

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

Reply of the European Trade Union Confederation (ETUC) to the Second Phase Consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges related to fair minimum wages

Executive Summary

The ETUC reminds the EU Commission that the EU Treaty prevents the EU from setting levels of pay. However, this does not prevent the EU from taking action to address the challenges related to the achievement of fair statutory minimum wages by preventing exploitative conditions of employment and by promoting collective bargaining as a fair condition of employment.

The ETUC therefore calls for Commission to bring forward a Framework Directive to guarantee the full involvement of social partners and:

1. end the practice of unjust, low statutory minimum wages by providing that Member States cannot set their statutory minimum wages below a threshold that is both 60% of the median AND 50% of the average wage (based on national full-time gross wages);
2. end unfair practices such as employer deductions from the statutory minimum wage, the payment of sub minimum rates or clauses that exclude categories of workers from protection;
3. end union busting practices, and require member states to agree with Social Partners an action plan to promote collective bargaining, including a guarantee for trade unions to access the workplace backed up with recognition and representation rights and protection from victimisation;
4. end state promotion of unfair competition on wages by amending public procurement rules so that companies that refuse to bargain or implement the collective agreement are prevented from state contracts, CAP payments, grants and other financial supports;
5. end negative court rulings by providing a social progress clause to protect collective bargaining and collective agreements, the autonomy of social partners and
6. end the threat to Member States that deliver fair wages through collective bargaining systems by guaranteeing that they will never be obliged directly or indirectly by the EU to introduce a statutory minimum wage or other minimum wage floors that interfere in collective agreements.

The ETUC support for a Framework Directive is not unconditional. The text of the forthcoming proposal will be carefully examined to ensure that it meets all the above objectives and that the outcome of the proposal will, in fact, result in Member States increasing their statutory minimum wages to levels that are adequate taking into account the situation of workers in the Member State concerned. The ETUC will oppose any initiative which harms the role of social partners and would damage social partners autonomy and wage-setting in collective bargaining systems.

Outline of the Reply

- Main messages
- Reply to Question 1: What are your views on the specific objectives of a possible EU action set out in section 5?
- Reply to Question 2: What are your views on the possible avenues for EU action set out in section 6.1 of this document?
- Reply to Question 3: What are your views on the possible legal instruments presented in section 6.2?
- Reply to 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?

Annex I: Reply of the European Trade Union Confederation to the First Phase Consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges related to fair minimum wages

Second Phase Consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges related to fair minimum wages

Main messages

1. The European Trade Union Confederation supports the Commission conclusion that there is a need for EU action to address the challenges related to the promotion of collective bargaining and fair minimum wages.
2. The Covid-19 crisis has shown once again the unfair conditions that many workers in the European Union face. Workers in essential services which have continued to work during the pandemic – often at great personal risk – have been publicly praised because of their essential contribution to society. This is very important, but now concrete actions need to follow, in order to ensure that work is properly valued, that workers earn a remuneration from which they can make ends meet and that unions can bargain for fair and just working conditions. The initiative also needs to include measures to promote upward convergence in wages and working conditions in the EU.
3. At the same time, the ETUC regrets the ongoing lack of clarity about how the specific measures under consideration can be achieved especially, it is still unclear what the Commission intends to propose as the choice of the legal instrument and how effective safeguards will be included.
4. The ETUC calls on the European Commission to bring forward a proposal for an **EU Framework Directive** to set out certain binding minimum requirements and objectives, **supplemented by a Council Recommendation** to set out complementary measures that can be adopted to achieve the objectives. (The two instruments would need to follow a joint legislative process and be approved at the same time, to ensure consistency).
5. The Framework Directive should require member states to guarantee a threshold of decency for statutory minimum wage floors. This means that **the Framework Directive must establish that statutory minimum wages must not fall below a threshold of both 60% of the full-time gross national median wage and 50% of the full-time national gross average wage**. The threshold must not become a maximum or considered to be an end goal, Member States must be free to go above this level and must set the rate of their statutory minimum wage with the full involvement of social partners. Additional measures should be put in place to check the adequacy of the rate at which statutory minimum wages are set (above the threshold), such as a basket of goods and services. In addition, statutory minimum wages – where they exist – should cover all workers and all sub-minimum rates should be removed. Deductions from statutory minimum wage should be prohibited. Member States that protect minimum wage floors through collective agreements should be protected to ensure they can continue to do so.
6. **The Framework Directive needs to ensure that all Member States promote collective bargaining, in particular sectoral collective bargaining and cross-sectoral collective bargaining.**
The Framework Directive should require Member States to have institutions and mechanisms in place to promote and support collective bargaining, in particular sectoral collective bargaining and cross-sectoral collective bargaining. The Framework Directive should require Member States to have in place protections to end union busting and to ensure that employers respect of the right to organise and to bargain collectively.

The Framework Directive should also include a requirement for Member States to develop an action plan, in consultation with the social partners, in order to promote collective bargaining, in particular sectoral collective bargaining and cross-sectoral collective bargaining.

Member States which have a collective bargaining coverage below 70% of the national workforce (or below 70% in a sector) the Member State should be required to put in place an action plan in consultation with the social partners, to progressively increase coverage towards the at least 70% of the national (and sector) workforce.

