



Director-General Joost Korte

Social Dialogue Committee

8 February 2022, 14:00

Videoconference (« Zoom »)

Briefing coordination: [REDACTED] [REDACTED]	Main contributors: [REDACTED] [REDACTED]
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Scene setter

On 8 February at 14:05, you will address the **Social Dialogue Committee (SDC)** and firstly present recent developments in employment and social policies (10 minutes). Your presentation will be followed by a short Q & A session. Your intervention together with the Q & A session should last about half an hour (14:05-14:35).

This regular agenda point is shorter compared to previous meetings as social partners asked to make the upcoming Social Dialogue Initiative the main agenda point of this SDC.

You will then speak on the Social Dialogue Initiative (10-15 minutes) to be followed by an exchange of views. You will then speak on the Social Dialogue Initiative (10 minutes) to be followed by an exchange of views. Each side has 30 minutes of speaking time to be shared among several speakers. Social partners agreed that Esther Lynch and Maxime Cerutti would speak first after your introduction. You could then briefly react. Then the discussion would move to alternating interventions from other trade union and employer speakers, to be followed by final reactions from your side. EU social partners are aware that the Commission will only present concrete proposals at the planned consultation hearings on the Communication (end of April) and the Recommendation (end of May). However, they wanted to provide their national affiliates with the opportunity to express their expectations and views.

The last SDC meeting in which you participated took place on 28 September (cf. draft minutes attached). It focused on the SOTEU 2022, the EMPL initiatives adopted in December 2021 and the ESF support for capacity building of social partners.

You will find below the draft agenda of the SDC. The plenary starting at 14:00 will be chaired by [REDACTED]. The meeting will be held in videoconference format, in ZOOM provided by TIPIK (DG JUST FWC).

The meeting is preceded by the preparatory group and joint meetings of ETUC and employers' organisations in the morning. The videoconference platform for the morning meetings will be Interactio provided by SCIC (DG EMPL didn't get a hybrid meeting room for the afternoon session). Social partners often complained in the past about the more rigid SCIC Interactio version.

After the break, social partners will inform the Commission on:

1. Implementation of the autonomous agreement on digitalisation (2020)
2. Update on integrated projects

At the end of the meeting, DG EMPL (E.1) and possibly also DG GROW will inform on the state of preparations of the Single Digital Form for the declaration of the posting of workers.

Participants:

- **COM:**
 - **DG EMPL:** DG Joost KORTE, [REDACTED]
[REDACTED]
[REDACTED]
 - **Other services:** [REDACTED] (SG/D.3), [REDACTED], (ECFIN.B.2)
- **Social partners** (*Full list of participants and speakers in a separate file.*)

In 2022, the Commission is planning to consult European social partners through dedicated hearings on various upcoming Commission initiatives:

- Council Recommendation on minimum income (24 March),
- European Care Strategy (beginning of April, date tbc),
- Communication on social dialogue (28 April),
- Council Recommendation on social dialogue (31 May).

[Since the kick-off meeting between Commissioner Schmit and social partners the third thematic seminar on the sectoral social dialogue review took place [survey conducted in summer 2021, 1st thematic seminar on 21 October, 2nd on 18 November , DG EMPL received the legal assessment by the Legal Service on the EPSU judgement and EMPL C.3 held a meeting with the secretariats of cross-industry EU social partners. Social partners agreed with the proposed approach on consultation of social partners and confirmed their lack of interest in the European award scheme.]

To feed into the dedicated hearing on the social dialogue communication, DG EMPL will also hold several other meetings with social partners regarding the planned visiting and information programme (18 February), the support frame for social partner agreements and the sectoral social dialogue review (March date tbc).

EU cross-industry social partners are currently negotiating their next joint work programme 2022-2024. 4 negotiations meetings already took place (24/09/21, 24/11/21 and 28/01/22), two more are scheduled on 16/02 and 18/03. Social partners could possibly reach an agreement in time for the next TSS on 23 March. However, the work programme would only become public and be signed following the endorsement by the respective internal bodies of social partners (process takes around 6 weeks). Among the priorities of the new work programme could possibly feature the just transition and telework.

On 17 January, the leaders of the four cross-industry social partners wrote to you expressing their concern about the delays in the selection of the successful proposal applications under the social dialogue call for proposals. The joint project proposal of EU social partners (so-called integrated project to implement their work programme) as well as the projects of national social partners affected by the pandemic were supposed to start at the beginning of 2022. They urged the Commission to ensure that a solution is found to quickly provide an answer to those social partners that have submitted projects and allow for a swift start of the project activities. They also count on you and your services to ensure that the distinctive nature of social dialogue projects is understood and respected by the Commission without overburdening the granting process by excessive administrative requirements.

A response has been prepared by units C.3 and G.4. The draft letter points to the delays caused by the late adoption of the MFF and to the delay in the evaluation process due to additional procedural stages embedded in the new E-grant system. Jörg Tagger, (HoU C.3) had already informed all applicants to the three call for proposals about the delays in an e-mail of 19 January 2022.

