore welcomes statements by the European Commissioner for Employment and Social Affairs, Marianne Thyssen, that the European Commission will in a first stage actively support proper transposition and implementation of the new enforcement directive, emphasising the importance of this new instrument leading to concrete results in the years ahead.

### 3.4. Freedom of establishment: further develop European company law to promote entrepreneurial growth in the single market

The freedom for companies to establish themselves in every EU Member State is an important condition for an economically prosperous European single market. Genuinely European legal forms for companies are an essential component for development of freedom of establishment. The success of the European public limited company (SE) is an eloquent example for this. Unfortunately, there is no corresponding offer of European legal forms for small and medium-sized enterprises. Rather, the European Commission withdrew its proposal for a European private company statute (SPE) in May 2014 due to a lack of progress in the negotiations, in particular on co-determination of employees. In its place, a proposal for a directive on single-member private limited liability companies (SUP) has been submitted. Whereas the proposal for the SPE provided for the creation of a supranational EU legal form which would stand alongside existing national legal forms, the aim is now only an EU-wide legal harmonisation with 28 variants of the SUP in individual Member States. For this reason if no other, the SUP is not an adequate substitute for the previously envisaged SPE.

A supranational and practical European private limited company oriented on the needs of small and medium-sized enterprises could have facilitated company creations and cross-border activities in all EU Member States. Time, costs and effort for creating and managing companies in other Member States would have been reduced and SMEs could thus have gained support for running...
their subsidiaries. While the company founder would have a rough, uniform framework in an SUP, he or she would still have to fill in the details very differently in individual Member States based on the relevant national company law. Furthermore, the proposed rules for the legal structure of the SUP throw up numerous questions, e.g. the proposed online creation.

German business therefore unanimously continues to call for the creation of a European private limited liability company. In this regard, neither should German co-determination law be extended, nor should the co-determination rules that apply in Germany today be modified. This means above all that the obligation to negotiate on the introduction of employee involvement rules must essentially be oriented on the country where the company is created in the absence of a consensus across the European Union. For instance, if a European private limited liability company created in Sweden had more than 50 employees, there would have to be negotiations on employee involvement due to the threshold of 50 employees applicable in that country. If no agreement is reached, Swedish employee involvement rules apply. The same applies for Germany: if a European private limited liability company created in Germany has more than 500 employees, there will be negotiations and in the absence of an agreement, German co-determination rules would apply. German business will advocate for the SPE to be put back on the European Commission’s agenda. The introduction of a European alternative to the German private limited company (GmbH) would be sensible and necessary whereas the added value of a single-member private limited liability company would be considerably less. The SUP cannot substitute for the SPE. Accordingly, the European Commission should not be discouraged by the setbacks encountered by its predecessor and table a new proposal for an SPE.

3.5. European social minimum standards for a globally competitive Europe

3.5.1. Strengthen subsidiarity and competitiveness — for a responsible balance between European and national level

European social regulation lays down minimum standards which create an EU-wide social policy level playing field in order to prevent possible distortions of competition in the EU. In this regard, European social policy falls into the area of “shared competences” whereby both the European legislator and also the Member States can adopt binding legislative acts. In particular for rules on social minimum standards, the principle of subsidiarity enshrined in the European Treaties must be maintained and consistently applied through a constant weighing of the advantages and drawbacks of EU-wide regulation. The EU may only take legislative action if Member States’ measures are insufficient and if the political objectives can actually be better achieved at EU level.

Appropriate consideration has not always been given to subsidiarity in the past. With around 70 directives and regulations, there is already an extensive corpus of EU social regulation at European level. The setting of European minimum standards, especially in the areas of occupational safety and health and also for coordination of social security systems, is broadly welcome and indispensable for completion of the European single market. However, the existing directives and regulations set very high requirements, in particular for the new EU Member States which are sometimes overwhelmed by their implementation. The EU should therefore concentrate on improved implementation of existing EU legislative acts in the coming years and to refrain from further regulatory initiatives which lead to more costs and bureaucracy in Europe. Further provisions for minimum standards would place an additional burden on companies and would not be conducive to the effort to strengthen the
global competitiveness of the European economic area.

