

Response to second stage social partners consultation under Article 154 TFEU on a possible action addressing the challenge related to minimum wages

Brussels, 4th September 2020

EXECUTIVE SUMMARY

Temporary agency workers are already sufficiently protected based on national regulation on minimum wage, the principles of equal treatment and equal pay as well as rights granted based on collective labour agreements. Any EU intervention on minimum wages needs to respect existing, national systems for setting and adapting minimum wages and the role of social partners.

Against this background, minimum wages in Europe should predominantly be discussed in the framework of the European Semester process. This could be complemented by a Council Recommendation defining a general, European policy framework.

General and introductory remarks

- The World Employment Confederation-Europe supports the EU Pillar of Social Rights proclaimed by EU Member States under the previous Commission and welcomes the 2020 EU Commission Work Programme. With this position paper, the World Employment Confederation-Europe aims to contribute to the second stage consultation of EU Social Partners regarding possible EU action to address challenges related to minimum wages in Europe.
- Regarding minimum wages for the agency work industry, the World Employment Confederation-Europe underlines in this position paper that an adequate level of protection is already provided for temporary agency workers based on the principles of equal treatment and equal pay and related national minimum wages applicable to temporary agency workers. Practices in several EU Member States shows that most agency workers earn more than the minimum wages.

Comments on the objectives of a possible initiative on minimum wages

- The World Employment Confederation-Europe supports appropriate protection and fair national minimum wages for agency workers. There should also be systems in place at national level to adapt minimum wages and social partners should be involved in accordance with national law and practice.

Comments on the possible policy instrument

- The World Employment Confederation-Europe would prefer if the topic of minimum wages is addressed via the European Semester process, which could be supported by a Council Recommendation, defining a general policy framework for minimum wages in the European Union.
- An EU Directive would not be the right instrument to address and cover the diversity of national practices that are in place for minimum wages in Europe.

Role of social partners and willingness to negotiate

- If social partners negotiations on minimum wages are to take place at EU level, these should be held at the level of the cross-industry social partners.

1. General, introductory comments

- 1.1. The World Employment Confederation-Europe welcomed the European Pillar of Social Rights, which is at the origin of the European Commission initiative on fair minimum wages in Europe. At the same time, it has been very clear from the beginning that the implementation of the European Pillar of Social Rights requires action at European, national and social partner levels. The topic of minimum wages is a typical example of social rights and social protection that is best addressed at national and/or social partner level. The World Employment Confederation-Europe agrees that workers should receive a fair and appropriate remuneration and that minimum wages agreed at national or social partners' level can be an important instrument in that context for the lowest wage levels.
- 1.2. The World Employment Confederation-Europe would like to recall that the European Commission concluded in its supporting documents to the first stage social partners' consultation that most workers in Europe are already sufficiently protected by national law and collective labour agreements. This is certainly the case of temporary agency workers, as the EU Directive on temporary agency work establishes the principles of equal treatment and equal pay, which cover where applicable the minimum wages in the different sectors to which agency workers are assigned to and minimum wages of the temporary agency work sector agreed by national, sectoral social partners.
- 1.3. The reality and practice in many European countries shows that agency workers receive more than the legal or sectoral minimum wage. Either because the classification of the agency worker based on the pay applicable to the comparable worker in the user company leads to a higher pay than the minimum wage and/or because the agency workers receives additional benefits set by the social partners in the agency work sector, such as complementary social benefits (e.g. NL, BE, FR), or entitlements to training (e.g. AT, BE, FR, NL, ES and IT). In the Netherlands, for example, about 9% of the agency workers receive a minimum wage, while 91% earn more than the minimum wage. The solutions for additional benefits put in place by the agency work industry are an embodiment of social innovation,¹ as these offer new solutions for social protection.
- 1.4. The World Employment Confederation-Europe would like to express concerns about the differentiation used in the consultation document between standard and non-standard forms of work and the reference to precarious forms of work. Diverse forms of work (including open-ended contracts, fixed-term contracts, part-time work, temporary agency work and online talent platforms) all contribute to serving the needs of companies and workers, provide opportunities and contribute to job creation. These forms of work are established based on national and European labour law and should not be stigmatised in a negative way. Looking at the diversity of forms of work established in European labour markets, it is important to ensure fair competition and a level-playing field between these forms of work.
- 1.5. The COVID-19 pandemic that hit Europe in Spring 2020 has led to a sharp decline in the number of hours worked in the temporary agency work industry and the demand for temporary agency work services in certain sectors. At the same time, the COVID-19 pandemic is a good example illustrating how the agency work industry is engaged in protecting agency workers and working towards the continuity of employment of agency workers. This was reached due to short-time working schemes, the combination of agency work assignments and periods of training and by using the labour market allocation role, helping agency workers to move from declining or temporarily closed sectors to rising and high in demand sectors. These elements of social protection and social innovation have also been reflected in a set of joint recommendations on COVID-19 adopted by the World Employment Confederation-Europe and UNI-Europa in April 2020.² In their Joint Recommendations on the recovery from

