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COM(2023) 38 final

2023/0012 (NLE)

Proposal for a

COUNCIL RECOMMENDATION

on strengthening social dialogue in the European Union

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The promotion of social dialogue is a common objective of the EU and its Member States. Social dialogue is a key driver for economic and social resilience, competitiveness, fairness and sustainable growth. It is crucial in finding balanced solutions in response to new needs, to changes in the world of work as well as to unexpected crises, by allowing an adjustment of working conditions and work organisation. Social dialogue can also contribute to new or existing labour protection, such as the right to disconnect from work or protection against violence and harassment at work. The financial crisis and the pandemic have shown that countries with robust frameworks for social dialogue and a high coverage of collective bargaining tend to have more competitive and resilient economies.

The Treaties recognise the unique role of social partners, also underlined by Principle 8 of the European Pillar of Social Rights. The European Pillar of Social Rights Action Plan¹ launched in March 2021 underlined the need to reinforce social dialogue at national and EU level and called for strengthened efforts to support collective bargaining coverage and prevent social partners' membership and organisational density from decreasing. The Porto Social Commitment² further called on all relevant actors to promote autonomous social dialogue as a structuring component of the European Social Model and strengthen it at the European, national, regional, sectorial and company levels, with particular emphasis on ensuring an enabling framework for collective bargaining within the various models that exist in the Member States. The Conference on the Future of Europe in its final report underlines that 'We must promote social dialogue and collective bargaining' (Proposal 13 on Inclusive labour markets).³

Social dialogue arrangements and processes vary across Member States, reflecting the countries' different histories and economic and political situations. There is a large diversity in collective labour relations, in terms of capacity and membership of the organisations, the role of collective bargaining in setting working conditions, as well as the formal structures for social partners' involvement in policymaking, and their influence.

Albeit with large variations amongst the Member States, the share of workers covered by collective agreements has declined significantly over the past 30 years. It decreased from an estimated EU average of about 66% in 2000 to about 56% in 2018 with particularly great declines in Central and Eastern Europe. While employer density has remained relatively stable, trade union density has diminished (on average) across all EU Member States.⁴

The changing world of work, with a more individualised way of living and working including the emergence of new forms of employment, makes it difficult for trade unions to recruit new members. Most of the newer forms of employment, including the rising number of solo self-employed, suffer from a lack of representation. The same applies to workers under fixed

¹ Communication from the Commission 'The European Pillar of Social Rights Action Plan', COM(2021) 102 final

² The Porto Social Commitment signed at the Porto Social Summit on 7 May 2021 by the Portuguese Presidency of the Council of the EU, the European Commission, the European Parliament and the EU level social partners and the Social Platform, to strengthen the commitment to the implementation of the European Pillar of Social Rights (<https://www.2021portugal.eu/en/porto-social-summit/porto-social-commitment>)

³ Available [online](#)

⁴ ICTWSS database, Version 6.1, University of Amsterdam

terms contracts who are less likely to unionise. The flexibility in terms of time and place of work makes it difficult for worker representatives to organise this rather fragmented workforce. In recent years, social partners' organisations have taken initiatives to attract new members or strengthen the voice of certain underrepresented groups (notably, youth and platform workers) through targeted strategies and recruitment efforts and creating specific structures within the organisations. However, challenges remain and more could be done, including in order to take advantage of the opportunities raised by digitalisation.

The need to involve of social partners in the design and implementation of policies and reforms and its benefits have been acknowledged and further developed in the Employment Guidelines.

According to the 2022 Joint Employment Report, analysing how social partners were involved in the design of the national Recovery and Resilience Plans and other crisis measures, more than half of all measures in the domains of active labour market policies and income protection enacted since the pandemic outbreak were either agreed by or negotiated with the social partners.

There are important variations between Member States regarding the framework, structures, processes and quality of social dialogue, including collective bargaining. Statutory regulations remain important as a condition to introduce new topics in collective agreements, especially in those countries with a strong regulation of employment relations.⁵ A majority of Member States have a formal national social dialogue institution in place where representatives of employers, trade unions and the government can discuss general economic and social matters. The role and powers of these bodies varies widely, but they usually have an advisory and consultative role on draft legislation and policies, especially in employment-related areas, and can provide a forum for the negotiation of agreements. In addition, many countries also have tripartite bodies that deal with specific issues, such as social security, employment, training, and health and safety.

Moreover, in a number of Member States, social partners lack organisational capacity. This hinders their involvement in relevant reforms and policy-making and their ability to conclude collective agreements. In turn, this affects the balancing of interests of both sides of industry and affects their efforts to find well-adjusted solutions and to negotiate wage.

Conditions for a well-functioning social dialogue include the existence of strong, independent workers' and employers' organisations with the technical capacity and the access to relevant information to participate in social dialogue; the political will and commitment from authorities to invest in tripartism and to support social dialogue; respect for the fundamental rights of freedom of association and collective bargaining and appropriate institutional support.⁶

Europe's companies and workers are currently facing major challenges stemming from the impact of the pandemic, the transitions to a digital and climate-neutral economy, and also from the Russian aggression against Ukraine.

The present proposal for a Council Recommendation aims to support Member States in promoting social dialogue and collective bargaining at national level, by addressing three main elements: consultation of social partners on the design and implementation of economic, employment and social policies; encouraging social partners to negotiate and conclude

⁵ Eurofound (2022), *Moving with the times: Emerging practices and provisions in collective bargaining*, Publications Office of the European Union, Luxembourg

⁶ For example, ILC Resolution on social dialogue and tripartism of 2018

collective agreements, while respecting their autonomy and the right to collective action; and fostering support for increased capacity of social partners.

