



Council of the
European Union

Brussels, 19 April 2023
(OR. en)

8393/23

**Interinstitutional File:
2023/0012(NLE)**

LIMITE

**SOC 246
EMPL 172**

NOTE

From: Presidency
To: Delegations

Subject: Proposal for a COUNCIL RECOMMENDATION on strengthening social
dialogue in the European Union
Presidency compromise proposal

In view of the Social Questions Working Party meeting, scheduled for 26 April 2023, delegations will find in annex a new presidency compromise proposal.

Changes compared to the initial Commission proposal (document 5754/23) are marked in **bold** and deletions by [...]. Changes compared to the previous presidency compromise proposal (document 7490/23) are marked in **bold underlined** and deletions by **[...]** .

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 **[...]apply up-to-date ILO Conventions and Protocols**. 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 **in** 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 **the** 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 improve [...] the membership and representativeness of both trade unions and employers’ organisations.

- (3) Principle 8 of the European Pillar **of** 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 **take** collective action[...]. **The Pillar also states that support to** increase the capacity of the social partners to promote social dialogue **is [...]** to be encouraged. The Porto Social Commitment¹ further called on all relevant actors to promote autonomous social dialogue as a structuring component of the European social model and **to** strengthen it at [...] European, national, regional, sectorial and company level [...], with particular emphasis on ensuring an enabling framework for collective bargaining within the various models in Member States.
- (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 [...] Union [...] primary law. The **European** 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.

¹ The Porto Social Commitment *was* 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>).

- (5) Guideline 7 of Council Decision (EU) 2022/2296² 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. **That** 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 **take** collective action. The annual growth survey for 2019³ 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 **economic and financial** crisis. The 2022 annual sustainable growth survey⁴ states that the systematic involvement of social partners and other relevant stakeholders is key for the success of [...] economic and employment policy coordination and implementation. While in some Member States, the social partners **play** 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,⁵ 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.

² 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).

³ Communication from the Commission Annual Growth Survey 2019: For a stronger Europe in the face of global uncertainty, COM/2018/770 final.

⁴ Communication from the Commission Annual Sustainable Growth Survey 2022, COM/2021/740 final.

⁵ Communication from the Commission The European Pillar of Social Rights Action Plan, COM/2021/102 final.

- (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 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 **at an early date**. 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 **war of 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 neutrality⁶ invites Member States to adopt and implement, in close cooperation with social partners as relevant, comprehensive and coherent policy packages, **while pursuing** a whole-of-society approach and [...] **making** optimal use of public and private funding.

⁶ 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).

- (10) Social dialogue arrangements and processes vary between Member States, reflecting their **respective** 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 [...] exercise **autonomously** their practices of collective bargaining and employee participation. Among the enabling conditions for a well-functioning social dialogue are [...] the existence of strong, independent trade unions and employers' organisations **with the appropriate** technical capacity; [...] access to relevant information **necessary** to participate in social dialogue; a commitment **on the part of all parties** to engage in social dialogue [...]; [...] respect for the fundamental rights of freedom of association and **of** collective bargaining, [...] **the availability of** appropriate institutional support **and the respect for the autonomy of social partners**.
- (11) Social dialogue encompasses [...] tripartite and bipartite consultation [...] and negotiation [...] at all levels, **including dialogue at** cross-sectoral, sectoral, [...]enterprise level, **including public employers, or at** national, regional or local **level**. National tripartite social dialogue brings together government, workers and employers to discuss public policies, laws **and regulations** 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. **A tripartite approach** needs to build upon a strong bipartite social dialogue. In order to improve tripartite processes, **it is key that** governments [...] increase the transparency of policy making, **including policy making** concerning the quality and [...] labour market relevance of training opportunities.
- (12) Bipartite negotiation [...], in particular collective bargaining, takes 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) **According to** the Workers' Representatives Convention 135 of the International Labour Organisation, currently ratified by 24 Member States, worker [...] representatives can be persons who are [...] 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 [...] 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 [...] both trade union representatives and elected representatives **exist in the same undertaking**, such representation should [...] not [...] be used to undermine the positions of the trade unions concerned or of their representatives. **Cooperation between the elected representatives and the trade unions concerned or their representatives should be encouraged.**

(13 a) Mutual recognition of the social partners and the statutory recognition of trade unions and employers' organisations by the authorities of each Member State are **both** key to a successful collective bargaining framework, provided employers and workers are able to choose freely **the organisation or organisations which** will represent them. In some Member States **that** recognition is limited to **those** organisations that fulfil specific representativeness criteria. Such criteria should be **objective and proportionate and** established in consultation with the social partners [...]. They should be assessed **under** an approval process that is open and transparent and which does not **impede** the full development of collective bargaining. In the absence of trade union [...] **representation at enterprise level**, collective agreements can be negotiated and concluded by the representatives of the workers who have been **freely** elected and authorised [...]in accordance with national law or practice.