¹ For information on the concept of social innovation is available on the World Employment Confederation-Europe website: <https://www.weceurope.org/topics-europe/social-innovation/> and the World Employment Confederation Social Innovation Stories websites: <https://www.socialinnovationstories.org/>

² The full text of the Joint Recommendations on COVID-19 is available on the World Employment Confederation-Europe [website](#).

COVID-19, the sectoral social partners put a strong emphasis on training, labour market transitions and the benefits of enhanced cooperation between public and private employment services to support the labour market access for those who have lost their jobs during the pandemic and economic lockdown.

2. Comments on the objectives of possible EU action

- 2.1. The European Commission under President van der Leyen presented an ambitious work programme based on “A Union that strives for more”. In the field of employment and social affairs, the European Pillar of Social Rights is clearly the compass for action in the coming years.
- 2.2. The World Employment Confederation-Europe supports the main objectives related to possible action in the field of minimum wages. Promoting fairness and upwards convergence, ensuring a better level playing field are objectives the World Employment Confederation-Europe is fully agreeing with. At the same time, the instruments to achieve these need to be carefully chosen. The open-method of coordination, country-specific recommendations in the context of the European Semester and potentially a Commission proposal for a Council Recommendation are much better suited than an EU Directive on minimum wages in Europe.
- 2.3. Regarding to the objective of ensuring well-functioning collective bargaining in wage setting, the World Employment Confederation-Europe would welcome a special focus on capacity building for national social partner organisations, including sectoral social partners. For the agency work sector, this is particularly relevant as many national, sectoral social partner organisations are fairly small in size. In the past years, a significant focus was laid on capacity building activities in central and eastern Europe, but experience in the temporary agency work industry shows that capacity building activities could be very beneficial for a larger number of national employers’ organisations. The current COVID-19 pandemic and the related economic crisis have even more highlighted this need for strengthening the capacity of sectoral social partners in jointly addressing current labour market challenge and designing appropriate and socially innovative, new solutions.
- 2.4. With regard to the national procedures for setting minimum wages in the agency work industry, it is essential to take account of the interrelation between the principles of equal treatment and equal pay established by the Directive 2008/104/EC on temporary agency work and national law on the one hand and the minimum wages established at national level or through collective labour agreements on the other hand. In all European countries, an appropriate level of protection for temporary agency workers is therefore already guaranteed based on the principles of equal treatment and equal pay and minimum wages set at national or sectoral level.
- 2.5. The World Employment Confederation-Europe supports a focus on national systems ensuring effective compliance and monitoring mechanisms regarding existing minimum wages at national level. In the Netherlands, an interesting and innovative practice has been put in place, namely a collective labour agreement enforcement authority governed by the social partners, which ensures the compliance and enforcement of the collective labour agreements and minimum wages established.