The Recommendation builds on essential elements of a well-functioning social dialogue in the European Union: the contractual freedom and autonomy of the social partners, respect for the national traditions, rules and practices, as well as social partners' autonomy. The initiative will complement the Directive on adequate minimum wages in the EU.

- **Consistency with existing policy provisions in the policy area**

The Commission proposal for a Council Recommendation is part of the 2023 Social Dialogue initiative and therefore has a direct link with the 2023 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on *Strengthening social dialogue in the European Union: harnessing its full potential for managing fair transitions*.

The Recommendation will complement and be without prejudice to already existing instruments at EU level. It will support the implementation of Principle 8 of the European Pillar of Social Rights as detailed in its Action Plan.

The EU has several instruments at its disposal to support national social dialogue or issue related policy guidance such as funding instruments (e.g. ESF+), the European Semester or the Quality Framework on Restructuring.

A comprehensive framework of Directives on the information and consultation of workers⁷, at both national and transnational levels, establishes rules to protect the rights of workers at company level. The EU quality framework for restructuring also helps companies anticipate change and mitigate the employment and social effects of restructuring.⁸ There are also other Commission initiatives of relevance to national social dialogue such as the Directive on adequate minimum wages in the EU⁹, the Proposal for a Directive on improving working conditions in platform work.¹⁰ and the Commission Communication on “Better Working Conditions for a Stronger Social Europe: harnessing the full benefits of digitalisation for the future of work”.¹¹

⁷ Council Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989, p. 1); Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies (OJ L 225, 12.8.1998, p. 16); Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16); Council Directive 2001/86/EC supplementing the Statute for a European company with regard to the involvement of employees (OJ L 294, 10.11.2001, p. 22); Directive 2002/14/EC of the European Parliament and of the Council establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation (OJ L 80, 23.3.2002, p. 29); Council Directive 2003/72/EC supplementing the Statute for a European Cooperative Society with regard to the involvement of employees (OJ L 207, 18.8.2003, p. 25); Directive 2009/38/EC of the European Parliament and Council on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees (Recast) (OJ L 122, 16.5.2009, p. 28) and Directive (EU) 2019/1152 of the European Parliament and of the Council on transparent and predictable working conditions in the European Union (OJ L 186, 11.7.2019, p. 105).

⁸ COM/2013/0882 final, available [online](#)

⁹ Directive 2022/2041 of the European Parliament and of the Council on adequate minimum wages in the European Union (OJ L 275, 25.10.2022, p. 33–47)

¹⁰ COM(2021) 762 final

¹¹ COM(2021) 761 final

- **Consistency with other Union policies**

This Recommendation links with the Commission Communication on “Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons”¹² which aim at ensuring that the EU competition rules do not stand in the way of collective bargaining for those solo self-employed who need it.

The recently adopted Commission Communication on “Harnessing talent in Europe’s regions”¹³ acknowledges the need of enhancing the involvement of social partners in the regions who face a talent development trap, as it is particularly valuable in creating better working conditions, adequate wages, and in tackling skills and labour shortages.

The Council, on the proposal of the Commission, recently adopted a Recommendation on affordable high-quality long-term care¹⁴ that calls on Member States to support quality employment and fair working conditions in long-term care by promoting national social dialogue and collective bargaining in long-term care.

The promotion of social dialogue and collective bargaining at national level is also important in the context of the ongoing enlargement negotiations as candidate countries need to strengthen their social dialogue structures and processes to meet the challenges in the changing world of work.

This initiative is also linked to the EU’s international relations in the field of social policy, being in line with the international labour standards of the International Labour Organisation and the European Social Charter. The value added of the EU action consists in building on those standards and making them more operational as well as more targeted to EU labour markets.

Directive 2014/24/EU¹⁵ on public procurement, Directive 2014/25/EU¹⁶ on procurement by entities operating in the water, energy, transport and postal services sectors and Directive 2014/23/EU¹⁷ on the award of concession contracts are also relevant to this initiative as they require Member States to respect the right to organise and collective bargaining following the ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise and ILO Convention 98 on the Right to Organise and Collective Bargaining.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This proposal for a Council Recommendation is based on Article 292 in conjunction with Article 153 (1) (f) of the Treaty, the latter enabling the Union to support and complement the activities of the Member States in the field of representation and collective defence of the interests of workers and employers, including co-determination. This legal basis requires unanimity voting.

¹² Communication from the commission Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons 2022/C 374/02 (OJ C 374, 30.9.2022, p. 2)

¹³ COM(2023) 32 final

¹⁴ Council Recommendation of 8 December 2022 on access to affordable high-quality long-term care 2022/C 476/01 (OJ C 476, 15.12.2022, p. 11)

¹⁵ OJ L 94, 28.3.2014, p. 65

¹⁶ OJ L 94, 28.3.2014, p. 243

¹⁷ OJ L 94, 28.3.2014, p. 1

In line with Article 153 (5), the Recommendation must not and does not include provisions related to the right of association, the right to strike or the right to impose lock-outs, which fall outside EU competence.