7. It is necessary to **ensure that public procurement contracts and public funding contribute to the promotion of collective bargaining and guarantee fair working conditions**. In the framework of this initiative, the Commission should bring forward an amendment to the public procurement and other Directives in order to ensure that only employers that respect workers' right to bargain collectively and implement the relevant collective agreement can be awarded public contracts, grants, funds, CAP payments etc.
8. The ETUC takes note of the confirmation by the Commission that **Article 153 (1)(b) TFEU should be the legal basis of the initiative**, thus anchoring it in the 'Social Policy' Title of the TFEU. The Framework Directive should be transposed by Member States with the full involvement of national social partners. Member States should actively engage with social partners and discuss the possibility to use the procedure defined in Article 153(3) TFEU to entrust management and labour with the implementation.
9. A European Framework Directive based on the abovementioned objectives and conditions would contribute to upward social and wage convergence, to the respect of workers' and trade unions' rights, to the fight against poverty, inequalities and the gender pay gap.¹ However it does not replace the need for the measures to be included in the proposed **Pay Transparency Directive** to address the undervaluing of work that is predominantly done by women. Both initiatives will stimulate demand and promote collective bargaining, thus contributing to a recovery from the Covid-19 crisis based on social progress and paving the way for a fairer, more resilient and sustainable economic model. Moreover, the unfair pay gaps between different regions of the EU cannot continue to be ignored. Correcting these gaps would also constitute an important step in the fight against social dumping.
- 10. The ETUC support for a Framework Directive is not unconditional.** We will not support any measures that aim at the introduction of a single system of industrial relations or a minimum wage for the whole of the EU. **No Member State should be required to introduce a statutory minimum wage system.** At the same time, where statutory minimum wage systems exist, they must be protected. Social partners' autonomy and decisions on these matters must be respected. The text of the forthcoming proposal will be carefully examined to ensure that it does not damage existing rights to bargain or undermine collective agreements, particularly sector level collective agreements. **The ETUC will oppose any initiative which lowers minimum wages, or harms the role of social partners or would damage social partners autonomy and independence or wage-setting and collective bargaining systems.**

¹ As outlined in the Commission Staff Working Document: "The majority of minimum wage earners are women. In all Member States, women have a higher probability to earn the minimum wage than men (Graph 2(a)). This gender gap varies across Member States: being a woman doubles the likelihood of being a minimum wage earner in Czechia, Germany, France, Croatia, Netherlands, and Slovakia but has a limited effect in Bulgaria, Estonia or Lithuania (not shown). Accordingly, women represent the majority of minimum wage earners in all Member States, their share exceeding 70% in Czechia, Germany, Malta, the Netherlands, Slovakia (Graph 3(b)). [Commission Staff Working Document. Analytical Document accompanying the document Consultation document – Second phase consultation of Social Partners under 154 TFEU on a possible action addressing the challenges related to fair minimum wages](#), SWD(2020) 105 final, 3 June 2020, p. 52.

The ETUC notes that the Commission has proposed that – for Member States without statutory minimum wages, the objectives can be achieved if all workers can genuinely potentially be covered by a collective agreement and/or indirectly benefit from the pay levels established by collective agreements –, but more is needed. Member States that set their wages predominantly through collective bargaining and that do not have a Statutory Minimum Wage in place on 1st January 2020 must not be required to introduce a statutory minimum wage or a national minimum threshold for wage adequacy, but shall be allowed to continue to define wage floors through collective agreements only.

11. The European Commission has put forward to the European social partners the following questions in the second phase consultation:

- What are your views on the specific objectives of a possible EU action [set out in section 5]?
- What are your views on the possible avenues for EU action [set out in section 6.1 of this document]?
- What are your views on the possible legal instruments [presented in section 6.2]?
- 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]?

The replies to those questions can be found in the following sections of this document.

<p>Reply to Question 1: What are your views on the specific objectives of a possible EU action set out in section 5?</p>

12. The ETUC reiterates its view that ambitious actions at European level are needed. The analysis outlining the reasons and the need for EU actions in these areas has been put forward by the ETUC in its response to the first phase consultation of social partners and remains valid (see Annex I).²

13. It is necessary to ensure that the recovery from the Covid-19 crisis is based on solidarity and on the respect of workers' and trade union rights and that it paves the way for a fairer, more sustainable and more resilient society and economic model. In this framework, it is necessary for the EU to take urgent and ambitious initiatives to ensure wage increases, upward convergence among Member States, the improvement of working and living conditions, including by guaranteeing higher statutory minimum wages and promoting collective bargaining. As recognised by the European Commission, *“ensuring that all workers in the EU earn a decent living is essential for the recovery as well as for building fair and resilient economies, and minimum wages have an important role to play”*.³

14. The Commission has set out two main objectives for the EU action: to ensure that minimum wages (a) are set by the national legislator and/or social partners at adequate levels and (b) protect all workers.

15. Amongst the specific objectives defined in section 5 of the Commission document, the ETUC welcomes namely the objective to ensure that *“well-functioning collective bargaining in wage-setting is in place [...] both in the systems where minimum wages*

² [Reply of the European Trade Union Confederation to the First Phase Consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges related to fair minimum wages. See Annex I.](#)

³ [CONSULTATION DOCUMENT – Second phase consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges related to fair minimum wages. C\(2020\) 3570 final, 3 June 2020, p. 1.](#)

are only determined by collective agreements and in those where they are set by law". The recognition that *"the structure and functioning of collective bargaining [...] play a key role for achieving fair minimum wages"* is equally important. The link between collective bargaining and developments in statutory minimum wages – where they exist – is also identified in the document.⁴ However the ETUC sounds a word of caution, the EU should not become involved in directing how member states operate their collective bargaining systems.