The European Commission has taken these considerations into account in its new strategic framework for occupational safety and health 2014-2020 and has completed a change of course. The new strategic framework does not contain any proposals for new legislative provisions and instead names better implementation of existing legislative provisions as one of the central challenges in the area of occupational safety and health for the next six years. In addition, the European Commission sets out strategic objectives including support for compliance, better implementation and simplification of existing legislation. Of decisive importance will be the question of whether the EU will maintain this change of course. In particular the review of the strategic framework planned for 2016, intended to follow on from the evaluation of EU occupational safety and health directives which will have been completed by then, should be regarded as a decisive moment when the new course has to be maintained.

On the basis of the principle of subsidiarity as the most important maxim for action in European policy, there is no need for EU regulation on transnational company agreements (TCAs) either. TCAs are concluded at company level when there is an added value for the parties. Concluded TCAs differ greatly from each other since they have to be adapted to the specific needs of the company and its contracting partners, and to the different national systems of industrial relations in which the company operates. The possibility to develop tailor-made arrangements is precisely the strength of TCAs. An optional legislative framework for TCAs at European level should therefore be rejected because it is not desirable or feasible. Neither is it sensible, since TCAs have an international reach in practice and are not limited only to the EU.

The principle of subsidiarity is also important in the area of corporate social responsibility (CSR). CSR describes a company’s commitment to society which it realises voluntarily over and above what is required by law in the areas of environment, social affairs and economy in its sphere of influence for a future-oriented society. The central principle for all CSR measures is their voluntary nature. So that companies can develop and implement CSR approaches which best fit in with their individual characteristics. Against this background, further rules on CSR, in particular further statutory reporting obligations should be seen in a critical light, since they would hold back innovation and dynamism in the field of CSR.

Furthermore, it is essential to refrain from EU rules which raise barriers on the labour market and make it more difficult to combat unemployment. Hence, calls for EU-wide rules on minimum wages are counterproductive.

On this point, it is also necessary to bear in mind that the EU has no legislative competence in the area of remuneration as stipulated in article 153 paragraph 5 TFEU. Rather, it is within the competence of the Member States to decide whether statutory minimum wages should be introduced, and if so at what level. Thus, seven EU Member States have not introduced a statutory minimum wage. This competence of Member States to regulate for social policy must be respected. It is also of decisive importance that the EU maintains the autonomy of national social partners to negotiate collective agreements. This is explicitly recognised as a fundamental right not only in national constitutions but also in article 28 of the Charter of Fundamental Rights.

Only if these principles are respected can European companies operate successfully in global competition and lay the foundation for employment and prosperity in Europe.
3.5.2. Working time directive: strengthen competitiveness and correct unwanted developments

Against the background of the digitisation of the work world and growing economic cooperation in the framework of international supply chains, the flexibility in working time is assuming ever greater importance for the international competitiveness of companies. Worldwide competition and the increasing trend towards individualisation of life and working time models make it necessary to be able to adjust working times rapidly and flexibly to meet demand. The advantages and opportunities arising from digitisation must therefore be used for more flexible deployment of workers and a better work-life balance. Whereas the existing working time directive meets its objectives in terms of the health and safety of workers, adjustments are still needed to correct unwanted developments and achieve more working time flexibility for companies and employees.

The European Commission’s objective must be in particular to correct the economic burdens arising from the jurisdiction of the European Court of Justice in the “Simap” and “Jaeger” cases on on-call duty and once more strengthening working time flexibility by not classifying all on-call duty as working time. To this end, an instrument needs to be introduced which allows a differentiation between the various forms of on-call duty. Such a differentiated solution could consist in the directive defining on-call duty comprising active and inactive parts as an additional time category alongside working time and rest time. The inactive part of on-call duty should not be regarded as working time insofar as this is provided for in national law and/or collectively negotiated agreements. With such a provision, the absurd situation would be ruled out whereby a fireman is obliged to take a long rest period immediately after spending a night of undisturbed sleep during on-call duty would no longer arise – what might be termed “a rest to recover from rest” – because this form of inactive on-call duty is regarded in its entirety as working time in application of the European Court of Justice’s jurisprudence.

