

Position of the Union of Entrepreneurs and Employers on the European Pillar of Social Rights Action Plan

On 4th March 2021, the European Commission presented the European Pillar of Social Rights Action Plan. The European Pillar of Social Rights (EPSR) is a set of 20 principles that were announced in 2017 at the Social Summit for Fair Jobs and Growth in Gothenburg, Sweden. The a vision of Europe possessing a strong social aspect has become one of the political objectives of the European Commission under the leadership of Ursula von der Leyen. In 2020, the Union of Entrepreneurs and Employers took part in the wide-ranging public consultations conducted by the European Commission concerning the implementation of the EPSR. The Action Plan builds on the results of these consultations as well as is intended to be the Commission's contribution to the next Social Summit to be held in May 2021 in Porto, Portugal. The position of the Union of Entrepreneurs and Employers on the EPSR Action Plan is presented below.

The non-binding nature of EPSR and legislative proposals

The Union of Entrepreneurs and Employers has consistently been reminding all parties involved that the European Pillar of Social Rights is not a legal act, but merely a non-binding political declaration, which, according to some, is designed to provide an impetus to the development of legislative initiatives on social rights within the EU. Nevertheless, the provisions of the EFPS themselves exclude such a possibility. Recital 18 of the EPSR makes it clear that “[a]t 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 recital 19 states 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”.

The non-binding nature of EFPS was then confirmed by the European Commission in a document accompanying the Action Plan [1]. It is rather noteworthy that the issue of the non-binding nature of the EPSR was raised by 8 other employers’ organisations from all over Europe. Apart from the Union of

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Entrepreneurs and Employers – ZPP, these were the Danish Chamber of Commerce – Dansk Erhverv, the Confederation of German Employers’ Associations – BDA, Federation of Belgian Enterprises – VBO-FEB, the German Federation of Chemical Employers’ Associations – BAVC, the Federation of German Employers’ Associations in the Metal and Electrical Engineering Industries Gesamtmetall, the Association of Swedish Engineering Industries – Teknikföretagen, and CEEMET – the European employers’ organisation representing the interests of the Metal, Engineering and Technology-based (MET) industries.

This argument is reflected again in the disinclination with which certain EU member states refer to the plans to submit legislative proposals as part of the EPSR implementation. During the consultations carried out by the Commission, Sweden, Hungary, Austria and Estonia did not support the use of legislative measures [2]. Furthermore, the Czech Republic, Denmark and Malta expressed their conviction that the main channels for implementing the EPSR ought to be the following: the European Semester, EU funding instruments, and the open method of coordination.

The employers’ organisations presented a similar position. The European Commission observed that ZPP, Gesamtmetall, CEEMET, the Confederation of Swedish Enterprise – Svenskt Näringsliv, and the European Chemical Employers Group – ECEG, are “generally opposed to further legislative action at EU level in the field of social policy” [3]. Moreover, Belgian employers added that recent legislative initiatives in the field of social policy did not sufficiently take into account the different starting points between individual member states [4].

Considering the above-mentioned arguments, it should be concluded that the EPSR does not entail the expansion of the EU’s powers in the field of social policy, and its implementation ought to be based on non-binding initiatives and should make use of existing tools such as the European Semester. We welcome the fact that the measures to implement the EPSR presented by the European Commission are largely based on non-legislative instruments (including the objectives set by the Pillar or measures to improve the quality of internships). At the same time, we see that the Action Plan contains several proposals to present legislative motions, which we evaluate negatively and as exceeding the powers of EU institutions – the European Minimum Wage Directive, in particular.

Objectives set by the Pillar

The EPSR Action Plan sets three objectives for the EU to be achieved by 2030.

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First, at least 78% of people aged 20-64 should be employed. Until Q3 of 2020, the average employment in the EU amounted to 78.3% for men and 66.6% for women. As part of the set target, the EU plans to reduce the employment gap between women and men by at least a half, to increase the provision of early childhood education and childcare, as well as to reduce the share of young people not in employment, education or training (known as NEETs) aged 15-29 from 12.6% (2019) to 9% by improving their employment prospects.

