



Proposal for an EU Directive on fair minimum wages

Executive summary

1. European employers agree with the overall objectives of achieving adequate wages across the EU, making work pay, fighting poverty, and strengthening the role of social partners and social dialogue, in line with national industrial relations systems. Employers are not in favour of competition based on lowering social standards.
2. A lot of work on this topic has already been done, in particular as part of the European semester. As stated in our answer to the Commission's social partner consultation, there is therefore room for discussion on this topic at EU level and we are available to support and participate in furthering this work, as part of a quadripartite process towards a council recommendation.
3. At the same time we strongly warned against an EU directive as the wrong instrument. A directive by definition hands over power to the legislator and to the courts, not to the social partners. Where national social partners are weak, European legislation cannot suddenly make them strong. Strength of the social partners can only come from representativity and the desire and ability to find balanced solutions. A directive also ignores that minimum wages cannot be seen in isolation from social security schemes, minimum income schemes and taxation, which are important in safeguarding good living conditions and tackling poverty.
4. The proposal on minimum wages is completely against the letter and spirit of the EU treaty on pay and collective bargaining, which are for good reasons the competence of Member States and social partners in line with the principle of subsidiarity. It disrespects diverse national systems and social partners' autonomy. It goes against the strict division of competences between the EU and member states. According to Treaty articles 153 (5) and 153 (1f), and related ECJ rulings, the EU has no competence to introduce a binding legal instrument on the level of minimum wages or on collective bargaining and the representation of workers and employers interest. Whilst the directive does not directly regulate the level of wages, by setting binding criteria for adequacy, it goes beyond the very limited space that the Treaty gives, if any, for EU intervention in the area of pay – in line with rulings of the European Court of Justice (ECJ), the EU cannot regulate the “constituent parts of pay”.
5. The proposal also goes against the well-recognised principle of freedom of association enshrined in the ILO, which refers to the voluntary nature of collective bargaining. It also goes against 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 to be covered.

6. Different proposals included in the directive will harm statutory minimum wage systems and collective agreements – more information is provided in the specific remarks.
7. The Commission wrongly supposes that the directive will “reinforce trust among Member States and social partners”. In fact, it will do the opposite. Not only does this proposal put social partners in opposition, it also goes against the majority view of EU Member States, many of which are in favour of a non-binding instrument. It is also strongly opposed by Nordic trade unions rightly fearing that it will undermine their well-functioning social models.
8. The directive will also weaken social partners in the long-term due to the proposed binding target of 70% coverage of collective bargaining: In some countries, probably the only way to achieve such a target is to automatically extend collective agreements negotiated by social partners to all companies and workers (including those that are not members of an employer organisation or trade unions). This would strongly reduce the role of social partners because companies and workers would be covered by minimum wages anyway.
9. The Commission states that the responses to the social partner consultation have been taken into account in coming forward with this proposal. This is not true. This is a very one-sided proposal, which completely ignores the views of the business community and the approach which we proposed - and even wrongly presents our views expressed in the social partner consultation. For example, aside from the notion of productivity, other important economic factors, such as competitiveness and employment, are not considered. Also, our call for the focus to be on persons living in EU member states, which is particularly important for some sectors, has not been taken into account in the scope. By not attempting to find a balanced solution, the Commission inflicts harm on the social dialogue both at European and national level.
10. A directive on minimum wages is particularly damaging now, as our economies and societies are confronted with the unprecedented challenge of Covid-19, which is putting workers and companies in economic difficulty, for some companies potentially risking their survival. Whereas we need to avoid actions which will exacerbate the current situation, the Commission itself recognises that this proposal is expected to lead to “increased labour costs for firms, increased prices and, to a lesser extent, lower profits”. More specifically, according to the Commission’s own impact assessment, setting the minimum wage at 60 % of the median wage and 50 % of the average wage, as set out in recital 21 and article 5.3 of the proposal, would lead to



an overall increase in the EU wage bill of up to 53 billion euros of total economic cost¹.