- **Subsidiarity**

Member States will design and select the measures and investments. The Union has the competence to support and complement the actions in the Member States in this field, in line with Article 153 (1) (f) TFEU. The Proposal ensures the added value of action at EU level, which resides in supporting Member States by guidance learnt from the wide variety of social dialogue models across the EU (while respecting the diversity of national systems). It will uphold the political commitment set out under Principle 8 of the European Pillar of Social Rights.

- **Proportionality**

The proposal supports and complements Member States' efforts. It respects the diversity of social dialogue systems existing in the Union and recognises that specific conditions at national, sector or regional level could lead to differences in how the recommendation is implemented. It does not propose any extension of EU regulatory power or binding commitments on Member States. Member States will decide, according to their national circumstances, how they can make best use of the Council recommendation.

- **Choice of the instrument**

The instrument is a proposal for a Council recommendation, which abides by the principles of subsidiarity and proportionality. It signals the commitment of Member States to the measures laid down in this Recommendation and provides a strong political basis for cooperation at Union level in social dialogue, while fully respecting the remit of Member States and the autonomy of the social partners.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

The Commission organised multiple consultation activities, aiming to ensure balance across the various concerned parties in the EU. Targeted consultations included exploratory seminars and a dedicated hearing with social partners at Union level (31 May 2022), dedicated meetings at Commissioner level with the leaders of the European cross-industry social partner organisations, discussions in the Social Dialogue Committee meetings (8 February, 14 June and 27 September 2022) and exchanges with Member State representatives in the Employment Committee (19 May 2022).

The call for evidence on the Social Dialogue Initiative, including on the Draft Council Recommendation, was published on the “Have your say” web page and was open for public feedback from 22 September to 20 October 2022. The Commission received 61 contributions, more than half of them coming from social partner organisations.

The main recurrent topics raised during the above-mentioned consultations were the need to create sufficient space for the social partners to negotiate freely, fostering an atmosphere of trust and engagement in social dialogue, better communicating the results and benefits of social dialogue, the need to distinguish between recognised social partner organisations and civil society organisations or other type of representation, boosting capacity of social partners, better involving social partners in policy making, ensuring strong cooperation between the national and EU levels as well more institutional support for social dialogue. The current proposal addresses all these views.

The Commission held exchanges of views with the European Parliament (as part of the structured dialogue with the EMPL Committee on 14 June 2022), the European Economic and Social Committee (EESC, 17 June 2022) and the Committee of the Regions (CoR, 21 June 2022).

- **Collection and use of expertise**

While the proposal builds on various already existing sources of research (e.g. Eurofound, ILO, OECD reports) and exchanges of information during specific events, no external experts were used for this proposal.

- **Impact assessment**

This type of act does not require an impact assessment.

- **Regulatory fitness and simplification**

This proposal is not linked to REFIT.

- **Fundamental rights**

This recommendation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, this recommendation respects the right of association (Article 12 of the Charter) and contributes to the upholding the right of collective bargaining and action (Article 28 of the Charter).

4. BUDGETARY IMPLICATIONS

This proposal has no financial implications for the Union budget and can be undertaken with the already existing human resources.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Paragraph (13) proposes that the Commission develops indicators within 12 months from the publication of the Recommendation, to monitor its implementation jointly with the Employment Committee and with relevant social partners as well as to improve the scope and relevance of data collection at Union and national level on social dialogue, including on collective bargaining.

According to Paragraph (14) the Commission will monitor regularly the implementation of this Recommendation at national and EU level, jointly with Member States and relevant social partners, through regular tripartite meetings or at least once a year, in the context of the multilateral surveillance tools under the guidance of the Employment Committee, including within the European Semester and in the context of the European Social Dialogue Committee.

Finally, the Commission will evaluate the Recommendation, in cooperation with the Member States, social partners, and after consulting other relevant stakeholders, the actions taken in response to this Recommendation, and report to the Council by four years from the publication of the Recommendation. On the basis of the results of the evaluation, the Commission may consider making further proposals.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

The recommendations addressed to the Member States are meant to be implemented in accordance to national law and/or practice, after consultation and in close cooperation with social partners, while respecting their autonomy.

Paragraph (1) sets out the main areas of action. It underlines that social dialogue has two sides, bipartite and tripartite, which both require an enabling environment. Collective bargaining is part of bipartite social dialogue and can take place in the public and private sectors, at all levels including cross-industry, sectoral, company, or regional level.

The enabling environment for bipartite and tripartite social dialogue should respect the fundamental rights of freedom of association and collective bargaining, promote strong, independent trade unions and employers' organisations, include measures to strengthen their capacity, ensure the access to relevant information, promote engagement in social dialogue on the part of all the parties, build upon the digital revolution be fit for the new world of work and ensure appropriate institutional support.

Paragraph (2) focuses on the tripartite dimension of social dialogue and the timely, systemic and meaningful involvement of social partners in the design and implementation of employment and social policies and, where relevant, economic and other public policies.

Paragraph (3) refers to access to relevant information for the social partners on the overall economic and social situation of the country and the relevant situation and policies for the respective sectors of activity to participate in social dialogue and in collective bargaining.

Paragraph (4) and its sub points addresses the issue of recognition and representativeness. It recommends to the Member States to make sure that relevant procedures are open and transparent, based on pre-established and objective criteria with regard to the organisations' representative character and that such criteria and procedures are established in consultation with trade unions and employers' organisations. It also reminds that where both trade union representatives and elected representatives are present in the same undertaking, appropriate measures should be taken to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives. Finally, it refers to the demarcation between social partner organisations and civil society organisations.

