



7 September 2020

## **BusinessEurope response to 2<sup>nd</sup> stage social partner consultation on a possible action addressing the challenges related to fair minimum wages**

### **Introduction**

1. Employers agree that workers should earn a decent living and that as part of our social market economy, minimum wages have an important role to play in this. Whether wages allow for a decent standard of living is also linked to the number of hours worked. For employers and employees, wages are first and foremost a compensation for work performed in employment. A wage is an expression and manifestation of how this work and the way in which it is performed are valued, both in the market and where applicable by the social partners. And in some countries like the Nordics, Austria or Belgium wages are based on well-established and considered negotiations between representatives of employers and employees. Minimum wages cannot be seen in isolation from economic factors and developments, in particular growth and productivity, as wage levels stem from these and companies have to be able to safeguard their competitiveness, also to protect jobs.
2. The amount and composition of wages, including minimum wages has to be seen in the broader context, including with regard to social security systems, minimum income schemes and taxation, which are important in safeguarding good living conditions and tackling poverty.
3. According to Treaty article 153 (5) and related European Court of Justice (ECJ) rulings, the EU has no competence to introduce a binding legal instrument on the level of minimum wages or on collective bargaining as these matters are, for good reasons, the competence of national social partners and Member States. Any EU initiative should fully respect national competences and the role of national social partners regarding wage setting, and, where possible, strengthen this. This is also an important commitment of the Commission. Any action must avoid changing (even inadvertently) the strict and deeply rooted division of competences between the EU, Member States and national social partners.
4. We strongly advise the Commission not to opt for a directive, as it would by definition hand over the power to the legislator and to the courts, and risk overstepping the competence of the EU. This would be particularly damaging for industrial relations systems in those Member States where national social partners are solely or predominantly responsible for wage formation or where statutory minimum wages are linked to collectively agreed minimum wages. Where national social partners are weak, European legislation cannot suddenly make them strong – strength can only come from representativity and the desire and ability to find balanced solutions as social partners. Also, other measures, in particular capacity-building are the best way to achieve this. A directive also risks leading to numerous court cases, to clarify the implications of the



directive, thereby further removing matters from the hands of the social partners. For these reasons, we find that a directive would severely damage our role and therefore be unacceptable for us.

5. We do however find that other actions could have an added value, namely, building on the existing cooperation between the social partners, the Commission and Council in the framework of the European Semester, which already covers the issue of minimum wages and other aspects concerning the fight against poverty in Europe, and on which the Council yearly makes recommendations. This could include more dedicated monitoring on minimum wages and social protection, including, where appropriate, the role of national social partners in statutory minimum wage setting systems and in a tripartite setting.
6. If however the Commission decides nonetheless to use article 153 as a basis, despite our strong concerns and the strict legal limits in article 153.5, only a Council recommendation could respect the role and autonomy of the social partners. As a non-binding instrument, this would allow for better respect of national competences and industrial relations systems, as long as it crucially leaves the decision on what action is needed and the approach to the national level, including the social partners.

### **Answers to the questions posed by the Commission**

**What are your views on the specific objectives of a possible EU action set out in section 5?**

#### ***Minimum wages set at adequate levels***

7. The objective suggested by the Commission is to ensure that minimum wages are set at an adequate level to allow for a decent standard of living and to combat in-work poverty. Whilst employers agree that social measures overall should aim for this, raising minimum wages is too blunt an instrument to achieve it. Such an objective can only be achieved with a holistic and more sustainable approach. First and foremost, the role of wages is to pay for the work performed at the right price. This is a fundamental prerequisite that is not adequately recognized in the consultation document. In the best case, improving companies' competitiveness and economic growth will create greater wealth for workers and citizens, but the fundamental point is not to blindly increase the labour cost. Furthermore, reducing the tax burden on low-wage and low-skilled workers will contribute to more effective social benefits and minimum income schemes, and to better functioning of labour markets. Different approaches will be necessary in different countries, depending on their systems, practices and economic and social situation.
8. While we note an increase in in-work poverty across the EU, the Commission also points to large differences between Member States, and shows that minimum wage adequacy has in fact improved in most Member States within the last years. Also, since national frameworks for wage setting are very different and hardly comparable across the



member states, added value of EU regulatory action is questionable. Supporting actions at national level, which have already proven effective, would be more suitable. It is also important to take into account that wage levels and poverty are affected by the number of hours worked. We do not agree with the Commission's statement that the minimum wage in certain countries, for example Germany, is not sufficient to protect workers against the risk of poverty. Germany has the 6th highest minimum wage in the EU and in 15 sectors, additions to the minimum wage are even higher. There are also additional social benefits in Germany, giving low wage workers protection against poverty. In order to increase payable hours and productivity and therefore lower the risk of in-work poverty, a more holistic and sustainable approach is needed, including improving care facilities, increasing flexible working hour schemes as well as upskilling and reskilling programmes at national and, where appropriate, at European level.