- (14) Collective bargaining **can** cover issues related to working conditions and terms of employment, **including** wages, hours of work, annual bonuses, annual leave, parental leave, training, occupational safety and health **as well as other matters relevant for the social partners**. **Collective bargaining** is therefore particularly relevant **to** preventing labour conflicts, improving wages and working conditions and reducing wage inequality. Collective bargaining is a crucial tool to help workers and **employers** [...] adapt to the changing world of work. **It is also crucial to** shaping the design and definition of new labour protection elements, such as the right to disconnect from work, or **to** improving existing ones, such as **equal opportunities**, protection against violence and harassment at work, training **and life-long learning**, improving work-life balance and addressing **mental health** challenges [...]. **Collective bargaining** also **has a key role to** play [...] 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 [...] features, such as the use of erga omnes clauses and extensions of collective agreements **and** their average length, the use of the favourability principle, the hierarchy of norms and the use of **deviations practices, either** from collective agreements [...] or **from law, as well as** the density rates of trade unions and employers' organisations. There is a broad diversity of approaches [...] to erga omnes clauses and administrative extensions in the Member States in line with their **respective laws and practices** [...]. A well-functioning collective bargaining system includes **respect for the autonomy of social partners**, procedures for cooperation, information sharing and **the** resolution of disputes between [...] parties.

- (16) Collective bargaining can take place at different levels. Bargaining **can** be highly decentralised, taking place mostly at **enterprise** level [...], highly centralised, **taking place** at national level, or **it can** take place at [...]intermediate levels, **such as [...]** **the** sectoral or regional or local levels [...]. Collective bargaining is increasingly taking place at more than one level. In some cases, sectoral or **enterprise**-level agreements follow the guidelines set by higher-level organisations, **while** in others, [...] sectors or **enterprises** follow the standards set in another sector. Coordination **across** bargaining levels is therefore a key pillar of collective bargaining systems. **In some collective bargaining systems the** favourability principle and **the** derogations from collective agreements [...] set the general framework that regulates the relationships between different bargaining levels. In **those systems**, the possibility **for** derogations can be set out in higher-level collective agreements or in [...]national laws, as **can** the conditions for applying them at a lower level. **It is common that derogation clauses from collective agreements are subject to the rules and procedures specified in higher-level agreements by social partners themselves and to an agreement at firm level. Depending on the national rules and practices,** derogation clauses **can** permit the suspension or renegotiation of [...] a collective agreement, **in whole or in part**, in order to set alternative levels or conditions to those prescribed by that agreement [...].**Derogations can, if used appropriately, contribute to guarantee 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.**

- (17) In most Member States, collective bargaining rates tend to be higher for employees on permanent contracts and for those working in larger **enterprises** or in specific sectors, such as the public sector. Generally, workers in small **enterprises** are less likely to be covered by **collective bargaining agreements**, as those **enterprises** often do not have the capacity to negotiate **an enterprise-level agreement** [...] or because a union or [...] other form of worker representation is absent **from that** 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 those 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 **create** a more effective social dialogue and collective bargaining **capacity**. 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, and their human and administrative **capability**, 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 **primarily** 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. Those efforts can then be complemented and/or supported by public authorities [...] and [...] by making use of Union funding [...] while respecting the **autonomy of the** social partners [...].
- (18) Some Member States have taken measures to support social dialogue and collective bargaining by [...] broadening the opportunities for social dialogue; [...] promoting the autonomy of social partners and [...] respect for their contractual freedom; [...] encouraging joint opinions, programmes and projects; [...] **engaging in the** regular sharing of information; [...] promoting negotiation training; [...] providing for alternative dispute resolution mechanisms, such as conciliation, mediation and arbitration, **and** strengthening the protection of workers against retaliation or discrimination as a result of their involvement in collective bargaining **activity**.