11. The current crisis is also expected to give rise to significant unemployment increases in the coming year, whereas, based on the commission's own estimates², (which are likely to be on the low side given the present circumstances), the proposal would reduce employment in the majority of EU member states. For example, in Spain, the official unemployment rate is currently just over 16% (twice the EU average and around 40% for young people, a group for which an increase in the minimum wage can have the most negative effects. Based on the commission's own estimates of the impact on employment of setting the minimum wage at 60 % of the median wage and 50 % of the average wage, the proposal could lead to a reduction in employment of almost 140.000 jobs in Spain. In Poland, it could lead to a reduction in employment of more than 130.000 jobs; in Ireland, it could lead to a reduction of around 20,000 jobs – equivalent to a 1 percentage point reduction in employment; and based on the commission's own estimates Greece would suffer particularly hard: a reduction of over 40,000 jobs – equivalent to around 1.3 percentage points reduction in employment. In particular at this moment, the last thing that Europe needs is regulation that will lead to a reduction in employment in a number of countries, and hurt the most vulnerable workers, in particular when other measures would be more effective in reducing poverty without such negative impacts.
12. The Commission expects that the costs of the increased minimum wage will be borne by companies with lower margins, consumers through higher prices, as well as workers through higher unemployment. It is important however to note that, at present, as a result of the COVID crisis, many small businesses have severely weakened balance sheets, making them less able to absorb increased costs than standard economic models (such as that used in the Commission's impact assessment) assume. In the present circumstances placing more costs on vulnerable businesses would lead to much higher rates of firm closures, and in turn falls in employment, than models developed in normal economic times assume.
13. The impact on employment is also likely to lead to an unwelcome growth in the number of undeclared workers which is already a major problem in many EU Member States, leading to unfair competition. Furthermore, the undeclared workers would be without any rights including to a minimum wage or obligations like paying taxes and social security contributions.

¹ See EC impact assessment, p64:

<https://ec.europa.eu/social/BlobServlet?docId=23093&langId=en>

² Based on Graph A12.9, page 197 of the Commission's impact assessment



14. Of course those facing unemployment and poverty during this crisis, including frontline workers, need support. However, short-time work schemes and social protection measures, such as minimum income schemes, are the right approach, not an instrument that harms employment and social dialogue.
15. The Commission proposal ignores that minimum wages are not a social transfer - wages are a compensation for the work performed and according to hours worked. Employers support well-functioning social protection systems, which are the right system to provide social transfers for those in need. Minimum wage policy must not be driven by political objectives at the cost of employers and employees alike.
16. BusinessEurope therefore urges the European Parliament and the Council to reject this proposal and to request the commission to pursue the objectives through EU guidance in a non-legally binding tool such as a Council Recommendation. As we have highlighted from the very start of the social partner consultation process, there is room and rationale to discuss the issue of minimum wages and collective bargaining at EU level, However, only a non-binding approach would allow for respect of national competences and industrial relations systems, by working together at the European level, whilst leaving the decision on what action is needed and the approach to the national level, including the social partners. This would also make it possible to take the broad approach necessary to at the same time promote employment and fight poverty.
17. Furthermore, the issues included in the draft directive are much better adapted to a recommendation, supported by the European semester process. We were willing to seek a mandate with our members to negotiate a framework agreement with the trade unions, to be implemented by a council recommendation, because we felt this was the best way to keep it in the hands of the social partners. This was turned down by the trade unions, due to a majority position of their members in favour of an EU directive.
18. We remain ready and available to play a part in developing a Council Recommendation, which fully respects the EU Treaty article 153 (1f and 5), the relevant ECJ jurisprudence, national competences and the autonomy of social partners regarding minimum wages and collective bargaining, by participating in a quadripartite process with the Commission, trade unions and governments. This is the best way to allow for a trust-based and constructive approach between all parties.
19. The aim of a council recommendation should be to achieve well-functioning national minimum wage setting in all EU Member States in a way that fully respects national competences and social partner autonomy, to improve incomes of people working in jobs that are paid at the minimum wage level. Improving incomes of people who are



at the lower end of labour markets in terms of pay will also depend on the success of EU and national skills policies in their ability to improve the productivity of the low-skilled workers. Should national governments consider that political intervention is needed to improve the low-skilled incomes, this should be done without raising the cost of work for employers. This means looking into the role of well-targeted and balanced in-work benefits paid via social protection systems aiming to encourage employment participation and, at the same time, a reduction of in-work poverty.

20. We also suggest to build on the existing cooperation between the social partners, the Commission and Council in the framework of the European Semester on minimum wages and the 2016 joint statement “new start for social dialogue” e.g. with more monitoring. The Technical Support Instrument can also be mobilised to help Member States develop or improve the technical aspects of minimum wage frameworks.

Specific remarks

21. Whatever is in the text of the directive, including derogations and specific provisions, the fact that it is binding on Member States means that there is no water-tight protection of the autonomy of the national social partners and national competences regarding wage setting and collective bargaining. The provisions on respect of the social partners are of a declaratory nature without any substance and are often in conflict with the objective and the minimum requirements of the directive. They would have an uncertain legal value in a court case. The mere existence of such a legally binding text means that Member States will need to transpose it and the European Court of Justice (ECJ) will acquire jurisdiction on purely national collective agreements and wage setting and on issues that are of national competence.

