

HOTREC's reply to the Commission second stage consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges related to fair minimum wages

HOTREC in a nutshell

HOTREC is the umbrella Association of hotels, restaurants, bars and cafés in Europe, which brings together 45 national associations in 33 European countries and is the voice of the hospitality industry in Europe. The industry contributes with 5% of the EU GDP to the EU economy and is composed of 2 million enterprises, 90% of which are micro-sized (i.e. employing less than 10 people). The European hospitality sector, together with the other tourism industries, is the 3rd largest socio-economic activity in Europe. Indeed, the hospitality industry alone created over 2 million new jobs between 2013 and 2017 taking its workforce from 10,3 million employees to almost 12,5 million. In addition, 30,2% of the workers in the sector are relatively unskilled, compared to 17,7% in the overall economy, meaning that the sector provides jobs to a broad range of profiles. Moreover, 20,2% of the employees are aged under 25 years compared to 8,2% in the overall economy, therefore, fighting youth unemployment. The sector **also promotes gender balance**: while in the overall economy 46% of people employed are women, in the sector the figure rises to 54,1%. The hospitality sector is, consequently, an entry door to the labour market and a facilitator in terms of social inclusion.

It is to take into account that the aforementioned statistics report **from before COVID-19 crisis**. At present the European Commission estimates a possible loss of 6 million employees for the tourism sector¹.

General remarks

HOTREC fully agrees with the principle that all workers in the EU should earn a decent living so that fair and resilient economies can be build. Nevertheless, it is to note that minimum wages are not the only element to reach this goal. In fact **tax burden reduction on wages** (especially those referring to the low-skilled and low-wage); **effective social benefits, education and training policies, as well as a modern labour market** are all part of the equation.

As mentioned before, the hospitality sector was severely hit by the crisis. Six million jobs are at stake and thousands of companies face bankruptcy or fear for their survival. We are now hoping that the EU Recovery Plan will help rebuild the entire sector. Therefore, at least for our sector, the goal is to **survive**. More administrative and economic burdens simply cannot be handled by the sector. It is also to note that 90% of our companies are micro-enterprises with very low profit margins. All in all, we are aware that some salaries in the sector are not very high. Nevertheless, we have some other examples of performing activities that are highly remunerated (e.g. Chef cook). Overall, we trust salaries are in line with either national legislation or collective bargaining agreements. And defend that is best to provide several forms of work (e.g. temporary / seasonal work) rather than no jobs at all. This is a way to dynamize employment.

¹ https://ec.europa.eu/info/sites/info/files/communication-commission-tourism-transport-2020-and-beyond_en.pdf

In addition, we welcome the fact that the European Commission acknowledges in the consultation document, that, in line with Articles 151 and 153/5 TFEU and the case-law of the Court of Justice of the EU, the EU is not allowed to intervene directly on the level of minimum wages across the EU nor to establish a uniform mechanism for setting minimum wages, in order to safeguard the competence of Member States and the autonomy of social partners in the field. National traditions, social partner's autonomy and the freedom of collective bargaining need to be respected.

HOTREC does not agree that the EU presents a Directive on possible EU action related with fair minimum wages. Court cases would probably be initiated in order to contest the legal basis.

HOTREC considers that the best solution would be to further develop the European Semester process, with the full involvement of social partners, European Commission and Council. Namely country specific recommendations could focus on **implementing effective structural reforms, boosting investment strategies and encouraging responsible fiscal policies**. Ad hoc solutions based on the individual needs of Member States could be worked upon. But, the EU should not jeopardise the economic reality of each one of the Member States and should not politicise the procedure. Therefore, the voice of each country should be heard.

As a second option, and only in case the European Semester solution can not prevail, a Council Recommendation could be considered. This is, in any case a better instrument, when compared to the Directive. Nevertheless, this could jeopardise the autonomy of social partners (both regarding wage discussions and collective bargaining). In case a Recommendation prevails, social partners need to be fully consulted.

