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# Directive on Adequate Minimum Wages: European institutions must respect the promise made to workers!

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1. The need for action. 2. Stronger collective bargaining and higher statutory minimum wages are good for the economy. 3. A strong Directive on Adequate Minimum Wages in the EU is legally possible. 4. The Directive: necessary improvements. 5. Final remarks.

## Abstract

The contribution aims at presenting the position and main messages of the European Trade Union Confederation on the Commission's recent proposal for a Directive on Adequate Minimum Wages in the EU, which is currently under discussion in the European institutions.

**Keywords:** Minimum wages; Collective Bargaining; EU social policy.

## 1. The need for action.

The Covid-19 crisis has highlighted once more the unfair conditions that many workers in the European Union currently face. Workers in essential services have been publicly praised because of their contribution to society during the pandemic. Now meaningful actions must follow to ensure that work is properly valued. Necessary and urgent action must be taken to guarantee that workers earn a remuneration from which they can at the very least make ends meet. Action is necessary and urgent to make sure that the right to collective bargaining is fully respected everywhere in the European Union and that trade unions can bargain for fair and just working conditions for workers.

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Without European action, the situation is getting worse. Almost one worker in ten in the EU27 is at risk of poverty. The share of workers at risk of poverty has increased in the last decade.<sup>1</sup> 70% of minimum wage workers report having some difficulty in making ends meet.<sup>2</sup>

At the same time, the number of workers covered by a collective agreement is down in 22 of the EU's 27 member states.<sup>3</sup> As pointed out by the ETUP's *Benchmarking Working Europe 2020*, the “consequence of the partly EU-induced dismantling of sectoral collective bargaining in the context of the handling of the 2008/2009 economic crisis was a drop in the overall bargaining coverage in the EU27 from 73% in 2000 to 61% in 2018”.<sup>4</sup> Several Member States are ignoring their responsibility to promote and ensure the right to collective bargaining is respected. The Conclusions of the Council of Europe's European Committee of Social Rights (ECSR) confirm that several Member States are not in conformity with the right to organise and to bargain collectively as defined in the European Social Charter.<sup>5</sup>

The EU has the objective of ensuring continuous improvement of living and working conditions. Without effective and meaningful action in the areas of collective bargaining and statutory minimum wages, Member States would be allowed to (continue to) compete in a race to the bottom with regard to working conditions, including on poverty wages and non-respect of the right to collective bargaining.

In 2019, European Commission President, Ursula von der Leyen, promised to deliver (within the first 100 days of her mandate) “a legal instrument to ensure that every worker in our Union has a fair minimum wage. This should allow for a decent living wherever they work. Minimum wages should be set according to national traditions, through collective agreements or legal provisions”. She also added: “I am a firm believer in the value of social dialogue between employers and unions, the people who know their sector and their region the best”.<sup>6</sup>

In May 2021 in Porto, EU Heads of State and Government, EU institutions, social partners and the Social Platform committed to the implementation of the European Pillar of Social Rights and its Action Plan and stressed the need to guarantee progress for a Social Europe, leaving no one behind. They stressed the importance of ensuring decent wages and an enabling framework for collective bargaining. The European Council committed to “defending fair wages”.<sup>7</sup>

Today – almost two years after the promises made by Commission President Ursula von der Leyen to workers, it is high time to deliver! It is high time to take concrete steps to improve the living and working conditions for workers. The proposed Directive on Adequate

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<sup>1</sup> European Commission, *Impact Assessment Accompanying the Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union*, 28 October 2020, SWD(2020) 245 final, 18, 144.

<sup>2</sup> Eurofound, *Minimum wages in 2020: Annual review*, 4 June 2020.

<sup>3</sup> European Commission, *Impact Assessment Accompanying the Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union*, cit., pp. 11-13, 153-156; European Trade Union Institute, *Benchmarking Working Europe 2020. Covid-19 and the world of work: the impact of a pandemic*, 2021, 110-111.

<sup>4</sup> *Ibidem*, 110.

<sup>5</sup> European Trade Union Confederation, *ETUC REPLY to the Second Phase Consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges related to fair minimum wages*, 2020, 8.

<sup>6</sup> Ursula von der Leyen, *A Union that strives for more. My agenda for Europe. Political guidelines for the next European Commission 2019-2024*, 2019, 9-10.

<sup>7</sup> Informal meeting of heads of state or government, Porto, 7-8 May 2021, The Porto declaration, par. 9.

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Minimum Wages in the EU has the potential to bring direct positive changes for workers, provided it achieves its stated objectives.