16. The ETUC reiterates its position that it is urgent and necessary to make sure that Member States live up to their commitments/obligations, under the relevant ILO Conventions, the Council of Europe European Social Charter (revised), the Community Charter of Fundamental Social Rights of Workers and the EU Charter of Fundamental Rights and the European Pillar of Social Rights, to promote collective bargaining, in particular sectoral collective bargaining, and to ensure that workers' rights of association and bargain collectively as well as to a fair (minimum) wage are fully respected and enforced. Fair minimum wages will only be created in labour markets with vibrant collective bargaining that raises the whole wage structure in the Member States, thus also lifting the minimum wage. The ETUC, therefore, stresses the necessity for the Framework Directive to require Member States to put in place effective measures to promote workers' rights to organise and bargain collectively. The ETUC proposes that the Framework Directive sets out a requirement for national action plans to be developed by Member States with the social partners to promote collective bargaining. The Council Recommendation could identify some complementary practical steps that can be taken. Collective bargaining in Member States must be promoted and strengthened, also through EU initiatives, however it must not become subject to EU conditions, rules or interpretations that would undermine trade unions' and workers' rights, including the rights to bargain collectively, to organise and to take collective action.⁵
17. The ETUC agrees with the assessment that *"collective bargaining coverage has been on a downward trend in many Member States in recent years"*, *"with particularly strong declines in Central and Eastern Europe"*.⁶ **The Commission however continues to wrongly attribute the decline in collective bargaining coverage solely "to the structural shifts in the economy towards less unionised sectors, notably in services, and due to the sharp decline in trade union membership related to the increase of atypical and new forms of work".⁷ **The ETUC disagrees with this narrow view.** Also the recent OECD report on collective bargaining recognised that the drivers of the decline in union density are *"numerous and vary between countries and over time"* and acknowledged that increasing management resistance (*"such as the use of union avoidance consultants, threats to close workplaces, or illegal firings of workers' representatives"*) has played a role in the decline in trade union density and in collective bargaining.⁸ For these reasons, provisions in EU legislation are necessary to protect workers and workers' representatives from any 'adverse treatment of consequences' for seeking to uphold workers' rights under EU legislation.**
18. In addition, after the 2008 economic crisis in particular, the European Commission and several Member States played a negative role in suppressing or limiting wage growth and in reducing job security and collective bargaining rights. It is sufficient to recall that in the context of that last economic and social crisis, 20 Member States were affected by wage policy interventions from European and international institutions and that almost all the interventions in the field of wages and

⁴ Consultation document, cit., pp. 12-13.

⁵ Reply of the European Trade Union Confederation to the First Phase Consultation, cit., p. 4.

⁶ Consultation document, cit., p. 9.

⁷ Ivi, p. 6.

⁸ OECD, *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*, 2019, OECD Publishing, Paris, Figure 3.10, p. 15, 125.

collective bargaining aimed at moderating (minimum) wage development and the decentralisation of collective bargaining, with devastating consequences for national bargaining systems – in particular at sectoral level – and real wage developments in many countries.⁹

Several Member States are furthermore ignoring their responsibility to promote collective bargaining and do not uphold workers and trade union rights which are necessary to ensure effective collective bargaining (e.g. rights to organise and form trade unions, to collective action, to information and access to the workplace, prevention against dismissals...). The recent Conclusions of the Council of Europe European Committee of Social Rights (ECSR) confirmed that several Member States are not in conformity with the rights to organise and to bargain collectively as defined in the European Social Charter (revised).¹⁰ All of this confirms the need for the EU to take active steps to remedy the past negative interference.

19. The consultation document also fails to recognise the key role played by **sectoral collective bargaining**, which constitutes a key component to ensure upwards wage convergence and to increase collective bargaining coverage.¹¹ It is of outmost importance for the EU action to promote the role of sectoral (and cross-sectoral) collective bargaining. This is also necessary as in several Member States, including in some with a high collective bargaining coverage, a negative process of decentralisation of collective bargaining mechanisms was brought forward in the past years. The consultation document refers to the need to ensure that “*all types of employers and employees are duly represented*”.¹² It is absolutely necessary to guarantee that collective bargaining remains the prerogative of social partners, i.e. employers and trade unions, and it is not opened to other actors, obscure and non-representative associations or groups. In this framework, the reference to social partners in the above-mentioned sense is necessary with regard to collective bargaining. Sectoral collective agreements can contribute in a significant way to the reduction of the gender pay gap and to support social cohesion and economic resilience.
20. The ETUC confirms its analysis included in the reply to the first stage consultation of the challenges that workers’ rights to organise and bargain collectively are facing and reiterates the need for the EU action to include measures to tackle those challenges and to effectively promote collective bargaining, in particular sectoral collective bargaining.
21. It is also necessary that the initiative pursues the objective of clarifying that neither economic freedoms nor competition rules have priority over and/or can infringe upon trade union and workers’ rights as recognised in the relevant ILO Conventions, the Council of Europe European Convention of Human Rights and European Social Charter (revised), the Community Charter of Fundamental Social Rights of Workers and the EU Charter of Fundamental Rights, in particular the freedom of association, right to organise, the right to collective bargaining and to take collective action and the right to fair remuneration.
22. The ETUC fully agrees with the objective of ensuring effective involvement of social partners in statutory minimum wage setting.
23. With regard to the objective concerning statutory minimum wages adequacy, the EU action needs to ensure that statutory minimum wages – where they exist – are fair vis-

⁹ See for example:

T. Müller, [The king is dead – long live the king: what follows after the Troika?](#), Brussels, ETUI Working Paper 2015.09, p. 30;

S. Clauwaert, [Country-specific recommendations \(CSRs\) in the social field](#), Brussels, ETUI Background Analysis 2013.02, p. 41 (as well as several updates for 2014-2019).

¹⁰ Reply of the European Trade Union Confederation to the First Phase Consultation, cit.

¹¹ However, also the Commission Staff Working Document recognises: “Coverage is high in those Member States where bargaining takes place at national or industry level”. Commission Staff Working Document, cit., p. 31.

¹² Consultation document, cit., p. 12.

à-vis the wage distribution in the different Member States and provide for at least a decent standard of living. The ETUC is calling for the Framework Directive to take the approach that statutory minimum wages must not fall below a threshold of both 60% of the full-time gross national median wage and 50% of the full-time national gross average wage. This threshold must not become a maximum or considered to be an end goal. Member States must set their own statutory minimum wage with the full involvement of social partners, however it must not fall below the threshold. Additional measures should be put in place to check the adequacy of the rate at which statutory minimum wages are set (above the threshold), such as a basket of goods and services. References to a decent standard of living must mean that statutory minimum wages provide above the threshold and for more than mere subsistence, enabling meaningful participation in society and some scope to insure against unforeseen shocks.