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Draft Agenda

Social Dialogue Committee (SDC)
Videoconference
8 February 2022
Draft Agenda

Format:	Videoconference (“Interactio” in the morning, “Zoom” in the afternoon”)
Languages:	EN FR DE IT (plus ES in the afternoon)
09:00 – 12:30	Trade unions' and employers' group meetings and bi-partite meeting
<i>11:00 – 11:15</i>	<i>Break</i>
14:00 – 16:30	Plenary session

14:00	1. Adoption of the agenda
	2. Approval of minutes (SDC of 28 September 2022)
14:05	3. Information by the Commission followed by a discussion with social partners: a) Update on recent developments in employment and social policies
14:35	4. Information by the Commission followed by feedback from social partners: a) 2022 social dialogue initiative
<i>16:00</i>	<i>Break</i>
16:15	5. Information by the social partners a) Implementation of the autonomous agreement on digitalisation (2020) b) Update on integrated projects
16:30	6. AOB a) eForm for the declaration of the posting of workers
17:00	End of the meeting

Speaking points

14:05-14:15 [Update on recent developments in employment and social policies] [1000 words = 10 minutes]

- It is my pleasure to meet and discuss with you again – still in a virtual format – several topics and initiatives we are going to focus on this year.
- Let me start this meeting with an overview of the recently adopted initiatives and our ongoing work on:
 1. The proposal on a minimum wage directive
 2. The initiative on improving the working conditions of platform workers
 3. The Social Economy Action Plan
 4. Individual Learning Accounts
 5. Micro-credentials

[1. Minimum wage]

- Following the adoption of their respective negotiating mandates [in November and December], the Council and the European Parliament started their negotiations on 13 January. We had the third trilogue earlier this morning.
- As you may know, the French Presidency has a very ambitious agenda on this file, and we have the fourth trilogue meeting scheduled for next week, with intense technical work taking place inbetween in good cooperation between the co-legislators. I am confident that these negotiations will move forward quickly and that a balanced and ambitious agreement can be reached soon.

[2. Platform workers]

- I am sure you have also seen that the Commission proposal for a Directive to improve working conditions in the platform economy was presented in December.
- This Directive will ensure decent and transparent working conditions and adequate social protection for people working in this promising sector, while supporting the sustainable growth of digital labour platforms.
- This proposal respects the competences of the Member States in the field of labour law and the traditional role of the social partners.
- Key elements of the proposal include the employment relationship and algorithmic management, as well as transparency and enforcement:

- Our proposal does not attempt to establish a definition of 'worker' at EU level. It provides a list of criteria to determine whether a digital labour platform exercises control over a person, and therefore **whether the person should be presumed to be a worker**.
 - The proposal establishes a new set of rights for people subject to **algorithmic management** in platform work – in particular to ensure human monitoring and review of decisions about how work and assignments are allocated, accounts are rated, or terminated. This will also ensure the role of social dialogue in regulating such practices.
 - The proposal will bring more **transparency** from the platforms, they will need to provide national authorities with information on people working through them and their terms and conditions.
- We hope that the European Parliament and the Council will be able to define their respective positions on our proposal by the end of 2022.

[3. Social Economy Action Plan]

- The action plan for the social economy puts forward concrete measures to unlock the potential of social economy.
- The action plan outlines the main features of the social economy and social enterprises. Numerous stakeholders, including social partners, were expecting the Commission to clarify the definition of social economy while respecting the different national approaches. We believe the approach followed in the action plan meets this expectation.
- A key examples of the proposed measures and actions include:
 - **Business environment:** creating the right framework conditions for the social economy to thrive
 - we will propose in 2023 a Council Recommendation on developing social economy framework conditions.
 - **Opportunities and building capacity:**
 - we will launch in 2023 a new EU Social Economy Gateway to ensure social economy actors can find all the information they need in one place on EU funding, policies, training and initiatives.
 - **Awareness and recognition:** we will carry out communication activities, continue data collection, and provide training to boost the visibility and promote the positive impact of the social economy and its potential.

[4. Individual Learning Accounts]

- The proposal for a Council Recommendation on individual learning accounts recommends Member States to:
 - Set up an **individual learning account for all working-age adults** –regardless of their current employment status;
 - Embed these in an **enabling framework**, including a national registry of relevant training, career guidance and validation opportunities that are eligible for funding from the training entitlements.
- Let me highlight that the proposal **does not replace existing support for training** to employers or education & training providers or provided by public employment services.
- Instead, it outlines how Member States can **significantly increase training participation to match the EU ambition** expressed by the Heads of State and government in the Porto Declaration: drawing on the “lessons learned” from past and current schemes to incentivize training uptake by individuals, and ensuring that training addresses labour market needs.
- The proposal recommends a **strong role of social partners** in the governance of individual learning accounts, notably in the definition of training opportunities eligible for funding.
- Negotiations in the **Council’s social questions working party** have started in January.

