

STRENGTHENING SOCIAL DIALOGUE IN THE EU

**An ETUC handbook for
the implementation of the
Council Recommendation
of June 2023**

Version June 2024



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Foreword

In June 2023, the Council adopted a Recommendation on strengthening social dialogue in the EU. The Recommendation addresses the need for strengthening and promoting the benefits of social dialogue, better involvement of social partners in policy design, and for capacity building for social partner organisations.

Member States are now expected to implement this Recommendation, jointly with social partners at national and EU level.

This handbook identifies three main topics of intervention:



These topics have been identified by ETUC's national affiliates as aspects where actions are particularly necessary in order to strengthen social dialogue.

For each topic, the handbook gives an overview of current challenges, summarises the key points of the Council Recommendation and provides guidance on the demands that trade unions could develop at national level to strengthen social dialogue.

This handbook is intended to be a useful tool for ETUC affiliates to strengthen their trade union demands for a meaningful implementation of the Council Recommendation. The handbook should be regarded as a living document to be regularly updated with more examples and to be expanded into other topics when demanded by ETUC affiliates.

I would like to thank Séverine Picard and Paulina Baranska (Progressive Policies), as well as Cecilia Lazzaroni and Ruairi Fitzgerald (ETUC) for their good work and collaboration in developing this handbook.

In solidarity,

Claes-Mikael Ståhl
ETUC Deputy General Secretary



The fight against yellow unions

1

1.1 Context

A 'yellow union' is defined by the ILO as a union which is established by and/or under the influence and control of an employer¹. Yellow unions often seek to engage in collective actions and sign collective agreements below the standards strived for by bona fide trade unions.

Yellow unions have been a long-standing concern for the labour movement, and there are indications that yellow unions might be a growing phenomenon. In Denmark, for instance, the share of yellow unions increased from 7% of total union membership in 2007 to 18% in 2019². In the Netherlands, there is a reported increase of yellow unions, largely dependent on funding from employers. Yellow unions often sign workplace collective agreements, which the national confederations refuse to undersign as they do not meet their minimum standards³. In Italy, just one third of registered collective agreements involve at least one of the confederations. The rest are so-called 'pirate agreements', exerting downward pressure on wages⁴. The German constitution clarifies that the conclusion of collective agreements is only assigned to trade unions, and the Federal Constitutional Court in 2015 declared that the CGZP organization was not responsible for collective bargaining. CGZP had concluded agreements with wages that were significantly below the wages of the collective agreements of the bona fide trade unions⁵.

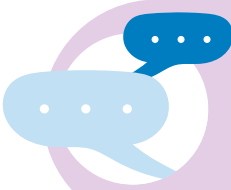
ETUC affiliates report increasing concerns about far right workers' organisations. Yellow unions have become legitimised by governments in those Member States that have recently seen a rise of far right parties. This forms part of a broader far-right agenda to weaken social dialogue and collective bargaining, undermining our democracy. The continuation of this trend is feared in other Member States that have recently witnessed a surge in far right parties, such as Finland or the Netherlands.

However, the rise of yellow unions representing a far right agenda can also occur in Member States with centre-left governments. For instance in Spain, a yellow union linked to far right politics has been granted trade union rights, such as the right to organise strikes. Nevertheless, in reality, that organisation does not engage in collective bargaining but disseminates the right-wing political agenda such as economic liberalism, anti-socialism, and anti-immigration demands.

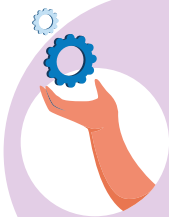
The resurgence of yellow unions may be further accelerated by several labour market developments, including:



Increase in non-standard forms of work (e.g. temporary agency work, self-employment, platform work). As these workers are more difficult to organise, employers are more able to reach out to non-unionised individuals.



Decentralisation of collective bargaining in favour of company level agreements. Recent labour market reforms across the EU may entice employers to rely more on yellow unions at the workplace as a way to undercut sectoral or cross-industry standards.



Collectively agreed derogations from EU standards. Some EU labour law instruments foresee that social partners can negotiate less favourable standards, which can act as an incentive for the setting up of yellow unions. As an illustration, the temporary agency work Directive authorises social partners “at the appropriate level” to derogate from the equal treatment principle while respecting the overall protection of agency workers⁶.

