

Possible EU action addressing the challenges related to fair minimum wages

Contribution to first stage consultation of EU Social Partners

On 14th January 2020 the European Commission published a first stage consultation on addressing challenges related to fair minimum wages in the European Union. This consultation is a follow-up of the European Pillar of Social Rights and a first, major initiative of the von der Leyen Commission. The World Employment Confederation-Europe supports fair working conditions and pay for agency workers, which are already secured via national law and collective labour agreements. The principle of equal treatment and equal pay is applied in all EU countries based on the Directive on temporary agency work and in many countries additional safety nets based on minimum wages for agency workers are already established.

25th February 2020

The EU Commission Consultation on fair minimum wages

- The World Employment Confederation-Europe welcomes the EU Commission's first stage EU social partners' consultation on minimum wages and contributes to the consultation with this position paper.
- The World Employment Confederation-Europe is strongly concerned by the misleading statement in the consultation document that temporary agency work is classified as non-standard form of employment with a particular risk of exposing low-wage workers to the risk of in-work poverty. It needs to be recalled and emphasised that temporary work agencies provide work opportunities and assignments to a broad variety of workers, ranging from very high qualified workers to lower qualified workers. For many agency workers, agency work is a stepping-stone to the labour market.
- Any initiative on fair minimum wages needs to respect the freedom of collective bargaining, the role of collective labour agreements and the central responsibility of national social partners in settling pay and working conditions including minimum wages. An initiative at EU level on minimum wages should furthermore strictly respect the principles of subsidiarity and proportionality reflecting national diversity in this field.

Fair working conditions for agency workers based on equal treatment and complementary benefits

- Based on the EU Directive 2008/104/EC on temporary agency work the principle of equal treatment and equal pay is applicable in all EU countries. This implies that agency workers benefit, during the period of their assignment, from the same pay and working conditions as comparable workers at the user companies. Derogations are only allowed by collective labour agreements if an appropriate level of protection is maintained and for open-ended contracts providing pay between assignments.
- In many European countries (including for example Belgium, France, Germany and Poland) provisions on equal pay are complemented by minimum wages applicable to agency workers either established by the agency work industry, set by law or based on the terms and conditions applicable in the user companies. Thus there is no general gap in the protection of agency workers.
- Complementary benefits and higher pay for agency workers are established in several EU Member States based on collective labour agreements. These elements of social innovation further enhance the protection of temporary agency workers.

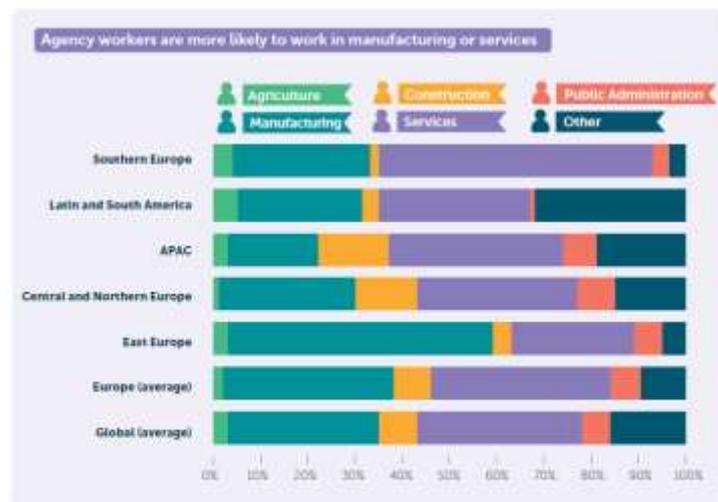
The principles of wage adequacy, wage coverage, the role of collective bargaining and mechanisms to adjust minimum wages

- The World Employment Confederation-Europe supports a national focus on minimum wage adequacy, the need to ensure appropriate coverage and to establish mechanisms to adjust minimum wages.