The ETUC recalls that social security contributions are part and parcel of the adequate minimum wage. We reject any proposal that the EU would require Member States to achieve adequate statutory minimum wages by lowering taxes or contributions to social security systems which are already under attack.

The costs coming with the increase of the minimum wage should in principle be borne by the employers. The use of tax deductions and other compensations mechanisms should only be the result of social dialogue.

24. It is important to ensure that statutory minimum wages are updated and increased on a regular basis to ensure their adequacy over time. However procedural requirements must not introduce obstacles or limits to achieving increases in statutory minimum wage nor provide any possibility to EU or national institutions to hold the necessary increases back. Criteria such as ‘competitiveness’ must not be used. The achievement of the respect of the human right to fair remuneration must be the objective. The objective of upwards wage convergence should also be included in the considerations.
25. The ETUC agrees with the objective identified in the consultation document to address the discriminatory situations linked with exclusions (or variations) from statutory minimum wages. The Framework Directive should ensure that statutory minimum wages, where they exist, cover all workers: exclusions should not be possible and all sub-minimum rates should be removed. It is also necessary that the initiative ensures that deductions from statutory minimum wages are prohibited.
26. The ETUC welcomes the fact that the Commission has identified effective compliance with national minimum wage frameworks and monitoring mechanisms as one of the main objectives of the EU action. It is necessary for the EU action to guarantee that all Member States have in place effective and adequate enforcement mechanisms and controls – including inspections – to ensure the application of minimum wages and other working conditions defined by statutory means or collective agreements, as well as the protection of workers and the respect of their rights. Member States should ensure that effective and dissuasive sanctions are in place in case of violations.
27. According to the consultation document, “*all Member States would be required to achieve the objectives of the initiative. They could do so through different means, in full respect of national competencies and social partners’ contractual freedom*”.¹³
This approach is in line with the useful recognition of the Commission that “*in line with Articles 151 and 153(5) TFEU, which forbids the EU to intervene directly on the level of pay so as not to interfere with the competence of Member States and autonomy of social partners in this field, as well as the constant case-law of the Court of Justice of the European Union (CJEU), any 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. It would not establish the level of pay which falls within the contractual freedom of the*

¹³ *Ibidem.*

social partners at the national level and within the relevant competence of Member States. In particular, EU action would not seek the introduction of a statutory minimum wage in all Member States. Minimum wages would continue to be set through either collective agreements or legislative provisions, according to the traditions and specificities of each country and in full respect of national competencies and social partners' contractual freedom".¹⁴

The ETUC confirms our support for the objective that the EU initiative would not establish the rates for minimum wages in Europe, but rather would set a threshold below which statutory minimum wages cannot fall. The ETUC supports the objective that statutory minimum wages should be checked at national level with the social partners for their adequacy.

The ETUC confirms our support for the objective that the EU initiative would not introduce a single system of industrial relations for the whole of the EU. No Member States should be required to introduce a statutory minimum wage system, where it does not exist. At the same time, the initiative must not endanger existing statutory minimum wage systems.

The ETUC confirms our support for the objective that the EU initiative would not interfere with well-functioning collective bargaining systems and social partners' autonomy would be fully respected. A clear distinction must be set between statutory minimum wages and wages floors established through collective agreements. The initiative must not undermine social partners' autonomy to negotiate, conclude and enforce collective agreements. Collective bargaining in Member States must be promoted and strengthened, also through EU initiatives, however it must not become subject to EU conditions, rules or interpretations that would undermine trade unions' and workers' rights, including the rights to bargain collectively, to organise and of association. Those safeguards must be present and clearly defined in the EU action.

Reply to Question 2: What are your views on the possible avenues for EU action set out in section 6.1 of this document?

28. In order to achieve the above-mentioned objectives, the consultation document defines **possible policy actions** in the areas of:

- Collective bargaining,
- Clear national frameworks to set and update statutory minimum wages,
- Involvement of social partners in statutory minimum wage setting,
- Exemptions and variations,
- Compliance and monitoring.

29. In the Commission Staff Working Document, it is clarified once more that *“the initiative would leave Member States the freedom to keep their current minimum wage system. It would also not include any provisions aimed at imposing an obligation to provide for a statutory minimum wage in Member States with collectively bargained minimum wages, nor at imposing administrative extensions on collectively agreed minimum wages. EU action on minimum wages would fully respect Member States' competence and collective bargaining traditions, and will not interfere with social partners' autonomy and freedom to negotiate”*.¹⁵

30. The ETUC reiterates that the Framework Directive must ensure that wages, as a fundamental rule, are collectively bargained by social partners, therefore statutory minimum wages should not be introduced in countries where social partners do not consider them necessary. Likewise, many Member States have multiple minimum wages, for example a national minimum wage set in law along with higher sector minimum wages set through law or collective agreements, and it is equally important

¹⁴ Ivi, p. 2.

¹⁵ Commission Staff Working Document, cit., p. 52.

that these systems are safeguarded. The Framework Directive must not aim at harmonisation or the introduction of a single system of industrial relations or a minimum wage for the whole of the EU.

The Framework Directive must not interfere with well-functioning collective bargaining systems and social partners' autonomy to set working conditions including minimum rates of pay through the negotiation, conclusion and enforcement of collective agreements must be respected. The Directive should not require the establishment of extension mechanisms or other instruments needed to make collective agreements universally applicable unless the relevant social partners require it. At the same time collective bargaining systems with universally applicable collective agreements must be safeguarded. A clear distinction must be made between statutory minimum wages and minimum wages established through collective agreements.