9. The Commission also points to statutory minimum wages in many Member States being low compared to other wages, in particular the median and average wage. However, what is unfortunately not considered is the negative impact that disproportionate increases in minimum wages can have on hiring, employment prospects and opportunities for progression of workers covered by them. Great caution is required, because disproportionately increasing minimum wages will put all existing scales and wage systems under pressure in the Member States. This is a fundamental impact that does not seem to us to be recognized in the consultation document. Disproportionate increases in minimum wages can also reduce the possibility for collective bargaining on wages at sectoral, as well as company level, which is precisely what the Commission states it would like to improve with its initiative.
10. An isolated objective of adequacy is not appropriate. Whilst we agree that economic conditions should be duly taken into account, this is not enough: improving the economic situation, including increasing productivity and employment opportunities should be combined with the objective of adequacy. This allows for workers' and employers' needs to be taken into account in a mutually beneficial way. This is even more crucial in the post-COVID recovery. Whilst we recognise that minimum wages that increase purchasing power of low-wage earners can have a positive economic impact, in contrast, disproportionate increases of minimum wages without higher productivity, will hamper the economic recovery. This is clearly highlighted by the principles and requirements set in ILO Convention No 131 on Minimum wage fixing which is ratified by a number of EU member states.

#### ***Minimum wages for all workers – coverage***

11. The choice of which workers are covered by the minimum wage is for the national level. Depending on the national industrial relations system, this decision is for the government, in cooperation with the social partners or the social partners alone. This is also enshrined in ILO convention 131 on minimum wage fixing, which leaves it to the competent national authority, in agreement or after consultation with social partners, to determine the groups of wage earners to be covered. The focus should be on persons living in EU Member



States. International legal instruments, national laws and collective bargaining agreements on wages that apply to residents of third countries must be respected.

12. It is true that where minimum wages are set through collective bargaining, coverage depends on the coverage of collective agreements. That this is the sole prerogative of the social partners, at the appropriate level(s), must be respected. The Commission suggests that for Member States where wages are set exclusively through collective bargaining all workers should be covered and that this can be achieved, for example, if all workers potentially can be covered by a collective agreement or indirectly benefit from them. It also states that an EU directive on minimum wages would not oblige those Member States to introduce a statutory minimum wage. However, if, as stated by the Commission, the objective would be that all workers in Europe should be covered by a fair minimum wage, the systems in all Nordic member states and a number of others such as Austria, would likely fail that test in an ECJ court ruling. Furthermore, including in a directive a statement that you can use the collective bargaining system is in itself problematic in mainly two ways: In the Nordics because it bestows power onto the state that today is the sole realm of the social partners on the basis of their freedom of contract. More generally because it does not in any way constitute a legal guarantee, because in all likelihood the mere existence of a directive would mean that court cases regarding full coverage based on such a directive would lead to those Member States being forced to introduce a statutory minimum wage.
13. Coverage cannot be seen in the isolated sphere of minimum wages. It also depends on whether workers are covered by other sources of income, e.g. social security. Often a balance is found between the two, depending on the national social systems, which nonetheless provides for an adequate income protection overall for workers.

***Elements identified by the Commission for achieving the objectives outlined***

14. The Commission identifies a number of aspects for achieving the objectives above. We believe that amongst these, the priority should be to encourage well-functioning collective bargaining on wage setting and social partner involvement in statutory minimum wage setting systems, in full respect of the national industrial relations system and the approach chosen by Member States and the national social partners.
15. We welcome that the Commission wants to strengthen the role of national social partners. This will help to improve the coverage of collective bargaining and therefore of minimum wages, by promoting and encouraging well-functioning collective bargaining at national and sectoral level, including in particular through capacity-building, but also, where requested by the two sides of the social partners, through other means of support. This must however respect the fact that freedom of collective bargaining refers to the voluntary nature of collective bargaining, based on the well-recognised principle (also enshrined in the ILO) of freedom of association.