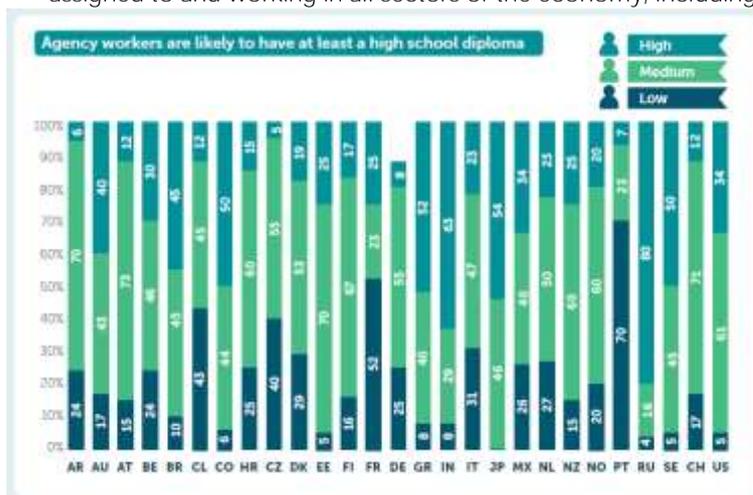
1. General Assessment and response to the three main questions of the consultation

1.1. The World Employment Confederation-Europe welcomes the first stage consultation of the EU Social Partners on a possible action addressing the challenges related to fair minimum wages in Europe. The World Employment Confederation has welcomed the adoption of the European Pillar of Social Rights under the Juncker Commission and supports the main areas of action put forward in the 2020 European Commission Communication on “Building a strong social Europe for just transitions.”¹

1.2. At the same time the World Employment Confederation-Europe is strongly concerned by the assessment in the consultation document that temporary agency workers belong to a group of workers under non-standard forms of employment, who are particularly exposed to the risk of in-work poverty. Data from the World Employment Confederation-Europe Economic Report shows that agency workers are assigned to and working in all sectors of the economy, including industry, manufacturing and



Note: Figures as reported by the members of the World Employment Confederation: Eastern Europe: Croatia, Czech Republic, Poland, Russia; Southern Europe: Italy, Spain, Portugal, Greece; Central and Northern Europe: Belgium, France, Germany, Netherlands, Norway, Switzerland.



services. Within these sectors, the private employment services industry provides work for individuals with all kinds of educational backgrounds. Whether a jobseeker has completed secondary education or not or whether they have a university degree, there is a large variety of jobs available to workers placed via agency work. The majority of agency workers in nearly all countries have at least a higher school diploma or a higher degree. The educational

level is classified as medium or high for 85% of the agency workers in Austria, 76% of the agency workers in Belgium, 72% of the agency workers in Denmark and 70% of the agency workers in Italy. The principles of equal treatment and equal pay ensures that temporary agency workers receive, for the periods of their assignment, the same pay as the comparable workers at the user company

¹ The EU Commission Communication is available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0014>

occupying the same position. Derogations are possible via collective labour agreements if an appropriate level of protection is maintained. Thus it is not justified to associate temporary agency work with non-standard forms of work that are linked to a risk of in-work poverty.

- 1.3. Based on the European Commission's own assessment each EU Member State has either a statutory minimum wage (22 countries) or a minimum wage set by collective bargaining (6 countries). As the European Commission does not intend to set a specific level of (minimum) wages and has no competence to do so, it must be questioned which gap the European Commission aims to fill with a European policy intervention. The World Employment Confederation-Europe would also like to underline that a discussion on minimum wages should not lead to a renewed discussion on a guaranteed minimum number of hours for an employment relationship, which was already discussed in the context of the Directive 2019/1152 on transparent and predictable working conditions.²
- 1.4. The World Employment Confederation-Europe feels that the European Commission should have highlighted more the need to respect the principles of subsidiarity and proportionality when addressing challenges related to minimum wages and possible solutions. In many cases and specifically for temporary agency work the best level for addressing adequate pay and social protection is the national level. This includes often with the involvement of national social partners at sectoral level, particularly in the northern European countries. The EU lacks competence in the area of pay according to Article 153 (5) TFEU, as settling pay is to take place at national level.
- 1.5. The World Employment Confederation-Europe is not convinced that legislative action at EU level is required to address challenges related to minimum wages in Europe. The European Semester process for economic policy coordination, the EU Employment Guidelines and the Country-Specific Recommendations could be used to promote mutual learning between the EU Member States, promote upwards convergence and ensure that adequate action on minimum wages is taken at an appropriate level.
- 1.6. Given the fact that the discussion on minimum wages is a cross-sectoral topic, the World Employment Confederation-Europe does not consider it to be appropriate to enter negotiations on the topic.