Paragraph (5) focuses on protection of social partners against any harmful of unlawful measure related to the exercising their right(s) to collective bargaining.

Paragraph (6) puts forward the need to foster trust in and among social partners and promote the conclusion of collective agreements. It calls for alternative dispute resolution to support enforcement of rights and obligations stemming from law or collective agreements, such as

conciliation, mediation and arbitration, all with the aim to facilitate negotiations and improving the application of collective bargaining agreements.

Paragraph (7) approaches the level of collective bargaining, as the latter needs to be possible at all existing levels as well encourage the coordination among these levels.

Paragraph (8) includes several ways to promote collective bargaining coverage and enable effective collective bargaining.

Paragraph (9) refers to communication activities to actively promote the benefits and the added value of social dialogue and collective bargaining.

Paragraph (10) contains several ways to boost capacity of national social partners in order to support them to participate successfully in social dialogue, including in collective bargaining and in the implementation EU level Autonomous Social Partner Agreements.

Paragraphs (11) and (12) refer, respectively, to the implementation of the Recommendation and reporting to the Commission and, to the possibility to entrust the social partners with the implementation of the relevant parts of this Recommendation, where applicable in accordance with national law or practice.

The last three paragraphs refer to measures that the Commission intends to take in order to support the Member States in the implementation of the Recommendation, as well as its monitoring.

Proposal for a

COUNCIL RECOMMENDATION

on strengthening social dialogue in the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular Article 292, in conjunction with Article 153 (1), point (f) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Council, in its Conclusions of 24 October 2019, on ‘The future of work: the Union promoting the ILO Centenary Declaration’ encourages Member States to continue their efforts to ratify and effectively implement ILO Conventions. The Council also calls upon the Member States and the Commission to enhance social dialogue at all levels and in all its forms, including cross-border cooperation, in order to ensure active participation of social partners in shaping the future of work and building social justice, including through the effective recognition of the right to collective bargaining and through a reflection on adequate minimum wages, whether statutory or negotiated.
- (2) In the 2016 Joint Statement on the New Start for Social Dialogue signed on 27 June 2016 by the Commission, the Netherlands Presidency of the Council and European social partners, cross-industry and sectoral social partners at Union level committed to continue efforts and assess the need for further actions in their respective social dialogues to reach out to affiliates not yet covered in Member States and to improving the membership and representativeness of both trade unions and employers’ organisations.
- (3) Principle 8 of the European Pillar Social Rights states that the social partners are to be consulted on the design and implementation of economic, employment and social policies according to national practices. They are also to be encouraged to negotiate and conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action. Support to increase the capacity of the social partners to promote social dialogue should also be encouraged. The Porto Social Commitment¹⁸ further called on all relevant actors to promote autonomous social dialogue as a structuring component of the European social model and strengthen it at the European, national, regional, sectorial and company levels, with particular emphasis on ensuring an enabling framework for collective bargaining within the various models in Member States.

¹⁸ The Porto Social Commitment signed at the Porto Social Summit on 7 May 2021 by the Portuguese Presidency of the Council of the EU, the European Commission, the European Parliament and the Union level social partners and the Social Platform, to strengthen the commitment to the implementation of the European Pillar of Social Rights (<https://www.2021portugal.eu/en/porto-social-summit/porto-social-commitment>)

- (4) In its Resolution on a European Pillar of Social Rights of 19 January 2017, the European Parliament stresses the importance of the right of collective bargaining and action as a fundamental right enshrined in the Union primary law. The Parliament also expects the Commission to step up concrete support for strengthening and respecting social dialogue at all levels and sectors, in particular where it is not sufficiently well developed, while taking into account different national practices. In its resolution on employment and social policies of the euro area of 10 October 2019, the European Parliament states that social dialogue and collective bargaining are key to designing and implementing policies that can improve working conditions, and terms of employment and calls for a coordinated Union initiative to extend collective agreement coverage to platform workers. The European Parliament also calls on Member States, where necessary, to strengthen opportunities for collective bargaining.
- (5) Guideline 7 of Council Decision (EU) 2022/2296¹⁹ calls upon Member States to, among other things, work together with the social partners on fair, transparent and predictable working conditions, balancing rights and obligations and to ensure the timely and meaningful involvement of the social partners in the design and implementation of employment, social and, where relevant, economic reforms and policies, including by supporting increased capacity of the social partners. The Guideline also calls on Member States to foster social dialogue and collective bargaining and to encourage the social partners to negotiate and conclude collective agreements in matters relevant to them, fully respecting their autonomy and the right to collective action. The annual growth survey for 2019²⁰ recalls that in a context of declining collective bargaining coverage, policies enhancing the institutional capacity of social partners could be beneficial in countries where social dialogue is weak or has been negatively affected by the crisis. The 2022 annual sustainable growth survey²¹ states that the systematic involvement of social partners and other relevant stakeholders is key for the success of the economic and employment policy coordination and implementation. While in some Member States, the social partners hold a significant role and are suitably involved in policy making and implementation, several country-specific recommendations have been issued in the context of the European Semester to other Member States in relation to the improvement of social dialogue and on involving of social partners in the design and/or implementation of reforms.
- (6) The Commission announced, in its European Pillar of Social Rights Action Plan,²² an initiative to support social dialogue at Union and national level. That Action Plan also underlined that social dialogue at national and Union level needs to be reinforced and called for strengthened efforts to support collective bargaining coverage and prevent social partners' membership and organisational density from decreasing.
- (7) Social dialogue, including collective bargaining, is a crucial and beneficial tool for a well-functioning social market economy, driving economic and social resilience, competitiveness, stability and sustainable and inclusive growth and development. Social dialogue also plays an important role in shaping the future of work, taking into