Those safeguards must be present and clearly defined in the Framework Directive.

31. The Framework Directive must include strong **non-regression clause and more favourable provisions clause** to ensure that it cannot in any case be used to lower the level of protection for collective bargaining or minimum wages. It shall ensure that **social partners at national level are fully involved in the transposition of the measures and in monitoring their effectiveness.**
32. The Framework Directive must clearly set out that **it shall not prevent Member States or their social partners from establishing more ambitious minimum wages, wage floors and any other working conditions and social standards in line with Article 153(4).** It shall clearly state that no provisions shall be interpreted as restricting or adversely affecting rights and principles as recognised by international law and by international agreements to which the Union or all the Member States are party, including the Council of Europe European Social Charter (revised) and the relevant Conventions and Recommendations of the International Labour Organisation.

Commission Policy Area 1. Collective bargaining

33. The Commission confirms that *“EU action to foster the role of collective bargaining in supporting minimum wage adequacy and coverage would be warranted”* and that *“collective bargaining has been identified as the best means to achieve the general aim of the initiative, provided its coverage is high enough to ensure that the agreed wage floors effectively protect vulnerable workers. To this end, a number of provisions would aim at supporting and promoting collective bargaining on wage setting”*.¹⁶ **The ETUC welcomes the intention of the Commission to include measures to promote collective bargaining in the initiative.**

However, **the policy options identified by the Commission are still unclear:** *“all Member States could thus provide incentives to promote well-functioning collective bargaining on wage issues, especially where it is less developed. In addition, the initiative could provide a non-exhaustive list of possible actions to support collective bargaining on wage-setting”*.¹⁷

34. The Commission specifies that for Member States where wages are set exclusively through collective bargaining, *“all workers should be covered”*. It further clarifies that *“this can be achieved for example if all workers potentially can be covered by a collective agreement and/or indirectly benefit from the pay levels established by collective agreements”*. This clarification is welcome but needs to be further developed. The wording of the Framework Directive will be critical: as outlined above, the initiative must not encroach on well-functioning collective bargaining systems. The Framework Directive must be clear that no limits or conditions on collective agreements establishing more protective conditions and higher wage floors are introduced. The right to collective bargaining and the national decisions that protect the use of extension mechanisms,

¹⁶ Ivi, p. 53.

¹⁷ Consultation document, cit, p. 14.

where they exist, must be respected. When it comes to the “benefit from the pay levels established by collective agreements” mentioned by the Commission, the ETUC recalls that decisions in this area must be made only with the agreement of the social partners.

35. The Framework Directive should take the approach of ensuring that Members States properly promote collective bargaining, in particular sectoral collective bargaining, *inter alia* by:

a) Having the necessary institutions and mechanisms in place to support collective bargaining, in particular sectoral collective bargaining and cross-sectoral bargaining, along with resources and legal backing especially protecting workers, their unions and the institutions for collective bargaining;

b) Ensuring that collective bargaining is available for all sectors of the economy including the public sector and for all workers, regardless of their employment status; this means non-standard workers, which may include self-employed workers, should have access to trade union representation, collective bargaining, collective agreements and collective actions; in this regard, the Framework Directive should include a provision to clarify the correct interpretation of (EU) Competition law that collective agreements covering non-standard workers, which may include self-employed workers, should be considered to fall outside the scope of Article 101 TFEU;

c) Ensuring the right to organise, to trade union recognition and to bargain collectively is properly respected by employers, including by guaranteeing right for unions to access the workplace, including digital access, to be able to meet with the workforce whether or not it is organized in trade union, along with the right to information, facilities and time off to meet with the unions, and paid time off for union representatives, including for their training, stronger protection for workers and unions from threats, reprisals, victimisation and any other union busting actions. This respect for collective bargaining should extend even to emergency situations. Following the last crisis, austerity and policies imposed by EU institutions led to the imposition of pay cuts and freezes for many workers, particularly in the public sector. The ILO conventions do not include any provision for suspension of rights and this should be reflected in the legislation to prevent any unilateral action to freeze or terminate collective bargaining, whether in the public or private sector;

d) Promoting, when requested by social partners at the relevant level, the principle of *erga omnes* extension in sectoral and cross-sectoral bargaining to ensure the effective coverage of collective agreements;

e) Tackling collective bargaining dumping (e.g. by/via agreements with less protections and weaker standards signed by ‘yellow’ unions, via abusive subcontracting practices, or by employing mobile workers based in countries with little or no collective bargaining structures) and resolve situations in which private and public sector employers’ refuse to recognise trade unions and the application of collective agreements and/or to enter into collective bargaining;

f) Ensuring proper implementation of international labour standards, in particular ILO Conventions, the Council of Europe European Social Charter (revised) and the European Convention of Human Rights in the area of collective bargaining;

g) Ensuring adequate resources (national and EU) are ringfenced to promote and support sectoral collective bargaining including through capacity building and training initiatives;

h) Ensuring that social partners at national level are fully involved in the implementation of any measures arising from the initiative, including in monitoring its effectiveness;

i) Ensuring that the meaning of ‘collective agreements’ and ‘representativeness of trade unions’ and ‘Social Partners’ are defined at national level in agreement with social partners, in accordance with national law and practice and in compliance with relevant ILO, Council of Europe [European Social Charter (revised) and Convention of Human Rights] and EU [Charter of Fundamental Rights of the EU and Charter of Fundamental Social Rights of Workers] Human Rights standards and the case-law of the respective supervisory bodies;

l) In addition, any measures should provide for the exchange of practices and to set benchmarks to promote and measure upward convergence in terms of overall coverage by collective agreements, including through the activities of Eurofound.

In the framework of this initiative, the Commission should also include the respect of right to collective bargaining as part of review of the EU Rule of Law so that violations of right to organise/collective bargaining and to fair remuneration should lead to sanctions including in terms of EU funding.