Secondly, at least 60% of all adults should attend training every year. This action encompasses increasing the knowledge of basic digital skills of people aged 16-74 in particular to at least 80%. Notably, until 2016, only 37% of adults participated in learning activities each year. These objectives are based on the targets set in the European Skills Agenda for Europe, the Council Recommendation on Vocational Education and Training, and the Council Resolution on the European Education Area.

Third, the number of people at risk of poverty or social exclusion should decrease by at least 15 million. In the EU, around 91 million people were at risk of poverty or social exclusion in 2019. The COVID-19 pandemic is expected to aggravate this situation. The Commission does not provide details concerning the plans to achieve the third objective.

As noted by the European Commission in the results of the consultation, ZPP together with other entrepreneurs unions called for measures to implement the EPSR to stimulate structural reforms and not to limit the ability of enterprises, in particular SMEs, to create jobs [5]. Therefore, we welcome the fact that the European Commission has placed emphasis on increasing employment and the skills of Europeans with use of existing instruments. At the same time, we noticed that as part of the fight against poverty and social exclusion, no details have been presented that would allow for a substantive evaluation of this aspect of Action Plan to implement the EPSR.

Better and more jobs

The next part of the Action Plan is dedicated to creating more and better jobs. At the outset, the European Commission notes that maintaining and creating new jobs in the era of the coronavirus pandemic is issue of paramount importance for the EU. On the other hand, when it comes to the recovery period, the Commission presents a series of measures aimed at promoting employment, creating new jobs, and facilitating job transitions, especially in those growing rapidly, such as the digital or green sectors. Therefore, the Commission will:

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- (i) review the Council Recommendation on a Quality Framework for Traineeships, principally in terms of working conditions;
- (ii) update the industrial policy for Europe, basing on the results of the implementation of the new 2020 industrial strategy and lessons learnt from the pandemic;
- (iii) adopt a social economy action plan for Q4 2021;
- (iv) evaluate the experience with the Temporary Support to Mitigate Unemployment Risks in an Emergency (SURE).

Although at the rhetorical level, the European Commission declares its willingness to undertake a number of actions aimed at increasing the quantity and quality of jobs, we are concerned that the EC's actions may ultimately focus on raising social standards, which will not be followed by the increase in productivity and competitiveness of the European economy – on the contrary, both will deteriorate as a result. Raising social standards has virtually no chances of success if separated from economic realities, and the EU should take steps to address the decline in the competitiveness of the European economy vis-à-vis partners from other parts of the world.

A sine qua non condition for the well-being of Europeans is to strengthen European economy. The growing power of China threatens the current position of the European Union as well as that of the United States. To meet this challenge, American and European authorities are responding by creating strategic programmes and increasing public funding. Various economies are now being stimulated through political planning, despite evidence that excessive state intervention leads to misallocation of resources in the economy. Thus the values that led the West to prosperity are being forgotten – from innovation via freedom of entrepreneurship to responsibility for oneself. In our view, maintaining the “European way of life” requires a comeback to European values, rather than emulating Chinese-style central planning. Opening up markets, along with unlocking entrepreneurship and creativity will allow us to take advantage of the opportunities offered by IT and technological revolution. Therefore, we call for the creation of new burdens to be abandoned, and the regulatory environment for entrepreneurs to be improved, as well as to focus on facing economic and technological challenges. Rebuilding Europe's economic position will increase the prosperity of Europeans and help raise social standards naturally, rather than putting pressure on entrepreneurs and reducing competitiveness.

Referring to individual proposals, the Union of Entrepreneurs and Employers takes note that:

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- improving the quality of internships is necessary and indispensable, but one should focus mainly on increasing the level of skills acquired by interns;
- updating industrial policy should take into account the issue of access to critical resources and enhancing the innovativeness and competitiveness of the European economy;
- presenting an action plan for the social economy constitutes a threat of violating the division of competences in social matters enshrined in the Treaties, just as the Action Plan does for the implementation of the Pillar;
- European programmes in the post-pandemic recovery period should focus on creating the jobs of the future.

Adaptation of labour standards to the future needs of the labour market

The third part of the Action Plan was dedicated to adjusting labour standards to the future of the labour market.