2. Do you consider that the Commission has correctly and sufficiently identified the issues and possible areas of action?

- 2.1. The World Employment Confederation-Europe supports the 20 principles of the European Pillar of Social Rights. These principles can be important elements to foster upwards convergence in Europe and to foster labour market reforms, resulting in more inclusive labour markets. At the same time the implementation of the European Pillar of Social Rights requires actions at different levels, including the EU level, national level and also commitments of social partners. The question of minimum wages, the way they are set and adjusted is typically best addressed and settled at national level with the involvement of social partners in accordance with national traditions and industrial relation practices.
- 2.2. When designing policies at EU level in follow-up of the European Pillar of Social Rights it is important to respect the principles of subsidiarity and proportionality. As for any EU initiative in the

² The text of the Directive is available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019L1152>

field of employment and social affairs, it is of fundamental importance to respect the principles of proportionality and subsidiarity when addressing questions related to minimum wages at EU level. Based on the Treaty on the Functioning of the European Union, the EU has competence to set common, minimum standards for working conditions, while the EU has no competence to regulate wages. Respecting this fundamental aspect is essential when discussing and addressing minimum wages at EU level. The World Employment Confederation-Europe welcomes the Commission's important promises made in the consultation document that any future initiative would "not harmonise directly the level of minimum wages across the EU; not seek to establish a uniform mechanism to set minimum wage; not establish the level of pay which falls within the contractual freedom of the social partners at a national level and within the relevant competence of Member States and respect national traditions, social partners' autonomy and the freedom of collective bargaining."

- 2.3. Any initiative at EU level on minimum wages should fully respect the autonomy of social partners and the right to collective bargaining at national level, as also emphasised in the European Commission Consultation document. This right is reflected in the European Pillar of Social Rights and in various ILO instruments. At present, the level and degree of collective bargaining in the temporary agency work sector varies and is traditionally lower in central and eastern European countries while it is more developed in western Europe and northern European countries. It is in this context that the World Employment Confederation-Europe would welcome further actions by the European Commission/DG Employment to support the capacity building for sectoral social partners at national level.
- 2.4. As the consultation documents refers on several occasion to the need of reaching fair minimum wages in Europe, it is important to clarify the meaning of the term "fair". From a World Employment Confederation-Europe point of view a fair minimum wage should balance the interests of employers and workers, of the economic freedoms that are at the centre of a social market economy and the need for adequate social protection for workers. Fairness of minimum wages should be discussed and framed in the national context of the EU Member States and involve national social partners in accordance with national law and practice.

3. Do you consider that EU action is needed to address the identified issues? If so, what should be the scope of that action?

- 3.1. Regarding the protection of temporary agency works it firstly must be recalled that agency workers are already adequately protected at EU level based on the Directive 2008/104/EC on temporary agency work. The principle of equal treatment includes pay and basic working conditions for agency workers. Derogations from the principle of equal treatment, where applicable, are mostly based on collective labour agreements and thus an agreement between employers and trade unions. Furthermore, a derogation may be applied in the case of open-ended contracts providing pay between assignments.
- 3.2. Minimum wages for the temporary agency worker are already today applied in many EU countries based on three different sources. Firstly, minimum wages can be set at national level by law. This is for example the case in Germany where a minimum wage agreed by the sectoral social partners has been declared universally binding through a provision in the German law on temporary agency work. Also in France, the agency work industry is covered by a statutory minimum wage. Secondly, minimum wages for the agency work industry are often set through collective labour agreements in the agency work industry. This is for example the case in Belgium, and the Netherlands. Thirdly, minimum wages agreed at the user company / client company level are fully applicable in the

agency work sector based on the principles of equal treatment and equal pay. This applies in all countries that have established the principle of equal treatment and equal pay and do not apply derogations (for example in Italy, Spain and Greece), Therefore, the issue of minimum wages for agency workers is already comprehensively and sufficiently regulated at national level and there is no need for a European, legislative intervention. EU Member States should focus on the correct application and enforcement of existing minimum wages to ensure the appropriate protection of temporary agency workers. Cases of non-compliance with minimum wages and abuses should be effectively addressed based on labour inspections and through initiatives of public-private partnerships, such as the Collective Labour Agreement Enforcement Body in The Netherlands.