1.2 What does the Council Recommendation say?

Recital 12 of the Recommendation states that workers' organisations may engage in bipartite negotiations, including collective bargaining, and defines a workers' organisation as *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*. This Recital was adopted in opposition to the ETUC position, which made it clear that trade unions must be recognised as the sole party representing workers when it comes to collective bargaining⁷. Recital 14 also has a problematic reference to collective agreements negotiated at company level.

Nevertheless, the rest of the Recommendation, in particular the operative part, exclusively refers to trade unions as representing workers interests.

Paragraph 4 a) raises the issue of recognition and representativeness of trade unions, highlighting the need to ensure that, where they exist, such criteria are not used arbitrarily by Member States. Paragraph 4 (b) recommends that Member States take measures to ensure that the existence of elected workers' representatives does not undermine the positions of trade unions. The full text of the recommendation is available in annex.

1.3 Union demands

The implementation of the Council Recommendation should reaffirm the prerogatives of trade unions to represent workers and engage in collective bargaining. Any attempts to promote the role of other actors, such as yellow unions or other 'workers' organisations', must be clearly highlighted as counter to Union law. Where needed, measures should be taken to reaffirm these trade union prerogatives.

Examples of measures that can safeguard and promote the prerogatives of trade unions include:

- The use of adequate criteria to measure the representativeness of trade union organisations to promote collective bargaining and to respect the role of trade unions in negotiating and signing collective agreements on behalf of workers;
- Protection of sectoral and cross-sectoral collective agreements against derogations negotiated by yellow unions, in particular at workplace level.

The use of criteria to measure representativeness

Establishing clear representativeness can be very relevant to limit the spread of yellow unions, preventing these non-representative workers' organisation from negotiating/ registering an agreement. Devising representativeness criteria requires great caution. Too rigid criteria (for instance a high membership threshold) would be greatly detrimental to bona fide unions (see the example in box 1). It could also be considered as a serious impediment on freedoms of association, speech and opinion. At the same time, too loose criteria might be misused by policy makers to artificially inflate collective bargaining coverage thus giving the wrong impression that social dialogue is being strengthened.

Box 1: Trade Union and collective bargaining recognition in Romania



In 2011 in **Romania**, a Social Dialogue Act was adopted which undermined collective bargaining through increasing the threshold for trade union recognition in companies from 33% of the to 50%+1. This was combined with the prevention of cross-industry collective agreements as well as the removal of extensions of sectoral agreements. Collective bargaining coverage plummeted as a result. A new 2022 law seeks to reverse this by, inter alia, allowing union recognition when 35 % of workers are union members and securing sectoral recognition when 5% of workers are union members.

Some existing frameworks on representativeness criteria, such as France (see example in box 2), seek a comprehensive approach, with a focus on qualitative elements such as financial independence and upholding of fundamental rights values.

The independent nature of a trade union should be emphasised as a key representativeness criterion. Bona fide trade unions should remain financially and politically independent from employers and their influence.

Box 2: Representativeness criteria in France



In **France**, only representative unions can sign collective agreements. The following criteria determine representativeness:

- 
 Respect for Republican values (e.g. respect for freedom of political opinion, refusal of discrimination, fundamentalism and intolerance);
- 
 Independence (e.g. financial);
- 
 Financial transparency (e.g. compliance with accounting obligations);
- 
 Minimum 2-year seniority in the relevant professional and geographical field;
- 
 Influence (e.g. reality of the actions carried out by the union);
- 
 Number of members and contributions (sufficient number of members to ensure that their contributions represent the main part of their resources, thus guaranteeing the independence criterion);
- 
 Adequate audience in social elections (at least 10% of the votes cast).

Quantitative criteria, such as social elections in workplaces, can also constitute an easy way to monitor representativeness. However, it is not advisable to exclusively rely on quantitative criteria, especially minimum membership thresholds, to assess representativeness.

Coordination of collective bargaining levels

It is important to build upon the Council Recommendation to try to **mitigate the negative impact of recent labour market reforms decentralising collective bargaining**. The Recommendation recognises the need to ensure coordination across the bargaining level. The respect of trade union prerogatives is a precondition for facilitating the coordination of collective bargaining. This means facilitating trade union access to the workplace; respecting, supporting and protecting the right of shop stewards to engage in trade union activity; ensuring that yellow unions and other types of workers organisations can't replace or undermine the role trade unions in collective bargaining such as through signing agreements on behalf of workers, which often derogate from sectoral and cross-sectoral collective agreements.