The Directive must ensure that the right to collective bargaining is fully respected for all workers and guarantee real increases in collective bargaining coverage. It must include effective measures against union busting practices, which are on the rise also in Europe. The Directive must ensure that statutory minimum wages are adequate and guarantee a decent standard of living for workers. The Directive should introduce a threshold of decency of 60% of the gross national median wage and 50% of the gross national average wage, below which statutory minimum wages must not be paid. Social partners must be fully involved in setting and updating statutory minimum wages. The Directive must include an obligation on Member States to end exclusions from statutory minimum wages and sub-minimum rates. Employers must be prevented from making their own deductions from statutory minimum wages.

## **2. Stronger collective bargaining and higher statutory minimum wages are good for the economy.**

Research on the effect of increases in minimum wage has shown no adverse economic effects and no negative impacts on employment levels. Increases in statutory minimum wages would create a level playing field without adverse effects for international competitiveness. Increases in statutory minimum wages would not endanger, but would boost economic growth. At the same time, measures to promote collective bargaining are necessary because fair minimum wages will only be created in labour markets with vibrant collective bargaining that raises the whole wage structure. Strengthening collective bargaining is not only important to ensure fair working conditions and remuneration for workers, but it is also decisive to promote a sustainable economic growth with high social standards. The EU's economy is mainly demand-led and wage-led. Wage increases through higher statutory minimum wages and stronger collective bargaining, in particular at sectoral level, would boost internal demand and thus economic growth.

As highlighted by the European Central Bank and the European Commission 'upward wage convergence' is urgently needed for the correct functioning of the internal market and for the economies of Central and Eastern Europe. In order to reach this objective, stronger sectoral collective bargaining is necessary to ensure a general increase of wages, including minimum wages. Higher wages are also necessary to retain a skilled and educated workforce in Central and Eastern Europe.

In May, an open letter signed by professors Mariana Mazzucato, Thomas Piketty and other renowned economists from across Europe stated that: "the proposed Directive is a step in the right direction, but stronger measures are needed to guarantee the respect of the right to collective bargaining for unions to negotiate better pay and conditions for workers and raise statutory minimum wages to a level which ensures at least a decent standard of

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living. Adequate minimum wages and strong collective bargaining are not only good for the people, they are clearly also good for the economy.”<sup>8</sup>

### 3. A strong Directive on Adequate Minimum Wages in the EU is legally possible.

The EU cannot set pay nor can it establish an EU Minimum Wage however this does not mean that the EU is prohibited from dealing with all matters relating to wages. The CJEU case law confirms that Article 153(5) must be interpreted restrictively and it cannot be read as a full exclusion of competence of the EU to act on the issue of wages/pay. Such an extensive interpretation would not only deprive Article 153(1)(b) (to improve working conditions) of its meaning and effectiveness but also Article 151 TFEU which enshrines the social policy objectives, including the improvement of living and working conditions. Several EU Directives provide for indicators or thresholds in levels of pay/payments. Protecting workers’ right to unionise and collectively bargain is a human rights requirement, and included in the EU Treaties by the EU Charter of Fundamental Rights.<sup>9</sup>

Also, subsidiarity is not an issue. Under Article 5(3) TEU the EU should not intervene if the objectives can be better achieved by Member States themselves, this is called the “principle of subsidiarity”. It is clear that on the issue of wages, and poverty wages in particular, the situation is getting worse and requires action at EU level. In addition, the EU has an obligation to act in order to achieve the objective of continuous improvement of living and working conditions (Art 151 TFEU). The European Pillar of Social Rights establishes the principle that “workers have the right to fair wages that provide for a decent standard of living”. Promoting collective bargaining cannot be considered an unjustified interference, as it is a fundamental human right and an essential precondition for the “social market economy”. Taking no action means that the objectives and obligations of the Treaty would be denied, and Member States would be allowed to compete in a race to the bottom on poverty wages and lack of respect of collective bargaining rights.

The recent opinion of the legal services of the Council confirms what trade unions have been saying all along: a Directive is possible and the proposed Directive is drafted on the correct legal base, i.e the protection of working conditions (Article 153(1)(b) TFEU in conjunction with Article 153(2) TFEU). There are now no more excuses or alibis. The Directive is about workers’ lives, about the possibility for workers on minimum wages to make ends meet, to pay the rent, to put food on the table for them and their families. The

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<sup>8</sup> Mazzucato M., Piketty T., et al., *Higher statutory minimum wages and stronger collective bargaining are good for the economy*, ETUC, 2021.

<sup>9</sup> Article 153(1)(b) TFEU “working conditions” includes pay/wages/financial components. Article 153(5) TFEU puts some restrictions, however CJEU case law (C-307/50 – Del Cerro Alonso, C-286/06 – ‘Impact’ and C-395-396/08 – ‘Bruno’) confirms that the exclusion in Article 153(5) TFEU must be interpreted restrictively and cannot be read as a full exclusion of competence for the EU to act on the issue of wages/pay. There are ways/formulations to set levels of pay/wages in EU primary/secondary law. It is possible to promote and enhance the role of collective bargaining/agreements in EU secondary law next to regulating/in support of primary working conditions.