- 3.3. In several, European countries, the temporary agency work industry has committed itself in collective labour agreements to pay a higher, minimum wage than the general, legal minimum wage. This is for instance the case in the Czech Republic, France, in the Netherlands, Belgium and Sweden. This commitment has been entered to illustrate that temporary agency work offers the most secure form of flexible work and an appropriate and adequate level of protection for the agency workers.
- 3.4. While the question of minimum wages is already comprehensively and sufficiently addressed and regulated in the agency work industry, it is important to underline that the industry goes beyond a commitment to ensure social protection based equal treatment and equal pay by developing solutions of social innovation. Social innovation is the implementation of new solutions for working, learning and social protection to the benefits of workers, employers and society at large. Regarding the dimension of social protection for agency workers, the temporary agency work industry has developed several innovative practices. This includes for example in France the FAS-TT, a social funds offering access to housing, transport and childcare for agency workers. In Belgium, a social fund has been set up to organise and administer the end of the year bonus payment for agency workers and in the Netherlands, a bipartite pension funds has been set up, offering an additional, third pillar pension scheme. These and other examples of social innovation in the agency work industry are presented on the World Employment Confederation Social Innovation Stories website,³ they are also in the focus of a currently ongoing, EU funded social partners project on social innovation in the temporary agency work sector.
- 3.5. In the European Commission Consultation document, a special focus is being laid on the principles of adequacy, coverage, the involvement of social partners and adjustments statutory minimum wages. These are certainly important elements in addressing minimum wages, while the conditions for adequacy, coverage, involvement of social partners and the adjustment of minimum wages are best settled at national level. The EU has no competence in area of pay according to Article 153 (5) TFEU.
- 3.6. The World Employment Confederation-Europe considers that the right forum at EU level to discuss wages, minimum wages, economic performance and competitiveness is the European Semester process for labour market reforms and economic convergence. The annual circle of the Annual Sustainable Growth Survey, the National Reform Programmes, Country Reports and Country-Specific Recommendations provide the right framework to address minimum wages in the EU Member States and appropriate social protection for workers while respecting the principle of subsidiarity. Given the intention to integrate the UN Sustainable Development Goals (SDGs) into the European Semester, it could also be useful to take a broader perspective than focusing on those goals outlined in the consultation document. Depending on the objective of a future initiative, SDG

³ The examples of social innovation in the temporary agency work industry are available online: <https://www.socialinnovationstories.org/>

8 on economic growth, employment and decent work and SDG 10 on inequality, are certainly relevant.

4. Would you consider initiating a dialogue under Article 155 TFEU on any of the issues identified in this consultation?

- 4.1. The World Employment Confederation-Europe welcomes an open dialogue on the changing world of work and social innovation with all stakeholders concerned. This should include labour law, working conditions social protection and the role of diverse forms of work on the labour market. Such an open dialogue should be focused on fostering a more inclusive, dynamic and agile labour markets. It should be promoting an economy that works for people, as outlined in the political guidelines of EU Commission President von der Leyen.
- 4.2. With regard to initiating a dialogue under Article 155 TFEU, the World Employment Confederation-Europe is firstly looking forward to the second stage consultation of EU Social Partners on a possible action addressing challenges related to minimum wages and will consider contributing to the second stage consultation.
- 4.3. In principle, the World Employment Confederation-Europe consider the topic of minimum wages to be primarily a cross-industry topic, which means that if a social partner dialogue on this topic is started, it should take place at the level of the cross-industry social partners BusinessEurope, CEEP, SmallBusinessUnited and ETUC. In any case, social partner negotiations at EU level should not aim to regulate pay, as the EU level as no competence in this area based on Article 153 (5) TFEU. Rather than initiating an EU social partner negation on minimum wages, the World Employment Confederation-Europe would recommend to broaden the focus to efficient labour markets, labour market performance and inclusiveness, thus linking these discussions to the European Semester process.

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. The World Employment Confederation–Europe is fully representative of the industry, both in size and diversity. It 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 more than 11 millions of people in Europe and serve around 1,5 million organisations on a yearly basis.