¹⁹ Council Decision (EU) 2022/2296 of 21 November 2022 on guidelines for the employment policies of the Member States (OJ L 304, 24.11.2022, p. 67)

²⁰ Communication from the Commission Annual Growth Survey 2019: For a stronger Europe in the face of global uncertainty, COM/2018/770 final

²¹ Communication from the Commission Annual Sustainable Growth Survey 2022, COM/2021/740 final

²² Communication from the Commission The European Pillar of Social Rights Action Plan, COM/2021/102 final

account particular trends in globalisation, technology, demography and climate change. Member States with robust frameworks for social dialogue and a wide coverage of collective bargaining tend to have more competitive and resilient economies.

- (8) Experience shows that social dialogue contributes to effective crisis management. Economies were more resilient in the aftermath of the 2008 crisis whenever social partners were able to manage and adapt collective bargaining structures early in advance. The recent COVID-19 crisis has shown that social dialogue is an essential tool for balanced crisis management and for finding effective mitigation and recovery policies. Beyond the humanitarian crisis, the unprovoked and unjustified military aggression of the Russian Federation against Ukraine has led to unprecedented food and energy price increases. The social partners play an important role in responding to some of these challenges, particularly with regard to integrating the people fleeing the war in Ukraine as well as other conflicts into the Union's labour market and to finding sustainable solutions to adjusting wages and collective agreements.
- (9) Ongoing technological shifts, increasing automation and the green transition to climate neutrality are moving rapidly throughout the economy, with varying impacts across sectors, occupations, regions and countries. Social partners have a vital role to play in helping to anticipate, change and address, through dialogue, negotiation and joint action where relevant, the employment and social consequences of the challenges of economic restructuring and the ongoing twin transitions. In the context of the European Green Deal and the RePowerEU Plan, the Council Recommendation on ensuring a fair transition towards climate neutrality²³ invites Member States to adopt and implement, in close cooperation with social partners as relevant, comprehensive and coherent policy packages, to pursue a whole-of-society approach and to make optimal use of public and private funding.
- (10) Social dialogue arrangements and processes vary between Member States, reflecting the countries' different histories, institutions, and economic and political situations. An effective social dialogue implies, among other things, the existence of industrial relations models in which the social partners can negotiate in good faith and autonomously exercise their practices of collective bargaining and employee participation. Among the enabling conditions for a well-functioning social dialogue are: (i) the existence of strong, independent trade unions and employers' organizations technical capacity; (ii) the access to relevant information to participate in social dialogue; (iii) commitment to engage in social dialogue on the part of all the parties; (iv) respect for the fundamental rights of freedom of association and collective bargaining; and (v) appropriate institutional support.
- (11) Social dialogue encompasses both tripartite and bipartite consultations and negotiations which take place at all levels, such as cross-sectoral, sectoral, group of companies, company, national, regional or local. National tripartite social dialogue brings together government, workers and employers to discuss public policies, laws and other decisions that affect the social partners. Tripartite consultations can ensure greater cooperation between the tripartite partners and build consensus on relevant national policies. Tripartite concertation needs to build upon a strong bipartite social dialogue. In order to improve tripartite processes, governments should also increase

²³ Council Recommendation of 16 June 2022 on ensuring a fair transition towards climate neutrality, 2022/C 243/04 (OJ C 243, 27.6.2022, p. 35)

the transparency of policy making, such as those concerning the quality and the labour market relevance of training opportunities.

- (12) Bipartite negotiations, in particular collective bargaining, take place between workers' and employers' organisations as defined by national law or practice. A workers' organisation is generally a trade union, formed by the association of workers or of other trade unions (or both) constituted for the purpose of furthering and defending the interests of workers, in accordance with national law and/or practice. An employers' organisation is an organisation whose membership consists of individual employers, other associations of employers or both, constituted for the purpose of furthering and defending the interests of its members, in accordance with national law and/or practice.
- (13) In line with the Workers' Representatives Convention 135 of the International Labour Organisation, currently ratified by 24 Member States, workers' representatives can be persons who are: (i) recognised as such under national law or practice, whether they are trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or (ii) elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned. Where there exist in the same undertaking both trade union representatives and elected representatives, such representation should however not to be used to undermine the position of the trade unions concerned or their representatives. Both mutual recognition of the social partners and the statutory recognition of trade unions and employers' organisations by the authorities of each Member State are key to a successful collective bargaining framework, provided employers and workers are able to choose freely which organisation(s) will represent them. In some Member States this recognition is limited to organisations that fulfil specific representativeness criteria. Such criteria should be established in consultation with the social partners and should be objective and proportionate. They should be assessed in an approval process that is open and transparent, and which does not hamper the full development of collective bargaining. In the absence of trade unions at company level, collective agreements can be negotiated and concluded by the representatives of the workers who have been duly elected and authorised by them in accordance with national law or practice.
- (14) Collective bargaining covers issues related to working conditions and terms of employment such as wages, hours of work, annual bonus, annual leave, parental leave, training and occupational safety and health. It is therefore particularly relevant in preventing labour conflicts, improving wages and working conditions and reducing wage inequality. Collective bargaining is a crucial tool to help workers and companies to adapt to the changing world of work and shape the design and definition of new labour protection elements, such as the right to disconnect from work, or improving existing ones, such as protection against violence and harassment at work, training of older workers, improving work-life balance and addressing challenges of mental health. It also plays a key role in addressing the impacts of unexpected crises, such as the COVID-19 pandemic.
- (15) The functioning of a collective bargaining system is determined by a combination of different features, such as the use of *erga omnes* clauses and extensions of collective agreements, their average length, the use of the favourability principle, the hierarchy of norms and the use of derogations from collective agreements concluded at a higher

