



12 December 2019

EFFAT Orientation Paper

Strengthening Collective Bargaining and Ensuring Living Wages for European Workers

Background

Ursula Von der Leyen, before being elected as President of the European Commission, declared in front of the European Parliament her intention to take action on minimum wages with an initiative to be developed in respect of the different labour markets. In her opening statement she also acknowledged collective bargaining as the “optimal option” to set minimum wages.

In the political guidelines for the newly confirmed European Commission, she clarified: *within the first 100 days of my mandate, I will propose a legal instrument to ensure that every worker in our Union has a fair minimum wage. This should allow for a decent living wherever they work. Minimum wages should be set according to national traditions, through collective agreements or legal provisions.*

The commitment to propose such an instrument was confirmed in the [mission letter](#) to Nicolas Schmit, Commissioner for Jobs and Social Rights, who in turn confirmed his own commitment to bring forward such a proposal in [written replies](#) to the European Parliament and during the hearing.

Since this announced proposal was made, EFFAT has carried out the following actions:

1. EFFAT affiliates have been asked to share their views, concerns and expectations with the EFFAT Secretariat. Since the outset it has been clear that the reaction of EFFAT Member Organisations to this announced proposal was not unanimous. While for some of our affiliates the announcement is considered promising, others, for example in the Nordic countries, regard it as a matter of major concern and a serious threat to social partners' autonomy and well-established collective bargaining systems.
2. As more time for debate and internal consultation was very much needed, EFFAT therefore asked for a postponement of the decision on the ETUC Draft resolution “Bargaining for Decency” at the ETUC Executive Committee meeting that took place on 22-23 October 2019.
3. A first exchange on the way to proceed took place within the newly-established EFFAT Coordination Group in Zagreb on 7 November at a side meeting during the EFFAT Congress.
4. The EFFAT Secretariat together with the ETUC and the other ETUFs had the opportunity to meet informally with Commissioner Nicolas Schmit and DG Employment on 18 November. The aim of the meeting was to better understand the Commission's aims with respect to the announced proposal. The meeting with Commissioner Schmit was positive. The Commissioner is fully aware of the fact that different industrial relations systems exist in the EU and he is committed to respecting them and carrying out in-depth consultation with national and EU social partners before developing the announced proposal. More details about the meeting with Commissioner Schmit and DG EMPL are included in the discussion paper sent in preparation of the EFFAT consultation meeting that took place on 28 November.
5. A consultation meeting took place in Brussels on 28 November 2019 with the political leaders and trade union officers responsible for collective bargaining of EFFAT's member organisations. During the meeting all affiliates had the possibility to contribute and share their views, expectations and concerns with respect to this announced proposal. The meeting was constructive and allowed for mutual understanding among EFFAT affiliates.

EFFAT preliminary reaction to the announced proposal

As an organisation operating in very difficult sectors of the economy with a high prevalence of in-work poverty and precarious conditions, EFFAT welcomes the European Commission's declared commitment to ensuring all European workers benefit from fair wages and decent living. This may be a first relevant step to marking a change in the EU macroeconomic narrative after several years of austerity measures and wage cuts.

At the same time, EFFAT believes that a one-size-fits-all approach cannot work. Industrial relations systems are extremely different across the EU and any initiative should consider such diversity as well as the specificities of every system without creating any prejudice to existing individual and collective labour rights.

EFFAT is committed to ensuring that the European Commission's promise not to harm or weaken well-functioning collective bargaining systems is fully respected. This applies in particular for those labour market models where there are no statutory minimum wages and industrial relations are based on a strong autonomous role played by social partners in setting wage formation and working conditions.