Box 3: Coordination of collective agreements in Belgium



In **Belgium**, all collective agreements including workplace agreements must be registered in a centralised register. Only a union official from the 3 recognised Confederations can sign a workplace agreement; the approval by a workers' organisation is not sufficient. In practice, negotiations can be led at the workplace by elected workers' representatives. The final text will then be undersigned by the Confederation.

Checklist of challenges and actions to consider

Challenges to Social Dialogue	Actions to consider
<p>Proliferation of non-representative workers' organisations</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Introduction of representativeness criteria <input type="checkbox"/> Non representative workers' organisations cannot be allowed to sign collective agreements
<p>Far-right politics rely on yellow unions</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Include respect for fundamental rights values among representativeness criteria
<p>Rigid/ arbitrary assessment of representativeness</p> <p>High membership thresholds in a context of low trade union density</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Ensure a set of several well balanced criteria <input type="checkbox"/> Quantitative elements cannot constitute the only criteria <input type="checkbox"/> Avoid minimum membership thresholds (consider replacing them with results in social elections and/ or the ability to negotiate sectoral collective agreements)
<p>Workers' organisations undercut representative sectoral collective agreements</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Non representative workers' organisations cannot be allowed to sign collective agreements <input type="checkbox"/> Require the co-signature of national/ sectoral unions for the registration of workplace collective agreements



Social Dialogue Structures

2

2.1 Context

According to Eurofound⁸, during the pandemic there was an intensification of **tripartite dialogue** in countries with robust traditions, with governments leaning even more heavily on this process to design mitigation measures to the crisis. Examples of this could be seen in Austria, Belgium, Denmark, Lithuania and Slovakia.

In contrast, countries with less developed social dialogue did not see a revitalisation of tripartism. These countries include in particular Hungary, Greece, Romania, Latvia and Poland. Countries such as Slovenia even saw a decline in tripartite processes.

A third group of countries saw a lower delivery of tripartite agreements in spite of a strong tradition pre-pandemic. These countries include France, Bulgaria and Luxembourg.

Trade unions in numerous Member States have reported that the involvement of social partners in policy-making has become an empty shell. Even when trade unions are formally consulted, the outcomes of consultations are often ignored and no agreements are concluded.

Asymmetry in the balance of power leads to poor social dialogue outcomes. Measures taken in the context of an imbalance of power within tripartite social dialogue structures weaken social dialogue as a whole.

Bipartite social dialogue is present in every EU Member State but with differing outcomes. It is in particular considered to be a common and robust practice in many Northern and Western European countries. Looking at collective bargaining coverage, bipartite social dialogue appears to be at its strongest where negotiations take place at sectoral and cross-sectoral level. It is less

prevalent in Eastern and South-Eastern Europe, especially in countries with single-employer bargaining arrangements⁹ (Baltic states, Hungary, Poland)¹⁰.

Bipartite social dialogue has proved to be an essential tool during the pandemic, where social partners needed to negotiate the implementation of short time work arrangements as well as heightened health and safety measures.

Trade unions across the EU Member States have been signalling common obstacles to bipartite social dialogue. A major impediment is the unwillingness or refusal of employers to engage in and conclude negotiations with workers. This problem has been observed in national as well as European social dialogue. The unilateral decision by employers to leave sectoral social dialogue negotiations has been an observed a common practice. For example, in the Polish social dialogue, employers, especially in sectors dominated by multinational corporations, generally refuse to enter into any sectoral negotiations on wages and working conditions, under the pretext that their organisations do not fully represent a given sector. Also, in the European social dialogue, the employers have recently broken the cross-sectoral negotiations on telework and right to disconnect¹¹. This resistance of employers to sit at the bargaining table and engage into negotiations or to recognise their mandate to conclude agreements is also visible in sectors, at both national and European level.¹²

An important distinction needs to be made between social dialogue and other forms of dialogue such as **multistakeholder dialogue, or civil dialogue**. These refer to a broader process of communication and collaboration between multiple stakeholders, such as government, employers, trade unions, NGOs and other civil society actors. Multistakeholder dialogue often addresses a wide range of issues, including social and labour market issues.

