

Position of the Union of Entrepreneurs and Employers on a fair minimum wage

On 4th June 2020, the second stage of consultations with trade unions and employers' organisations began with ensuring a fair minimum wage for all workers in the European Union in mind. A fair minimum wage is one of the priorities of the European Commission chaired by Ursula von der Leyen. Basing on the outcomes of the consultations' first stage, the European Commission concluded that there was a need for further action at the EU level. As part of this second phase of the consultations, the Commission seeks to find out what the views of trade unions and employers' organisations are with regard to the type of instrument that would be most appropriate and its potential goals.

At present, the Commission is considering both the possibility of adopting a directive and non-legislative measures, such as a Council recommendation. In order to justify the need for EU action on the minimum wage, EU institutions refer to the European Pillar of Social Rights (hereinafter EPSR). It is worth stressing, however, that the EPSR is not a legal act, but merely a non-binding political declaration, which some believe is intended to stimulate the development of EU legislative initiatives on social rights. Nonetheless, the provisions of the EPSR themselves exclude this possibility. Section 18 of the EPSR Preamble states clearly that "at Union level, the European Pillar of Social Rights does not entail an extension of the Union's powers and tasks as conferred by the Treaties. It should be implemented within the limits of those powers", while Section 19 sets forth that "the establishment of the European Pillar of Social Rights does not affect the right of Member States to define the fundamental principles of their social security systems and manage their public finances, and must not significantly affect the financial equilibrium thereof". Moreover, as a potential legal basis for a fair minimum wage, the European Commission proposes Art. 153 sec. 1 of the Treaty on the Functioning of the European Union (TFEU), which allows the EU to act in the field of social rights. However, these actions ought to be of the following nature "the Union shall support and complement the activities of the Member States". Therefore, the Union of Entrepreneurs and Employers is of the opinion that the regulation of the minimum wage remains within the exclusive competence of member states, and that EU instruments referring to these issues should be of a non-binding nature, should they be at all adopted.

In the document providing the basis for the second stage of consultations, the European Commission identified possible options for EU action to ensure a fair minimum wage: establishing a well-functioning collective bargaining system for wage setting; creating a national legal framework to establish and regularly update a statutory minimum rate based on clear and stable rationale; social partners' real involvement in the process of minimum wage setting; elimination of exceptions allowing for deviation from the application of the minimum wage; creating an effective system for monitoring and enforcing the minimum rate.

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When it comes to establishing an efficient collective bargaining system, the EC distinguishes between countries with a statutory minimum wage and countries that set a minimum wage only by means of negotiations with unions. This distinction is a nod to the Scandinavian countries, which have a well-functioning collective bargaining system and fear that minimal harmonisation at the EU level may worsen their standards. Of course, Poland does not belong to this group of countries due to, among other things, an insufficient unionisation. Moreover, the European Commission notes the positive impact of a well-functioning collective bargaining system even on statutory minimum wage systems. Unfortunately, the Commission does not make any specific proposals with regard to how to build or reform such a system, but merely points out that a future instrument may provide a non-exhaustive list of possible actions to support collective bargaining. This proposal is a step in the right direction, as it allows for a more appropriate adaptation of the minimum wage to economic conditions in different sectors and regions. However, this proposal's main weakness is its lack of precision.

The Commission's proposals regarding the legal framework for keeping the minimum wage up-to-date, the involvement of social partners, and the minimum wage monitoring and enforcement system do not go beyond the provisions of the Act on the minimum remuneration for work being in force in Poland. The minimum wage is negotiated on a yearly basis within the Social Dialogue Council (hereinafter SDC). By 15th June each year, the Council of Ministers presents to the SDC a proposal of the minimum wage for the following year, considering 10 statutory economic and social premises, and the National Labour Inspectorate monitors compliance with these provisions by entrepreneurs. Owing to this, from the Polish point of view, one may wonder whether such proposals are at all justified. Moreover, it should be also noted that currently six EU countries, namely Sweden, Denmark, Finland, Italy, Austria and Cyprus, do not regulate their minimum rates in a statutory manner. The European Commission claims that the European minimum wage will not force these countries to introduce a statutory minimum wage, but only to introduce clear and stable criteria to the collective bargaining process. Still, taking into consideration the fact that these countries offer a relatively good minimum wage (according to the European Commission), it may be questioned whether the EC's intervention is necessary in this respect, and consequently whether it adheres to the principles of subsidiarity and proportionality in its activities.

According to the Commission, the above-mentioned measures could contribute to the improvement of working conditions and the standard of living of workers, while keeping jobs and maintaining competitiveness. Improving minimum wage conditions would reduce inequality and poverty among employees. The EC also notes that the exact impact of the Union's action on the state of affairs in each EU country would be different, reflecting the different characteristics of their minimum wage setting systems, workforce, and economic structures. In an ideal world, raising labour standards would indeed reduce social inequalities. Instead, in its analysis, the Commission forgets to look at the minimum wage from a non-workers' perspective which in turn raises serious concerns. Namely: employers, avoiding rising labour costs resulting from raising the minimum wage, may force employees to switch to part-time work, which will effectively reduce their remuneration. Rising labour costs will primarily affect the SME sector, which may have a negative effect on the European economy as a whole. Moreover, further increases in

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the minimum wage may cause the employment contract to become an even greater luxury on the labour market. According to research by The Netherlands Economic Review, the average employment on a basis other than an employment agreement in OECD countries amounts to 11.5%. On the other hand, in Poland, France, Italy, Portugal, Spain and the Netherlands, 21% to 27% of all employees work on the basis of civil law contracts, and this number is constantly growing. The introduction of additional regulations may therefore lead to strengthening of arbitration on the labour market, which – so it would seem – is not consistent with the EU concept of social policy.

The institutions of the European Union are primarily bound by the principle of subsidiarity, i.e. taking the least intrusive, yet effective means to achieve a given goal. Considering the vast discrepancies in the regulations behind the minimum wage in individual member states, establishing even a minimum standard seems to be a difficult task. There is undoubtedly a lot of work to be done in European social policy. However, trying to regulate the minimum wage in a top-down manner seems like somebody is attempting to bite off more than one they chew. To sum up, the Commission's proposal should be assessed negatively.

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