

Commission proposal for a Directive on minimum wages

The World Employment Confederation-Europe supports the objectives of the Commission proposal, while an EU Directive an inappropriate instrument

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EXECUTIVE SUMMARY

The World Employment Confederation-Europe fully supports the main objective of the European Commission proposal, while the proposed EU Directive on minimum wages is an inappropriate instrument that risks interfering in well-established collective bargaining and minimum wage setting systems. For the sector of temporary agency work, an appropriate level of protection is already provided in all EU Member States based on the principles of equal treatment and equal pay as stipulated by the EU Directive 2008/104 on temporary agency work.

General comments on the Commission proposal

- The World Employment Confederation-Europe supports the policy objective of adequate minimum wages in the European Union and acknowledges that policy action at the European level may be needed to reach that objective.
- For the sector of temporary agency work, adequate pay and working conditions are already in place based on the principles of equal treatment and equal pay, which include applicable minimum wages in the sectors temporary agency workers are assigned to. It should also be noted that the majority of temporary agency workers are earning more than the statutory or collective labour agreement based minimum wages.
- The World Employment Confederation-Europe believes that there are more effective ways to achieve adequate minimum wages than the current Commission proposal for a Directive. A proposal for a Council Recommendation, complemented by discussions and policy guidance in the European Semester process, would leave more space for the variety between labour market models in the EU.

Autonomy of Social Partners and promotion of collective bargaining and capacity building

- The World Employment Confederation-Europe underlines the need to respect the autonomy of social partners in setting and adapting non-statutory minimum wages and the need to involve social partners in the minimum wage setting and adapting, as well as building capacity of sectoral social partners.

The adequacy of statutory minimum wages

- The World Employment Confederation-Europe supports the concept of adequacy of minimum wages, while being opposed to the definition of too prescriptive criteria for minimum wage adequacy at EU level.

Effective access of workers to statutory minimum wages

- The World Employment Confederation-Europe fully supports the objectives of effective access of workers to statutory minimum wages and the focus on enforcement. Non-compliance with minimum wages distorts the level-playing field on the labour market and leads to unfair competition.
- At the same time, the measures on inspections, the guidance for enforcement authorities and the information obligations on statutory minimum wages must be proportionate and risk-based. These should not put unjustified obligations or burdens on compliant private employment services.

1. General assessment

- 1.1. The World Employment Confederation-Europe supports the European Pillar of Social Rights proclaimed by the EU institutions in 2017. Appropriate and fair working conditions for diverse forms of work are essential to adapt labour markets to the changing world of work, while there is also a need to value diverse forms of work and to overcome the stigmatisation of certain forms of work as non-standard. Diverse forms of work include open-ended contracts, fixed-term contracts, part-time work, temporary agency work, work in the collaborative economy and via online talent platforms. All these forms of work contribute to more agile, dynamic and resilient labour markets, providing employment opportunities to people and fostering inclusive labour markets.¹ Diverse forms of work are particularly important as access channel to the labour market, for example for young people looking for their first professional experience, migrants or people with disabilities.
- 1.2. For the sector of temporary agency work, appropriate social protection and working conditions are already sufficiently determined via the EU Directive 2008/104 on temporary agency work and based on the principles of equal treatment and equal pay. The principle of equal pay in Article 5 of the Directive on temporary agency work includes the application of national provisions on minimum wages where these have been established. Minimum wages for temporary agency workers can be based on statutory minimum wages, minimum wages established by collective labour agreements in the temporary agency work industry and/or minimum wages set by collective labour agreements of user undertakings.
- 1.3. For many years, the temporary agency work industry has been pioneering in social innovation by promoting new ways of working, learning and social protection. An important element in that context has been the setting of systems for complementary, portable and transferable rights and benefits for temporary agency workers. These are often managed via bipartite funds and cover **for example** end of the year premiums, complementary health insurances or pensions and other social benefits.² Also due to these elements of social innovation, the majority of temporary agency workers earns more than the minimum wages.
- 1.4. The World Employment Confederation-Europe is strongly concerned by the legal instrument chosen by the European Commission to set a European framework on minimum wages. The proposed Directive risks of interfering in an unjustified way into established systems of collective bargaining and minimum wage setting by social partners. The instrument of a Directive is also not the appropriate legal instrument to reflect the different national models for the setting and adapting of minimum wages in Europe. Where national or sectoral social partners are weak or collective bargaining is underdeveloped, capacity building should be the main focus, rather than setting rules via a Directive.
- 1.5. Especially in the current context of the Covid-19 pandemic, it is important to build on the experience and knowledge of social partners to adapt to the “new normal” and the changing world of work. The sectoral social partners for temporary agency work have jointly acted to address these challenges by signing the Joint Recommendations on Covid-19 “Protecting workers, safeguarding work and preparing for an economic and social recovery”³. In line with these recommendations, focus should be laid in the current crisis on the allocation role of temporary agency work, on managing transitions from declining sectors to sectors in demand and on investing people through training and skills enhancement. Sectoral social partners for temporary agency work at the national level have acted