36. The Framework Directive should require Member States **to develop an action plan, in consultation with the social partners, to promote collective bargaining.**

Member States which have a collective bargaining coverage below 70% of the national workforce (or below 70% in a sector) should be required to put in place an action plan in consultation with the social partners, to progressively increase coverage towards the at least 70% of the national (and sector) workforce. This includes measures to promote sectoral collective bargaining.

37. It is important that the consultation document recognises the **role that public procurement can play with regard to the promotion of collective bargaining and fair minimum wages.**

The consultation document only refers however to the implementation of the social clause contained in the Public Procurement Directive 2014/24/EU (“*Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X*”)¹⁸ and to a possible mapping of the way in which such clause has been implemented in the different Member States. The EU must ensure that public procurement procedures effectively promote collective bargaining and that all economic operators involved (including subcontractors) fully respect the right to bargain collectively and the relevant working conditions, in line with ILO Convention 94. A proper implementation of the social clause is important, but it is not enough to make Directive 2014/24/EU and other related directives principal instruments for the support of collective bargaining.

In order for public procurement procedures to give a decisive contribution in promoting collective bargaining, **the ETUC calls on the European Commission to propose – in the framework of this initiative – an amendment of the public procurement and concessions Directives.** The amendments to revise the relevant directives should state that only companies which respect workers’ right to bargain collectively as well as applicable working conditions, including implementing relevant collective agreement concluded with trade unions in accordance with national law and practice, can be awarded public contracts.

It should furthermore ensure that the same conditions apply to public funding, including in the framework of the Next Generation EU instrument, grants, structural funds, Common Agriculture Policy (CAP) direct payments and subsidies, lease contracts, access to licences to operate whenever required, etc.

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

38. The ETUC is calling for the Framework Directive to take the approach that statutory minimum wages must not fall below a threshold of both 60% of the full-time gross national median wage and 50% of the full-time national gross average wage. This threshold must not become a maximum or considered to be an end goal.

¹⁸ *Ibidem.*

The consultation document only refers to the general Public Procurement Directive 2014/24/EU, however the same should apply to Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and to Directive 2014/23/EU on the award of concession contracts.

Member States must set their own statutory minimum wage with the full involvement of social partners, however it must not fall below the threshold. Additional measures should be put in place to check the adequacy of the rate at which statutory minimum wages are set (above the threshold), such as a basket of goods and services.

39. The ETUC is very concerned that the Commission is unclear on what they mean by “*the EU initiative could provide for national frameworks to include specific indicators against which minimum wage adequacy could be assessed*”. While some possible specific indicators for adequacy are mentioned (reference to levels of gross/net median/average wage or to the living wage approach, i.e. a reference basket of goods to ensure decent living), as well as possible non-binding reference values (comparing the net or gross minimum wage to a threshold of the net or gross median or average wage of the respective Member State), the Commission needs to understand that Member States must be free to set their own statutory minimum wage with the full involvement of social partners and respecting the human right to fair remuneration.¹⁹ Competitiveness should not be included as a criteria. It is also negative that the consultation document fails to clarify the necessary distinction between statutory minimum wages and wage floors established through collective agreements.
40. It is also important to ensure that statutory minimum wage levels **are updated and increase at least on an annual basis** in order to ensure their adequacy over time, with the full involvement of social partners. Procedural requirements must not introduce obstacles or limits to the possibility of increases in statutory minimum wage nor provide any possibility to EU or national institutions to hold the increases back.
41. The Framework Directive should also require Member States to ensure that workers have **sufficient weekly/monthly/daily hours of work** to enable them to achieve a real decent wage. Complementary measures to a fair statutory minimum wage based on full-time employment are required that take full account of the fact that an increasing number of workers are in precarious, casual or part-time employment whose working time is below the level they desire. In order to ensure a decent living standard for these workers there should be a minimum guaranteed number of hours.
42. No Member State should be required to introduce a statutory minimum wage system by the Framework Directive. In addition, the Framework Directive must ensure that those Member States that set their wages through collective bargaining, in particular those that have a collective bargaining coverage above 70% of the national workforce, and that do not have a Statutory Minimum Wage in place on 1st January 2020 cannot introduce a statutory minimum wage or a national minimum threshold for wage adequacy where social partners do not consider it necessary, rather they shall be allowed to continue to define wage floors through collective agreements only.
43. In order to fight inequalities and ensure that workers get their fair share, in addition to the necessary measures to ensure increases in statutory minimum wages, where they exist, and support for collective bargaining, a maximum CEO/management-to-worker pay ratio should be introduced by the Framework Directive. A maximum ratio would reduce wage inequality from both ends of the pay spectrum by raising wages at the bottom while at the same time preventing excessive wages (or wage increases) at the top. This measure would constitute an important signal that the recovery from the Covid-19 crisis will lead to a more equal and fair society.

Commission Policy Area 3. Involvement of social partners in statutory minimum wage setting

44. In order to reach the objective of effective social partners’ involvement in statutory minimum wage setting, according to the Commission “*an EU initiative could state that, wherever minimum wages are set by law, social partners should be involved in an*

¹⁹ Consultation document, cit., pp. 14-15.

effective and timely manner. Moreover, specific options could be considered for the most relevant institutional aspects of social partner involvement (e.g. existence of regular, formal consultation mechanisms, specialised minimum wage committees, attributing to social partners a decision making role, etc.).²⁰ The ETUC welcomes the options considered by the Commission in order to ensure social partners' involvement.