Question 1 – What are your views on the specific objectives of a possible EU action set out in section 5?

HOTREC has the following views with regard to the specific objectives set as possible EU actions:

- **Minimum wages are set by the national legislator and / or social partner at adequate levels**

HOTREC agrees that social measures should be in place allowing for a decent living wherever you work. Nevertheless, as mentioned, social measures not only include minimum wages, but also reduction of tax burden on wages; effective social benefits; education and training policies, as well as a modern labour market.

Overall, the Commission acknowledges positively in its analysis paper, that the adequacy of statutory minimum wages has improved in several countries in recent years.

The Commission also makes reference that statutory minimum wages are lower in some countries. Nevertheless, it is to take into account that increases in wages that go beyond what employers can pay, may result in less people being employed and less progression in the career. In fact, higher minimum wages may result in less jobs, at least in low skilled areas. This might decrease the possibilities of entering the labour market and might lead to increased automatization of low skilled jobs.

We also take note that the Commission analysis paper states that the statutory minimum wage did not provide sufficient income for a single minimum-wage earner to reach the at-risk-of-poverty threshold in six Member States².

Nevertheless, we insist that adequacy should be analyzed jointly with productivity levels and job and career opportunities. As mentioned before, it is in our perspective much better to provide several forms of work (including part-time, occasional work, seasonal work) rather than any jobs at all. In fact, at the moment, one needs to consider that job opportunities for low skilled workers are at risk due to the Covid-19 crisis.

- **Minimum wages to protect all workers**

It is up to governments to decide which workers are covered by minimum wages. This should be done in cooperation with social partners or by the social partners on their own. If wages are agreed via collective bargaining, wages are set by collective agreements.

Coverage should take into account both minimum wages but also other points, such as social security.

In order to reach those main objectives, the Commission has put forward some objectives:

- **Well-functioning collective bargaining in wage-setting** – collective bargaining ensures that workers are protected, implies that both employers and employees are represented and ensure that wage conditions are consistent with worker’s and employee’s needs. Nevertheless, their autonomy needs to be respected. HOTREC would agree on more involvement of social partners in setting minimum statutory wages, in cases where social partners are not so much involved, if they are willing to do so;
- **The national legislator and/or the social partners provide for national frameworks allowing for statutory minimum wages to be set and regularly updated according to clear and stable criteria** – HOTREC agrees with the objective. Nevertheless, and as already mentioned, adequacy needs to be put together with economic aspects (e.g. tax burden reduction on wages (especially those referring to the low-skilled and low-wage); effective social benefits, education and training policies, as well as a modern labour market;
- **Social partners effectively being involved in statutory minimum wage settings** – as mentioned, even though we consider that involvement of the social partners in the statutory minimum wages could be positive, one needs to consider that systems that are working well, should continue working in the same way (e.g. social partners that are happy with their statutory systems or those social partners not willing that more legislation is in place should be respected). Overall, the autonomy of the collective bargaining on one hand, as well as the legislation of the different Member States on the topic should be respected;
- **The national legislator and / or the social partners eliminate or limit minimum wage variations and exemptions so as not to unduly harm minimum wage adequacy or preclude certain groups from benefiting from minimum wage protection** – HOTREC does not agree with this point. Any such action would undermine the autonomy of social partners or go against the competencies of Member States. Exemptions in force exist for a reason and are proportionate and justified (e.g. allow workers to enter the labor market). Exemptions depend on national

² Czechia, Estonia, Malta, Germany, Latvia and Luxembourg.

conditions, sectors, national definitions. It is not up to the EU to determine whether such exemptions should exist or not.

- **Effective compliance with national minimum wage frameworks and monitoring mechanisms** –it is important to avoid non-compliance or undeclared work. Nevertheless, it is up to national legislation to determine compliance mechanisms. Therefore, the EU should not act.

2 – What are your views on the possible venues for EU action set out on section 6.1 of this document?