¹ See also Joint Statement of EFCI, EuroCommerce, Food Service Europe, HOTREC and WEC-Europe on diverse forms of work. Available on the World Employment Confederation-Europe [website](#).

² The sectoral social partners for temporary agency work conducted a joint project on social innovation and published a compendium of social innovation practices in December 2020. Also a set of joint recommendations has been agreed. More information is available on the World Employment Confederation-Europe [website](#).

³ The joint recommendations are available on the World Employment Confederation-Europe [website](#).

jointly to ensure the continuity of employment, support workers who have lost their jobs and invest in skills of temporary agency workers.

- 1.6. Rather than opting for a Directive on minimum wages, the World Employment Confederation-Europe would have favoured a proposal for a non-binding Council Recommendation, which should have set only general principles and provide the basis for convergence in Europe. Furthermore, the issues addressed in the EU Commission proposal for a Directive could have been addressed more appropriately through the European Semester process and the yearly Country-Specific Recommendations.
- 1.7. It should be recalled that the EU Treaty only provides a legal basis for setting minimum working conditions, while the EU has no competence for regulating wage settings or for determining procedures for setting minimum wages. The proposed Directive does not sufficiently respect the diverse national industrial relations systems and social partners' autonomy. It goes against the strict division of competences between the EU and Member States. According to Treaty articles 153 (5) and 153 (1f), and related ECJ rulings, the EU has no competence to introduce a binding legal instrument on the level of minimum wages or on collective bargaining and the representation of workers and employers' interest.

2. Subject matter (Article 1)

- 2.1. The World Employment Confederation-Europe supports the policy objectives of the subject matter in Article 1, which are a follow-up of the European Pillar of Social Rights. Agency work contributes to reaching the principles of the pillar based on the already established principles of equal treatment and equal pay, which provided adequate working conditions, as situated by the Directive 2008/104/EC on temporary agency work.
- 2.2. The private employment services industry, including its temporary agency work activities but also other HR services, is a human centred industry focused on creating opportunities in agile and dynamic labour markets. People, their employment opportunities and appropriate working conditions are at the centre of the sector. This is why the World Employment Confederation-Europe supports the Pillar of Social Rights and EU actions to ensure the social protection of workers.

3. Promotion of collective bargaining on minimum wages (Article 4)

- 3.1. The World Employment Confederation-Europe supports the objective of Article 4 on the promotion of collective bargaining on wage setting.
- 3.2. Capacity building for national and specifically sectoral social partners in the temporary agency work industry is of key importance, especially for countries in central and eastern Europe, in which sectoral social dialogue and collective bargaining is still underdeveloped, as well as for several other countries.
- 3.3. The World Employment Confederation-Europe supports the call in Article 4 to encourage constructive, meaningful and informed negotiations on wages among social partners. At the same time, the role of Member States in this area should be limited and by not interfere into the freedom of sectoral social partners to set minimum wages and to organise the collective bargaining process.
- 3.4. Introducing binding legal obligations on coverage of collective bargaining disrespects the autonomy of social partners and national competences, as it is for the national level and for social partners to decide this. For the sector of temporary agency work, it also raises questions on the interrelation between the principles of equal treatment and equal pay set by national law and the EU Directive

2008/104 on temporary agency work and the different levels of collective bargaining opportunities of the national sectoral social partners for temporary agency work.

