

SMEUnited position on the proposal for a Council Recommendation on strengthening social dialogue in the European Union

Key messages

SMEUnited welcomes the Council Recommendation proposal on Social Dialogue in the EU.

The Recommendation is an important contribution for strengthening social dialogue at national level in a period of rapid changes on the labour market.

We particularly support:

- Promoting social dialogue and collective bargaining which should go hand in hand with the full respect of social partners' autonomy at all levels.
- The full recognition for a well-functioning social dialogue of the existence of strong, independent workers' and employers' organisations as well as the respect for the fundamental rights of freedom of association and collective bargaining at all levels.
- The real and timely involvement of social partners in the design and implementation of policies and reforms.
- The clear distinction between the social and civil dialogues.
- The lack of capacity of social partners in a number of Member States which remains a real obstacle in their involvement in policy-making and in reforms.

SMEUnited welcomes the Social Dialogue package making a clear link between the Council Recommendation proposal and the Communication which underlines the role of Member States to ensure an enabling environment for tripartite and bipartite social dialogue and the necessary interconnection between the European and national social dialogue.

The European social partners rely on strong and representative members at national level to contribute to and support the European social dialogue and to fully implement the outcomes of the European social dialogue according to the national practices. SMEUnited appreciates the acknowledgement of the diversity of national industrial relations systems and the impact this has on the role of collective bargaining.

SMEUnited fully agrees with the aim of the proposal for a Council Recommendation to support Member States in promoting social dialogue and collective bargaining at national level by addressing:

- The consultation of social partners on the design and implementation of economic, employment and social policies,
- Encouraging social partners to negotiate and conclude collective agreements while respecting their autonomy and the right to collective actions,
- Fostering support for increased capacity of social partners.

On the process, SMEUnited very much appreciated the various hearings and exchanges at all levels with the Commission, including at the Commissioner level, organised before the publication of the Social Dialogue package. This has strongly contributed to a better mutual understanding of the existing challenges and of the best approach to strengthen social dialogue at national, regional, sectoral and company level.

1. An enabling environment for bipartite and tripartite social dialogue

As SMEUnited, we fully support the priorities defined in the Recommendation. The enabling environment should first and foremost respects the national social partners' autonomy and the fundamental rights of freedom of association and collective bargaining.

The promotion of strong, independent trade unions and employers' organisations, the access to relevant information to participate in the social dialogue, the commitment to engage in social dialogue, the respect of fundamental rights of freedom of association and collective bargaining and the appropriate institutional support are the main building blocks of a well-functioning bipartite and tripartite social dialogue.

In the Member States where tripartite dialogue is predominant, governments should give more space to social partners to have a real bipartite dialogue and to come with some joint proposals on the main challenges they would like to be pro-active to tackle them. Where it does not already exists, governments should set-up dedicated structures for a good and sustainable tripartite dialogue.

On the point (1f) "adapts to the digital age, promotes collective bargaining in the new world of work and a fair and just transition towards climate neutrality", which should be red in connection to point (8a), we would like to highlight the issue of self-employed and especially of solo self-employed as referred to in recitals 22 and 23.

For SMEUnited, the guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed does not really clarify when self-employed can negotiate collectively better working conditions. According to us, self-employed cannot and should not be assimilated to workers. We would like to recall that it is a B2B relationship between the self-employed and his/her client which cannot be solved in the

framework of collective bargaining or collective agreements as for workers with an employment relationship. For the new forms of work, we would prefer to have a reference to the “B2B dialogue between self-employed organisations and platform providers” since the existence of an employment relationship is defined at national level according to national law and practices and that genuine self-employed are not covered by labour law contrary to employees.

Furthermore, contrary to what the EU Commission pretends, self-employed do not lack representation since the majority of SMEUnited members represent genuine self-employed including solo self-employed.

2. The involvement of social partners in the design and implementation of economic, employment and social policies

SMEUnited strongly supports the systematic, meaningful and timely involvement of national social partners in the European Semester and in the implementation and review of national Resilience and Recovery Plans, in particular of SME organisations. Such a meaningful consultation and involvement of social partners is still not a reality in a number of Member States.

3. Ensure that social partners have access to relevant information on the economic and social situation

In these Member States, where consultation and involvement of social partners is still not a reality, national social partners would like to see a real improvement in the timely sharing of the economic, employment and social information and of their effective involvement in the labour market reforms and in the adaptation of the social protection systems.