HOTREC advises the Commission to take action on minimum wages via the European Semester. The involvement of social partners, the European Commission and all EU countries should be taken into account. In any case, when considering wages, a holistic approach should be reflected upon, including adequacy and other economic and social aspects.

We would not agree if the Commission chooses a Directive as the EU instrument of its choice – again the legal basis would be questionable, and well-established national legislation and/or collective bargaining agreements could be jeopardized. A Council Recommendation is not advisable by HOTREC but would be less detrimental when compared to a legislative act. National competencies and social partners autonomy should be preserved.

HOTREC's opinion with regard to section 6.1 of the Commission document should be read in line with our reply provided to question 1 of this questionnaire. HOTREC's views are as follows:

- **Collective bargaining:** HOTREC supports a strong collective bargaining but it does not support action taken by the EU on the topic. In fact, coverage should be decided by the social partners and, as mentioned should include other economic factors (e.g. tax burden; career and training opportunities). Experiences on collective bargaining could be shared amongst countries and sectors. The European Semester could eventually play a role in this field;
- **Clear national frameworks to set and update statutory minimum wages:** HOTREC can agree that the EU proposes some criteria to provide guidance for updates on wages to be conducted frequently and with regular intervals. Nevertheless, and as pointed out, the cost of living and other economic and social conditions need to be considered (productivity levels, taxation; social benefits). If indicators are implemented, for instance, via the European Semester, net wages should be the ones considered (this will take into account the costs for employers and the worker's take home pay);
- **Involvement of social partners in statutory minimum wage settings:** if there is agreement from social partner's side, involvement by the latter on statutory minimum wage settings could be positive. The existence of regular, formal consultation mechanisms as highlighted by the Commission could be considered;
- **Exemptions and variations:** HOTREC cannot accept the elimination of exemptions and/or variations. As explained before if they exist is for a specific reason: either they were agreed by social partners or designed by national legislation;

- **Compliance and monitoring:** the EU should not get involved on this matter. It is up to national governments to make sure compliance and enforcement with national legislation is in place.

3 – What are your views on the possible legal instruments presented in section 6.2?

As stated on the first stage consultation, HOTREC is of the opinion that according to arts 151 TFEU and 153/5 TFEU and the case-law of the European Court of Justice (EJC) it is clear that the EU cannot legislate when it comes to payment. This point was also acknowledged by the European Commission in the second consultation document.³

The direct consequence is that the possibility of the European Commission to issue a Directive on the matter should be ruled out.

In any case, and as previously mentioned it is very important that the independence of well running collective bargaining agreements is respected, as well as traditions and specific legislation established in each country. A Directive would not be in line with these principles.

A Council Recommendation is not recommended by HOTREC, but it could be considered if all other options are ruled out. Nevertheless, Member States should follow the Recommendation, so again the question regarding the autonomy of social partners and national traditions could be an issue. If the Council Recommendation is the instrument chosen, social partners should actively participate in the discussions.

HOTREC advocates for EU action to be developed in the framework of the **European semester**, namely on country specific recommendations focusing on **implementing effective structural reforms, boosting investment strategies and encouraging responsible fiscal policies**. Ad hoc solutions based on the individual needs of Member States could be worked upon. But the EU should not jeopardize the economic reality of each one of the Member States and should not politicise the procedure. Therefore, the voice of each country could be heard.

In addition, countries with low minimum wage should tackle the challenge at national level.

Overall, the EU should help Member States to increase sustainable jobs and reduce unemployment, which is a precondition for better working conditions and wages.

4 – Are the EU social partners willing to enter into negotiations with a view to concluding an agreement under Article 155 TFEU with regard to any of the elements set out in section 5 of this document?

HOTREC cannot initiate negotiations with its trade union on the topic. But in case negotiations between Business Europe and ETUC are deployed, HOTREC is willing to be very much involved, so that the hospitality sector can be represented.

³ Page 2 of the consultation.