

## **A Framework Directive for fair minimum wages and collective bargaining**

### **Trade Union red lines and priorities**

#### **Europe needs a work-led recovery**

The recovery from Covid-19 cannot be built on job losses and unfair competition between member states on wages and working conditions.

Workers in essential services who have continued to work during the pandemic – often at great personal risk – have been praised for their vital contribution to society. Praise needs to be followed by concrete actions.

The European economy is wage-led, and needs demand-side and wage-led solutions to get out of the crisis (not short-sighted supply-side measures which were a feature of austerity policies). This is why higher statutory minimum wages and stronger collective bargaining, in particular at sectoral level, would boost – not hamper – economic recovery from Covid-19.

Now the European Commission must deliver on its commitments and put forward a proposal for a Framework Directive which guarantees that statutory minimum wages cannot be set below a threshold of decency, and that all Member States promote and protect collective bargaining to ensure fair pay and working conditions for all workers.

#### **What objective for the EU initiative?**

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. Unjust, unconscionably low pay is an unfair condition of employment and the imbalance in bargaining power between employers and workers on the labour market needs to be rebalanced. This is what the Framework Directive must do!

The objective of the EU initiative should be to guarantee fair working conditions. To achieve this, it must also ensure that all workers can join a union empowered to bargain for fair wages and conditions for them.

#### **Why is it necessary to act?**

The number of workers covered by a collective agreement has fallen significantly. Collective bargaining coverage is down in 22 of the EU's 27 member states as a result of deliberate policies implemented by member states and endorsed by the European Commission. In certain Member States, unions are still denied access to the workplace, including digital access, or are unable to meet the workforce. Employers are all too often allowed to implement union busting strategies and actions. The most recent Conclusions of the Council of Europe European Committee on Social Rights confirm that several Member States are not in conformity with the rights to organise and right to bargain collectively as defined in the European Charter of Social Rights.

One in ten workers live in households that are at risk of poverty: an alarming 20.5 million persons.

From 2010 to 2019 wages increased less than labour productivity in the majority of Member States. Workers in two thirds of EU member states are receiving a smaller share of their country's GDP than they were at the beginning of the decade.

### **Workers demand it!**

Workers want to be able to join a union without fear and for their union to have the right to bargain for a fair wage. All Member States must promote and protect collective bargaining, this means ensuring the workers' right to bargain through their unions and prevent union busting!

Workers also demand that their unions are involved in setting statutory minimum wages. Statutory minimum wages must be set always above a threshold of decency and no category of workers should be excluded. Statutory minimum wages must rise! In no case should they be set below the threshold of decency of 60% of the median AND 50% of the average wage!

### **Necessary for the economy**

The 2008 economic crisis was managed badly: imposing austerity and more competition between Member States through internal devaluation and the weakening of collective bargaining (especially at national and sectoral levels) to the detriment of workers. This caused unemployment and lower wages, weakening domestic demand and public and private investments, perpetuating economic stagnation and leading to rising inequality and sometimes dramatic social upheavals. When COVID hit many workers still had not recovered from the previous crisis!

The European economy is wage-led. It needs demand-side and wage-led solutions to get out of the crisis (not short-sighted supply-side measures which were a feature of austerity policies). This is why higher statutory minimum wages and stronger collective bargaining, in particular at sectoral level, would boost – not hamper – economic recovery from Covid-19.

Low wage developments also negatively impact productivity through decreases in investment, while fostering financialization. Low wage levels are also an essential cause of rising inequalities, both in income and wealth, which are detrimental to economic growth. Minimum wage increases would help to curb economic and social divergence currently experienced. Finally, wage increases have been requested for a very long time, together with active fiscal policies, to complement the various monetary measures implemented by the European Central Bank. As repeatedly pointed out by the European Central Bank and the European Commission 'upward wage convergence' is urgently needed.

'Upward wage convergence' is urgent also for the economies of Central and Eastern Europe. The East-West wage gap narrowed in the period up to 2008 but the trend has slowed in recent years. To narrow the gap, sectoral collective bargaining must be strengthened and promoted, ensuring a general increase of wages, including minimum wages. Higher wages are also necessary to retain a skilled and educated workforce in Central and Eastern Europe and to stop the "brain drain".

Increases in statutory minimum wages would reduce poverty and drive economic growth. A comprehensive body of literature covering different countries and using a multitude of different research methods has confirmed the positive effects on household and child poverty of rises in minimum wages, and furthermore not yielded adverse effects on employment, competitiveness, or time worked.

## **The Commission must respect its commitments**

The President of the European Commission recognised that it is “still too difficult for hard working families to make ends meet in Europe”. She went on to state, in the political guidelines for the European Commission “within the first 100 days of my mandate, I will propose a legal instrument to ensure that every worker in our Union has a fair minimum wage. This should allow for a decent living wherever they work. Minimum wages should be set according to national traditions, through collective agreements or legal provisions”.

Now it is time for the European Commission to deliver by putting forward a proposal for a Framework Directive guaranteeing that statutory minimum wages cannot be set below a threshold of decency and that all Member States promote and protect collective bargaining to ensure fair working conditions and pay.

## **A Directive is the only effective instrument**

A Council Recommendation, which is by definition not binding, would not ensure what the Commission President has promised. Without binding minimum requirements, the initiative would fail to deliver the commitments made. A Framework Directive is the only solution!

## **It IS legally possible**

It is not true, as some claim, that the EU has no competence whatsoever in the matter of pay and in particular minimum wage. It is also clear that the most logical and appropriate legal basis for the Framework Directive is Article 153 TFEU (in conjunction with Article 151) and in particular Article 153(1)(b) aimed at improving working conditions.

CJEU case law confirms that the exclusion in Article 153(5) TFEU must be interpreted restrictively and cannot be read as a full exclusion of competence for the EU to act on the issue of wages/pay. Article 153(5) TFEU only limits the EU from setting levels of pay (or parts of it), since this comes under the contractual freedom of unions and employers at national level and the competence of Member States. It is also clear from EU secondary law that the EU is competent to deal with pay/wage related aspects and that pay, wages, remuneration as well as other financial components fall under the EU definition of “working/employment conditions”.

The ETUC demands that Member States are required to ensure that statutory minimum wages – where they exist – are never set below the double decency threshold of 60% of the national median wage and 50% of the national average wage. This leaves the Member States and social partners free to determine the level of their minimum wages. This demand for a threshold below which statutory minimum wages cannot fall is fully consistent with the limits of the EU competences. According to CJEU case law, while the fixing of the level of wages is a national competence, it is possible for the EU to provide a threshold below which statutory minimum wages cannot fall as an unfair condition of employment.

The ETUC also demands that the Framework Directive promotes collective bargaining as the main way to set wages. There are numerous examples of EU secondary legislation which set minimum requirements in relation to working conditions and at the same time confer an important role to the social partners in the Member States to implement these requirements, or to reach the objectives defined in the legislation via collective bargaining/agreements. Those examples prove that the Framework Directive can include the much-needed provisions to

ensure that Member States promote and protect collective bargaining/agreements, in particular at sectoral level.

### **ETUC demands in 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.

## More information

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

**Recent ETUC press releases on wages and collective bargaining** (including specific updated data connected with the trade union demands):

Huge majority of trade unions call for EU law on fair wages

Statutory minimum wages leave workers at risk of poverty in at least 17 EU member states

Workers in 6 EU countries worse off than 10 years ago

Workers' share of economic prosperity down in 18 EU member states

3.3 million workers lose out because member states fail to protect collective bargaining

GDPR being misused by employers to hinder trade unions

Wages initiative needed even more after coronavirus

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