Genuine value would also be added for working time flexibility, to the benefit of small and medium-sized enterprises especially, through an extension of the reference period for maximum weekly working time in the directive to twelve months (or even longer if so agreed by social partners). Against the background of leeway for flexible arrangements, the “opt-out” clause contained in the working time directive to allow departures from a maximum weekly working time of 48 hours must be maintained. This opt-out possibility supports the dependable personnel planning which is a condition for planning certainty. For this, it should also be clarified in the working time directive that Member States have the option of restricting the right to leave to the holiday year, even if an employee has not worked for a long period due to illness.

3.6. Role of social partners and Social Dialogue

3.6.1. Respect role and autonomy of social partners

It is an important and correct step to upgrade Social Dialogue and to create an explicit competence for a Vice-President of the European Commission. The European Social Dialogue is an effective instrument for shaping European social policy. In recent years it has developed into a practice-oriented and targeted instrument of European social policy. Furthermore, it can make a considerable contribution to integration in the EU, because it builds a bridge from the EU level to companies and workers, i.e. players at local level, and transports their specific concerns to the EU level. Completely within the sense of a “reform partnership”, Social Dialogue leads to concrete results which bring an added value for companies at operational level. The European Commission should therefore re-
spect the autonomy of the social partners and take their concerns into account, but not impose particular types of agreements and themes from the outside.

It is essential for horizontal and sectoral Social Dialogue that the necessary resources are made available by the EU. Recognition of the importance of this instrument must lead to the requisite means being made available.

On the other side, the limits of the competences of the social partners must be respected. Social partners should not be confronted with expectations of negotiating agreements on themes where policy-makers have already failed, or which fall outside the competence of the social partners.

3.6.2. Ensure appropriate involvement of social partners in the European Semester

Strengthened economic policy coordination in the framework of the European Semester touches on several areas which fall within the competence of the social partners. This relates above all to employment policy. Appropriate and early involvement of the social partners is necessary for coordination of the themes in question.

This calls for consultation of the social partners both at European level by Commission and Council and also at national level by Governments. To avoid double structures, no new bodies should be created at EU level, but existing institutions of the Social Dialogue – first and foremost the Social Dialogue Committee – should be used.

In a joint statement dated 24 October 2013 the European social partners BUSINESSEUROPE, UEAPME, CEEP and ETUC set out concrete proposals for appropriate involvement of the social partners in the European Semester. The Commission and the Council are invited to take up these proposals and implement them on the ground.

3.7. Public infrastructure and public procurement – development of European networks strengthens competitiveness and social dimension

The high level of public infrastructure in Europe is rightly regarded as a decisive competitive advantage of the EU vis-à-vis other economic areas, be it in access to education, transport infrastructure, energy, post or digital communication. However, many of these infrastructures currently come to a halt at national borders, so that the potential of the EU single market in these areas is insufficiently used. European policy-makers therefore rightly see themselves as being responsible for developing cross-border infrastructure in areas such as energy or also digital communication for the entire single market, and hence to secure the general good in the EU.

An orientation on the general good does not necessarily mean interference with free competition. Competition guarantees the effectiveness and above all the quality of services for the consumer. If the State sets the right framework conditions, this also applies for services of general interest which, as a rule, can be provided with greater diversity and at better prices by the private sector in competition.

Networks and international value creation chains are increasingly important for the success of European companies in global competition. European policy-makers must therefore create the right framework conditions for a stronger networking of companies in a number of areas. Thus, for instance, cross-border broadband infrastructure must
be further developed and modernised. According to estimates by the European Parliament, a functioning digital single market can lead to a €260 billion increase in EU gross domestic product. Something similar applies for the field of energy and the European energy single market for which more opening and competition are urgently necessary. €50 billion a year could be saved if the energy single market is completed. Annual efficiency gains of €5 billion is also possible through a deepening of the single market in the area of transport routes. Setting the right framework conditions in these areas is indispensable to increase the global competitiveness of location Europe.