4. Adequacy of statutory minimum wages (Article 5)

- 4.1. The World Employment Confederation-Europe supports the concept of adequacy of minimum wages at national level. However, Article 4 of the proposed Directive does not sufficiently reflect the diversity in Europe for defining statutory minimum wages in Europe. The World Employment Confederation-Europe advocates for leaving a significant freedom to EU Member States in defining and arranging for the adequacy of statutory minimum wages.
- 4.2. The private employment services industry does not support the list of criteria for the adequacy of statutory minimum wages included in Article 5, paragraph 2 (the purchasing power of statutory minimum wages, the general level of gross wages, the growth rate of gross wages and labour productivity developments), as these criteria are too prescriptive.
- 4.3. Instead of defining a European set of criteria for the adequacy of statutory minimum wages, Member States could be required to set of their national, country specific criteria for adequate minimum wages. Social protection and minimum wages should preferably be discussed and addressed in a non-legally binding way at EU level, through a Council Recommendation or in the context of the European Semester process and mutual learning programmes.

5. Involvement of social partners in statutory minimum wages setting and updating (Article 7)

- 5.1. The World Employment Confederation-Europe strongly supports the involvement of social partners in statutory minimum wage setting and updating.
- 5.2. National social partners at cross-industry and sectoral level have the best knowledge, experience and capacity with regard to wage setting and updating and their input should be heard and considered.
- 5.3. A point of concern for the World Employment Confederation-Europe is that the provisions on wage adequacy as determined in Article 5 and on variations and deductions in Article 6 are too detailed and prescriptive to actually allow for a meaningful role and impact of social partners in the mandatory wage setting and adaptation.

6. Effective access of workers to statutory minimum wages (Article 8)

- 6.1. The World Employment Confederation-Europe strongly supports the European Commission's intention on effective access to statutory minimum wages for workers. Effective access should be based on proportionate, non-discriminatory and objectively justified measures in the areas of controls, enforcement and access to information.
- 6.2. Temporary agency workers are fully covered and fall under the scope of the all the existing national labour laws, including existing provisions on statutory minimum wages. Existing EU Directives such as the Directive 2008/104/EC on temporary agency work, the EU Directive 1996/71 on the posting of workers and the Directive 2019/1152 on transparent and predictable working conditions sets the EU framework for ensuring appropriate working conditions. An important, complementary instrument is the Council Recommendation on access to social protection for workers and self-employed, which is

fully supported by the World Employment Confederation-Europe. These EU Directives and EU instruments set basic, minimum working conditions and ensuring social protection.

- 6.3. Furthermore, all EU Member States have established a legal framework to ensure the protection of temporary agency workers, which are often completed by collective labour agreements. In several European countries, especially in Northern Europe, Germany, the Netherlands and others there are dedicated collective labour agreements covering temporary agency workers to address specificities that come with relatively short assignments and ensure their protection.
- 6.4. A point of concern for the private employment services, is that there is a lack of level-playing field, for example with "outsourcing" and particularly rogue providers and companies who are not compliant with national and European law. Cases of non-compliance with national and European law lead to a distortion of the level-playing field, unfair competition and undermine the working conditions of workers. Thus ensuring compliance with existing legislation at European and national level is of core interest to the private employment services industry. At the European level, the European Platform on tackling undeclared work and with regard to cross-border mobility of workers also the European Labour Authority can play an important role in promoting a level-playing field and the enforcement of the EU *acquis communautaire* in the area of employment and social affairs. While EU and national action in the area of compliance and enforcement is needed, ensuring effective access of workers to statutory minimum wages should not lead to disproportionate burdens and obligations for the private employment services industry.
- 6.5. In the Netherlands, a socially innovative practice has been put in place by the sectoral social partners for temporary agency work to ensure compliance and enforcement of rights granted to temporary agency workers through collective labour agreements. The Collective Labour Agreement enforcement body SNCA carries out checks and controls to ensure compliance with the collective labour agreement.

About the World Employment Confederation-Europe

The World Employment Confederation-Europe is the voice of the employment industry at European level, representing labour market enablers.

The World Employment Confederation-Europe includes in its membership national federations from all across Europe, as well as several of the largest international workforce solutions companies. It is therefore fully representative of the industry, both in size and diversity. The World Employment Confederation-Europe brings a unique access to and engagement with European policymakers (EU Commission, European Parliament, and Council) and stakeholders (trade unions, academic world, think tanks).

The World Employment Confederation-Europe strives for a recognition of the economic and social role played by the industry in enabling work, adaptation, security and prosperity in our societies. Its members provide access to the labour market and meaningful work to almost 11 million of people in Europe.