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Directive is about the guarantee of the right of trade unions to negotiate fair conditions for workers. Governments and MEPs must take their responsibilities.<sup>10</sup>

#### 4. The Directive: necessary improvements.

The ETUC considers that the proposal for a Directive is critical and we call on the European institutions to support and improve it. The failure of the Council of the European Union to reach a general approach on the Directive during the Portuguese Presidency, due to the resistance of several governments that make continuous efforts to water-down the proposed Directive, is a worrying signal and a missed opportunity. A watered-down Directive will fail to deliver on its promises to ensure decent pay for workers and guarantee the respect of the right to collective bargaining. The Directive cannot be weakened in the discussions in the Council and the Parliament, but must be improved on key aspects.

The Directive must be amended to protect against unintended consequences and detrimental impacts and to ensure that it lives up to its stated aims, thus ensuring adequate statutory minimum wages that protect workers and guarantee a decent standard of living, the respect of the right to collective bargaining and real increases in the number of workers covered by a collective agreement concluded by trade unions.

In order to achieve these objectives, improvements to the Directive are needed in order to:

- Replace “workers organisations” with “trade unions” in the definition of collective bargaining. Collective bargaining is the prerogative of trade unions. It is unacceptable if the Directive allows employers to replace trade unions with works councils or other non-union entities. Indeed, this would be contrary to ILO Conventions 98 and 154.
- Guarantee real increases in the number of workers covered by collective agreements and to ensure the respect of the right to collective bargaining. It is also necessary to ensure that Member States introduce measures that protect against union busting and guarantee trade union access to workplaces to meet with workers for purpose of collective bargaining.
- Ensure adequate statutory minimum wages. Member States should be required to ensure that their statutory minimum wages are not paid below a threshold of 60% of the national median gross wage and 50% of the national average gross wage. Member States would retain the competence to decide the level at which their statutory minimum wages are to be paid (above the threshold). Member States should be required to guarantee that their statutory minimum wages are “adequate”, having regard to what is needed to ensure a decent standard of living.

It is also necessary to delete “productivity” from the criteria for determining the level of statutory minimum wages. Social partners should be fully involved in setting and updating statutory minimum wages.

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<sup>10</sup> Statement of the ETUC Collective Bargaining and Wage Coordination Committee, *Opinion of the Council Legal Service on the Directive on Adequate Minimum Wages in the EU – Better late than never!*, 2021.

- Include an obligation on Member States to end exclusions from statutory minimum wages and sub-minimum rates (for example for young workers, domestic workers, migrant workers). Employers must be prevented from making their own deductions from statutory minimum wages.
- Ensure that companies that access public procurement contracts are party to a collective agreement negotiated with trade unions and that any employer who denies workers their trade union rights is prevented from accessing public contracts and funds.
- Strengthen the controls and intensity of field inspections and guarantee that inspectorates and other bodies, as well as trade unions responsible for the enforcement of statutory minimum wages, have the necessary human and financial resources.
- Correct the monitoring mechanism to ensure: (i) the full involvement of social partners at national and EU level in the monitoring mechanism; (ii) that the purpose of the monitoring mechanism is to guarantee that statutory minimum wages are adequate, that collective bargaining coverage increases and the right to collective bargaining is respected (i.e. the monitoring mechanism cannot be used to push wages down or to undermine collective bargaining).

## 5. Final remarks.

In 2019, Commission President Ursula von der Leyen promised to ensure that every worker in our Union has a fair minimum wage that allows for a decent living. In May 2021, the Porto Summit has stressed the need to guarantee progress for Social Europe and Member States committed to “defending fair wages”.

The Directive on Adequate Minimum Wages in the EU is essential to deliver on these promises and to leave no one behind in the recovery. The ETUC considers the adoption of a Directive that achieves its stated objectives – i.e. with the above-mentioned necessary improvements – to be critical.

The Directive with the necessary improvements has the potential to increase wages for more than 24 million workers in Europe.<sup>11</sup> The Directive also has the potential to lay down rules to guarantee the right of trade unions to negotiate fair conditions and wages for workers.

Now is the time for European institutions to take their responsibilities and deliver an essential instrument to improve living and working conditions, and to build a more inclusive Europe that leaves no one behind.

Now is the time for European institutions to take their responsibilities and deliver on the promises made to workers in the EU.

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<sup>11</sup> European Trade Union Confederation, *24m could get pay rise under EU directive*, 2021.

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