



EFBWW Position Paper
4 February 2020

Collective bargaining and minimum wages in the EU

The European Commission has announced that it will take an initiative to create an EU framework for minimum wages and the right to collective bargaining. The ETUC wants “to engage robustly” with the European Commission on this issue. The discussion on the possible legal instrument has created, however, several concerns. Some are concerned about a possible negative impact on national collective bargaining systems, while others are concerned that the instrument could not be strong enough to have a real impact. The EFBWW and the other European industry federations (ETUFs) have adopted a careful approach in this debate, on the one hand not wanting to interfere directly in an ETUC debate, but on the other hand pushing for a position that would be based on consensus.

As an absolute priority in all discussions and (possible) negotiations, the EFBWW will put an emphasis on the strengthening of trade unions and autonomous sectoral collective bargaining for good wages.

1. The European Commission initiative

In the political guidelines for the new European Commission, Ursula von der Leyen has stated that “within the first 100 days of her mandate, she 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”.

The Commission has started a two-step consultation:

On 14 January 2020 it has published a document (C(2020) 83 final) for a first phase consultation of Social Partners under Article 154 TFEU. The available time to respond is 6 weeks. The three questions asked by the Commission are:

- I. Do you consider that the Commission has correctly and sufficiently identified the issues and the possible areas for EU action?*
- II. Do you consider that EU action is needed to address the identified issues? If so, what should be the scope of that action?*
- III. Would you consider initiating a dialogue under Article 155 TFEU on any of the issues identified in this consultation?*

In a second step – i.e. if the Commission concludes that there is a need for action at EU level – it will launch a second phase consultation of the social partners on a more concrete proposal for (legal) EU action. According to the preliminary information available, a legal instrument would

probably consist of a directive based on Article 153 TFEU in the framework of the EU competences on working conditions, accompanied by a (non-binding) recommendation. It is not clear yet which elements would be addressed specifically in which of the two instruments. Since Article 153 (5) specifically excludes any EU competence to regulate on “pay”, it remains to be seen how this will be addressed by the Commission. Furthermore, any EU rules on “representation and collective defence of interests of workers and employers” would fall under the unanimity requirement in the Council (Article 153 (2b) and thus would make it improbable that any decision could be taken.

2. The ETUC discussion

The ETUC wants “to engage robustly” with the European Commission on this issue. However, the ETUC discussion on a European framework for Promoting Collective Bargaining and Improving Wages in Europe (see ETUC “Orientation Document”) has been controversial as to the existence, nature and scope of the EU initiative. This reflects the different national labour market models, wage setting mechanisms and levels, and perspectives on the EU as a political level for social policy in general. Some national trade unions are concerned that the instrument could not be strong enough to have a real impact for rising minimum wages and collective bargaining coverage in their country. Others are more concerned about a possible negative impact on national collective bargaining systems and the autonomy of the trade unions to engage freely in (collective) wage negotiations. During the discussion, a number of objectives on the right to collective bargaining and increasing minimum wages have been formulated on ETUC level, along with a number of red lines.

The EFBWW and the other ETUFs have adopted a careful approach in this debate, on the one hand not wanting to interfere directly in an ETUC debate, but on the other hand pushing for a position that would be based on consensus.

At the ETUC Executive Committee on 17 December, the broad range of opinions among the affiliates were in full display. The result of the discussion was that the Executive Committee agreed with the ETUFs position and changed the name of the Draft Resolution to an “Orientation document”, taking into account the discussion as it stands today. No proposed amendments to the document were discussed at the meeting. There was no vote.

The discussion is ongoing and is now directly related to the consultation procedures put forward by the European Commission. After the start of the Commission’s 1st stage consultation, the ETUC has presented two documents:

A “Note for ETUC Affiliates on an initial analysis” identifies a number of shortcomings of the 1st stage consultation:

- No proposal on how to increase statutory minimum wages to a sufficient level;
- No proposals on how to promote upward wage convergence between Member States;
- No proposals on how to make Member States actively ensure collective bargaining rights of workers;
- No proposal on how to safeguard well-functioning systems of collective bargaining.

