

## Ceemet reply to 2<sup>nd</sup> phase social partner consultation on a possible action addressing the challenges related to fair minimum wages – C (2020) 3570 FINAL

This document provides the answers of industries represented by Ceemet on the 2<sup>nd</sup> phase social partner consultation under Article 154 TFEU on a possible action addressing the challenges related to fair minimum wages.

### Ceemet's key messages

- It is vital that the concept of worker as defined by the Member States is respected as EU interference in this regard would go fully against the principle of subsidiarity and TFEU.
- Matters related to the notion of an employment relationship or the concept of a worker are a core competence of the Member States.
- "Adequate criteria" to determine "fair" minimum wages cannot be defined/developed in isolation. Wages are set at different levels and are combining economic factors, productivity according to the situation or outlook at national, sectoral, regional or company level. The weighing of these factors too will vary according to the situation.
- To strengthen collective bargaining structures, the appropriate conditions to encourage social dialogue and increase the capacity, representativeness and mandate of social partners should be created at national level
- The EU, as well as Member States' authorities involved, should also allocate more and more easily accessible EU funds to support capacity building of social partners as a contribution to an effective and well-functioning social dialogue
- It is up to representative and autonomous social partners to discuss and agree on how to best represent the new actors of the platform economy and start-ups
- Ceemet does not agree with introducing a Directive nor a Commission proposal to pursue the policy objectives of section 6.1<sup>1</sup>.
- The measures and actions to pursue the policy objectives of section 6.1 have to be taken at the national level
- The semester process/country specific recommendations (CSR) is the adequate framework to recommend reforms to the Member States to pursue the policy objectives in the different areas mentioned by the Commission in section 6.1
- The involvement of (sector) social partners in the semester process should be reinforced
- The EU should also foster a structured exchange of best practices in the different areas mentioned by the Commission in section 6.1
- The guidelines for employment policies of the Member States that are proposed for update on a yearly basis are yet another tool to encourage Member States and social partners to ensure the adequacy of wage level

### LEGAL FRAMEWORK

1. The EU has no legal basis to introduce an EU action in this area. Article 153 (5) explicitly excludes pay from the EU competences.
2. The measures and actions to address the challenges related to fair minimum wages have to be decided and taken at the national level in line with national regulations and traditions.

<sup>1</sup> Collective bargaining; clear national frameworks to set and update statutory minimum wages; involvement of social partners in statutory minimum wages; exemptions and variations and compliance & monitoring

## Preliminary remarks

Ceemet would like to refer to its reply to the first phase consultation of social partners (available [here](#)) as the key messages contained in that response remain valid for this second phase consultation.

Ceemet and its member associations agree with the general objective of addressing the challenges related to low-wage workers that can lead to in-work poverty. Yet, we believe that the measures and actions to address these challenges have to be decided and taken at national level in line with national regulations and traditions. As Article 153 (5) TFEU explicitly excludes pay from the EU competences there is no legal basis for an EU action in this area, and further, there is no one's-size-fit all solution to consider the different, often external factors to determine wages.

Minimum wages exist in 21 of the 27 EU Member States, in five countries (A, DK, FIN, I, S) these are set within collective agreements. Setting up minimum wages is a highly complex process in which many parameters have to be taken into consideration, such as productivity, investments, taxation issues, competitiveness of companies, order books and many other. It goes without saying that it is challenging to determine what a fair minimum wage is in a fair/adequate way in times of economic shocks, especially of symmetric shocks, such as in the ongoing context of the COVID-19 pandemic that has impacted, obviously with variations, every country and sector and where many small companies are fighting to survive and keep employment, to which exceptionally high levels of short-time work and looming company bankruptcies bear witness.

In the particular case of the European metal, engineering and technology-based industries, Ceemet would like to highlight that our companies generally pay higher wages, in general the highest in the private industry. Minimum wages set at too high levels might have knock-on effects on lower wage-groups, thus also interfering with autonomously agreed collective agreements, and eventually pricing people out of the labour market or impeding access for job-seekers.

## Answers to the questions raised by the European Commission

### 1- Ceemet's views on the specific objectives of a possible EU action set out in section 5

#### Coverage (definition of worker)

In its consultation document, the Commission highlights: *"The initiative would be addressed to all Member States. It would cover all those qualifying as workers according to EU and national law, regardless of the type of contract or form of employment relationship with their employer and including those in the public sector."* Further, under 'policy objectives' the Commission points out that the initiative would have the objective to ensure that all workers in the Union are protected by a fair minimum wage.

Ceemet would like to stress that it is vital that the concept of worker as defined by the Member States is respected as EU interference in this regard would go fully against the principle of subsidiarity and TFEU. Matters related to the notion of an employment relationship or the concept of a worker are a core competence of the Member States. Therefore, we believe that the Commission must refrain from any such attempt, whether by a definition, by a list of criteria, or the classification of an employment relationship.