- (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 **Member States**, trade union density has been declining on average across **the Union**. Moreover, the share of workers covered by collective agreements (the collective bargaining coverage) is low in most Member States and, despite several strategies **being adopted** by trade union organisations to extend their reach to non-standard forms of employment, **that share** 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. **Those gaps** can include: [...] strict representativeness conditions; [...] interference in the bargaining process or undue limitations on the subjects of collective bargaining; [...] an improper delineation of economic sectors that precludes the formation of sectoral level collective bargaining structures; [...] lack of enforcement of collective agreements; [...] ineffective protections against anti-union discrimination; [...] ineffective consultation procedures; [...] **a lack of constructiveness in negotiations, and [...] a 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 **the putting into place of** an enabling framework for social dialogue, including collective bargaining, and that national social partners have sufficient capacity to [...] contribute **effectively** 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.
- (20a) **Directive 2022/2041/EC⁷ aims, among others, to improve working conditions by facilitating the exercise of the right to collective bargaining on wage-setting. Member States are called to foster collective bargaining coverage and, under certain conditions, to take active measures for its promotion.**

⁷ Directive (EU) 2022/2041 of 19 October 2022 on adequate minimum wages in the European Union, OJ L 275, 25.10.2022, p. 33

- (21) Directive 2014/24/EU⁸ on public procurement, Directive 2014/25/EU⁹ on procurement by entities operating in the water, energy, transport and postal services sectors and Directive 2014/23/EU¹⁰ on the award of concession contracts require Member States to respect the right to organise and **the right of** 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) [...] 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 ‘false self-employed’ and thus in a situation comparable to that of workers¹¹. **The Court has also** confirmed that ‘in today’s economy it is not always easy to establish the status of some self-employed contractors as undertakings’¹².
- (23) **In its** guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons¹³ **the Commission clarifies that in its view collective agreements by solo self-employed persons who are in a situation comparable to that of workers fall outside the scope of Article 101 TFEU; and that the Commission will not intervene against collective agreements of solo self-employed persons who experience an imbalance in bargaining power vis-à-vis their counterparty/-ies.**
- (24) [...]

⁸ OJ L 94, 28.3.2014, p. 65.

⁹ OJ L 94, 28.3.2014, p. 243.

¹⁰ OJ L 94, 28.3.2014, p. 1.

¹¹ 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.

¹² Judgment of 4 December 2014, FNV Kunsten Informatie en Media v Staat der Nederlanden, C-413/13, EU:C:2014:2411, paragraph 32.

¹³ 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).

- (25) Regulation (EU) 2021/1057 of the European Parliament and of the Council¹⁴ maintains the obligation of Member States to ensure **meaningful** participation of social partners in the delivery of policies supported by the European Social Fund Plus (ESF+) and strengthens their obligation to support the capacity building of social partners. **Where applicable**, an appropriate amount of ESF+ resources should **be** allocated by Member States for the capacity building of social partners and civil society. **Article 9 of that Regulation [...] provides that** Member States that have a European Semester country-specific recommendation in this area **are to** 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 [...] existing instruments at Union level. **In addition, this Recommendation takes into account the specific circumstances of Member States and recognises that the choice of individual measures for its implementation can be determined by such circumstances.**
- (27) This Recommendation **cannot**, under **any** circumstances, be **cited** to [...] justify reducing the level of support already afforded to social dialogue, including collective bargaining, within Member States. **Furthermore, this Recommendation** does not preclude Member States from putting in place stronger support measures and more advanced provisions for social dialogue, including collective bargaining, **than** those included in this Recommendation.
- (28) This Recommendation is without prejudice to the competences of the Member States regarding **pay**, 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, **or** to the autonomy of the social partners.

¹⁴ 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).

HAS ADOPTED THIS RECOMMENDATION:

DEFINITIONS

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, **employment** 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 dialogue, and can be informal or institutionalised or a combination of the two, taking place at [...] national, regional, **local** or [...] enterprise level **across industries or sectors**, or at **several of these levels at a time**.
- (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 **workers’ organisations, generally 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 parties referred to in the previous point**, according to national law and practices, including those that are **declared** universally applicable.
- (4) ‘Derogation[...]**’ means [...] a provision[...] that sets** alternative standards or conditions to those contained in a **[...] collective agreement[...]. [...]**
- (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 [...].

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

- (1) ensure, **as detailed in this Recommendation**, an enabling environment for bipartite and tripartite social dialogue, including collective bargaining, in the public and private sectors, at all levels [...] that:
 - (a) respects the fundamental rights of freedom of association and **of** collective bargaining;
 - (b) promotes strong, independent trade unions and employers' organisations **for the purpose of fostering meaningful social dialogue**;
 - (c) includes measures to strengthen the [...] capacity **of trade unions and employers' organisations**;
 - (d) ensures access to the relevant information **that is necessary** to participate in social dialogue;
 - (e) promotes engagement in social dialogue on the part of all the parties;
 - (f) adapts to the digital age **and** promotes collective bargaining in the new world of work and a fair and just transition towards climate neutrality; **and**
 - (g) **provides** [...] appropriate institutional **support for the purpose of fostering meaningful social dialogue**;

