



Minimum wage initiative lacks legal basis: it must respect the autonomous role of social partners in wage-setting as well as statutory minimum wages

Brussels, 05 May 2021 - As representatives of sectoral employers, strongly engaged in social dialogue at national and EU level, we are committed to continuously improve the working conditions of our employees and share the Commission's objectives. We are however strongly concerned about the implications of the proposal for a Directive on adequate minimum wages on the role of Social Partners and on statutory minimum wages.

Indeed, as **EU sectoral employers, we firmly believe in the autonomous role of our members in collective bargaining at national, sectoral and company level** and support the right of Member States to set minimum wages according to national law and practice. Regrettably, the Commission's proposal does not respect these two core principles underpinning the European social market economy. For us, the EU has no competence to introduce any action regarding pay and collective bargaining as there is no legal basis to do so.

European employers' organisation of the tech & industry, security industry, banking, chemicals, cleaning & facility services, retail & wholesale, construction, agriculture, hotel & gastronomy and private employment services industry are concerned about the implications of the proposal for a Directive on adequate minimum wages.

The 10 European sectoral employers' organisations together regroup well over 33 million companies providing jobs to nearly 114 million employees.

For these reasons, the **sectors we represent are highly concerned about the proposed Directive. They fear in particular that top-down governmental intervention may crowd out better, closer-to-the-ground solutions, devised by social partners at national, sectoral and company level.** The ability to set wages at the closest possible level to the workplace is crucial to adequately and timely respond to the rapid change taking place in our sectors.

As employers from different sectors that need dynamic and adaptable labour markets, we also challenge the European Commission assessment that there is a lack of social protection for certain forms of work, such as part-time work, fixed-term contracts and temporary agency work. Especially for these three forms of work, specific EU Directives are already in place, ensuring appropriate working conditions.

1. Legal basis of the Proposal for a Directive is problematic and could lead to competence conflict

The chosen legal basis (art. 153(1)(b) TFEU) is problematic in the context of setting minimum wages and collective bargaining as these two issues are excluded from the TFEU.

Further, **as evidenced by the Council Legal Service's assessment of art. 6 (variations/exemptions) there is a high risk of legal difficulties in the transposition and enforcement phase of this Directive** in case the co-legislators agree on binding provisions on adequacy of minimum wages and coverage of collective agreements. Therefore, Article 6 should be fully amended.

The **EU semester would be a better tool** to facilitate Member States' exchange of information and best practice in these fields. **We continue to support voluntary capacity-building initiatives on social partnership and collective bargaining in those countries where this does not exist.** However, the Commission cannot simply create social dialogue and social partners through EU legislation: social dialogue can only work when it is sectorial, autonomous and voluntary.

2. Upholding the autonomy of social partners (art. 4)

The Commission's overall good efforts to prevent an unequal recovery from Covid-19 are contradicted by **the provisions on the coverage of collective agreements (art. 4), which clearly violate the autonomy of social partners (protected by Article 152 TFEU and explicitly cited as a fundamental right in art. 28 EU Charter of Fundamental Rights).**

The Directive would therefore not achieve its aim to promote social dialogue and collective bargaining in Europe at a time when good social partnership is needed most. To the contrary, setting arbitrary targets for collective bargaining at EU level will merely result in opening a back door for political interference in wage-setting across Europe and lead to increased social tensions rather than good social relations. **Consequently, the EU institutions should refrain from regulating collective bargaining at EU level.**

3. Respecting statutory minimum wage systems (art. 5)

It is important that new EU social affairs legislation does not upset the division of competences between the EU and member states. We would like to stress that **decisions on adequacy (article 5) of member states' minimum wage systems are national prerogatives. As such, the Directive's provisions should therefore be designated as recommendations** rather than provisions that are binding on member states. Furthermore, the EP and the Council should refrain from defining set targets for the level of minimum wages (e.g. measured by a set percentage of the national median wage levels, etc.)

Although we welcome the provisions on involving social partners in statutory minimum wage setting systems (article 7), we are convinced that the removal of binding provisions is the best guarantee for the national, sectoral and company-level social partners to retain real involvement in statutory minimum wage setting. National statutory minimum wage setting processes set and review minimum wage levels regularly, independently and with the involvement of social partners. They should be fully respected by the proposed legislation.

⇒ Against this background

European sector employers urge **the EU Institutions to reconsider their approach** on this matter, including the choice of the Directive as an instrument, and to **guarantee that the principle of autonomy of the social partners enshrined in the EU Treaties is fully respected** throughout the legislative process. As European employers, we are willing to provide input and expertise to shape an initiative on adequate minimum wages that fully respects the right to collective bargaining, the autonomy of social partners and statutory minimum wages.