16. It is also essential to safeguard and avoid undermining existing well-functioning systems. For example, as noted by Eurofound, in those Member States where wages are set exclusively or predominantly by social partners through collective agreements, mechanisms exist to ensure that the rest of the labour market also have rather high levels of wages. It is equally essential to safeguard and respect the current statutory systems, where there is less or little collective bargaining in wage setting, where social partners are satisfied with the system. This includes respecting social partners who do not want legislation extending their agreed minimum wage. There should also be full respect of the level at which collective bargaining on wages takes place, as this is a decision for Member States.
17. Regarding the use of public procurement to promote collective bargaining, as highlighted by the Commission, the current EU Directive 2014/24/EU already provides for Member States to take appropriate measures to ensure that in the performance of public contracts, employers acting as contractors for the public administration comply with applicable collective agreements. More generally, it also gives the possibility to take account in social aspects in awarding public contracts. Therefore, there is no need for additional requirements in this regard.
18. Promoting and encouraging clear and stable criteria in national frameworks for setting and updating minimum wages is also a priority for employers. However, this should not be seen only in terms of social adequacy (contrary to what is suggested by the Commission). As already highlighted in point 6., a broader approach is necessary also including economic aspects.
19. Encouraging national social partner involvement in statutory minimum wage setting systems is crucial. The focus should be to support establishment of well-functioning consultation procedures leading to possible agreements between relevant national authorities and social partners, based on the request of both sides of the social partners.
20. In line with point 11, actions at EU level aiming to limit or eliminate minimum wage exemptions and variations for certain groups would not respect national competences, including social partners' autonomy in those systems where minimum wages are set predominantly by them.
21. Specific exemptions and variations in minimum wages in different countries may have been agreed for good reasons such as facilitating labour market entry. For example, this is the case for apprenticeships in some countries/sectors, which have been an important route to the labour market for some workers, including during the current crisis. The reasons depend on the national and sectoral situations, approaches and practices, not only in terms of overall wage setting systems and coverage, but also specific groups' access to other sources of income and national definitions/categorisation of workers. It is not appropriate for the EU to judge whether their use is justified and proportionate or to set specific criteria for determining this.



22. Compliance with national laws and monitoring of compliance is of course important, in terms of ensuring a level playing field between companies and avoiding undeclared work. However, compliance mechanisms clearly perform best as a national prerogative, because national social partners and national legislators are those that best know their national legal systems and can therefore effectively enforce the rules. Therefore, we do not see an added value of EU action on or monitoring of this.

**What are your views on the possible avenues for EU action set out in section 6.1 of this document?**

23. The Commission presents a number of specific policy measures to achieve the objectives outlined. Our support for specific measures is very much dependant on the action that is taken and the instrument used. To ensure that Member States and national social partner prerogatives are fully respected, based on the division of competences between EU and national level, it is absolutely essential that all aspects are non-binding. Furthermore, many of the useful elements the Commission outlines would be much more appropriately and naturally covered in a non-binding instrument, which promotes and encourages certain aspects, but leaves the decision and approach to the national level. This makes a directive completely unacceptable.

24. The Commission suggests action at EU level to ensure that in those Member States where wages are set exclusively through collective bargaining, all workers are covered. This is neither appropriate regarding the coverage of workers by collective agreements nor in terms of making collective agreements (including pay levels established by them) applicable by law to all workers. As already highlighted, coverage is the decision of the national partners and this would interfere with the design and/or functioning of national collective bargaining systems in the Member States. It would however be useful to take inspiration from ILO Convention 131 on minimum wage fixing, which enshrines the principle of universal coverage, but not as an obligation of absolute result, since States and national social partners can determine the groups of employees who must be protected.

25. Furthermore, it would be useful to facilitate discussions and exchanges of experiences on how to support and encourage well-functioning collective bargaining, including through capacity building measures for national social partners.

26. Regarding actions to encourage national frameworks to include stable and clear criteria for setting and updating minimum wages, we agree that a number of elements could be specified at EU level, to be taken into account for statutory minimum wage setting and updating. As already highlighted, these should reflect a balanced approach to meet employers' and workers' needs, taking into account not only the objective of adequacy of minimum wages to ensure a decent standard of living, but also economic factors, in terms of increasing productivity, encouraging hiring and increasing employment. National frameworks should respect the role of wages, which is to pay for the work performed at the right price, taking into account the way in which it is done and valued on the market and within the enterprise.