EFFAT acknowledges that in Europe there are industrial relation systems that have contributed to creating fairer societies and economic growth. This is especially the case for those member states where high union membership levels are combined with high coverage of collective agreements. The presence of these elements together has proven to be essential in ensuring a fairer distribution of wealth, social justice, social inclusion and advanced individual and collective labour rights. Collective bargaining systems with a high degree of wage co-ordination across sectors are also decisive in ensuring fair competition and increased aggregate demand within the country. Moreover, systems with strong collective bargaining are more likely to be characterised by a high degree of wage equality among and within companies, sectors and regions. This also ensures more democratic, fair and inclusive societies.

Main issues to be considered by any EU initiative on minimum wages and collective bargaining

The announced initiative should address the following issues:

1. In-work poverty in Europe has been growing since 2008. Today almost one worker in ten is at risk of poverty. The nature of the jobs created in the EU over recent years has significantly changed to being primarily non-standard, insecure and low-paid jobs. The increase in non-standard forms of employment including temporary employment contracts in many countries has contributed to rising in-work poverty. Poorly paid and precarious jobs are often a reality for many workers employed in the EFFAT sectors.
2. Inequality has been rising for decades in the vast majority of member states with a progressive decline in the share of national income going to labour and an increase in the share going to capital. The rise in inequality is also a direct consequence of the progressive decentralisation of collective bargaining as well as the decline of its coverage. The weakening of sectoral and cross-sectoral collective bargaining has contributed to a decrease in workers' purchasing power with real wages lagging behind productivity in the majority of member states. Collective bargaining structures have often been dismantled as a consequence of austerity programmes and structural labour market reforms imposed on some member states by the Troika or through the EU Economic Governance and the "recommendations" of the EU Semester in the aftermath of the economic crisis and the double downturn (2007-2012). Agriculture and the hospitality sectors are among the sectors with the lowest collective bargaining coverage in Europe.

3. In many member states sectoral collective bargaining structures are too weak. Employer organisations are often missing or are not representative and willing to bargain with our affiliates at sectoral level. It is not acceptable that in some countries in Central and in Eastern Europe companies refuse to be part of employer organisations and do not contribute to collective bargaining at industry level. This causes unfair competition and a race to the bottom in terms of wages and working conditions, exacerbating the wage and socio-economic divide among countries in Europe. Weak collective bargaining structures end also in a negative effect on the “attractivity” of the EFFAT sectors, causing high turnover rates and labour shortages. Employers must play their role. This applies for transnational companies as well as small and medium enterprises. Industry-level collective bargaining ensures fair competition and benefits society as a whole.
4. In some member states EFFAT affiliates have to face collective bargaining dumping caused by “pirate agreements” with less protections and poor standards signed by “yellow unions”.
5. Due to the increasing abusive use of subcontracting, it happens that workers employed in the same workplace and doing the same job are not covered by the same collective agreement. Workers involved in the subcontracting chain are often employed by fake cooperatives or other illegal entities. Sometimes they are even forced to work as (bogus) self-employed and are therefore not entitled to basic social protections.
6. In some member states the right to organise, the right to form trade unions, the right to be recognised and negotiate with employers, the right to collective action, to time credit for union representatives, or to protection against unfair dismissal are still violated or not fully respected. In order to keep labour costs low, in some member states companies implement aggressive union-busting strategies and regard with hostility the rights of workers to organise, speak up and seek representation free from victimisation and reprisal.
7. The relentless development of the platform economy prevents many workers employed in new sectors of the economy from enjoying fair competition and key workplace rights, including the rights to organise and collective bargaining. This is also the reality for many platform workers employed in the Hospitality and Tourism sectors as food delivery riders or workers employed by short-term stay providers (e.g. cleaning, caretaking, administration).
8. Although the public procurement Directive 2014/24/EU introduced some positive elements, the social clause (Art 18.2) is often not correctly transposed and respected at national level. One of its main shortcomings is that it requires economic operators to respect collective bargaining agreements only in the delivery of the contract and not as a pre-condition to being part of the contract award process.
9. Agricultural workers in the EU are often confronted with a lack of contractual protection, exploitative working hours, harsh treatment and deplorable housing and working conditions. It is not acceptable that CAP (Common Agricultural Policy) funding is often provided to farmers not respecting collective labour agreements and labour standards.
10. In many member states where statutory minimum wages exist, trade unions are not involved in the setting procedure. Transparency concerning the process and methodology to define statutory minimum wages level is also lacking. Statutory minimum wages are too low and insufficiently adjusted. In the vast majority of member states, statutory minimum wages do not provide wage earners and their families with decent living standards, appropriate participation in society and do not safeguard against unforeseen shocks.