Any proposal which aims to qualify such notions could severely interfere and thus impact the classification of a worker within Member States. This can lead to a genuine self-employed

person (such as freelancers or consultants) being requalified/re-defined as a worker. This requalification would not only have far-reaching consequences as regards national labour law but also as regards social security legislation and tax law. It is needless to say that this will create legal uncertainty for employees, self-employed and companies. The consequences of the qualification of a person, notably the applicable social security legislation, should be left to the discretion of the Member States.

### **Adequacy**

According to Ceemet “adequacy criteria” to determine “fair” minimum wages cannot be defined/developed in isolation. Wages are set at different levels and are combining economic factors, productivity etc. according to the situation or outlook at national, sectoral, regional or company level. The weighing of these factors too will vary according to the situation.

It is also important to bear in mind that taxes and social security contributions are determining factors regarding net minimum wages and disposable incomes. These factors vary a lot from Member State to Member State, and even more so between regions, sectors, and companies, and need to be taken into account when we speak about wages.

## **2- Ceemet views on the possible elements to achieve the policy objectives and avenues for EU action as set out in section 6.1**

### **1) Collective bargaining:**

Ceemet fully agrees with the Commission’s factual statement that where collective bargaining takes place there tends to be less unemployment and the number of low paid workers is also lower. That presupposes strong, representative and mandated social partner organisations. Likewise, Ceemet fully endorses the Commission’s statement that collective bargaining is key to achieve adequate pay and quality jobs.

Still, Ceemet does not agree with introducing a Directive nor a Commission proposal to foster the role of collective bargaining in supporting minimum wage adequacy and warrantee coverage as a Directive or a Commission proposal in this area will be directly in breach of social partners’ autonomy and the freedom of collective bargaining. An EU action in this area could also have a negative impact on industrial relations systems and, contrary to the Commission’s intention, weaken social partners which are rightly said to contribute to resilient and fair labour markets

To strengthen collective bargaining structures, the appropriate conditions to encourage social dialogue and increase the capacity, representativeness and mandate of social partners should be created at national level. This should aim at reinforcing social partnership and encourage collective bargaining in line with national practices while fully respecting the autonomy of social partners. These measures will help social partners to adapt their business model to digitalisation and its effects on the labour markets and thus to extend the number of workers covered by collective bargaining and thus reduce the number of low-wage workers.

The EU might recommend reforms to the Member States through the CSR to advise for a stronger social partnership. The EU could also support reforms in this area by promoting and encouraging a structured exchange of best practices-

Indeed, the EU, as well as Member States’ authorities involved, should also allocate more and more easily accessible EU funds to support capacity building of social partners as a contribution to an effective and well-functioning social dialogue, always in line with national practices and fully respecting social partner autonomy.

*Only if social partners consider it useful, the EU should support employers and workers representatives in adapting social dialogue to new economic realities and help social partners' capacity building.*

Ceemet would like to stress that it is up to representative and autonomous social partners to discuss and agree on how to best represent the new actors of the platform economy and start-ups. EU or Member State intervention should be avoided.

The EU should thus not introduce a Directive nor a Commission proposal to warrantee and/or extend the coverage of collective bargaining to other types of workers, as this again will be in breach of social partner autonomy and will as pointed above weaken social partnership and thus collective agreements in the long term. Member States should leave enough room for manoeuvre for social partners to manage and best adapt collective bargaining to a changing world of work (including the representation of new types of employees/employers).

## **2) Clear national frameworks to set and update statutory minimum wages**

Wage setting mechanisms and wage policy are a national competence and, in some countries, also legally and constitutionally guaranteed, a core responsibility of mandated social partners. In the case of statutory minimum wages, it is up to the Member States together with the social partners to determine how statutory minimum wages are set and what criteria are taken into account to determine and update statutory minimum wages.

The EU could foster the exchange of best practices in this field, possibly through the European Semester process. Member States that do not have a rational framework with clear and stable criteria to set and update statutory minimum wages could learn from other Member States that do have a clearer framework.

Again, we could see the Commission providing specific-tailor guidance to Member States in this area through the European Semester process.

In this regard we would like to refer to the guidelines<sup>2</sup> for employment policies of the Member States that advise Member States on transparent and predictable wage setting-mechanisms and adequate minimum wage levels. These guidelines are proposed for update on a yearly basis.

## **3) Involvement of social partners in statutory minimum wage setting**

It is up to the Member States and to social partners to discuss and agree on the way social partners are involved in the setting and updating of statutory minimum wages where such exists. Indeed, the involvement of social partners in the setting of statutory minimum wages differs from country to country and depends very much on their own national rules, specificities and traditions.

Ceemet would see the added value of social partners, notably at sector level, being involved timely and effectively in the setting of possible statutory minimum wages to support minimum wage adequacy. Ineffective involvement of social partners, could be detrimental for both companies and workers as it would not be based on a full set of relevant information, reflecting all relevant economic and sectoral conditions nor sufficiently articulated with collective bargaining processes.