We fully support the proposal presented by the Commission to reduce labour taxation. Excessive overheads on work are a source of problems related to social exclusion resulting from the inability to obtain formal employment. In its recent proposal, ZPP proposed to abolish the minimum wage requirements for the smallest entrepreneurs in order to make the labour market more flexible.

At the same time, we must oppose the proposal to introduce a European minimum wage. The drafted directive will lead to a reduction in labour market flexibility and will deepen social exclusion. Setting a minimum wage at national level is detrimental to people in low-paid jobs, especially in smaller towns, and can effectively deprive such people of access to legal work. Raising burdens on work also intensifies the phenomenon of arbitration in the labour market, depriving an increasing number of people of the possibility of exercising the rights that would be theirs under the Labour Code.

We also believe that the European Commission does not have the power to regulate wages. Article 153 of the Treaty on the Functioning of the European Union (TFEU) is the standard legal basis for EU action in the field of social policy. Art. 153 sec. 1 lists a number of areas in which the EU can support and supplement the actions of member states, one of which is listed under letter (b): “working conditions”. However, a clear exception to the EU’s social competences is given in Art. 153 sec. 5 TFEU: “[t]he provisions of this Article shall not apply to pay”. And as one can observe, Art. 153 sec. 5 TFEU does not

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mention the direct impact on the level of remuneration, but explicitly states that the EU institutions have no competence in this area, both directly and indirectly. This means that the Treaties clearly and literally exclude EU action in the field of wages, and the proposed Directive is an example of exceeding the competences and ignoring EU law by the European Commission.

Moreover, we note that the draft directive has received criticism from the Scandinavian countries as it will weaken their collective bargaining system. The issue of minimum wages is regulated differently in each member state. Countries such as Denmark and Sweden boast a long tradition and a well-developed system of collective bargaining. This is illustrated by the fact that despite the lack of a statutorily regulated minimum wage, these countries have some of the best social standards in Europe. The Minimum Wage Directive may undermine this system and lead to a lowering of standards, and is therefore undesired.

We are also concerned about the subsequent proposals of the European Commission. The third part of the Action Plan assumes that in Q4 2021, the European Commission will submit a legislative proposal on the working conditions of people working via online platforms and will present an initiative to ensure that EU competition law does not prevent the conclusion of collective agreements on (some) self-employed people. With regard to the regulation of platform employees, in the opinion of ZPP, such regulation is undesired, as it will further limit what little flexibility there is on the labour market and it may encounter serious legal problems related to, among other things, the definition of an employee and the differences in the legal status of platform employees in different member states. For example, according to recent rulings, a court in the Netherlands classified Deliveroo employees as full-time employees, while an Italian court – as self-employed.

In the discussion on the regulation of platforms, one must not forget their economic aspect. According to the currently prevailing discourse, regulatory barriers can strengthen the EU's global position, as they will force other regions to adopt European values. This approach has proven unsuccessful in the case of China, where economic growth was not followed by the respect for the rule of law or human rights. There is no reason to expect this to change in the future. Furthermore, we see the practical difficulties that may be associated with the introduction of collective agreements for some self-employed workers. First of all, it seems difficult to define the target group of such regulation. Secondly, after a successful process of defining criteria for selecting such self-employed workers, the same criteria can be used by national tax offices to prove to these entrepreneurs that they have an employment relationship with their main or sole client and therefore should pay higher health or social insurance contributions.

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Employee mobility

In the field of employee mobility, the European Commission proposes to cooperate with the European Labour Authority to properly implement and enforce EU rules on employee mobility, to create better information and labour inspection capabilities at a national level, and to protect mobile workers, including seasonal workers. In our opinion, the measures proposed by the European Commission are insufficient and should be extended to include an analysis of the impact of the Mobility Package on employee mobility, job availability, competitiveness of the European economy as well as the implementation of the European Green Deal objectives. A recent report by the Commission touched upon the environmental impact of two provisions from the mobility package: the obligation to return the truck to base every 4 weeks and the reduction of cabotage quotas [6]. According to this report these provisions will lead to the emission of an additional 3.3 million tonnes of carbon dioxide (comparable to a year's worth of total transport CO₂ emissions in Estonia) and an increase in transport emissions by approx. 5%. With this in mind, ZPP encourages the Commission to expand the scope of its planned activities in the field of employee mobility.