3. Comments on possible avenues for EU action

- 3.1. In section 6.1. of the consultation document, the European Commission outlines possible policy options for an EU instrument on minimum wages, focusing on collective bargaining, clear national frameworks to set and update statutory minimum wages, the involvement of social partners, exemptions and variations, compliance and monitoring.
- 3.2. From an agency work of view, the role of social partners and collective bargaining is of central importance for setting minimum wages in Europe. As mentioned before, supporting the capacity building for sectoral social partners could be an important avenue for action at the EU level.

- 3.3. Regarding the setting and updating of statutory minimum wages that are applicable at national level, the World Employment Confederation-Europe assessment is that these are largely in place. In case there is a need for reforms at national level, these could be addressed through mutual learning programmes or potentially in the context of the country-specific recommendations of the European Semester process.
- 3.4. Compliance and enforcement of minimum wages in the agency work industry and the labour market in general are important elements to ensure a level-playing field and to avoid any unfair competition. But action needs to be taken here predominantly by national governments, authorities and labour inspectorates. Existing, EU networks such as the EU Committee of Experts on the Posting of Workers and the EU Platform for tackling undeclared work could be used to foster the cooperation between Member States and the information exchange on matters linked to compliance and enforcement. Also the newly established European Labour Authority can play a role here with regard to labour mobility.

4. Comments on possible legal instruments

- 4.1. In section 6.2. of the consultation document, the European Commission puts forward two alternative instruments to address the challenges linked to minimum wages, namely an EU Directive in the area of working conditions based on Article 153 (2) or a Council Recommendation. Whereas a Directive would set binding minimum requirements, a Council Recommendation would set the conditions for Member States to ensuring fair minimum wages.
- 4.2. The World Employment Confederation-Europe would like to reiterate that the best way to address minimum wages, their appropriateness and adaptation, is the national and often sectoral level, respecting and building on the role of social partners at national level. For the sector of temporary agency work, there is currently no gap in the protection of temporary agency workers regarding their working conditions and minimum wages.
- 4.3. If action by the European Commission and the EU institutions on minimum wages is proceeded, it is essential to leave sufficient room for tailor-made solutions at national and/or sectoral level and to respect the freedom of social partners. The World Employment Confederation-Europe is convinced that an EU Directive on minimum wages would not allow for such a tailored and country-specific approach. Furthermore, according to the Treaty article 153 (5) and related court rulings, the EU has no competence to introduce a Directive on the level of minimum wages or collective bargaining as these matters are for good reasons competence of national social partners and the EU Member States.
- 4.4. The World Employment Confederation-Europe would much prefer if, rather than opting for a Directive, the European institutions and the EU Member States would address the topic of minimum wages primarily through the European Semester process, the EU Employment Guidelines and the Country-Specific Recommendations. This focus on the European Semester as appropriate framework for addressing and discussing minimum wages in Europe could be complemented by an EU Commission Proposal for a Council Recommendation on minimum wages in Europe. Such a proposal for a Council Recommendation should be limited to defining general principles and overall guidelines for establishing, settling and adapting minimum wages at national level, while fully respect the autonomy of the national social partners at sectoral and cross-industry level. An EU policy intervention on minimum wages, as any other initiative in the area of employment and social affairs, should in any case fully respect the principles of subsidiarity and proportionality.

5. Willingness of EU social partners to enter in negotiations under article 155 TFEU

- 5.1. As also underlined in the reply to the first stage social partners consultation minimum wages, the World Employment Confederation-Europe considers the topic of minimum wages in principle to be of cross-industry nature. Therefore, if this is to be addressed by European social partners, it should be done at the level of the

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cross-industry social partners at European level and not by sectoral social partners. As employers' organisation and EU sectoral social partners for temporary agency work, the World Employment Confederation-Europe does not intend to enter in negotiations under Article 155 TFEU on the topic of minimum wages at European level.

- 5.2. Any action on minimum wages at European level, taken by social partners or by the EU institutions, needs to strictly respect the freedom of national social partner to engage in collective bargaining and set minimum wages.

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.