collective bargaining level as well as the density rates of trade unions and employers' organisations. There is a broad diversity of approaches given to *erga omnes* clauses and administrative extensions in the Member States, in line with their law or practice or both. A well-functioning collective bargaining system includes procedures for cooperation, information sharing and resolution of disputes between the parties.

- (16) Collective bargaining can take place at different levels. Bargaining may either be highly decentralised (taking place mostly at company level), highly centralised (at national level) or take place at an intermediate level, at the level of sectors or regions. Collective bargaining is increasingly taking place at more than one level. In some cases, sectoral or company-level agreements follow the guidelines set by higher-level organisations; in other cases, some sectors or companies follow the standards set in another sector. Coordination between bargaining levels is therefore a key pillar of collective bargaining systems. The favourability principle and derogations from collective agreements concluded at a higher collective bargaining level set the general framework that regulates the relationship between different bargaining levels. In this context, the possibility for derogations can be set out in higher-level collective agreements or in the law, as well as the conditions for applying them at a lower level. Derogation clauses may permit the suspension or renegotiation of (part of) a collective agreement, in order to set alternative levels or conditions to those prescribed by the agreement, where justified and agreed by the social partners.
- (17) In most Member States, collective bargaining rates tend to be higher for employees on permanent contracts and for those working in larger companies or in specific sectors, such as the public sector. Generally, workers in small companies are less likely to be covered, as these companies often do not have the capacity to negotiate a company-level agreement, or because a union or another form of worker representation is absent in the workplace. Organising workers is particularly difficult in non-standard employment situations and most of the newer forms of employment suffer from a lack of representation. The considerable lack of representation of these types of workers can be attributed, on the one hand, to the cost of their being represented and, on the other, to flexibility in terms of time and place of work, making it difficult for worker representatives to organise this rather fragmented workforce. Increased capacity of the social partners would help them to further improve their contribution to policy making and have a more effective social dialogue and collective bargaining. Capacity-building activities typically help social partners to improve the size of their membership base (including through the use of technology, the provision of new services and activities at school or university level etc.) and their human and administrative capacities, to promote their process-oriented capacities and to support their organisational development. Such activities include the provision of specialised training, technical and logistical support and funding. Capacity building is first of all a bottom-up process, dependent on the will and efforts of the social partners themselves who are best placed to identify their needs and indicate the measures they are already taking to strengthen their capacities. These efforts can then be complemented and/or supported by public authorities, and also by making use of Union funding, while respecting the social partners' autonomy.
- (18) Some Member States have taken measures to support social dialogue and collective bargaining by: (i) broadening the opportunities for social dialogue; (ii) promoting the autonomy of social partners and the respect for their contractual freedom; (iii) encouraging joint opinions, programmes and projects; (iv) regular sharing of information; (v) promoting negotiation training; (vi) providing for alternative dispute

resolution mechanisms such as conciliation, mediation and arbitration; (vii) strengthening the protection of workers against retaliation or discrimination as a result of their involvement in collective bargaining.

- (19) In many Member States, social dialogue is however under pressure. While employer density remains relatively stable, even if on a declining trend in several EU countries, trade union density has been declining on average across all Member States. Moreover, the share of workers covered by collective agreements (the collective bargaining coverage) is low in most Member States and, despite several strategies by trade union organisations to extend their reach to non-standard forms of employment, it has significantly declined over the past 30 years. In some cases, the existing rules might present gaps with a potentially detrimental effect on social dialogue. These can include: (i) strict representativeness conditions; (ii) interference in the bargaining process or undue limitations on the subjects of collective bargaining, (iii) an improper delineation of economic sectors that precludes the formation of sector level collective bargaining structures; (iv) lack of enforcement of collective agreements; (v) ineffective protection against anti-union discrimination; (vi) ineffective consultation procedures; (vii) lack of constructiveness in negotiations; (viii) lack of capacity to bargain or to fully participate in consultation procedures.
- (20) The representativeness and the capacity of the national social partners also needs to be strengthened with a view to the implementation at national level of Union level autonomous social partner agreements. Particular attention should therefore be given to ensuring an enabling framework for social dialogue, including collective bargaining, and that national social partners have sufficient capacity to effectively contribute to the work of the Union-level social dialogue and to implementing at national level the framework agreements signed by social partners at Union level.
- (21) Directive 2014/24/EU²⁴ on public procurement, Directive 2014/25/EU²⁵ on procurement by entities operating in the water, energy, transport and postal services sectors and Directive 2014/23/EU²⁶ on the award of concession contracts require Member States to respect the right to organise and collective bargaining following the ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise and ILO Convention 98 on the Right to Organise and Collective Bargaining.
- (22) Collective bargaining should be available to all workers who are in comparable situations, including the self-employed. The Court of Justice of the European Union has ruled that a collective agreement, which covers self-employed service providers, can be regarded as the result of dialogue between management and labour if the service providers are in a situation comparable to that of workers.²⁷ And it has confirmed that ‘in today’s economy it is not always easy to establish the status of some self-employed contractors as undertakings’.²⁸