Investments in skills and education to provide new opportunities for all

With reference to the part of the Action Plan dedicated to investment in skills, the Commission will:

- (i) propose a higher education transformation plan in Q4 2021 to unlock the full potential of tertiary education institutions in the scope of reconstruction towards a sustainable, inclusive, green and digital transformation;
- (ii) propose a personalised training account initiative in Q4 2021 to overcome barriers to access to trainings and enable adults to manage their career changes;
- (iii) propose in Q4 2021 a European approach to micro-qualifications to support flexible learning pathways and labour market flows;
- (iv) propose a skills and talent package in Q4 2021, including a revision of the Long-term Residents Directive (Directive 2003/109) to establish true long-term resident status in the EU, a revision of the Single Permit Directive (Directive 2011/98) to simplify and clarify its scope (including admission and residence conditions for low- and medium-skilled workers) as well as to identify options for developing an EU talent pool for qualified third-country workers.

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The Union of Entrepreneurs and Employers welcomes the proposed proposals aimed at investing in skills, the simplification of procedures, and the use of the talent pool of third-country workers. At the same time, ZPP notes that in the times of Brexit, the number of EU institutions ranked globally among the very best universities has significantly decreased. Scientific centres at the highest world level play a key role in fostering innovation in the economy. Therefore, ZPP calls for the extension of the Action Plan related to tertiary education to support the best universities, so that, in the next few years, European universities and Europeans can be at the forefront of science.

Building a Union of equality

Along with this Action Plan, the Commission presented a motion proposing a directive to strengthen the application of the principle of equal pay regardless of gender for equal work or work of equal value through pay transparency measures and enforcement mechanisms. Although the provisions of the proposed directive do not undermine the principle of pay secrecy, in the case of small companies, where the same position is occupied by, for example, two people, they may in fact lead to pay secrecy violation. In some member states, it is an important principle and legislation promoting equal pay should be designed so as not to violate it.

Summary

From the above analysis, we can draw several basic conclusions. First of all, the EPSR remains a non-binding political declaration which cannot lead to an extension of the powers of EU institutions in the field of social policy. Therefore, in order to implement the Pillar, ZPP advocates the use of non-binding and existing instruments.

Secondly, ZPP welcomes the emphasis in the Action Plan on job creation and investment in skills. From our perspective, achieving the ambitious goals of social policy is impossible without improving the competitiveness of European economy, which will not happen without increased productivity, and therefore without better skills and more jobs. At the same time, we are concerned about the possibility of a rhetorical use of the postulates of creating better-quality jobs for the purposes of raising social standards, which would not be followed by productivity growth.

Third, making the labour market more flexible is crucial for restoring the competitiveness of the EU economy and the well-being of Europeans. On the one hand, we support the European Commission's

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proposal to reduce taxes on labour. On the other hand, we strongly oppose the idea of introducing a European minimum wage or regulating platforms in such a way that labour surcharges would be increased.

Fourth, we note that any action taken at the EU level should primarily respect the national traditions and laws of individual member states. We therefore oppose the plans to introduce a European minimum wage as lowering the standards of collective bargaining in some member states. Moreover, we see that the directive aimed at strengthening the application of the principle of equal pay for male and female workers may lead to a de facto violation of the principle of pay secrecy.

Lastly, we emphasise that the strengthening of the European economy is a sine qua non condition for the well-being of Europeans. In response to China's growing power, the EU is increasingly interfering in the economy and distancing itself from the values that had built its position – innovation, freedom, entrepreneurship and responsibility for oneself. In our view, the “European way of life” requires a return to European values, rather than following the Chinese model. Unlocking the potential of entrepreneurship will increase Europe's prosperity and lead to a natural rise in social standards. On the other hand, the path of adding burdens that the EU is currently following is putting pressure on entrepreneurs and leading us to decreasing competitiveness at a key moment in a post-pandemic recovery.

[1] <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0046&from=EN> page 9.

[2] Ibid., page 45.

[3] <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0046&from=EN> page 44.

[4] Ibid.

[5] <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0046&from=EN> page 11.

[6] https://ec.europa.eu/transport/modes/road/news/2021-02-mobility-package-i-studies_en

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