What should be the objectives of the initiative?

The instrument(s) delivering this announced proposal should consider the following priorities:

1. EFFAT believes that if this announced proposal aims at delivering an EU instrument able to fight in-work poverty, tackle inequalities, ensure prosperity and social justice in the long term, it is of utmost importance that it contains strong provisions aimed at fostering sectoral (and, where applicable, cross-sectoral) collective bargaining. This should be a top priority of any Commission's initiative in this field. Collective bargaining is the best way to ensure all European workers have living wages. Wages negotiated through sectoral collective bargaining include various elements of remuneration (e.g. holiday allowance, overtime rates, 13th monthly pay, non-wage benefits, etc) and not only minimum rates of pay. Strengthening collective bargaining is essential to ensuring better working conditions and the development of all wages and not only minimum ones. Collective bargaining helps in boosting internal demand and shaping digital transformation. It ensures fair competition and limits social dumping.
2. The initiative should ensure member states promote sectoral collective bargaining through the creation of opportunities and structures where social partners can meet and develop synergies. The initiative must ensure the removal of all barriers and limitations to collective bargaining. Adequate resources at national and EU level should also be allocated with a clear obligation to promote capacity building initiatives in consultation with and for social partners.
3. It is important to limit the use of opening clauses and derogations in industry level collective bargaining agreements. Some of these derogations have been made possible by recent labour reforms (e.g. "inaplicaciones" in Spain) and allow companies not to apply industry level agreements entirely or to deviate from some important parts of them without agreement with workers' representatives. Industry level agreements should be derogated only if jointly agreed by social partners and to include more favourable provisions for workers (favourability principle).
4. The instrument(s) delivering this announced proposal must prevent public procurement contracts from being awarded to tenders that do not respect collective labour agreements. Not respecting collective labour agreements and violating labour laws should constitute an exclusion ground according to Art. 57 of the Public Procurement Directive 2014/24/EU. Respecting collective labour agreements should be a necessary pre-condition for all economic operators that wish to be part of a public contract award procedure.
5. It is of paramount importance to prevent EU grants and financial contributions given under the framework of the Common Agriculture policy (CAP) from being provided to irresponsible employers that do not respect collective labour agreements and labour standards. This is a long-standing EFFAT demand that needs to be urgently addressed.
6. The same sectoral collective agreement should apply to all workers employed in the same production cycle of a company or performing the same activity at the same workplace (including those employed in the subcontracting chain). The applicable collective agreement should be the most favourable one and, in any case, related to the activity performed by the workers.
7. The right to organise (access to sites and digital workplaces, protection against unfair dismissal, right to form TU, time credit) and bargain collectively must be ensured for all sectors of the economy and all workers including domestic workers and platform workers.
8. The initiative should ensure respect and implementation of the relevant ILO conventions on freedom of association, the right to organise and to collective bargaining, the European Charter of Fundamental Rights, the European Social Charter and the European Convention of Human Rights¹.

¹ UN ILO: Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise (1948); Convention No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively

9. The initiative should be aimed at promoting upward convergence of wages and working conditions to strengthen social and economic cohesion and stop both delocalisation of companies and the brain drain of skilled workers that some countries in Europe are experiencing. The period up to 2008 saw a reduction of the east-west wage gap with Eastern European countries catching up to some extent, but the trend stagnated in terms of nominal wage levels in the following years. The current scenario is not sustainable in the long-term. Workers in Eastern Europe need pay rises above the rate of inflation and increases in productivity. The best way to achieve this is through the strengthening of collective bargaining. Increases in minimum wages are also needed. Employers and national governments must do their part.