The ETUC concludes that *“it is disappointing that the Consultation is not providing much information about what the Commission intends to do. But we can seize this as an opportunity to influence the second stage.”*

A first Draft Reply by the ETUC to the 1st phase consultation has been presented on the 21st of January.

3. The EFBWW discussion

From the Commission's analysis in the 1st stage consultation document it is still unclear what problems concretely the EU Commission wants to address with its initiative. It is also unclear which groups of workers will be affected and have a better wage according to this proposal. Without a solid analysis, it is not possible to say whether a future proposal on a European framework for (statutory) minimum wages and collective bargaining is the right tool to solve the problem.

An EFBWW position on any proposals put forward by the EU Commission will be framed by the conclusions of the resolution "equal pay for equal work in EU countries" that was adopted by the General Assembly in Vienna (November 2019). Furthermore, an EFBWW position should take an approach that is grounded in sectoral perspectives on the issues at stake.

A number of basic elements for a common EFBWW position can be drawn from the conclusions of the resolution adopted by the General Assembly. They should be further concretised during the common discussion. These elements are:

- The demand for an upwards convergence of wage levels in the EU and the support for national (bipartite) autonomous and tripartite arrangements in this regard;
- The recognition of qualifications required for specific occupations and jobs;
- The precedence for collective bargaining and the demand for an increase of collective bargaining coverage;
- The recognition that EU member states have developed different wage setting systems with collectively agreed wages, statutory and collectively agreed minimum wages and a combination of these mechanisms;
- And, finally, a *European approach* that improves minimum wages in EU Member States while respecting the different labour market systems in each EU Member State.

From an EU policy point of view, a "European approach" could either take the form of a legally binding framework directive for common minimum standards, a recommendation either by the Commission or the Council, or a combination of a directive and a recommendation.

Preliminary elements to be considered for an EFBWW position

For the EFBWW sectors the question of equal pay for equal work in the same place is paramount. Wage and social dumping – especially in the context of labour migration within the and into the EU internal market – threaten the fundamental social rights of workers and the national and European social models designed to protect those rights. Upwards convergence in collective bargaining coverage and rising wages would contribute to a more social internal market in which labour migration is not anymore driven by economic inequality and poverty.

Within the European construction industry the push factor for migration and temporary posting is mainly the poor and low wages in the home Member States. The current wage gap between

many Western and Eastern and Central European countries make it very attractive for some companies to organise cross-border social fraud, abuse or evasion.

European policies which have contributed to an insufficient development of wage levels (for example structural adjustment programs in the financial crises, recommendations in the framework of the European Semester, and an internal market policy based on deregulation) must be changed.

In this context, the following elements are starting points for the further discussion within the Standing Committees and the Executive Committee of the EFBWW:

Sectoral autonomous collective bargaining: Bilateral autonomous industrial relations at national/regional/company level must be strengthened and/or restored and in those countries where they do not exist put in place. Any new instruments put forward by the Commission should provide for measures against those Member States that have dismantled or cast aside autonomous sectoral systems of bilateral industrial relations. Furthermore, sectoral social dialogue and bargaining systems need resources, recognition and legal backing, especially to protect workers and unions.

At the same time, the EFBWW will actively defend national (cross) sectoral social partners' autonomy and different existing social models in the collective bargaining domain against any interference by EU institutions, be it via the European Semester and the Country Specific Recommendations or any new EU instrument. Collective rights in the national law of the Member States and/or laid down in collective agreements must always be respected.

Fundamental trade union rights in practice: The right to organise and have a trade union representation, to engage freely in collective bargaining, conclude collective agreements and organise collective actions are fundamental rights and must therefore be available for all workers, regardless of their employment status. All EU Member States should put the workers' fundamental principles in practice by recognising the right to access to work sites by trade unions and by actively fostering autonomous collective bargaining. Also non-standard and self-employed workers must not be excluded from the right to collective organisation and action.