The EU should, through the Semester, encourage Member States to improve the involvement of social partners in the setting and updating of statutory minimum wages where such exists

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<sup>2</sup>Council Decision (EU) 2019/1181 of 8 July 2019, see [link](#) and Council Decision (EU) 2018/1215 see [link](#)

as a way to guarantee the adequacy of wages in line with national practices and social partner autonomy.

#### **4) Exemptions and variations**

As the Commission itself points out exemptions and variations in the countries where they exist are in many occasions based on the Member States specificities to facilitate for example the access to the labour market. Rules have to be reliable, yet they must offer the opportunity to allow for exceptional, time limited exceptions to deal with economic shocks

The Semester process could be an added value tool to recommend Member States to try to remove as much as possible exemptions and variations or to justify their use in a proportionate way and during a limited period of time.

#### **5) Compliance and monitoring**

As expressed in our first-phase consultation, Ceemet is of the opinion that compliance with statutory minimum wages or collectively agreed wages is important. Further Ceemet considers that improving the level of compliance with both statutory minimum wages and/or collectively agreed wages could be another way to reduce the number of low paid workers. However, this should be settled at the national level.

Ceemet considers that the Semester process is the adequate framework to recommend Member States to ensure effective **implementation and compliance** with national minimum wage frameworks, and attribute to the social partners a key role in the implementation process. An exchange of good practices in this area could also support an effective compliance with statutory minimum wages and foster, as well a better involvement social partners in this key area.

In its first-phase consultation the Commission points out that it appears challenging to obtain national data on the extent of non-compliance with statutory or collectively agreed minimum wages. The EU could, in this context, allocate EU funds to develop studies for the research of data on non-compliance.

### ***3- Ceemet's views on the possible legal instruments presented in section 6.2***

Ceemet does not agree with introducing an EU Directive nor any Commission proposal.

The EU has to adhere to the Treaty (TFEU) which does not offer room for interpretation and safeguard the diversity of national industrial relations systems and the autonomy of social partners regarding wage setting. Art. 153 (5) of the Treaty explicitly excludes pay from the EU's competences. Also points 123 and 124 of the ECJ case C 268/06, Impact, highlight the lack of legal basis of the EU to harmonise the level of minimum wages across the EU or to establish levels of pay.

Furthermore, a Directive or a Commission proposal in this area can even be detrimental since this is a highly complex issue that goes beyond the boundaries of the single market. EU companies are part of a globalised economy and need to be able to compete internationally. Therefore, a Directive or any Commission proposal related to fair minimum wages, set under the influence of political goals, can have a negative impact on companies' competitiveness, in particular SMEs, productivity and thus on the retention and creation of employment. Undoubtedly, wages (including wage developments) and labour costs influence economic performance and competitiveness both from a macro and microeconomic perspective.

Introducing a Directive or a Commission proposal to address the challenges related to fair minimum wages can breach national competence as wage setting is a national competence



and is in many countries a core responsibility of mandated social partners at the appropriate level. Wage setting and collective bargaining are autonomously steered processes for good reasons. In wage negotiations also the importance of psychological factors should not be ignored. Social partners and companies are in the best position to peg wages to productivity, the ability to pay, other elements of remuneration, the need to invest etc.

### **Existing EU instruments to address the challenges related to fair minimum wages.**

#### The European Semester: the right framework to enhance these reforms

The EU already has the tools in place to encourage Member States to address the challenges related to “fair minimum wages”, namely through the European Semester and in particular the CSR that provide general and specific advice to individual Member States on how to boost jobs, growth and investment while maintaining sound public finance. Further, the CSR provide with a combination of recommendations in the social area/wage policy as well as guidance on financial possibilities that are adapted to the concrete needs and areas for priority investment of each specific Member State in the social/employment field.

Actually, the CSRs already address specifically the issue of wages, for example there was a detailed CSR for Germany in 2019 “to strengthen the conditions that support higher wage growth while respecting the role of social partners”.

Introducing a Directive or a Commission proposal to address the challenges related to fair minimum wages would not take into account the individual needs of each Member State, their economies and their economic actors.

A stronger involvement of the (sector) social partners in the semester process is needed and likely to be more goal-oriented

### ***Guidelines for employment policies of the Member States***

Finally, Ceemet refers to the guidelines for employment policies of the Member States that have been aligned since 2018 with the principles of the European Pillar of Social Rights. In this context, we want to highlight guideline 5 regarding recommendations to Member States on transparent and predictable wage-setting mechanisms and adequate minimum wage levels. These guidelines are yet another tool to encourage Member States and social partners to ensure the adequacy of wage level.

Further the guidelines are proposed for discussion, modification and approval of the Council on a yearly basis<sup>3</sup>. These guidelines can thus be adjusted to economic/social specificities, i.e -covid-19 pandemic.

#### **4- Ceemet’s views on the possibility to enter into negotiations**

Ceemet does not consider entering into negotiations.

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<sup>3</sup> Proposal for a Council Recommendation on guidelines for employment policies of the Member States – (COM (2020) 70 final), follow [link](#), and annex, see [link](#)