45. It is necessary that the Framework Directive requires Member States to ensure that social partners are genuinely and fully involved in statutory minimum wage setting. Social partners should be fully involved in the establishment and operation of the mechanism to set and periodically update statutory minimum wages and to check their ongoing adequacy. In this context, Member States need to compile and make available to social partners all the statistical data and information necessary to evaluate the adequacy of statutory minimum wages and the respect of the requirements established in the Framework Directive and in national legislation. Member States should ensure that information is given to social partners at such time, in such fashion and with such content as are appropriate to enable social partners to conduct an adequate study and to prepare for the consultation. The Framework Directive shall also ensure that social partners have the right to expertise to get support in discussions and negotiations on statutory minimum wages.

It is also necessary to ensure that if social partners at national level reach an agreement on the increase to be introduced to the statutory minimum wage, Member States shall introduce such increase.

46. The consultation document also states that *“the initiative could provide for independent experts to be associated with minimum wage setting and updating”*.²¹ While recognising the importance of sound analysis to ensure the adequacy of statutory minimum wages, the ETUC considers not useful to introduce obligations at European level with regard to the involvement of ‘independent’ experts in statutory minimum wage discussions.

Commission Policy Area 4. Exemptions and variations

47. The consultation document states that the initiative *“could provide elements so as to aim at the elimination of exemptions and/or variations in the countries where they exist”*. This would be a very important step to ensure fairness and the respect of workers' right to a fair remuneration and to avoid discrimination. The ECSR has already ruled that the exclusions from the statutory minimum wages for certain categories of workers (as well as some subminimum rates) are not in conformity with the Council of Europe European Social Charter (revised).²² However, the consultation document goes on to state that alternatively the initiative *“could define criteria and conditions for allowing their use, so as to limit them to the minimum. In particular, it could require them to be non-discriminatory, proportionate, duly justified and, whenever relevant, limited in time. Explicit provisions could be foreseen for specific groups or occupations”*.²³ The ETUC rejects any exemptions from statutory minimum wages and the use of statutory subminimum wages.

48. The ETUC considers that the Framework Directive should ensure that statutory minimum wages – where they exist – cover all workers, defined by national law and practice in consultation with social partners, and should include currently excluded categories of workers, such as domestic workers, non-standard workers – which may include self-employed workers –, platform workers, seafarers, seasonal workers, long-term unemployed workers, workers with disability, retired workers, third-country national workers, interns, trainees and/or apprentices, etc. In addition, all sub-minimum rates should be removed, for examples those that apply to young workers.

²⁰ Consultation document, *cit.*, p. 15.

²¹ *Ibidem*.

²² Reply of the European Trade Union Confederation to the First Phase Consultation, *cit.*

²³ *Ibidem*.

Commission Policy Area 5. Compliance and monitoring

49. The ETUC welcomes the focus on compliance and monitoring in the consultation document. Compliance with collectively agreed wage floors and with statutory minimum wages still remains a challenge in several Member States, thus undermining the efforts to ensure the respect of workers' right to fair remuneration and working conditions.
50. The ETUC agrees with the assessment that “*in some Member States with statutory minimum wages, there is evidence that some workers, even though they are covered, receive in practice a remuneration below the minimum wage due to the non-respect of existing rules. Compliance may also be an issue in some of the Member States exclusively relying on collective bargaining for setting wages, whereby workers are paid below the wage floor established by their reference collective agreement*”.²⁴ It is however negative and surprising that – despite the analysis of the existing challenges – the Commission only proposes to “*call on*” Member States to undertake certain actions in this area. For the Framework Directive to have a real impact and to ensure the respect of the applicable rules and of workers' rights, it is necessary to guarantee that Member States are required to take action in the area of compliance and enforcement (invitations or recommendations to take action are not sufficient in this regard). This can include giving a key role to trade unions to inspect compliance with statutory minimum wages and other working conditions.
51. In several Member States employers are allowed to circumvent the payment of statutory minimum wages by introducing deductions (e.g. for buying uniforms or other equipment necessary for work, breakages, etc.) or including premiums, bonuses, tips or seniority payments in the calculation of the wage. The Framework Directive should ensure that deductions from statutory minimum wage be prohibited and tips and other extra-payments be excluded from the calculation of the statutory minimum wages (these should be paid on top of them).
52. The ETUC calls for the Framework Directive to require Member States to have in place effective monitoring and sanction mechanisms, including by attributing “to the social partners a key role in that respect”²⁵ and by strengthening enforcement bodies, in particular labour inspectorates, controls and inspections.
The Framework Directive should ensure that Member States, in line with their industrial relations systems and with respect of the role of social partners, *inter alia*:
- a) put in place effective and adequate monitoring and controls, inspections, complaint systems and remedies;
 - b) strengthen labour inspectorates, in line with the relevant ILO Conventions and Recommendations. This Framework Directive should ensure that Member States have in place the necessary human and financial resources to ensure effective labour inspections. This means having at least 1 labour inspector for every 10.000 worker, but it can require significantly more inspectors depending on the specific challenges and levels of compliance in the Member States;
 - c) establish effective mechanisms ensuring joint and several liability throughout the whole subcontracting chains for sanctions, back payments and compensations in case of non-respect of the applicable wage floors or statutory minimum wages or of the rights to organise and bargain collectively;
 - d) ensure that social partners be involved in and periodically informed about the implementation of the measures in this area, including the number of inspections conducted every year per sector and their results;
 - e) guarantee that no employers, including online platforms, can offer work paid less than the relevant minimum wage;

²⁴ Consultation document, *cit.*, p. 11.

²⁵ *Ivi*, p. 15.

- f) ensure European cooperation to guarantee the respect for the relevant collective agreements, applicable wage floors and statutory minimum wages and so to tackle wage dumping, in particular in the case of posted and migrant workers;
- g) establish effective and dissuasive sanctions and in case of violations effective remedies to repay the worker and mitigate the damage;
- h) it is essential that all working time is documented. The under recording of working time or overtime are key methods for employers to circumvent minimum wage laws. As has recently confirmed by the European Court of Justice (C-55/18), Member States must introduce rules requiring employers to record individual working times in “an objective, reliable and accessible way”.