²⁴ OJ L 94, 28.3.2014, p. 65

²⁵ OJ L 94, 28.3.2014, p. 243

²⁶ OJ L 94, 28.3.2014, p. 1

²⁷ Judgment of 4 December 2014, FNV Kunsten Informatie en Media v Staat der Nederlanden, C-413/13, EU:C:2014:2411, paragraphs 31 and 42

²⁸ Judgment of 4 December 2014, FNV Kunsten Informatie en Media v Staat der Nederlanden, C-413/13, EU:C:2014:2411, paragraph 32

- (23) The guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons²⁹ aim at clarifying when self-employed people can negotiate collectively better working conditions without breaching Union competition rules.
- (24) The Proposal for a Directive on improving working conditions in platform work³⁰ includes provisions that aim to promote social dialogue in algorithmic management by introducing collective rights regarding information and consultation on substantial changes related to use of automated monitoring and decision-making systems.
- (25) Regulation (EU) 2021/1057 of the European Parliament and of the Council³¹ maintains the obligation of Member States to ensure adequate participation of social partners in the delivery of policies supported by the European Social Fund Plus (ESF+) and strengthens the obligation to support the capacity building of social partners. To this purpose, an appropriate amount of ESF+ resources should be allocated by Member States for the capacity building of social partners and civil society. Member States that have a European Semester country-specific recommendation in this area should allocate at least 0.25% of their ESF+ resources under shared management to this aim.
- (26) This Recommendation will support the implementation of Principle 8 of the European Pillar of Social Rights. It encourages measures that are adapted to national traditions, rules and practices, thus respecting national specificities as well as the autonomy of the social partners. This Recommendation complements and is without prejudice to already existing instruments at Union level.
- (27) This Recommendation should under no circumstances be referred to as justification for reducing the level of support already afforded to social dialogue, including collective bargaining, within Member States. It also does not preclude Member States from putting in place stronger support measures and more advanced provisions for social dialogue, including collective bargaining, which differ from those included in this Recommendation.
- (28) This Recommendation is without prejudice to the competences of the Member States regarding the right of association, the right to strike and the right to impose lock-outs, in line with the provisions of Article 153 (5) TFEU as well as to the autonomy of the social partners.

FOR THE PURPOSES OF THIS RECOMMENDATION, THE FOLLOWING DEFINITIONS APPLY:

- (1) ‘Social dialogue’ means all types of negotiation, consultation or exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy, that exist as bipartite relations between labour and management, including collective bargaining, or as a tripartite process, with the government as an official party to the

²⁹ Communication from the commission Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons 2022/C 374/02 (OJ C 374, 30.9.2022, p. 2)

³⁰ Proposal for a Directive on improving working conditions in platform work, COM(2021) 762 final

³¹ Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013 (OJ L 231, 30.6.2021, p. 21)

dialogue and can be informal or institutionalised or a combination of the two, taking place at the national, regional or at enterprise level cross-industry, sectoral or a combination of these.

- (2) ‘Collective bargaining’ means all negotiations which take place according to national laws and practices in each Member State between an employer, a group of employers or one or more employer organisations, on the one hand, and one or more trade unions, on the other, for determining working conditions and terms of employment.
- (3) ‘Collective agreement’ means a written agreement regarding provisions on working conditions and terms of employment concluded by the social partners having the capacity to bargain on behalf of workers and employers respectively, according to national law and practices, including those that are made universally applicable.
- (4) ‘Derogations’ from higher-level agreements mean opening or derogation clauses that make it possible to set setting alternative standards or conditions to those contained in the agreement, where justified and agreed by social partners.
- (5) ‘Capacity building’ means enhancement of the skills, abilities and powers of the social partners to engage effectively and at different levels in social dialogue, including collective bargaining, (co)regulating the employment relationship, bipartite and tripartite consultations and public policy making.

HEREBY RECOMMENDS THAT MEMBER STATES, IN ACCORDANCE TO NATIONAL LAW AND/OR PRACTICE, AFTER CONSULTATION AND IN CLOSE COOPERATION WITH SOCIAL PARTNERS, WHILE RESPECTING THEIR AUTONOMY:

- (1) ensure an enabling environment for bipartite and tripartite social dialogue, including collective bargaining, in the public and private sectors, at all levels, including cross-industry, sectoral, company, or regional level that:
 - (a) respects the fundamental rights of freedom of association and collective bargaining;
 - (b) promotes strong, independent trade unions and employers' organisations;
 - (c) includes measures to strengthen their capacity;
 - (d) ensures access to the relevant information needed in order to participate in social dialogue;
 - (e) promotes engagement in social dialogue on the part of all the parties;
 - (f) adapts to the digital age, promotes collective bargaining in the new world of work and a fair and just transition towards climate neutrality;
 - (g) ensures appropriate institutional support.

as further detailed in the present Recommendation.

- (2) ensure that social partners are systematically, meaningfully and in a timely manner involved in the design and implementation of employment and social policies and, where relevant, economic and other public policies, including in the context of the European Semester.
- (3) ensure that social partners have access to relevant information on the overall economic and social situation of their Member State and on the relevant situation and

policies for the respective sectors of activity needed in order to participate in social dialogue and in collective bargaining.