[5. Micro-credentials]

- We adopted also a proposal for Council Recommendation on Micro-credentials for Lifelong learning and employability.
- The sets out a common definition for micro-credentials; standard elements for describing micro-credentials; and principles for designing and issuing micro-credentials which can enable the understanding and recognition of micro-credentials across borders, companies and institutions.
- Discussion on the micro-credentials is expected to begin in Council under the French Presidency in March 2022.
- Both the on Individual learning accounts and on Micro-credentials will be key for us to meet the ambitious targets of the European Social Pillar Action Plan: 60% of all adults participating in training every year (versus 37% in 2016) and at least 78% of people [aged 20 to 64] in employment.

[Closing]

- As you can see, we have a very ambitious agenda for 2022, and social dialogue will play a vital role in carrying them out.
- Moreover, the Commission will soon launch a number of targeted consultations and dedicated hearings with European social partners on several proposals, this includes just to name a few:
 - The **Council Recommendation on adequate minimum income schemes** (in Q3 2022); and
 - The **European Care Strategy**.
- In order to achieve this ambitious agenda, we need a strong European social dialogue. We will come back in the second part of our meeting today to the details of the social dialogue initiative.

14:35-14:45 [2022 Social Dialogue initiative] [805 words = 8 minutes]

- 2022 will be a very special year for social dialogue.
- As announced in the European Pillar of Social Rights Action Plan, this year the Commission will present an initiative to support social dialogue at European and national level.
- At our last Social Dialogue Committee meeting, we already briefly discussed the envisaged initiative. I recall that I told you that in my view this initiative should take the form of a Commission Communication.
- Such a Communication was then confirmed in the Commission Work Programme in October last year. It will be the first Commission communication on social dialogue since 2004.
- President von der Leyen also announced in her concluding remarks at the last Tripartite Social Summit that the Commission would also propose a Council Recommendation on the role of social dialogue.
- Her proposal echoed the strong criticism that was expressed by social partners at the TSS regarding their involvement in the design of National Recovery and Resilience Plans.
- So finally the Social Dialogue Initiative will be a package consisting of a Commission Communication and a proposal for a Council Recommendation.
- The Communication will address social dialogue in a comprehensive way and focus on actions that could take place at European level, while the proposal for a Council Recommendation will target action to take place at national level.
- The Commission will shape this initiative in close consultation with social partners.
- Today is not yet the moment for putting concrete proposals on the table. We will do so in view of the planned dedicated hearings in April and May.
- Nevertheless, I will outline our initial thinking for the Communication and the Recommendation.

[Communication]

- The Communication will set out a common policy narrative on the role of social dialogue at European and national level.
- It should take stock of social dialogue achievements since the 2015 New Start for Social Dialogue and the 2016 Quadripartite Joint Statement.

- It should also discuss the main challenges and opportunities for social dialogue. I am thinking about the key role of social partners for ensuring fair transitions to a climate neutral and digital economy and for shaping the future of work including the platform economy.
- The Commission should also announce a set of planned action to further strengthen European social dialogue.
- A number of issues are already on the table further to the report of Andrea Nahles and the European Pillar of Social Rights Action Plan, including the sectoral social dialogue review and a new supporting frame for social partner agreements at EU level. The Communication will be the vehicle of operationalising these in practice.
- As for the sectoral social dialogue review, the Commission already conducted a survey of social partners and held three thematic seminars. We are currently reviewing the very rich feedback from social partners and are developing a set of concrete proposals.
- To follow-up on the famous EPSU judgement, we are in the process of preparing a legally sound and procedurally clear approach for a new supporting frame for social partner agreements, on which you will then be consulted.
- This will give us a clear framework and procedures on how to deal with social partner agreements in the future.

[Recommendation]

- The Recommendation should recall and address the main challenges for social dialogue at national level:
 - The substantial difference between Member States when it comes to the structures, processes, and quality of social dialogue.
 - The lack of proper involvement on social partners as evidenced again during the preparations of the National Recovery and Resilience Plans.
 - The decreasing trends in the coverage of collective bargaining agreements and lack of participation of younger generations in social dialogue
 - The need for social partners to find innovative solutions to better cover new forms of work including the platform economy.
- In my view, principle 8 of the European Pillar of Social Rights should be the starting point of our reflections for the scope and content of the Recommendation.
- Principle 8 includes three main elements:

- that social partners are to be consulted on the design and implementation of economic, employment and social policies according to national practices;
- that social partners should be encouraged to negotiate and conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action; and
- that support for increased capacity of social partners should be encouraged.
- Member States could possibly be asked to ensure
 - that an appropriate framework for social dialogue, including collective bargaining, is in place;
 - that social partners are involved in a timely and meaningful manner in the design and implementation of employment and social policies;
 - that they promote the building and strengthening of the capacity of workers' and employers' organisations at all levels.
- I am now curious to listen to your expectations and suggestions for the Social Dialogue Initiative.