10. In an integrated single market, low wages not only weaken each country's domestic demand but also weaken export prospects for all other economies. EU member states suffer from both weak domestic demand as well as from lower demand from trade partners. If we want the European internal market to flourish, then European workers' wages need to increase. This applies to all countries including and especially those with large trade surpluses.

11. All wages should be living wages. This also applies for minimum wages either negotiated through collective bargaining or established by statutory means. Wages should always ensure workers and their families have a decent standard of living. They should ensure appropriate participation in society and should protect workers and their families in case of unforeseen shocks. The rise of all wages including minimum ones should at least take into account increases in living costs and productivity.

12. The initiative must guarantee that in those countries where statutory minimum wages exist, they are set through a transparent procedure with the active involvement of social partners.

13. Social partners at EU and national level should be consulted in the development of the legal instrument(s) delivering this announced proposal. We call on the European Commission to ensure meaningful and in-depth involvement of both the ETUC as well as the European Trade Union Federations and national social partners in the development of this initiative. The involvement of the ETUFs is essential as we know the reality of the sectors in the various member states and our affiliates are directly involved in sectoral collective bargaining at national level.

The EFFAT redlines

EFFAT support for any EU initiative on minimum wages and collective bargaining will strictly depend on respect of the following redlines throughout the whole adoption process:

1. Any EU initiative on minimum wages and collective bargaining shall respect national industrial relations systems and the role of social partners. Moreover, it must not create any prejudice to those systems where social partners play an autonomous role in setting working conditions (including minimum rates of pay) through sectoral and, where applicable, cross-sectoral collective bargaining. Safeguards must apply to ensure that national governments do not interfere with the independent role played by social partners in collective bargaining.

(1949); Convention No. 151 concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service (1978); Convention No. 154 concerning the Promotion of Collective Bargaining (1981) ;

UN: International Covenant on Economic, Social and Cultural Rights, Article 7 and 8

Council of Europe: Article 11 European Convention of Human Rights; Articles 4, 5 and 6 of the European Social Charter;

European Union: Article 28 and 31 of the EU Charter of Fundamental Rights; Article 11-14 1989 of the Community Article 11-12- 13 and 14 of the Charter of Fundamental Social Rights for Workers.

2. The instrument(s) delivering this announced proposal must not require member states without a statutory minimum wage to set one.
3. Member states must not be asked to set extension mechanisms or other instruments needed to make collective agreements universally applicable unless social partners consider it necessary and demand it.
4. The principle of non-regression should be clearly enshrined in the instrument(s) delivering this announced proposal. Member states should not be prevented from maintaining or introducing higher standards. On the contrary, the initiative should only identify minimum objectives.
5. The initiative must include a “monti clause” and should not hamper in any manner social partners’ autonomy and responsibilities. The initiative must respect social partners’ right to negotiate, conclude and enforce collective agreements, or to take collective action in accordance with national law or practice.

Next steps

EFFAT considers it to be crucial that the instrument(s) delivering this proposal contain(s) sufficiently clear provisions capable of meeting the EFFAT objectives and redlines.

EFFAT’s position and approach towards this announced proposal will be pragmatic and will strictly depend on the way these objectives and redlines are considered throughout the different stages of the adoption process.

The EFFAT Secretariat will actively engage with the European Institutions to ensure the EFFAT demands are taken on board. The EFFAT Secretariat will also work in close cooperation with the ETUC and other ETUFs Secretariats to ensure the coordination and unity of the European Trade Union movement.

The EFFAT affiliates will be regularly consulted and the EFFAT Executive Committee will receive constant updates from the EFFAT Secretariat, being asked to confirm, adapt or reconsider the EFFAT position towards this announced initiative throughout the adoption process.