

Reply to the second phase consultation of Social Partners under Art 154 TFEU on a possible action addressing the challenges related to fair minimum wages

On 3 June 2020, The European Commission launched the second phase consultation of social partners on a possible European action addressing the challenges related to fair minimum wages.

Following the first phase consultation, SMEUnited is pleased to reply to this second phase consultation on a core topic for social partners.

General comments

In between the two phases of consultation of social partners, the economic situation in Europe has completely changed due to the COVID-19 outbreak and its devastating economic, social and employment impact leading to an historical recession.

SMEs have been particularly hit by the crisis, the lockdown, disruption in supply chains, etc. Emergency and exit measures were helpful to survive and maintain jobs. Now they are in the restart and recovery phase expecting a rapid kick-start of the economy with strong financial support for investments, growth and jobs.

As already expressed during the first phase consultation, SMEUnited agrees with the importance of having fair minimum wages in the European Union, which fully take into account the economic conditions, the productivity level and the labour market situation in each Member State in order to contribute to employment and SME competitiveness.

A minimum wage is an essential component of the social market economy. A well-adapted minimum wage level contributes to stimulate domestic demand and economic growth and therefore to support the recovery. It also creates incentives to take-up work. It contributes to reduce in-work poverty as well as prevent unfair competition and social dumping on the labour market, a key concern for SMEs.

With the COVID-19 crisis, a large proportion of SMEs has been obliged to strongly reduce activities and are now at risk of bankruptcy. This is especially the case in sectors hard hit by the lockdown, such as retail, tourism, horeca, entertainment, which will be strongly affected by the crisis for a longer period.

Under these difficult economic, social and employment circumstances, the current debate on a possible increase of the minimum wage, and therefore of labour costs for businesses, is not the most

appropriate. Too high minimum wages would increase the risk to further reduce the level of employment in sectors particularly hit by the crisis, or for certain groups of workers such as young workers or low qualified workers.

In view of the current macro-economic situation and preparing the aftermath of the crisis, more attention should be dedicated to the impact on employment, productivity and competitiveness of SMEs. In its analysis, the Commission points out that workers in smaller firms with less than 50 employees are more likely to be minimum wage earners especially in the services sectors, which are those particularly hit by the crisis (Figure 4 of the annex).

It is essential to well balance the needs and interests of enterprises and workers for setting the best adequate level of minimum wage and safeguarding jobs. This is the role of national social partners and/or governments since **wage setting mechanisms and wage policy including minimum wage are central issues which fall within the competence of the national level.**

As recalled in the consultation papers, wage setting can be the responsibility of social partners, a mixed system involving social partners and the respective governments, or for government only, according to national industrial relations systems and practices. Depending on the national : system, minimum wages are fixed at national or sectoral level, autonomously negotiated by social partners or determined by legal provisions defining statutory minimum wages.

SMEunited insists once more on the full respect of the principle of subsidiarity, the division of competences between the European and the national level, the autonomy of social partners as well as the contractual freedom of collective bargaining when addressing minimum wage at European level.

The autonomy of social partners to engage in collective bargaining and negotiate collective agreements concerning the level of wages, including minimum wage, is a fundamental pillar of industrial relations in the Member States.

The second major issue is to support social partners to be fully involved in statutory minimum wage systems, where they are not or not sufficiently involved by government.

The third main component is to promote social dialogue and strengthen social partners to have the genuine capacity to engage in collective bargaining and to be able to duly participate in consultations for wage setting.

On the basis of the first phase consultation, the European Commission identified a certain number of challenges concerning minimum wage and concludes that there is a need for EU action. The EU initiative would aim **“to ensure that all workers in the European Union are protected by a fair minimum wage allowing them to have a decent living wherever they work”**.