Defensives

[1. Minimum wage]

Does the Commission agree that wages set through collective bargaining should always be considered adequate?

- No. While minimum wage protection generally tends to be [overall] adequate in Member States relying on collective bargaining, there are also exceptions:
 - In some countries [for example IT], collectively agreed wages do not sufficiently protect low-wage workers against the risk of poverty¹; [they are notably well below 60% of the median wage and 50% of the average wage].
- So while strong collective bargaining at sector or cross-sectoral level generally contributes to ensuring adequate minimum wage protection, this is not always the outcome [in some countries].

Why does the Commission insist so much on the indicative reference values of 60% of the median and 50% of the average wage?

- Reference values, such as 60% of the gross median wage and 50% of the gross average wage, can help guide the assessment of minimum wage adequacy in relation to the gross level of wages.
- [As shown in the Impact Assessment accompanying the draft Directive] These two reference values are the ones maximizing social benefits, while minimising economic costs. [Both reference values represent about the same level of ambition in terms of the resulting minimum wage.]
- Both indicators are commonly used at the international level to compare minimum wages across countries.

Can the Commission guarantee that this Directive will not create individual rights to a minimum wage?

- The proposed Directive does not aim to create an individual right to a minimum wage of a certain amount for workers.
- Article 1(3) explicitly states that nothing in this Directive shall be construed as imposing an obligation to introduce a statutory minimum wage or to make the collective agreements universally applicable. The Directive is addressed to the Member States and not to individuals or companies.

¹ In Italy, the net household income of a single worker working full time is below the poverty line [60% of the net median household income]. In Cyprus, some workers earn a wage that keeps them just above the poverty line.

- It establishes a procedural framework within which Member States are required to act, in consultation with social partners, to arrive at adequate minimum wages.
- [Member States are also required to give access to effective dispute resolution mechanisms and right to redress to workers [Article 11 on the right to redress], in case of infringements of their rights relating to statutory minimum wages or minimum wage protection provided by collective agreements. In this context, let me stress that the rights concerned are the rights that are conferred either by the national normative acts on statutory minimum wages or by the collective agreements and are not created by the Directive.]

[2. Platform Work]

Will the Commission's initiative reclassify all people on platforms from self-employed to workers?

- No. There is no automaticity. What matters is a correct employment status. For this, the proposed Directive is putting forward measures that will help determine the correct employment status of people working through platforms.
- Only in case there is a misclassification, a rectification will need to happen. This will however apply only to a minority of people working through platforms. According to the impact assessment study, currently there are between 1.72 million and 4.1 million people who are at risk of being misclassified.
- If digital labour platforms fulfil certain criteria, which indicate that they control the performance of work (for instance restricting the freedom of people to organise their work), they will be 'presumed' to be employers and the people working through them will be 'presumed' to be their employees.
- This means the digital labour platforms in question will be considered and treated as employers by all authorities, including social security bodies, and they will have to fulfil their obligations as employers under national and EU law, for instance with regard to minimum wages, working time and annual and family-related leaves.

What will the impact of the initiative be on genuine self-employed people working through platforms?

- As a result of the Directive, some of the digital labour platforms which currently exercise some degree of control over people who work through them, may need to change their business model to create conditions for genuine self-employment.
- Self-employed people might thus have their working arrangements revised to make sure they are granted the full autonomy that genuine self-employment entails. This will further strengthen the self-employed's

ability to take advantage of their entrepreneurial possibilities, e.g. by setting their own rates or developing their client pool. Those who are already genuinely self-employed will retain the benefits related to their employment status.

- Similarly to workers, all genuine self-employed working through platforms will also obtain new or more specific rights with respect to algorithmic management. They will better understand how tasks are allocated, how prices are set, and it will become easier for them to question automated decisions taken by algorithms, and get a solution should problems arise.

[3. Social Economy Action Plan]

Lagodinsky report: Why does the EU action plan not take into account the European Parliament draft report with recommendations to the Commission on A statute for European cross-border associations and non-profit organisations?

- The scope and rationale of the EP legislative own initiative Report and the Social Economy Action Plan are different. The action plan focuses on soft law measures, whilst the EP draft report calls for legislative proposals.
- The difference is further reflected in point 11 of the Resolution, which welcomes the action plan but highlights that, as only certain associations and NPOs are operating in the social economy, it needs to be complemented by separate legislative initiatives to cover all associations.
- The concept of social economy targeted by the action plan includes associations, but also cooperatives, mutual undertakings, foundations and social enterprises.
- Moreover, while the EP Resolution calls for binding legal measures in the forms of a Regulation and a Directive, the Commission aims to address similar issues with soft law approaches, such as the Council Recommendation on developing social economy frameworks conditions, announced for 2023, and the key measures envisaged by the action plan.

[4. Individual Learning Accounts]

How does the Commission proposal take into account the ACVT opinion on individual learning accounts?

