

Denmark & Sweden

Initiatives to promote fair wages through social dialogue in EU Member States

Every worker in the EU should be able to make a decent living when working full time. For the sake of the individual worker but also for the sake of fair competition in the internal market. Reducing the number of workers, who are ‘working poor’ and securing upward convergence is undoubtedly a goal to strive for.

However, binding EU-measures on minimum wage is not the way forward. It is clear that there is no legal basis to put forward an instrument on minimum rates of pay – as stated in Article 153(5) in the Treaty of Functioning of the European Union as well as case law of the Court of Justice of the European Union (C-268/06 Impact). This was also repeated by the Commission in its first phase consultation of the social partners. On the contrary, wages are set in each Member State in accordance with national labour market models – either by agreement between the employee and the employer or through agreements between the social partners within the framework of these negotiations set by the Member State. Some Member States provide a minimum floor of protection by law. It is unclear what the Commission envisages to propose considering those limitations. The hesitations from different actors and Member States towards introducing minimum mechanisms on fair minimum wages are well known. In this paper we will focus on possible other means to promote social dialogue and thus fair wages.

In their reply to the Commission’s first stage consultation on a possible action addressing the challenges related to fair minimum wages, the European social partners have emphasized the need for social dialogue stressing that promoting and safeguarding collective bargaining is essential.

The EU should endeavor to support the role of the social partners and the outcome of their decisions. In Member States with high coverage of collective bargaining, wage is an area traditionally reserved for the autonomy of the social partners and an area from which governments have refrained from interfering with. Autonomous negotiations between the social partners have proven to be a successful way of ensuring the priorities and security of both employers and workers and contribute to a flexible labour market. The Treaty protects this by explicitly exempting wages and the role of the social partners from an EU instrument and encourages instead social dialogue. Data presented by the Commission in its consultation document shows that countries with strong social partners, who are able to negotiate freely, to a large extent already have fair wages. It indicates that the best way to achieve fair wages is to strengthen collective bargaining and not through statutory minimum wages. For these reasons, the Commission is encouraged to promote social dialogue and an increased use of collective bargaining as the best way to promote fair minimum wage in each Member State – a long-term but sustainable solution.

Although the promotion of social dialogue is a common objective of the EU and the Member States, binding mechanisms for consultations of national social partners, for arbitration and for dispute settlement is and should continue to be a matter for the Member States and not the EU. However, much can be done at EU level in terms of awareness raising, exchange of best practice, identifying opportunities and obstacles and making recommendations, support capacity building, creating incentives etc. Gender mainstreaming should be an integral part of this work.

We thus invite the Commission to strengthen social dialogue by putting forward a Communication identifying the challenges of social dialogue in Member States and bringing forward new tools to meet these challenges. The following suggestions seek to contribute to this work by promoting, while respecting the division of competences between Member States and the EU and the autonomy of social partners:

- Capacity building
- Transparency
- Better implementation and enforcement
- Awareness raising – sharing of good practice
- Incentives for collective bargaining

Capacity building

Capacity building of social partners at national level is a prerequisite for social dialogue. It contributes to improved representativeness, which in turn contributes to increased coverage of collective agreements and influence at national level. The support for increased capacity of social partners is also reflected in principle 8 of the European Pillar of Social Rights, stating that the *“support for increased capacity of social partners to promote social dialogue shall be encouraged”*.

Possible EU-initiatives

A way to accommodate these challenges and to target support measures in challenged Member States is for *the Commission* to:

- Promote even stronger use of European Social Fund+ for the capacity building of national social partners in all Member States.
- Encourage the use of the possibilities under European Structural Funds (e.g. ESF+) to promote projects covered by collective agreements.
- Promote bilateral and unilateral activities involving the social partners in order to further and disseminate collective bargaining structures in all Member States.
- Support capacity building through mutual learning and exchange of best practices. There is no “one-size-fits-all” for well-functioning social dialogue. However, exchange of good practice between Member States could help to inspire and promote the involvement of social partners. One way of doing so could be by introducing a 1:1-mentoring programme between Member States. The European Labour Authority could help facilitate such capacity building.

Possible national initiatives

An effective social dialogue also requires social partners to be autonomous and to have (national) institutional settings to help allow the outcome of their social dialogue and negotiations to be effective. In order to strengthen the representativeness

of the organizations *Member States* could consider introducing institutional frameworks to support and encourage social dialogue – keeping in mind that a successful social dialogue often presupposes the absence of government interference or that the government acts on the joint request of the social partners (a two-party dialogue).

Transparency

Transparency is essential to improving the basis for collective bargaining.

Possible EU-initiatives

The Commission could initially:

- Include social dialogue in the Commission’s impact assessment of relevant new rules.¹
- Regularly present public information on wage-levels, wage-formation, collective bargaining etc. in Member States to help raise awareness and upward convergence. Increased transparency can improve the basis and conditions for collective bargaining. As opposed to the annual review on minimum wages by Eurofound, this should be done more frequently and targeted collective bargaining and social dialogue in Member States.
- Extend the use of the European Semester to include Country Specific Recommendations on the outcome regarding the effectiveness, transparency and involvement of social partners in wage-setting mechanisms.
- Provide more analysis identifying barriers to social dialogue in individual countries in order to target these challenges – for example through the European Semester process and/or Eurofound.