4. Ensure that representative employers' organisations and trade unions are recognised for the purposes of social dialogue and collective bargaining

The recognition of criteria ensuring the representativeness of social partners able to negotiate collective agreements is one of the major decisions of public authorities for what concerns the negotiation and coverage of collective agreements. The definition and establishment of such procedures and criteria should be done in a transparent and objective manner. It should be done in close consultation with the trade unions and employers' organisations including SMEs representative organisations which would like to be fully part of the national social dialogue bipartite and/or tripartite structures. Such transparent and objective criteria must be applied in the same way to access the tripartite dialogue and the bipartite dialogue.

On the point 4(b) and in recital 13, the Commission's paragraph is a quote of Article 5 of the ILO Convention 135 but only a partial one. As SMEUnited, we consider highly relevant to quote Article 5 in its entirety and add the missing part “Where there exist in the same undertaking

both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives **and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives**".

The main justification is that the absence of trade unions does not mean that collective agreements cannot be concluded at company level. When such representatives co-exist, it is essential that they both have possibility to act and their co-operation should be promoted. In a number of Member States such employees representatives other than trade unions members are recognised in national legislations as it is the case in Finland. This national diversity on employee representation should be equally mentioned and respected in the Recommendation.

Another central element is the clear distinction by national authorities between the social dialogue and the civil dialogue. In a number of Member States, this distinction is not sufficiently recognised which contributes to blur the specific role of social partners and undermine their involvement in policy-making.

5. Foster trust between social partners, promote the conclusion of collective agreements, ensure that collective bargaining is possible at all levels, promote a higher coverage of collective bargaining

Trust in and among social partners is the basis for a good social dialogue. Social dialogue cannot be limited to collective bargaining and collective agreements. Social dialogue is much broader and therefore trust should be built progressively between the two sides. Collective bargaining should effectively take place at all levels, national, regional, sectoral and company level while fully respecting the national industrial relations systems and practices.

As mentioned in recital 15, there is a broad diversity of approaches for what concerns the coverage and implementation of collective agreements on the ground. Among the main features, the erga-omnes clauses or administrative extensions of collective agreements, the use of the favourability principle or the hierarchy of norms and the use of derogations. All these aspects should be fully respected and dealt with in accordance to national law and practices.

6. Promote a higher coverage of collective bargaining and enable effective collective bargaining

Under point 8(a) the Commission proposal states "removing institutional or legal barriers to social dialogue and collective bargaining covering new forms of work or atypical employment".

In order to avoid any misunderstanding concerning self-employed, SMEUnited proposed to change the wording in the following way "removing institutional or legal barriers to social dialogue and collective bargaining covering **all forms of employment relationships**".

Even though the purpose of the proposed recommendation is to promote collective bargaining, which is appropriate, it is highly problematic if the labour law instruments dedicated to employees are extended to cover also genuine self-employed. This wording should be further adapted in the recitals, explaining that the collective bargaining for working conditions should be available for all workers who have, according to national law and practice, an employment contract considered as an employment relationship. A major challenge is to not apply to genuinely self-employed persons the labour law rules defined and/or negotiated for employees.

Under point 8(c), dealing with the possibility to derogate from collective agreements, the possibility to derogate from collective agreements must remain since it largely contributes to provide some flexibility and adaptation for enterprises and workers while respecting the workers' rights. Such opening-clauses for derogations only exist in a limited number of Member States where they have to be agreed by social partners to ensure the right balance between the interests of employers and workers. In the Member States where collective bargaining is based on a legislative framework, we fully agree that such derogations are established in consultation with trade unions and employers' organisations. The possibility to use such opening-clauses is especially important for SMEs.

7. Support national social partners to participate successfully in social dialogue including in collective bargaining and in the implementation of Union level autonomous social partners agreements

We appreciate the willingness to continue the support to capacity building in order to give social partners the possibility to fully play their role in all Member States.

When using the ESF+ funding dedicated to capacity-building, it would be a major progress to distinguish between the support of the ESF+ funds dedicated to social partners and the part dedicated to the other organisations of the civil society. It would help to get a more precise idea of the budget strictly dedicated to social partners.

The support can take different forms adapted to the social partners needs in each Member State, such as logistical support, training, expertise. It can also be joint projects to implement the European social partners agreements, efforts to increase their representativeness or better cooperation with the European level.

8. Development of indicators and monitoring the implementation of the Recommendation

Concerning the monitoring and implementation of the Recommendation, the EU Commission will develop indicators jointly with the Employment Committee (EMCO). The cross-industry European social partners will come with their own proposals to contribute to the definition of the monitoring indicators.

The regular monitoring should also be based on the tripartite dimension in the context of the EMCO multilateral surveillance process with the direct involvement of national social partners.

Brussels, 23.03.2023

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