- The ACVT opinion agrees on the need for significant additional policy efforts to reach the 60% training participation target by 2030, and also sees the role of ILA as contributing to more engagement, motivation and participation of adults in training.
- The proposal follows the ACVT opinion in that it leaves many key design parameters (*notably: the source of funding*) to the Member States, embeds ILAs in an „enabling framework“, and highlights the important role of social partners in implementation (*notably: concerning the*

governance of registries of opportunities eligible for ILA-funding).

Will the initiative put at risk the diverse social partner-led arrangements on training that exist across the Member States by proposing a “one size fits all” approach?

- The initiative complements, and does not replace, strong employer-organised training. Other Commission initiatives from the Skills Agenda such as the Pact for Skills aim to further strengthen training provision by employers.
- Individual learning accounts provide opportunities to boost the role of skills in social dialogue, for instance by providing top-ups as an outcome of bargaining between social partners.
- The proposal respects the diverse funding arrangements that currently exist in the Member States. It allows Member States with different starting points to build on what already exists and works well.

How will individual learning accounts be financed?

- The financing of individual learning accounts and related schemes differs from one country to another, in accordance with strategic choices made at national level. For example, in France they are financed primarily through an employers' levy, whereas the Netherlands envisage using public financing.
- The proposal leaves flexibility to Member States on these aspects, allowing them to select the funding model that fits best with national traditions.
- It also aims to facilitate cost-sharing between different stakeholders, such as public authorities and employers.

[5. Micro-credentials]

Are micro-credentials intended to replace qualifications?

- No, micro-credentials are not intended to replace qualifications. There are already thousands of micro-credentials on offer in the market.
- The EU approach to micro-credentials seeks only to enhance the quality, transparency and uptake of these micro-credentials as a way to support access to quality, flexible learning in line with people's needs.
- The EU approach to micro-credentials will complement existing qualifications systems.

Will the Commission proposal consider the role of employers in provision of micro-credentials?

- The Commission proposal focuses on the use of micro-credentials for lifelong learning and employability. Employers have a key role in

delivering on the potential of micro-credentials to support the upskilling and reskilling of the adult work force.

- Employers should be active partners in the design and delivery of micro-credentials. They can help to establish a culture of lifelong learning, enabling staff to access courses leading to micro-credentials, so that people have the right skills throughout their careers.

What is the link between micro-credentials and the initiative on Individual Learning Accounts?

- Micro-credentials can support the operation and added-value of Individual Learning Accounts.
- Member States that develop Individual Learning Accounts can include information on recognised training opportunities that lead to micro-credentials for learners to access through their accounts.
- Users of individual learning accounts can get tailored suggestions of quality-assured micro-credentials to empower, upskill and reskill in line with their needs.
- Individual learning accounts, underpinned with information on micro-credentials, have the potential to close existing support gaps and increase the incentives of individuals to seek training.

[6. Social dialogue]

Why did only some proposals from the Nahles Report feature in the Pillar Action Plan?

- All proposals are very valuable and the Commission is in the process of assessing them very carefully and will decide on the concrete follow-up.
- For the Action Plan, we had to be selective and we included only new actions and actions of particular importance.
- Other proposals relating to the Semester/RRF, the consultation of social partners and capacity-building support are of course also very important. But those are not really new and link to the priorities of the New Start for Social Dialogue.

Will the Commission implement the proposal of social partners picked up by Andrea Nahles to create a social dialogue coordinator in each DG?

- I think that this proposal has many merits and could potentially lead to a more coherent approach for involving and consulting social partners across the Commission.
- However, the proposal is currently still being assessed within the Commission in the context of the Social Dialogue Initiative.

Will the Commission provide more targeted support in the future for the implementation of autonomous social partner agreements?

- I think such support is already available.
- Under the Commission's call for proposals on social dialogue, social partners can receive funding for projects related to the implementation of autonomous agreements.
- In this way, the Commission has funded or is funding a number of projects related to the implementation of your agreements on active ageing and digitalisation.
- But we are currently reflecting, also on the basis of the feedback received so far, to make our support to social dialogue, e.g. to meetings more flexible and adapted to your needs.

Will the COM support the creation of two new Advisory Committees (one on employment and one on social protection)?

- I note your request to create new Advisory Committees on employment policies and on social protection on top of the existing ones.
 - *[in DG EMPL remit: 1. Advisory Committee on free movement of workers; 2. Advisory Committee for the Coordination of Social Security Systems (AdvC); 3. Advisory Committee on Vocational Training (ACVT); 4. Advisory Committee on safety and health at workplace (ACSH)]*
- We need to assess the added value of such Committees.
- However, let me point out that European social dialogue is not lacking meeting opportunities and discussion fora. At this stage, I would just caution against proliferation of committees to avoid a duplication of discussions and blurring of roles.

How will the Commission's support to social dialogue develop from now on, after the judgment of the General Court on 2 September?