The justification of such a need for an EU action is based on the following challenges: the deterioration of the situation of low-wage workers, including in-work poverty over the last decade, the fact that nearly 60% of minimum-wage earners are women and that young workers have a higher likelihood to earn the minimum wage than other age groups. Traditional collective bargaining structures have been eroding due to the structural shifts in the economy and due to the sharp decline of trade union membership related to the increase of atypical and new forms of work.

On the challenges, SMEUnited would like to make the following comments:

The issue of in-work poverty should be seriously considered even if the link to minimum wage is complex. For an appropriate analysis of the problem, it is necessary to consider multiple factors: the first reference to in-work poverty should be the amount earned by a person working full-time, further elements should be taken into consideration such as the tax wedge, various social security measures, welfare and supplementary health insurance, additional work subsidies, the household composition and the total household income after transfer payments. Reducing the issue of in-work poverty to the level of the minimum wage is inappropriate and would be misleading for the analysis and identification of the adequate remedial measures.

Lastly, one should not forget the difference between brut and net minimum wage which can largely differ among Member States. In many Member States, minimum wage earners benefit from various welfare measures, additional in-work benefits, tax allowances or credits which contribute to a decent standard of living.

When talking about ensuring a better level playing field in the Single Market and fair competition, the full labour costs related to minimum wages should be taken into account, including the contribution of employers to social protection systems (e.g. sickness, healthcare, occupational health and safety, unemployment insurance, pensions) and also holidays, bonuses, working time, without forgetting the level of taxation.

On the use of the minimum wage to close the gender pay gap, collective bargaining on minimum wage always avoids any direct and indirect discrimination as regards the same job or a job of equal value. Classification systems for the purpose of determining wages are gender neutral. Any future European legal initiative regarding equal pay and gender equality should fully respect the role of social partners in this area.

Question 1: what are your views on the specific objectives of a possible EU action set out in section 5?

According to SMEUnited, the five objectives of the European Commission should be considered in different ways since they could strongly interfere with well-established industrial relations systems and with the autonomy and contractual freedom of national social partners.

SMEUnited takes well note of the European Commission statement “that the purpose of the possible EU action in the field of minimum wages would neither seek to harmonise the level of minimum wages across the EU nor to establish a uniform mechanism for setting minimum wages. It would also respect national traditions, social partners’ autonomy and the freedom of collective bargaining”. At the same time, the initiative announced by the Commission should achieve the five objectives listed below while safeguarding access to employment and taking into account the effects on job creation and competitiveness, especially for SMEs.

1. On well-functioning collective bargaining in wage-setting

SMEUnited supports such a necessary objective. In the Member States where social partners are responsible for defining the minimum wage, well-functioning collective bargaining is the best tool for setting wages. Social partners negotiate with due regard to the performance of the economy and, in particular, the situation of individual sectors and of regional development. In this way, social partners secure the competitiveness of the economy while at the same time ensuring a positive development of incomes and employment. As a result, the social partners agree on the minimum wage and ensure a high level of coverage rate.

Negotiations on minimum wage do not take place in isolation. They are strongly coordinated with the whole wage setting system. Coordinated wage bargaining systems are more likely to absorb macroeconomic shocks or disruptive developments, as (wage) coordination between the social partners can take more account of the macro-economic perspectives. Overall, structures based on social partnership and the associated wage bargaining systems tend to result in better macroeconomic performance.

With regard to the intention of the Commission to improve the level playing field in the Single Market, which SMEUnited supports, collective bargaining is the best tool for ensuring upward convergence. This is less the case with statutory minimum wages.

Therefore, the European minimum wage initiative shall not interfere with and not weaken well-functioning wage setting systems based on bilateral collective bargaining between employers' organisations and trade unions, by reducing the control of social partners over minimum wages in those industrial relations systems where wages are strictly defined by collective bargaining.

2. On national legislator and/or the social partners to provide for national framework conditions which make it possible to set statutory minimum wages according to clear and stable criteria and to update them regularly

As a matter of principle, SMEUnited agrees with the need that national legislator and/or social partners have clear and stable criteria regularly up-dated to guide adjustments of statutory minimum wage.