53. It is important to guarantee that data collection tools and monitoring frameworks on minimum wage adequacy and coverage, as well as on collective bargaining coverage, are effective and comparable in the different Member States. The Framework Directive should establish common tools and criteria to collect and to communicate data on these key issues, including data on gender and ethnicity pay gaps, and other pay gaps affecting groups who can face labour market discrimination, with a view of facilitating the exchange of best practices and ensuring the effective implementation of the requirements of the Framework Directive. The Commission should put together those data and define and publish, in consultation with European social partners, an annual report on developments with regard to fair minimum wages and the promotion of collective bargaining, with a specific focus on the respect of the minimum requirements defined in the EU legislation.

Measures to ensure correct interpretation

54. The Commission has not yet included in the possible policy options some important demands put forward by the ETUC during the first stage consultation of social partners. They include elements which are necessary to fully achieve the objectives of the EU action.

55. The Framework Directive should also include a **Social Progress clause** clarifying that that economic freedoms, internal market rules or competition rules do not have priority over and/or must not infringe upon collective agreements, collective bargaining or other trade union rights as recognised in international and European human rights instruments, in particular the freedom of association, the right to organise, the right to collective bargaining and the right to a fair remuneration. In this way, the Framework Directive can ensure that EU action remains focused on promoting collective bargaining, and not restricting it. In addition, it could ensure that the CJEU interprets the Directive in a manner consistent with the promotion of collective bargaining and trade union rights, along with mitigating some of the damages of the past.

56. With regard to workers’ rights to fair remuneration, collective bargaining, collective actions and freedom of association, Member States shall ensure that they meet the requirements they have committed to under international law (in particular with regard to ILO Conventions and the European Social Charter (revised) of the Council of Europe) and EU law (including the Community Charter of Fundamental Social Rights of Workers and the Charter of Fundamental Rights of the European Union).

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

57. The ETUC takes note of the confirmation by the Commission that Article 153 (1)(b) TFEU would be the legal basis of the initiative. Such a legal basis would embed the action in the ‘Social Policy’ Title of the TFEU and would thus be safer for workers, unions and collective bargaining rights. This also clarifies that the initiative would be

directed towards the achievement of the objective of ‘improved living and working conditions’ as foreseen in Article 151 TFEU. It would also confirm the possibility and the right of Member States to maintain or introduce “more stringent protective measures”, in accordance with Article 153(4) TFEU.

58. According to this legal basis, the consultation document confirms that both legislative and non-legislative actions are possible.

The Commission is considering a Directive and a Council Recommendation.

According to the consultation document, a Directive “*would contain a set of minimum requirements and procedural obligations to be complied with. The Directive would leave room for Member States to decide on the way to implement them, and would not take away the freedom of Member States and social partners to set the level of minimum wages*”.

A Council Recommendation could ‘invite’ Member States “*to set the conditions for ensuring fair minimum wages*” and provide “*policy guidance*”. It could establish a “*common set of principles and criteria*”. Envisaged tools for implementation would be “*the use of benchmarking, the exchange of good practices, and joint work with Member States and social partners on the development of appropriate statistical and monitoring tools*”²⁶

59. It is evident that a Council Recommendation, without binding requirements, would not deliver the improvements necessary to reach the abovementioned objectives. In order to achieve those objectives, a binding legislative initiative at European level is urgently needed. Without binding minimum requirements, the initiative would fail to ensure the necessary steps forward to guarantee fair remuneration for European workers and to strengthen collective bargaining in all Member States.

60. For these reasons, **the ETUC calls on the European Commission to propose an ambitious Framework Directive.** The Framework Directive would need to define binding minimum objectives and requirements, but must leave the possibility to Member States to achieve and respect those on the basis of their industrial relations systems, by statutory minimum wages and collective bargaining or by collective bargaining only.

In any case, the Framework Directive must not aim at harmonisation or the introduction of a single system of industrial relations or a minimum wage for the whole of the EU. No Member States should be required to introduce a statutory minimum wage system, where it does not exist. At the same time, where statutory minimum wage systems exist, they must be maintained.

Social partners’ autonomy must be respected. A clear distinction must be set between statutory minimum wages and minimum wages established through collective agreements. Collective bargaining in Member States must be promoted and strengthened, also through EU initiatives, however it must not become subject to EU conditions, rules or interpretations that would undermine trade unions’ and workers’ rights, including the rights to bargain collectively, to organise and of association.

Those safeguards must be present and clearly defined in the EU action. The text of the proposal will be carefully examined to ensure and the ETUC will oppose any initiative which would damage well-functioning wage-setting and collective bargaining systems or their extensions, where they exist.

- 61. The Framework Directive should be transposed by Member States with the full involvement of national social partners. As many Member States as possible should use the procedure defined in Article 153(3) TFEU and entrust management and labour with the implementation.**

62. A Framework Directive with the above-mentioned objectives and measures **should be supplemented by a Council Recommendation to define specific complementary**

²⁶ Consultation document, cit., p. 16.

elements. In that case, the two instruments would need to follow a joint legislative process and be approved at the same time, to ensure consistency.

Reply to 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?

63. The ETUC reaffirms its full commitment to social dialogue, as stated – amongst others – in the Quadripartite declaration "A new start for social dialogue" signed in July 2017. The ETUC has taken note of the replies of the European employers' organisations to the first stage consultation, in terms of not being in the position to undertake negotiations. In light of these answers, there appears not to be an opportunity to open social partners negotiations which could achieve a positive outcome. Nevertheless, the ETUC remains still open to discuss this possibility in case there is a clear and public engagement by employers' organisations of their willingness to open negotiations to deliver an ambitious agreement leading to a Council Directive to ensure that statutory minimum wages – where they exist - guarantee at least a decent standard of living for workers, and to promote collective bargaining, in particular sectoral collective bargaining.