- The Commission's support to social dialogue has not changed after the judgment of the Court of Justice.
- This Commission has stepped up the involvement of the social partners in the policy and legislative process and has strongly promoted social dialogue at EU and national level over the last years. This includes considerable financial and administrative resources to support social dialogue at EU level.
- Over the last years, the Commission has also submitted 8 sectoral social partner agreements to the Council, such as in the inland waterways sector in 2014, the work in fishing convention in 2016, and the maritime transport sectors in 2018 which were adopted as Council Directives.

- And since the beginning of 2021, the Commission has been providing logistic support to European social partners in two sectors (Railways and Central Government) for the negotiation of a sectoral agreement in each of these sectors, at social partners' request. To this, we add the logistic support provided to the negotiations of the Autonomous Framework Agreement on digitalisation signed by the EU cross-industry social partners in June 2020.
- This Commission has already confirmed its commitment to social dialogue, which is one of the key principles of the European Pillar of Social Rights and features prominently in the Pillar Action Plan. Therefore, social partners will continue to be key drivers of the European social agenda.
- As already stated, the Commission is planning a dedicated exchange of views with social partners on a possible new procedure regarding to requests for the implementation of a social partner agreement into EU law. Such a new procedure will have to be fully in line with the recent judgment, which provide as much clarity and transparency in the process as possible.

When will the Commission inform social partners about the results of the 2021 call for proposals on social dialogue?

- You already expressed your concern in writing to me. A response is being prepared.
- As you may remember, the publication process of the 2021 social dialogue calls suffered from the late adoption of the MFF. This already had a negative impact on the previous stages of the calls for proposals.
- As indicated in the e-mail of Jörg Tagger, the head of the social dialogue unit of 19 January 2022 to the applicants for the three calls, the delay in the evaluation process is due to additional procedural stages embedded in the new E-grant system.
- I realise that this creates issues for some projects, and a particularly difficult situation for national social partners who submitted capacity building projects in the context of the Covid crisis. However, my services will explore the possibilities to address the difficulties caused by the delay.
- We are currently preparing the publication process for some of the 2022 calls for proposals, and will try to avoid similar problems this year.

Background

[1. Minimum wage]

The Commission tabled its proposal for a Directive on a framework for adequate minimum wages in the EU on 28 October 2020. The successful conclusion of the file is among the key political priorities of the French Presidency, as indicated by President

Macron, including in his intervention at the European Parliament plenary on 19 January 2022.

Following the adoption of the Council's general approach (December 2021) and the European Parliament's negotiating mandate (November 2021), an opening trilogue was held on 13 January 2022.

The co-legislators agreed on a number of fundamental underlying principles for the initiative (i.e. to respect the different models that exist in the EU, including the distinction between Member States with statutory minimum wage systems and those with systems relying on collective bargaining, the importance to respect the EU treaties and work within the remit of article 153(5) TFEU, etc.). Main differences concern the scope of the initiative (with the Parliament considering that the initiative should cover all workers), the choice of reference values to assess the adequacy of statutory minimum wages, the promotion of collective bargaining (with the Parliament raising the threshold for Member States to develop a dedicated action plan from 70% to 80%), the use of variations and deductions (the Council wanting to leave more flexibility to Member States to use them and the Parliament arguing for limiting them as much as possible, however without banning them), data collection (the Council wishing to limit administrative burden) and provisions related to the right to redress (the Parliament aiming at further protecting workers).

The Commission recalled the elements of its proposal, which it considers would be important to preserve during the negotiations, including the dual objective of the proposal (to establish a framework for setting adequate levels of minimum wage protection AND enhancing access of workers to it) covering both statutory minimum wage systems and systems relying on collective bargaining, the large scope of the initiative, as no worker should be left behind and the obligation to use reference values to assess the adequacy of statutory minimum wages.

The Roadmap for the negotiations foresees an ambitious timeline, with the view to reaching a political agreement at the beginning of March 2022 (considering the French Presidential elections will take place in April 2022). The European Parliament has underlined the importance of quality over speed, while it agreed to be optimistic. The Council's stance was to be "ambitious, while pragmatic".

[2. Platform work]

On 9 December 2021, the Commission adopted its proposal for a Directive on improving working conditions in platform work. The aim of the directive is to ensure decent and transparent working conditions and adequate social protection for people active in the platform economy while supporting the sustainable growth of digital labour platforms in the EU. The proposed Directive tackles three core issues: the misclassification of the employment status, algorithmic management, and cross-border transparency.

The directive does not include or propose an EU level definition of worker. It provides a list of control criteria to determine whether the platform is an "employer". If the platform meets at least two of those criteria, it is legally presumed to be an employer.

These criteria are as follows:

- (a) effectively determining, or setting upper limits for the level of remuneration;
- (b) requiring the person performing platform work to respect specific binding rules with regard to appearance, conduct towards the recipient of the service or performance of the work;

(c) supervising the performance of work or verifying the quality of the results of the work including by electronic means;

(d) effectively restricting the freedom, including through sanctions, to organise one's work, in particular the discretion to choose one's working hours or periods of absence, to accept or to refuse tasks or to use subcontractors or substitutes;

(e) effectively restricting the possibility to build a client base or to perform work for any third party.

