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ECEG's Position paper on the Commission proposal for a Directive on "Adequate minimum wages in the European Union" (COM (2020) 682 final, 2020/0310 (COD))

Overview

ECEG fully supports the main objectives of the Directive on improving the adequacy of minimum wages across Europe and the access of workers to minimum wage protection in the EU.

However,

- the association does not agree with the choice of the instrument and the fact that the joint opinion of the business community and several trade unions expressed during the two stage consultations was not taken into account;
- it does not see the national competences and the role of social partners fully respected and outlined in the proposal;

- it regrets, that wages - as integral part of all aspects of the employment relationship set by social partners - are not recognized as part of the competences of collective bargaining negotiations;
- it is concerned that the current initiative interferes with and weakens the ground for sustainable, well-functioning collective bargaining and diminishes incentives for self-organization be it in employers' or workers' associations.

ECEG believes that, given the Union's complementary and supportive role to activities of the Member States in social policy (including working conditions), and the principle of subsidiarity, the issue of adequate wages at the EU level should be subject to legally non-binding coordination of Member States' employment policies.

This was also underlined in the letter sent by 9 ministers of social affairs to the Portuguese presidency¹.

Below we highlight several contradictions of general provisions with the legal ones.

Such contradictions create uncertainty and make the overall comprehension of the Directive difficult.

Objective

The Commission's justification for the proposal primarily relies on the fact that measures at EU level will help to safeguard equal terms in the internal market. This though contradicts the objective of the proposal since it states that the Directive aims at improving working and living conditions in the EU, making the above arguments out of context.

We do not oppose the purpose of the Directive to create fair competition and encourage closer convergence on better wage and employment conditions. However, such purposes should be

¹ *"We feel that a recommendation is a better legal instrument, which provides the flexibility for Member States to achieve the objectives of the proposal. Whatever form, any EU action needs of course to respect the boundaries of the Treaties".*

achieved by other means, such as building capacities of the parties involved via the cohesion policy, employment strategy, etc. first of all at national level.

Terminology

The proposed Directive also contains definitions of concepts such as minimum wages, collective bargaining and collective agreements. We believe that such central concepts relating to labour law are best to be left to the national level based on existing different systems.

Collective bargaining and statutory wages

We would like to reiterate that the EU does not have the competence to legislate on pay or the right of association (Art. 153 (5) TFEU).

Secondly, the Directive refers to protecting the independence of both traditional collective bargaining structures and statutory minimum wages set by law (Article 1). In the meantime, it enlists extensive accompanying measures and regulations, such as:

- creating measures to promote collective bargaining in the event of thereof being under 70 percent,
- to apply the minimum criteria and update statutory minimum wages,
- to set up advisory bodies, to carry out on-site controls and inspections,
- to develop guidelines for enforcement authorities and
- to develop data collection tools for monitoring.

The criteria for collective bargaining negotiations shall be determined by means of legislation or a tripartite agreement (Article 4(2) & Recital 19). However, this is being contradicted in the proposal for a Directive, which states that Member States may entrust the social partners with the implementation of the Directive (Article 13).

Wages

While referring to the appropriateness of wages, the Directive suggests the following criteria for its assessment:

- the purchasing power of the statutory minimum wages,
- the general level of gross wages and their distribution,
- growth rate of gross wages and the development of labour productivity (Article 5).

In addition, the Commission assumes a “guideline” of 60 percent of the gross median wage and 50 percent of the gross average wage (Recital 21).

As a result, the Member States are left with little leeway in determining the level of the minimum wage.

ECEG is concerned that the above-mentioned regulations of minimum specification of certain socio-economic criteria and their ongoing monitoring (Article 10) will condense into EU requirements on specific wage levels or remuneration.

Recital 15 and 16 are contradictory to each other, especially in view of Article 1, para. 3.

As a matter of fact, the Directive states that all workers will be covered by a minimum wage provision (Recital 15). At the same time, it recognizes collective agreements as a way to establish minimum wages. It highlights that the new legal provisions do not have to be implemented by any Member State (Recital 16 and Article 1, para. 3).

The Directive creates uncertainty as to what would happen if workers not covered either by statutory minimum wage or minimum wage set by collective bargaining claim right to minimum wage.

Subsidiarity principle

The following provisions in the proposal are not compatible with the subsidiarity principle:

- provisions for collective bargaining agreements’ enhancement when these cover less than 70% of the workforce (Article 4(2));

- prescriptions of measures that Member States should undertake to ensure specific forms of and dispute resolutions in collective agreements (Article 11);
- what kind of penalties Member States should provide for (Article 12).

Finally, the proposal for a Directive does not comply with the subsidiarity principle as wage setting via collective agreement works best when the social parties are responsible for its enforcement.

Dispute resolutions

The Directive states that it applies without prejudice to dispute resolution mechanisms in collective bargaining agreements (Article 11(1)). We find that this Article can be interpreted as giving access to the law courts alongside dispute resolution measures in collective bargaining agreements.

Conclusion

The Commission's initiative poses both a direct threat to social partners' autonomy and collective bargaining negotiations, with the Union overstepping its mandate.

Even though the ECEG supports the concept of adequacy of minimum wages, the association believes that national competences and the principle of subsidiarity under the current EU Treaties should be respected.

The EU needs to make sure that long existing, well-functioning and balanced national social systems are left unchanged while good practice examples are shared where needed.

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About ECEG

ECEG, the European Chemical Employers Group, founded in 2002, is a recognised European Sectoral Social Partner, representing the chemicals, pharmaceuticals, rubber and plastics industries in Europe. Our sector provides approximately 3.3 million direct jobs in more than 94.000 enterprises.