However, SMEUnited considers that setting such criteria at European level in a directive would not be compatible with the provisions of the Treaty, as this would be contrary to Article 153 (5) TFEU and, moreover, would constitute a clear encroachment on the autonomy of the social partners.

If the instrument of a Council Recommendation is used, such indicators could be monitored via the Social Scoreboard in the European semester.

3. Effective involvement of social partners in setting the statutory minimum wage to support the minimum wage adequacy

SMEUnited considers the effective involvement of social partners as a key component of the setting of statutory minimum wages. Fixing the adequate level of minimum wage is particularly critical for enterprises. An adequate minimum wage for workers provides fair competition for enterprises through a guaranteed level-playing field. It also supports domestic demand, which is a central factor for SME growth.

Furthermore, the systematic involvement of social partners in statutory minimum wage setting will ensure the full acceptance of the outcomes by the representatives of employers and trade unions involved in this process.

SMEUnited supports the full involvement of social partners and strongly advocates that SME representatives are systematically involved in the setting of statutory minimum wage to determine its adequacy for both sides. It is an essential requirement justified by the fact that two thirds of employment is provided by SMEs.

4. Variations and exceptions to the minimum wage are eliminated and limited or justified, proportionate and limited in time by national legislator and/or the social partners

SMEUnited considers this objective as more problematic. If we agree that social partners must be effectively involved in the determination of a statutory minimum wage in order to support adequacy, it does not mean that exceptions and deviations for certain groups of workers are not justified.

We see a certain contradiction on the side of the European Commission with such an objective. If some workers are not covered by the minimum wage, it is based on objective reasons.

For example, in some Member States, for apprentices, the payment of the minimum wage would discourage the learners to conclude their education pathway in order to obtain a recognised qualification. The minimum wage would be a strong disincentive for achieving a full vocational pathway and acquiring a diploma (still extremely helpful for further progressing in their future career and earn more than the minimum wage). Furthermore, Member States and national social partners, are fully entitled to not apply the Directive 2000/78 on non-discrimination when it concerns age and specific measures for the integration into the labour market. In addition, an apprentice who is in a learning phase does not deliver the same output as a fully qualified worker and does not have the same productivity level.

Once again, we emphasise that we fully support the participation of the social partners in wage determination, and at the same time, we point out that such a European measure reducing variations and exemptions would clearly interfere with national competences for wage setting and well-functioning collective bargaining systems.

5. Effective compliance with national minimum wage frameworks and monitoring mechanisms

SMEUnited fully supports the objective to have national minimum wage respected and that adequate monitoring mechanisms are in place. This should hinder employers who would have the intention to benefit from unfair competitive advantages.

However the control should be undertaken by the public authorities. Furthermore only dedicated official bodies have the formal authority to impose sanctions and fines in case of non-compliance.

Question 2: What are your views on the possible avenues for EU actions set out in section 6.1?

1. Collective bargaining

The European Commission stresses that the application of the measures would depend on the systems for setting minimum wages, fully respecting national competences and the autonomy of social partners. At the same time, the European Commission states that all workers should be covered by a minimum wage. This can be achieved by either law or by stating an “erga omnes” effect to collective agreements which do not cover all workers of a certain sector.

SMEUnited believes this could mean changing the status of collective agreements or the establishment of minimum wage tariffs. However, these are always only subsidiary instruments, while the main focus is on the setting of wages by the social partners.

Furthermore such an EU requirement that collective agreements should cover all employees could be problematic in some Member States from the viewpoint of freedom of association. Compliance with the European Charter of Fundamental Rights should also be respected.

2. Clear national frameworks to set and update statutory minimum wages

According to the Commission, an assessment of adequacy could be carried out on the basis of various indicators that put the minimum wage in relation to the gross/net median or average wage, or provide a reference basket of goods and services that can be used to assess whether a living wage exists.