Multistakeholder dialogue is an indicator of a transparent and accountable democratic system. For unions, it can create opportunities for strategic alliances and bring to the table a range of expertise thereby partly addressing unions' capacity issues.

However, **multistakeholder dialogue which includes a broader set of actors than social partners is a separate process to social dialogue and should not be used to weaken or replace social dialogue**. Union specific concerns can be overshadowed by other, non-employment related, interests. Trade unions may indeed be outnumbered, particularly if other stakeholders have more resources. Where the dialogue does focus on labour issues, social dialogue can be undermined and trade unions undercut. As democratic entities issued from workplace elections, trade unions are the only organisations who can legitimately negotiate wages and employment terms and conditions.

Trade unions in Hungary, Poland, Portugal or Spain have voiced concerns over multistakeholder dialogue diverting the consultations away from trade union matters such as wage setting or improvement of working conditions. The involvement in the social dialogue of actors such as civil society organisations, advisory bodies, and non-representative trade unions has depoliticised social dialogue and underplayed the role of class conflict.

2.2 What does the Council Recommendation say?

The Council Recommendation advocates for a strengthened social dialogue both in the context of collective bargaining and policy-making. Paragraph 1 recommends Member States to ensure an enabling environment for bipartite and tripartite social dialogue including collective bargaining. This enabling environment refers specifically to, inter alia:

- Respecting the fundamental rights of freedom of association and of collective bargaining;
- Measures to ensure capacity building of social partners (including appropriate institutional support);
- Promoting engagement in social dialogue on the part of all the parties.

According to paragraph 2, Member States must ensure access to relevant information and involve social partners in a systematic, meaningful and timely manner. Member States should also ensure that social partners have access to relevant economic and social analysis (paragraph 3).

On the issue of multistakeholder dialogue, the Recommendation recognises that social dialogue is a specific process, separate from broader consultation (paragraph 4). Broader civil dialogue should not be used to replace or weaken social dialogue and the role of social partners in policy making.

Paragraph 5 clearly outlines the need to 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.

2.3 Union demands

Distinctive approaches may be needed when seeking to strengthen social dialogue and collective bargaining.

Social dialogue can be understood as a tripartite or bipartite umbrella process, encompassing the exchange of information, consultation and negotiation on social or company policies. Collective bargaining is a narrower term describing the negotiations between trade unions and employers on wages and working conditions. An overall assumption is that a well-functioning bipartite social dialogue, particularly the collective bargaining process, is an essential condition of effective and independent tripartite social dialogue. Ireland provides an interesting illustration of such synergies (Box 4).

In order to support collective bargaining, EU institutions and national governments should take action to ensure trade union rights are protected, collective agreements are enforced, and employers enter negotiations in good faith.

Concerning social dialogue, effective rules and procedures for the dedicated and effective consultation of social partners before policy-making is finalised should be applied.

Due to differing traditions, there will not be a one-size fit all solution.

Empowering collective bargaining

First, **legal frameworks must re-balance the power asymmetry between capital and labour**. Trade unions and their members must be guaranteed strong legal rights to collective bargaining and its corollary, the right to collective action as well as protection and dissuasive sanctions against anti-union behaviour. Without a right to strike, the right to collective bargaining amounts to no more than a right to “collective begging.”¹³

Second, where employers systematically refuse to recognise or engage with trade unions and conclude collective agreements, i.e. refuse to regulate the labour market through collective bargaining, then policy makers must take action. The refusal of employers to engage in collective bargaining as part of a deregulation agenda should be met with both trade union action as well as the clear ambition of policy makers to bring forward solutions that support workers. Strong incentives

or even a legal obligation on employers to negotiate in good faith where this does not exist could be considered in order to create the enabling framework required by the Recommendation. Such measures would help overcome the recurrent employer practice of aborting negotiations in an effort to delay or even pre-empt collective action. An alert mechanism should be ensured where the commitments made by social partners to support social dialogue have not been fulfilled.

Third, governments must introduce measures to **guarantee the effective application of collective agreements**. This includes in particular:

1

The introduction or strengthening of existing extension mechanisms in countries where enforcement cannot be guaranteed by industrial relations alone;

2

The strengthening of the favourability principle, whereby individual employment contracts are not allowed to undercut collectively agreed standards;

3

The strengthening of public procurement rules subjecting the awarding of contracts to the demonstrated respect of applicable collective agreements.