27. We agree that EU action could provide encouragement for national frameworks to include specific indicators against which minimum wage adequacy but also economic viability and labour market impacts could be assessed. We are convinced that this would be best done through the European Semester process, as this would be linked to national reform agendas.
28. Regarding the indicators set out by the Commission, it is crucial to look at adequacy and economic viability in terms of net rather than gross wages, as this takes account of non-wage labour costs which have an impact on workers' take home pay and therefore adequacy. Moreover, the total cost for employers is the right criteria when assessing economic viability. We also believe that focusing on living-wages is not appropriate, as this is a completely different approach going beyond what is necessary for achieving adequacy and is not widely used across Member States.
29. Indicators to assess economic viability should include aspects such as productivity, hiring and employment prospects, particularly of low-skilled workers. These aspects are also important when comparing net minimum wage with the net median or average wage, including regarding opportunities for progression of workers covered by minimum wages. It would also be useful to look at the merits of an alternative method highlighted by Eurofound, which compares minimum wages to GDP per capita or per worker, which has the advantage of linking the minimum wage to the evolution of overall productivity in the country.
30. This shows that before moving forward with any specific indicators, a much more thorough analysis and discussion, including with national governments and social partners, is needed on the benefits and disadvantages of different elements.
31. Outlining at EU level specific options to ensure effective and timely social partner involvement in statutory minimum wage setting systems would have added value. We agree, as mentioned by the Commission, on the importance of regular, formal consultation mechanisms. However, the specific way to do this depends on the national systems and practices. Therefore, whilst specialised minimum wage committees may be a useful approach in some member states, other options may be better in other countries. Similarly, whilst in some countries, panels are set up to discuss statutory minimum wages and include independent experts in some cases, this is not the approach taken in all countries. This must be decided at a national level. Learning between Member States on this could be useful though.
32. Based on points 11, 20 and 21, we are strongly against specifying at EU level how to eliminate specific exemptions and variations in minimum wages or criteria/conditions for limiting their use. There may however be some added value for EU level discussions and exchanges of experiences on this topic to better understand the different national approaches, including using the ILO convention 131 on minimum wage fixing as inspiration (see point 24).

33. Building on point 22, the added value of action at EU level calling on Member States to ensure effective implementation and compliance with national minimum wage frameworks, effective enforcement and sanctions, is questionable, as this is simply about compliance with the national laws and collective agreements. However, supporting those Member States in which a need for improvement on these aspects has been identified (e.g. through the Semester process), could be useful, as long as it does not interfere with national frameworks.
34. If an EU initiative on minimum wages is proposed, the best tool to monitor implementation of it would be the European semester process, as it already has a well-established monitoring framework, including with involvement of EU and national social partners. However, as already highlighted, monitoring should not only concern adequacy but should be combined with monitoring of economic aspects.

**What are your views on the possible legal instruments presented in section 6.2?**

35. As already stated in reply to the first stage consultation, we believe that there is room and rationale to discuss the issue of minimum wages at EU level. However, Article 153 (5) and related ECJ rulings exclude from EU competence the possibility to introduce a legal instrument on the level of minimum wages and the role of the social partners. We remain convinced that the most appropriate way for the European Commission to deal with this issue while respecting social partners' autonomy and Member State competence, is within the European Semester process. Use of the existing tools, including benchmarking and the exchange of good practices, and a dedicated benchmarking framework, would be the best approach. Existing social partner involvement in the Semester process should also be strengthened.
36. Irrespective of the nature of an EU directive on minimum wages, including whether it leaves room for Member States to decide how to implement the requirements, including by social partners, an EU directive would be completely unacceptable, as such a legally binding measure would go against the Commission's commitment to respect national competences and social partners' autonomy. Furthermore, in those countries where minimum wages are predominantly set by social partners, a directive would oblige the legislator to take on this role, which would be detrimental to well-functioning systems and social partner autonomy and thus also interfere with national division of competences between the legislator and social partners. This would not be in line with the Commission's commitment to strengthen the role of social partners, as it would automatically reduce or even take away social partners' possibility at different levels to negotiate wages and thereby to deliver solutions that take into account the interest of both companies and workers. Also, many of the useful elements that the Commission puts forward do not fit the character of a directive.

**Are the EU social partners willing to enter into negotiations with a view to concluding an agreement under Article 155 TFEU with regard to any of the elements set out in section 5 of this document?**

37. If, however, despite our strong concerns, a legal instrument based on Article 153 and in respect of ECJ rulings, is the Commission's way forward, the absolute maximum possible would be a non-binding Council recommendation. The text of such a recommendation must respect the role and autonomy of social partners and Member State competence.

In order to preserve the competences of the national social partners regarding wage setting, BusinessEurope would be prepared to seek a mandate for entering into negotiations with the European Trade Unions with a view to concluding a European framework agreement on aspects of minimum wages compatible with article 153 (1f) and 153 (5) and to be implemented through a Council recommendation under article 155 of the TFEU.

In the absence of such negotiations under article 155 of the Treaty, for example because the European Trade Unions are not willing to enter negotiations under these conditions, and if the Commission was to make a proposal, only a non-binding Council recommendation would be appropriate. Furthermore, such a recommendation should be drafted with full involvement of the European Social Partners and of national governments as part of a tripartite process, thereby ensuring full respect of Member State competence as well as of national social partners' role and autonomy.

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