In addition to the basic principle that definition of minimum wage should be based on clear and stable criteria, the Commission proposes a number of elements to be taken into account, such as the level and distribution of wages, the cost of living as well as economic and social conditions. Whether these indicators or reference values are acceptable depends on the choice of instrument. SMEUnited considers that setting these criteria in a directive would not be compatible with the provisions of the Treaty, as this would be contrary to Article 153 (5) TFEU and, moreover, would

constitute a clear encroachment on the autonomy of the social partners. However, if the instrument of a Council Recommendation is used, such indicators could be monitored via the Social Scoreboard in the European semester.

In case these clear and stable criteria would become an obligation, it would be in contradiction with the Commission's commitment to fully respect the autonomy of social partners. Defining the adequate level of minimum wage is a complex issue which cannot be restricted to a percentage of the gross/net national median wage or average wage in a given country. The involvement of social partners in statutory minimum wage setting is the pre-condition for establishing the right level for a fair minimum wage for workers and a good functioning of the economy and the labour market. To avoid further rigidities, the minimum wage should be based on productivity level, employment situation and the overall economic and social situation. In particular, the availability of adequate skills, including through up-skilling and re-skilling, is fundamental to raise productivity.

As explained by Eurofound¹, social partners or Member States are more likely to have either formulas or broad references to economic and social indicators in place to guide how minimum wage rates are adapted, rather than predefined relative targets in relation to their national median or average wages.

Furthermore, when considering a fair minimum wage, one should not underestimate the impact of national tax and benefit systems and the level of the tax wedge. Large differences appear among Member States with, in some cases, high or very high tax wedge level for employers and/or workers.

The main indicator should be the gross value of the minimum wage even if the tax wedge and the level of social contributions should be duly taken into account when talking about the adequacy of minimum wage in the Member States. When needed, measures to reduce labour costs for employers and tax wedge for the benefit of workers should be fully part of the national discussions.

A too high minimum wage can push businesses and workers to move fully or partially towards undeclared work. It can also lead to a reduction in the number of hours worked for employees or even the replacement of low-paid workers by automation.

A too high level or increase of minimum wage would also reduce opportunities for specific groups such as low qualified workers or young workers to enter the labour market. Therefore, the adequate level of minimum wage cannot and should not be decided at European level. Instead it should be carefully assessed at national and/or sectoral level in each Member State, by social partners and/or governments, depending on the industrial relations system and practices in place.

In view of the current labour market situation in many Member States, the reference to the median wage or average wage for fixing the adequate level of minimum wage, is not the most suited reply to balance a fair level of income for workers and the conditions for business competitiveness.

¹ Eurofound, minimum wages in 2019/ Annual review

3. Involvement of social partners in statutory minimum wage setting

The involvement of social partners is a high necessity whatever the system in place. To set a predictable and transparent framework for minimum wage, governments should apply a full and genuine involvement of social partners and a systematic monitoring of potential impact on employment by independent bodies.

SMEunited supports the full involvement of social partners and strongly advocates that SME representatives are systematically involved in the setting of statutory minimum wage to determine its adequacy for both sides. It is an essential requirement justified by the fact that two thirds of employment is provided by SMEs.

Moreover it is not sufficient to consult social partners. Social partners should also dispose of the full capacity and expertise required and benefit from the necessary economic, social and/or sectoral trends to make a correct analysis for the right decisions.

Businesses need to have sufficient legal certainty to anticipate on minimum wage and wage increase more generally. The recent increases of minimum wage, unilaterally taken by governments in a number of Member States, without consulting social partners, is not the right approach. Such political decisions on minimum wage do not create a favourable business environment. The direct negative impact on labour costs also affects the general wage level due to a spill-over effect on wages above the minimum wage level.

The involvement of social partners for the definition of the appropriate minimum wage level and its future increase should be the normal rule all over Europe.