These five criteria are meant as a procedural facilitation for the correct employment classification, but ultimately the national criteria will be used to confirm such a classification. As such, this proposal respects Member States' competencies in the area of labour law as well as the traditional role of social partners. The new provisions on algorithmic management build upon existing and upcoming legislative instruments (e.g. GDPR and the proposed AI Act). The interplay between the three instruments has been carefully assessed when preparing the platform work proposal.

The first discussion of the Platform Work proposal under the French Presidency took place at the Social Questions Working Party on 17 January 2021. Most Member States welcomed the proposal while expressing a general scrutiny (and in some cases, parliamentary) reservation. The detailed discussion reached Article 4(2). Most comments concerned Article 2 (Definitions) and Article 4 (Legal Presumption). Many Member States asked questions, and a few raised some doubts, mainly about the presumption.

[3. Social Economy Action Plan]

The action plan for the social economy puts forward concrete measures to unlock the potential of social economy organisations and social enterprises.

It is built around three main pillars:

- First, **developing an enabling framework for the social economy**. Policy and legal frameworks need to be adapted to this specific business model, including in specific areas such as state aid, public procurement and taxation. The action plan will seek to engage with all relevant authorities and stakeholders around this objective, including at national, regional and international levels.
- Second, **opening-up opportunities for the social economy, by facilitating access to funding, business support, and networks**. We want concrete and direct support to be available to actors on the ground in all relevant areas to unlock their potential.
- Third, **promoting a better understanding of the specificities of the social economy by all relevant stakeholders including policy makers, financial intermediaries, social partners**, etc. The important positive impact of all social economy stakeholders needs to be more visible and better recognised.

The action plan also outlines the main features of the social economy and social enterprises. Numerous stakeholders were expecting the Commission to clarify the definition of social economy while respecting the different national approaches.

The plan mentions around 60 actions, including 10 so-called "key actions" listed at the end of the document, such as:

- **A new EU Social Economy Gateway** will provide a clear entry point for social economy stakeholders, other relevant actors and individuals seeking information on relevant EU funding, policies and initiatives as of 2023.
- A proposal for a **Council Recommendation** on developing social economy framework conditions to be adopted by the Commission by 2023. This will be accompanied by guidance and training courses for public officials on various topics that are relevant for the social economy such as state aid, socially responsible public procurement, taxation, social impact measurement.
- The launch of **new financial products** under the InvestEU programme targeted at the needs of social enterprises.
- **A European Competence Centre for Social innovation**, to make it easier for stakeholders from one corner of Europe to replicate successful ideas already implemented elsewhere.
- **A Youth Entrepreneurship Policy Academy** will be launched in 2022. It will seek to increase the appeal of social entrepreneurship among young people and ensure that social economy business models are present in entrepreneurship education curricula.

[4. Individual Learning Accounts]

On 10 December 2021, the Commission adopted a proposal for a Council Recommendation on individual learning accounts. It recommends Member States to:

- Set up an **individual learning account for all working-age adults** – regardless of their current employment status-and ensure an adequate provision of training entitlements (*as determined by the Member State*), with additional support for those individuals most in need of up- and reskilling.
- Embed the individual learning accounts in an **enabling framework**, which includes a national registry of quality-assured and labour market relevant training, career guidance and validation opportunities that are eligible for funding from the training entitlements as well as paid training leave provisions.

The proposal **does not replace existing support for training** to employers or education & training providers or provided by public employment services. It also does not recommend to reduce any opportunities that are currently offered free of charge to individuals (for instance in adult learning centres). Instead, it outlines how Member States can **significantly increase training participation to reach the EU headline target**, drawing on the “lessons learned” from past and current schemes to incentivize training uptake by individuals, while ensuring that training addresses labour market needs.

The proposal is currently under negotiation in the social questions working party. The next meeting is scheduled for 28 February, with the ambition to have about one meeting per month and have the proposal ready for **adoption in the EPSCO Council meeting on 16-17 June**.

Key features of the proposal on individual learning accounts (ILA):

- ILA ensures that **everyone** of working age has the incentives and the means and to train throughout their career (= *universal but modulated support*);

- ILA ensures **transferability** of training entitlements throughout a career (*= in step with fast changing labour market*);
- ILA account holder **selects freely** among eligible training opportunities (*= individual in the driving seat*);
- ILA allows to **integrate support** to individuals (*= financial and non-financial*);
- ILA enables **public-private cost sharing** (*= increase in skills investments*);
- ILA is **not a “one-size-fits-all”** proposal, as Member States define eligible training opportunities, financial amounts and funding sources (*= tailored to national needs*).

[5. Micro-credentials]

By means of its proposal for a Council Recommendation of 10 December 2021, the Commission has proposed a European approach to micro-credentials. Micro-credentials can offer quick and targeted upskilling and reskilling for workers, learners and jobseekers. They can be developed jointly by social partners to meet specific labour market needs and address targeted skills shortages, including in the context of the recovery to respond to the digital and green transition.