[...]
- (2) **involve social partners in a systematic, meaningful, and timely manner**, 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 **in** their Member State and on the relevant situation and policies for their respective sectors of activity, **which is necessary** to participate in social dialogue and [...] collective bargaining.
- (4) ensure that representative employer 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, **those determinations are open and transparent and** based on pre-established and objective criteria with regard to **those organisations' representative characteristics**, and that such criteria and procedures are established in consultation with trade unions and employers' organisations;
 - (b) **taking**, where [...] both trade union representatives and elected **worker** representatives are present in the same undertaking, [...] appropriate measures **wherever** necessary to ensure that the existence of elected **worker** representatives is not used to undermine the positions of the trade unions concerned or **of** their representatives; **and**
 - (c) ensuring that **their** specific role [...] is fully recognised and respected in social dialogue structures and processes, while recognising that [...] dialogue **which** involves a broader set of stakeholders is a separate process;
- (5) ensure that workers, [...] trade union members, **and their** representatives, are **protected** when exercising their right [...] to collective bargaining [...] against any measure that may be harmful to them or **which** may have a negative impact on their employment. [...] **Employers and their representatives should be** protected against any unlawful measures [...] when exercising their right [...] to collective bargaining;

- (6) foster trust in and between social partners, **including by [...] promoting mechanisms to resolve labour disputes, without affecting rights of access to adequate administrative and judicial procedures to enforce rights and obligations in law or stemming from collective agreements, and taking into account any procedures established by the social partners, such as:**
- (a) the use of conciliation, mediation **or** arbitration, with the agreement of both parties, with a view to facilitating negotiations and improving the application [...] of collective agreements; **and**
 - (b) **the establishment**, where not already in place, [...] of mediators who can act in case of conflict between trade unions and employers' organisations;
- (7) **enable** collective bargaining [...] at all appropriate levels, [...] and encourage coordination between **and across** those levels;
- (8) promote a higher **level of** 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 **non-standard forms of work**;
 - (b) ensuring that the negotiating parties have, **within the applicable legal framework**, the freedom to decide on the issues to be negotiated;
 - (c) [...]
 - (d) [...] implementing a system of enforcement of collective agreements, **either by law** [...] **or as** agreed by collective agreement, **depending** on national law or practice **including, where appropriate, inspections and sanctions.**

- (8a) **recognize that derogations from collective agreements are, in principle, to be agreed between the social partners. [...] Where a Member State allows to derogate by law from a collective agreement[...], the relevant social partners should be consulted during the legislative process[...];**
- (9) **actively** promote [...] the benefits and the added value of social dialogue and collective bargaining, in particular by targeted communication and **other** means, **and** encourage the social partners to make [...] collective agreements widely accessible, including by digital means and **in** public repositories;
- (10) support national social partners, **at their request**, to participate **effectively** in social dialogue, including in collective bargaining and [...] the implementation of Union level autonomous social partner agreements [...] by **taking actions such as:**
- (a) promoting the building and strengthening of their capacity at all levels, depending on their needs;
 - (b) using different forms of support, **which may include** 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 **bases**;

- (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 [...] Union level social partners, [...];
 - (h) providing appropriate support to implement in the Member States social partner agreements concluded at Union level;
 - (i) making the best use of [...] national and Union funding, **where available, including** support under ESF+ and the Technical Support Instrument, **and** encouraging social partners to use [...] existing national and Union funding, [...];
- (11) submit to the Commission by [ADD date **24** 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. **When that information is already submitted to the Commission under other reporting mechanisms, Member States can refer to those reports when compiling the list;**
- (12) may entrust the social partners with the implementation of the relevant parts of this Recommendation, where applicable **and** in accordance with national law or practice,

INVITES THE EMPLOYMENT COMMITTEE AND THE SOCIAL PROTECTION COMMITTEE, WITHIN THEIR RESPECTIVE MANDATES, WITH THE SUPPORT OF THE COMMISSION TO:

- (13) **explore, in consultation with relevant social partners, the possibility to develop commonly agreed indicators by [ADD date 12 months from the publication of the Recommendation] to improve the scope and relevance of data collection at Union and national level on social dialogue, including on collective bargaining, which are appropriate for monitoring the implementation of this Recommendation [...];**
- (14) **monitor regularly, as part of the multilateral surveillance activities [...]in the context of the European Semester, the implementation of this Recommendation [...] jointly with [...] relevant social partners [...] at national and Union level, where such [...] monitoring would 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;**

INVITES THE COMMISSION TO

- (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 6 years from the publication of the Recommendation] [...],**

Done at...

For the Council

The President