- (4) ensure that representative employers' organisations and trade unions are recognised for the purposes of social dialogue and collective bargaining, including by:
 - (a) ensuring that, where the competent authorities apply procedures for recognition and representativeness with a view to determining the organisations to be granted the right to bargain collectively, this determination is open and transparent, based on pre-established and objective criteria with regard to the organisations' representative character and that such criteria and procedures are established in consultation with trade unions and employers' organisations;
 - (b) where, both trade union representatives and elected representatives are present in the same undertaking, taking appropriate measures whenever necessary to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives;
 - (c) ensuring that the specific role of social partner organisations is fully recognised and respected in social dialogue structures and processes, while recognising that civil dialogue, involving a broader set of stakeholders, is a separate process.
- (5) ensure that workers and workers' representatives, including those who are trade union members or representatives, are, when exercising their right(s) to collective bargaining, protected against any measure that may be harmful to them or may have a negative impact on their employment. They should also ensure that employers are protected against any unlawful measures, when exercising their right(s) to collective bargaining.
- (6) foster trust in and between social partners and promote the conclusion of collective agreements. In case of dissents and, without affecting the right to access adequate administrative and judicial procedures to enforce rights and obligations stemming from law or collective agreements, and taking into account any procedures set by the social partners, they should encourage and promote mechanisms to resolve them, including:
 - (a) the use of conciliation, mediation and arbitration, with the agreement of both parties, with a view to facilitating negotiations and improving the application of collective bargaining and of collective agreements;
 - (b) where not already in place, the establishment of mediators who can act in case of conflict between trade unions and employers' organisations.
- (7) ensure that collective bargaining is possible at all appropriate levels, including company, sector, regional or national levels, and encourage coordination between these levels.
- (8) promote a higher coverage of collective bargaining and enable effective collective bargaining, including by:
 - (a) removing institutional or legal barriers to social dialogue and collective bargaining covering new forms of work or atypical employment;
 - (b) ensuring that the negotiating parties have the freedom to decide on the issues to be negotiated;

- (c) ensuring that any possibility to derogate from collective bargaining agreements is agreed between the social partners and limited with regard to the conditions under which it can apply, ensuring at the same time flexibility to adapt to evolving labour market and economic conditions, sufficient stability to enable planning for both employers and workers, and the protection of workers' rights. In Member States where collective bargaining is based on a legislative framework, such derogations should be established in consultation with trade unions and employers' organisations;
 - (d) ensuring and implementing a system of enforcement of collective agreements, including, where appropriate, inspections and sanctions. Rules and practices of enforcement can also be agreed by collective agreement, according to national law or practice.
- (9) actively promote the benefits and the added value of social dialogue and collective bargaining, in particular by targeted communication and means. They should encourage social partners to make the text of collective agreements widely accessible, including by digital means and public repositories.
- (10) support national social partners to participate successfully in social dialogue, including in collective bargaining and in the implementation of Union level autonomous social partner agreements, including by:
- (a) promoting the building and strengthening of their capacity at all levels, depending on their needs;
 - (b) using different forms of support, including logistical support, training and the provision of legal and technical expertise;
 - (c) encouraging joint projects between social partners in various fields of interest, such as the provision of training;
 - (d) encouraging and, where appropriate, supporting social partners to put forward initiatives and develop new and innovative approaches and strategies to increase their representativeness and membership;
 - (e) supporting social partners to adapt their activities to the digital age as well as to explore new activities fit for the future of work, the green and demographic transitions and new labour market conditions;
 - (f) promoting gender equality and equal opportunities for all in terms of representation and thematic priorities;
 - (g) promoting and facilitating their collaboration with the Union level social partners, particularly with a view to enabling them to implement at national level the agreements concluded by social partners at Union level;
 - (h) providing appropriate support to implement in the Member States social partners agreements concluded at Union level;
 - (i) making the best use of the available national and Union funding, such as support under ESF+ and the Technical Support Instrument encouraging social partners to use the existing national and Union funding, including the prerogative budget lines dedicated to 'specific competences in the area of social policy, including social dialogue' and to 'information and training measures for workers' organisations'.

- (11) submit to the Commission by [ADD date 18 months from the publication of the Recommendation] a list of measures, drawn up in consultation with social partners, which are taken or have already been taken in each Member State to implement this Recommendation.
- (12) may entrust the social partners with the implementation of the relevant parts of this Recommendation, where applicable in accordance with national law or practice.

WELCOMES THE COMMISSION'S INTENTION TO:

- (13) develop commonly agreed indicators by [ADD date 12 months from the publication of the Recommendation] to monitor the implementation of this Recommendation jointly with the Employment Committee and with relevant social partners and improve the scope and relevance of data collection at Union and national level on social dialogue, including on collective bargaining.
- (14) monitor regularly the implementation of this Recommendation at national and Union level, jointly with Member States and relevant social partners, through regular tripartite meetings or at least once a year, in the context of the multilateral surveillance activities of the Employment Committee, in the context of the European Social Dialogue Committee, and in the context of the European Semester. This monitoring should allow social partners to, among other things, identify situations where they have been excluded or inadequately involved in national level consultations on Union and national policy.
- (15) evaluate, in cooperation with Member States, social partners, and after consulting other relevant stakeholders, the actions taken in response to this Recommendation, and report to the Council by [ADD date 4 years from the publication of the Recommendation]. On the basis of the results of the evaluation, the Commission may consider making further proposals.

Done at Brussels,

*For the Council
The President*