Public procurement: Public procurement is a decisive tool for the mainstreaming of collective bargaining. Any new instrument should ensure that no contract can be awarded to bidders that do not guarantee that their workers are covered by a collective agreement. We call for a targeted amendment to the Public Procurement Directive.

Funding, grants and structural funds and green investment: Any public funding, grant or allocation from EU funds should be subject to a strict collective agreement clause. I.e. companies which do not pay their workers according to collective bargaining agreements should be excluded from public funding and contracts. This provision should also include any private investment backed by public securities, as it is the case with the European Fund for Strategic Investments (EFSI).

Investments in the context of the "Green Deal" and the "Just Transition Mechanism", digitalisation and European networks should be implemented in the spirit of a just transition to new and unprecedented levels of collective bargaining coverage.

Recording and enforcement of working time: Wages – collectively agreed or based on a statutory minimum wage – can only be decent if they are paid according to a working time schedule. Undocumented working times and overtimes are key methods of fraudulently acting employers to circumvent due wages. As has recently confirmed by the European Court of Justice (C-55/18), Member States must introduce rules forcing employers to record individual working times in “an objective, reliable and accessible way”. This is of particular importance for posted workers and other workers in situations prone to abuse.

Minimum wages and trade union involvement: No national statutory minimum wage shall be set without the proper involvement of trade unions, including negotiations at sectoral level and/or proper consultation, depending on each individual national system and tradition. There must be a clear distinction between statutory minimum wages and collectively agreed (minimum) wage floors. Rules on wage setting shall never apply to collective bargaining or in any way affect the autonomy of the social partners. Member States shall not be requested to introduce a statutory minimum wage system where it does not exist, unless the social partners demand it.

Decency of minimum wages: National statutory minimum wages should always be based on objective criteria and tested for adequacy. We want a living wage, not “working poor”. A living wage must be set in relation to living costs, purchasing power parities and always be high enough to prevent income poverty. Moreover, a net statutory minimum wage cannot be the reference for adequacy. Furthermore, any increase of statutory minimum wages shall not be at the expense of social security contributions and/or taxes paid by employers. Sub minimum rates – e.g. for young people or formally long-term unemployed – must be prevented. Collectively agreed wages should always have a level well above any existing statutory minimum wage.

Social security and social protection: Any statutory minimum wage must have a level high enough for proper social security contributions (especially from the employer’s side) and coverage in the country of work. This must specifically include the generation of pension entitlements in the respective 1st pillar pension system in order to guarantee pension entitlements above the poverty threshold.

Effective and efficient enforcement: Any discussion on minimum wages and/or collective bargaining is meaningless without proper enforcement at national level and in a cross-border context. Any initiative, tool or action proposed by the European Commission may not undermine existing measures and must be accompanied by supplementary efficient and effective enforcement tools, either through the social partners’ autonomy to enforce collective agreements or through national enforcement bodies, such as labour inspectorates. Enforcement should be interpreted in a broad sense and cover information, prevention, controls, field inspections and dissuasive sanctions. Proper instruments on EU level to impose and collect fines and to collect arrears and back payments, in particular for posted and migrant workers, should be installed.

EU funding for capacity building of sectoral social partners: Especially in Central and Eastern European countries, EU funding should be available for social partners’ capacity building in the construction and wood sectors in order to support building a basis for autonomous sectoral collective bargaining at regional and/or national level.

The above mentioned elements can serve as starting points for the further discussion within the EFBWW. They will have to be adapted and concretised as soon as more information is available about the real content of the Commission's proposal.

4. Timeline and Next steps

This paper should be considered as the starting point for a common position of the EFBWW on this matter, taking a sectoral approach as a point of departure. The approved document will direct our position in the internal discussions with the other ETUFs and the ETUC.

The European Commission has launched the first social partner consultation process on the 14th of January 2020. It will be open for replies until the 24th of February. A more concrete proposal on the legal instrument(s) is supposed to follow in the 2nd step consultation in April 2020. The EFBWW will continue to work with the other ETUFs to have a unified position on this matter, both when it comes to content and strategy.

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