

**The Union of Entrepreneurs and Employer's Contribution to the European Commission consultation  
on the implementation of the Social Pillar**

The European Commission has organized a consultation on the reinforcing Social Europe. According to the Commission, the aim of the consultation 'is to prepare ground implementation of the European Pillar of Social Rights' as well as the Pillar's Action Plan to be presented in early 2021. The overall aim of the implementation of Social Europe is to ensure that the transitions of climate-neutrality, digitization and demographic change, as well as the recovery from the COVID-19 pandemic, are socially fair and just.

The Union of Entrepreneurs and Employers has consistently opposed the idea of implementation of the European Pillar of Social Rights ('EPSR') due to fundamental legal reasons. The EPSR is not a legal act, but merely a non-binding political declaration, which, as exemplified by this consultation, is used 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". Therefore, the provisions of the EPSR preclude the possibility of using it to contravene the Treaties.

Nevertheless, as the proposed Directive on the European Minimum Wage shows, the EPSR has already been used to extend the competences of the European Commission in the field of social affairs. Art. 153 TFEU is the standard legal basis for EU actions in the field of social policy. Art. 153(1) lists a number of areas in which the EU can support and complement the action of member states. One of them is listed in Art. 153(1)(b) as "working conditions". However, as a clear exception to the EU's social competences under Art. 153(5) TFEU states that "the provisions of this Article shall not apply to pay". This means that the Treaties in a clear and literal way exclude EU action in the field of wages, and the proposed Directive is an example of using the EPSR to exceed the competences and contravene the EU law. Keeping this in mind, the Union of Entrepreneurs and Employers expresses its concern that further implementation of EPSR may lead to similar result.

## Związek Przedsiębiorców i Pracodawców

Zarząd: Cezary Kaźmierczak – Prezes, Marcin Nowacki - Wiceprezes



Notwithstanding the legal concerns, the importance of just transition and recovery cannot be overstated. Currently, the European Union is facing an unprecedented crisis caused by the pandemic of coronavirus. Rebooting the economy after the crisis while ensuring green and digital transition represents a challenge that the EU will have to face in the coming years. However, it is important to realize that these tasks will not be completed without generating economic growth. Therefore, a sustainable policy needs to take under consideration interests of the entrepreneurs, who bear the burden of providing jobs for Europeans. The SMEs are the backbone of the European economy – in 2017 there were almost 24.5 millions SMEs which employed close to 95 million people. In other words, two out of three workers in the EU has an occupation in the SME sector. Moreover, the economic impact of the pandemic on this sector has been particularly severe as more than 75% of SMEs are experiencing or expecting a reduction in revenues through 2020 and in part the reductions in revenues are very high. It is worth noting that even under normal circumstances the SMEs often struggle with scarcity of financial and human resources. Therefore, creating additional requirements on top of these already in place during or before the economic recovery will put an unjust burden SMEs, what can subsequently hinder the EU's ability to fulfill other strategic goals.

In brief, the Union of Entrepreneurs and Employers consistently stresses the fact that the European Pillar of Social Rights is not a legal act and its' provisions themselves preclude the possibility of EPSR being used to extend EU's competences in the field of social affairs. Nevertheless, as the example of European Minimum Wage Directive shows, the EPSR is being used to contravene the Treaties. Hence, we are deeply concerned that further implementation of EPSR can lead to similar illegal acts. Nevertheless, the Union of Entrepreneurs and Employers understands the challenges related to recovery and twin transition. These strategic goals will, however, not be obtained without economic growth. The SMEs sector, employing two out of three Europeans, is the backbone of the European economy and has been severely impacted by the economic crisis. Thus, we recommend the European Commission to be wary of imposing additional burdens on SMEs as this might jeopardize the EU's ability to recover and attain strategic objectives of the twin transition.

## Związek Przedsiębiorców i Pracodawców

Zarząd: Cezary Kaźmierczak – Prezes, Marcin Nowacki - Wiceprezes