Public procurement plays a decisive role for infrastructure investments. Public contracts are awarded with an annual value of around €360 billion in the Federal Republic of Germany and more than €2 trillion in the EU. In this regard, public procurement rules serve for transparent provision of goods and services to public authorities and must be oriented aspects of cost efficiency. A simple and transparent procurement system promotes competition by enabling a large number of participate in contract awards. By contrast, it is problematic if procurement rules are weighed down with other political objectives. With each additional award criterion, the bureaucracy associated with a tendering procedure increases both for companies and for the contracting administration. Numerous additional social and ecological award criteria run counter to the objective of combating corruption, since they make procurement rules more open to abuse and less transparent. They also create considerable legal uncertainty. Moreover, taking account of aspects unrelated to procurement distort competition for the most cost-efficient offer to the detriment of public budgets. Not least, small and medium-sized enterprises in particular must not be overburdened with additional bureaucratic effort because this runs counter to the objective of better access to public contracts.

4. Global dimension of the EU – promote growth opportunities of the global economy for Europe

4.1. Use chances of ambitious free-trade agreements for more growth and jobs in Europe

The EU must take into consideration much more strongly than hitherto that cooperation arrangements, networks and international value creation chains are becoming ever more important success factors for European companies. With this in mind, they should continue to campaign for improved access to foreign markets for European companies, in particular through conclusion of ambitious free-trade agreements. Especially in an exporting nation such as Germany, such agreements can generate a growth impetus for jobs.

This applies to a considerable extent for the currently ongoing negotiations between the EU and the USA on a transatlantic trade and investment partnership (TTIP). The EU and the USA are far and away the two largest economic areas in the world with the highest environmental, consumer and social standards. As such, TTIP offers a one-off opportunity to develop common rules for free and fair trade worldwide. TTIP can set high, globally effective benchmarks which set an example for other agreements of this type.

The European Commission and the Council should therefore endeavour to ensure that the TTIP negotiations are driven forward in a constructive spirit and the positive effects of such an agreement on prosperity and jobs are more strongly highlighted vis-à-vis the public.

4.2. Create a global level playing field for companies

The share of emerging countries in worldwide foreign direct investments is constantly increasing. The “North-South” investments
that have dominated hitherto are increasingly being replaced by “South-North” or even by “South-South” investments. Against this background, it is important to have a global level playing field for the European economy. In this regard, the OECD guidelines on social responsibility for multinational enterprises are of great importance for the shaping of fair competition. The OECD guidelines constitute a framework for responsible conduct on which companies can and should orient their worldwide business activities. The task now is therefore to disseminate the guidelines beyond the perimeter of OECD Member States as recognised principles for responsible corporate conduct with regard to foreign investments. In particular emerging countries such as China and India should now be persuaded to adopt the guidelines in order to set responsible framework conditions for international trade. Clearly, the OECD guidelines on their own are not capable of ensuring a global level playing field. Fundamental environmental and social standards must be enacted and enforced by States. But the guidelines have the potential to support these efforts. This potential should be better used. It is therefore positive that Egypt, Argentina, Brazil, Morocco and others have signed the guidelines alongside OECD countries. It is also a happy development that the European Parliament in 2013 called for comprehensive diplomatic efforts to be made to win over further countries at international level for the OECD guidelines (2012/2097(INI)). The European Union’s Foreign Service in particular should follow up this invitation.

In this connection, the EU should also promote the sustainability of business activity in non-European countries, since European companies are also more often economically active there. However, it is frequently difficult for companies to obtain valid information on concrete investment risks, e.g. on the human rights situation. The European Commission should ensure that companies can obtain such information, for instance via the European Union’s diplomatic service. It should exert its influence on the Member States so that they pass on the corresponding information to companies. This would make an important contribution to the sustainability of the global value creation chain.

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