However, the European Commission ignores how social dialogue can be promoted and supported in those Member States where the social partners play no or only a subordinate role in wage determination.

This question deserves much more importance than just the reference to the implementation of the social clause in public procurement. Greater efforts in this regard must be made within the European Semester, in order to promote social dialogue, especially in those countries where it is lacking and there is no well-developed tradition of industrial relations and collective bargaining.

4. Exemptions and variations

If in Member States, some workers are not covered by the minimum wage, this might be justified, in particular to facilitate the entry of certain groups to the labour market. The decision to possibly revise some exemptions should be taken at national level by social partners and/or governments with a clear assessment of its impact on employment.

As already explained earlier, exemptions are justified especially if the employee's productivity is not at the expected level due to obvious reasons (apprenticeship, vocational training, etc...) or if a national wage subsidy system is in place or a similar effect to the actual wage paid by the employer. Justified exemptions decided by social partners and/or government should remain.

5. Compliance and monitoring

Effective enforcement is an important aspect which should be ensured by national authorities. It is an issue to be regulated at national level. It should respect national practices and traditions, taking into account the fundamental rights.

Social partners can support compliance by informing their members on minimum wage rules as well as on rights and obligations on both sides. Depending on the national system, it is also the joint interest of social partners to have full compliance with the minimum wage application. Their cooperation at sectoral level could contribute to a better compliance. SMEUnited considers that asking Member States to reinforce the data collection tools and monitoring frameworks on minimum wage coverage can be supported.

Question 3: What are your views on the possible legal instruments presented in section 6.2?

The European Commission clearly indicates that its initiative would be based on Article 153 (1) (b) TFEU related to the objective of improving working conditions. The Commission mentions that both legislative and non-legislative instruments would be possible and refers to a possible European Directive or a Council Recommendation.

European Directive

Taking into account Art 153 (5) of the TFEU which explicitly states that pay is not a competence of the European Union, SMEUnited considers that issuing a Directive on “statutory minimum-wage setting” guided by national frameworks based on clear and stable criteria is not the right way forward.

Such a Directive would not ensure to fully respect the autonomy of social partners, the freedom of collective bargaining and the clear division of competences between the European and national level in terms of wage setting, including wage level.

Taking into account the diversity of situations in the Member States for setting minimum wage, be it autonomously by social partners through collective bargaining, or by governments by law in the case of statutory minimum wages, SMEUnited does not consider a European Directive as the appropriate legal instrument to be adopted.

Council Recommendation

The European action should primarily concentrate on promoting social dialogue and supporting social partners to engage in collective bargaining, be it at national or sectoral level according to the practices and traditions of industrial relations in the various Member States.

SMEUnited can consider a Council Recommendation which would define a number of joint principles to be taken into account by Member States and/or social partners focusing on collective bargaining, support to social partners capacity building and their timely and effective involvement in minimum wage setting when this is set by law.

However the joint principles should not refer to a certain level of the minimum wage, since it would directly interfere with national social partners autonomy and their collective bargaining freedom.

Question 4: 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?

National labour market models are different and statutory minimum wage may be justified in some Member States.

The EU should support social partners to gain the necessary expertise and to be fully involved in the national debate on wage setting. The EU action should, in particular and where needed, concentrate on supporting joint actions to build trust between national social partners and strengthen them to fulfil their task and promote more social dialogue.

SMEUnited is open to a dialogue between social partners at EU level under Article 155 TFEU on the different objectives proposed by the Commission especially on strengthening social dialogue in wage setting mechanisms and promoting collective bargaining.

Our dialogue should fully respect national traditions, social partners' autonomy and the freedom of collective bargaining as stated by the Commission.

Under these conditions, SMEUnited declares its readiness to start a formal dialogue, in view of negotiating a Council recommendation to be monitored in the European Semester.

Brussels, 04 September 2020