22. Three examples to illustrate the point above:

- The “subject matter” or binding objective of the whole directive as set out in article 1.1 is that it is an EU obligation for the national legislator to set up a framework for adequate minimum wages. Adequate minimum wage is defined in recital 21 as: “Minimum wages are considered adequate if they are fair in relation to the wage distribution in the country and if they provide a decent standard of living”. This article will invite court cases to specify how a minimum wage can be set in a Member State. This provision not only applies to Member States with statutory minimum wages but also the 6 Member States and two EEA members without a statutory minimum wage and collective agreements that do not cover all workers and can also affect the agreement between EU and Switzerland.
- Article 1.1. sets an EU obligation for the national legislator to secure access for all workers either to a statutory minimum wage or minimum wages set by collective agreements. It makes it a matter for the legislator to secure access for all workers to collective agreements not respecting the autonomy of social



partners to decide if and for which workers they want to enter into collective agreements. This brings the objective of the directive in conflict with the declaratory statement that the directive respects the autonomy of the social partners and in conflict with the declaration in article 1.3 that nothing in this directive can be construed as imposing on Member States to introduce a statutory minimum wage.

- For those member states where wages are exclusively based on collective agreements, there are specific conditions applying to the declaration that the directive does not oblige you to introduce a statutory minimum wage. This should be ensured without any conditions. If the Commission had wanted to ensure that the directive does not affect those Member States who want to base themselves on well-functioning collective agreements, they should have found a legally water-tight way to limit the objective of the directive to statutory minimum wages.

23. The Commission argues that the initiative is respecting the principle of subsidiarity as “national action has not been enough to address the problem of insufficient adequacy and/or coverage of minimum wage protection. Without policy action at EU level, individual countries may be little inclined to improve their minimum wage settings because of the perception that this could negatively affect their external cost competitiveness.” This is not correct as the Commission’s own impact assessment shows: some of the biggest increases in minimum wages have been in Member States with lower levels of wealth.³

24. Since wages and collective bargaining are a national competence, the most important aspect to take into account to ensure that EU action is fully in line with the principle of subsidiarity, is the statement that matters should be decided as closely as possible to the citizens, also since this increases their effectiveness. As wages are a key issue for workers, companies and for social partners, it is also more effective if they are directly involved.

25. Whereas the commission suggests that a directive would improve social dialogue and support collective bargaining, it would do just the opposite, by taking away power from the social partners. This would undermine a fundamental feature of the best performing social dialogue systems in Europe: independent collective bargaining between representative employers’ and trade unions’ organisations. This will be particularly damaging in those countries where social partners are solely or predominantly responsible for setting wages, e.g. the Nordic countries, but also in

³ See pages 149 to 151 in the Commission impact assessment including graph A8.9 and A8.10 where it is concluded that: The statutory minimum wage has increased faster in low-wage countries, even as compared to other wages or compared to productivity growth.



countries where statutory minimum wages are linked to collectively agreed minimum wages or based on procedures agreed with the social partners.

26. This directive is also likely to lead to numerous ECJ rulings, since it is overly detailed and includes many different possibilities to derogate from various provisions, according to complex conditions. This will create great legal uncertainty for employers, workers and governments, no doubt for many years to come. This is not the foundation on which to build a well-functioning social dialogue.
27. The Commission highlights that the objective is to improve working conditions and convergence of wage levels in the single market, however, the only way to improve social convergence across the EU, is by improving economic conditions including the functioning of the single market. Also, as shown by Eurofound, wages across the EU have been gradually converging.
28. The sole focus on “improving living and working conditions” in the Member States is not balanced. The Commission’s proposal is focused uniquely on minimum wage adequacy, whereas the way minimum wages are set impacts employment. We therefore regret the negative view that is reflected in the proposal regarding the role of diverse forms of employment on the labour markets. Diverse forms of employment in fact play a key role to encourage hiring by employers and ensure greater employee choice in view of changing availability for work in view of personal circumstances. Also, there should be a clearer acknowledgement that there is no causal relationship between wage levels and the form of work. Employment participation objectives should be at the core of minimum wage setting.
29. In the longer-term, there is a need for well-targeted and balanced in-work benefits paid via social protection systems aiming to encourage employment participation and, at the same time, a reduction of in-work poverty. The business community calls on the European Commission and on the Council’s employment and social protection committees to prioritise policy learning and exchanges with social partners on in-work benefits to support Member States designing and implementing their policy initiatives in that field drawing on most effective existing in-work benefit schemes.
30. The focus of Commission action on minimum wages, as a maximum through a council recommendation, should be on:
 - Encouraging well-functioning autonomous collective bargaining on wage setting;
 - Improving social partner involvement in legal minimum wage setting systems, including by highlighting useful procedures for this;
 - Supporting and promoting capacity building of social partners where relevant and asked for by them as part of better wage setting and involvement in statutory minimum wage setting;



- Acknowledging that the role of a wage is to provide an adequate compensation for work performed and should therefore not be confused with the role of minimum income;
- Encouraging an approach where adequacy and economic factors are combined, recognising that social partner agreements establish a balance between economic and social considerations;
- Supporting compliance with statutory minimum wage provisions and other existing provisions, whilst fully respecting the diversity of national wage setting systems.