Better implementation and enforcement

Better implementation and enforcement of preexisting rules should be a priority in order to help support the involvement of the social partners and the right to collective action.

Possible EU-initiatives

Therefore, *the Commission* is invited to:

- Support further implementation and development of the Council Conclusions on “A new start for a strong Social Dialogue” (2016). The shared objective in these Council Conclusions was to “*strengthen social dialogue both by making better use of existing fora and by enhancing the involvement of the social partners in the economic governance structure, including at national level*”. Member States should take the necessary steps to “*support the improvement of the functioning and effectiveness of social dialogue at national level, which is conducive to collective bargaining and creates an appropriate space for social partners’ negotiations*”.
- Support further implementation of principle 8 in the European Pillar of Social Rights, stating that “[*The social partners*] shall be encouraged to negotiate and

¹ According to the current Commission guidelines on Impact assessments they must include a description of the environmental, social and economic impacts. As examples on social impacts are mentioned: Levels of education and training, fundamental rights, employment and skills, social inclusion, poverty etc.

conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action.” In accordance with the strategic guidelines 2019-2024 the Pillar should be implemented at EU and Member State level with due regard for respective competences.

- Support the use of the European Labour Authority to contribute to fair labour mobility as well as ensuring and strengthening the free movement in the EU by facilitating cooperation and ensuring effective implementation and enforcement of EU-rules in the internal market.
- Facilitate a tripartite discussion on the application in the Member States of international standards on freedom of association and the right to collective bargaining.
- Support the freedom of association, calling for Member States and employers to respect the right to collective bargaining and action as set out in EU law, e.g. Article 28 in the Charter of Fundamental Rights of the European Union and made legally binding by Article 6 of the Treaty. The right *not* to associate should also be respected.

As stated by the Commission in their first phase consultation “minimum wages would continue to be set either through collective agreements or legal provisions” – provided the Member State has introduced such provisions – “*in full respect* of national competencies and social partners’ contractual freedom”. This merely supports that the Commission should not seek to regulate matters falling within the competence of Member States/social partners neither directly nor indirectly. Instead, the Commission should seek to support social dialogue in each Member State based on the implementation and enforcement of existing rules.

Awareness raising – sharing of good practice

Possible EU-initiatives

- Present good examples of creating incentives/building capacity such as those mentioned in the Joint Employment Report (see examples below).
- A dedicated report could be presented regularly and discussed at the Tripartite Social Summit.
- Encourage using the European Social Fund (ESF+) to support projects that promote social dialogue in Member States.
- Focus on raising the awareness of decent working conditions based on safety and flexibility.

Incentives for collective bargaining

The effect of social dialogue in each Member State depends on the extent of the collective agreements in that Member State, i.e. the number of employees covered, as well as effective implementation and enforcement thereof. In order to promote collective bargaining in the first place, incentives to do so must be promoted. Involvement is needed not only on European level but especially at national level. Implementing some of the proposals below, which should not be seen as an exhaustive list, can help support the Member States’ own role in ensuring well-functioning and wide-ranging social dialogue.

However, in order for genuine social dialogue to exist and to be promoted, it is essential and a prerequisite that the social partners' room for negotiation (both material and procedural) is respected by each Member State.

Possible EU-initiatives

The Commission is encouraged to help facilitate:

- Increase focus on promoting social dialogue in EU policy making, e.g. by making exemptions for terms agreed upon in collective agreements. This could help increase the incentive to organize for both employees and employers.
- Strengthen the role of the social partners and the collective bargaining system by (to a greater extent) leaving it to the social partners themselves to agree on the content of the regulation (European agreements) or by allowing the social partners to derogate from certain regulation through collective agreements.

Possible national initiatives

Member States could consider:

- Allowing the social partners to implement national and EU-legislation through collective agreements. These discussions could take place in implementation committees when consulting the social partners on upcoming regulation.
- Provide better opportunities for social partners to enter into supplementary agreements or implement legislation through collective agreements. A barrier is often the lack of incentives for employers to commit to collective bargaining. Latvia amended its labour law to facilitate sectoral bipartite agreements, by allowing them to derogate, under certain conditions, from the 100% supplement for overtime (Joint Employment Report, 2020).
- Promote collective bargaining through rules on public procurement.
- Provide an institutionalized setup and process for resolving conflicts among the social partners – both during the time of collective bargaining and afterwards when doubts about interpretation of the agreements needs settlements.
- Ease trade unions access to workplaces and increase the protection against reprisals when employers or workers are trying to organize and bargain collectively.
- Unemployment insurance through trade unions (“Ghent system”) can help increase the incentives to insure and to organize.