The proposal includes a key section on active labour market policies to actively promote the use of micro-credentials for labour market purposes, as well as the involvement of social partners in the design and use of micro-credentials

Micro-credentials should by no means replace state-recognised qualifications. They can be used to complement qualifications and to top-up and certify people's skills in a flexible and relatively fast manner.

Reactions of EU social partners on ILA and micro-credentials

Position of Business Europe (Sept. 2020): “*BusinessEurope sees good potential in basing VET programmes on modules or units of learning outcomes and with particular reference to the development of micro-credentials. Micro-credentials are a flexible, demand-driven and complementary approach for training to be undertaken in way that responds to companies and workers' needs.*”

Position of ETUC (Oct. 2020): “*Respect of full qualifications and quality units/modules of full study programmes while considering that micro-credentials have added value to complement full qualifications*”

National authorities and trade unions:

- Risk that micro-credentials replace full qualifications.
- Link to levels in the national qualifications frameworks could generate confusion as to the actual value of the micro-credential.
- No to the excessive modularisation of VET.
- Links to qualifications frameworks not clear.
- Credits don't work in VET or non-formal training, contrary to higher education. It is not possible to introduce comparable units.

National authorities in VET and non-formal providers (e.g. companies, chambers of commerce):

- Excessive bureaucracy to meet agreed EU standards will take away flexibility and stifle the offer of micro-credentials, de facto diminishing their attractiveness and usefulness.
- Why should private providers and VET organisations bind themselves to EU standard and limit their autonomy in developing training programmes?

Social Partners Hearing

The discussion during the hearing on 15 April was **broadly positive**. Both sides stressed the potential usefulness of micro-credentials for upskilling and reskilling people, the importance of social partners' involvement in their development and of respecting national systems and practices. They also highlighted that micro-credentials should complement and not replace formal qualifications and the importance of quality assurance.

Workers stated that micro-credentials should be linked to paid training leave and that special attention should be paid to inclusiveness (reaching out to low-skilled people), equal access and work-life balance. They asked for social partners' involvement in the regulation of private courses to avoid the risk of frauds.

Employers asked to avoid over-formalisation that would reduce flexibility, which is a key feature of micro-credentials, and to leave providers the choice of whether or not to adopt the EU standards. They also asked for a link to the Europass infrastructure.

[6. Social dialogue - On EPSU appeal judgement]

The **Court of Justice has confirmed the judgment and the reasoning of the General Court** of 24 October 2019, which had upheld the Commission decision not to put forward a social partner agreement to the Council of the EU to be transformed into EU law.

The Court confirmed that **the Commission does not have an obligation to submit a proposal to the Council** on the basis of an agreement between management and labour (the social partners), for the purpose of its implementation at EU level. Moreover, in line with its task of promoting the general interest of the European Union, the Commission has the power of determining whether it is appropriate or not to submit such a proposal. A different interpretation would have the effect that the interests of the management and labour signatories to an agreement alone would prevail over the task, entrusted to the Commission, of promoting the general interest of the European Union.

The Court **underlined the autonomy of social partners** and explained the understanding of the relevant provisions of the Treaty. The duty of the Commission to represent the general interest of the Union is not called into question by the autonomy of social partners. The existence of this autonomy characterises the stage of negotiation of a possible agreement between social partners and does not mean that the Commission must automatically submit it to the Council at their request, because that would be tantamount to according those social partners a power of initiative of their own that they do not have.

The **Court reconfirmed that the Commission has a [power of] discretion** when deciding whether it is appropriate to submit a proposal to the Council pursuant to Article 155(2) TFEU. For that purpose, the Commission carries out a complex assessment that needs to take into account, such as in the present case, potentially

divergent interests and policy choices that have regard to political, economic and social considerations. As a result, the judicial review of this type of decision must be limited and is, in principle, confined to verifying that the relevant rules governing procedure and the duty to give reasons have been complied with, that the facts relied on have been accurately stated and that there has been no error of law, manifest error in the assessment of the facts or misuse of powers. At the same time, the Court found that the obligation to state reasons has been complied by the Commission and rejected EPSU's line of argument relating to the fact that the reasons given in the contested decision were incorrect or irrelevant.

With regard to the **role of Commission Communications**, the Court held that in adopting rules of conduct and announcing by publishing them that it would apply them, an institution imposes a limit on the exercise of its discretion and cannot depart from those rules, unless it is found, where appropriate, to be in breach of general principles of law, such as equal treatment or the protection of legitimate expectations. However, in the present case, the Court did not find an explicit and unequivocal commitment on the part of the Commission to set a limit on the exercise of its power, by undertaking to examine solely certain specific considerations before submitting its proposal. This is also to be seen in the light of the exercise of a power conferred upon the Commission by the Treaty (to decide whether to submit the agreement to the Council) and of the importance of the institutional balance within which this power falls.