An enabling framework for tripartite social dialogue

Broadly speaking, the ILO¹⁴ lists the following preconditions for sound social dialogue:

- Strong, independent and representative employers' and workers' organisations;
- Technical capacity;
- Access to relevant information;
- Political will, trust and commitment to engage in social dialogue by all the parties;
- Respect for the fundamental rights of freedom of association and effective recognition of the right to collective bargaining;
- Enabling legal and institutional framework.

Establishing bodies such as national tripartite councils can provide a formal structure for regular meetings and formal policy consultations with trade unions. The process needs to be transparent and ensure the effective influence of trade unions in the design and implementation of social policies.

Box 4: Links between social dialogue and collective bargaining structures in Ireland



In Ireland, the Labour Employer Economic Forum (LEEF) is a national level social dialogue structure involving consultations, rather than negotiations, with trade unions, employers and government. It is divided in sub-groups that look at specific issues:



**Employment
Rights**



Childcare



Pensions



Housing



Health

Alongside the LEEF structure there is a fragmented, voluntary system of collective bargaining.

It's a mixture of national, sectoral and enterprise level collective bargaining.

Collective bargaining coverage ranges between 35% and 40% with trade union density between 25% and 30%.

The improvement of the functioning of collective bargaining is addressed directly in a high level working group in the LEEF. The working group has recommended that legislation requires an employer to engage with a trade union that seeks good faith engagement where they represent at least 10% of workers in a grade group or category within the employment.

Procedural safeguards should therefore be put in place to ensure that tripartite social dialogue translates into meaningful consultations. These procedural safeguards should include in particular:



Representative partners. Social dialogue should take place with representatives capable of impacting policy decisions.



Access to information. Trade unions need to be presented with the most recent and complete documentation on draft policies subject to trade union review, consultation and opinion.



Timing. Sufficient time should be allowed to trade unions to review policy proposals and collect their members' opinion **before** the policy process is finalised.



Technical assistance. Trade unions need to have sufficient financial and human resources to autonomously elaborate on the positions on policy proposals and actively participate in the consultations (see also topic 3: Capacity building).

Overall, a balance should be maintained between, on the one hand, the political will necessary to an enabling framework and, on the other hand, the need to preserve the autonomy of social partners. According to the latter principle, social partners should remain free to set their agenda, without interference from public authorities.



Checklist of challenges and actions to consider	
Challenges to Social Dialogue	Actions to consider
Opaque policy-making	<ul style="list-style-type: none"> <input type="checkbox"/> Introduce clear rules and procedures for permanent consultation in tripartite social dialogue
Government provides information as opposed to meaningful consultation	<ul style="list-style-type: none"> <input type="checkbox"/> Introduce clear rules and procedures for permanent consultation in tripartite social dialogue, including on timing <input type="checkbox"/> Strengthen the government obligation to conduct a meaningful consultation by reporting on the outcomes and providing justification for the refusal to recognise the trade union position
Lack of capacity	<ul style="list-style-type: none"> <input type="checkbox"/> Strengthen the obligations of public bodies to provide adequate labour market and employment data, including a common public access to databases <input type="checkbox"/> Introduce clear rules and procedures for permanent consultation in tripartite social dialogue, including on timing

Challenges to Social Dialogue	Actions to consider
<p>Employers refuse to recognise, engage or negotiate with trade unions</p>	<ul style="list-style-type: none"> <li data-bbox="580 284 946 459">□ Provide for social partners to negotiate in the shadow of the law ensuring a refusal by employers to negotiate does not block regulation protective of workers <li data-bbox="580 483 969 598">□ Introduce an alert mechanism where commitments to support social dialogue have not been fulfilled
<p>Low unionisation rate/ non representative employers' association</p>	<ul style="list-style-type: none"> <li data-bbox="580 678 949 762">□ Review and strengthen legal rights to collective bargaining and freedom of association <li data-bbox="580 786 930 847">□ Ensure dissuasive sanctions against union busting <li data-bbox="580 871 897 932">□ Promote multi-employer collective bargaining <li data-bbox="580 956 953 1040">□ Introduce employer obligation to engage in collective bargaining process <li data-bbox="580 1064 953 1185">□ Ensure public procurement contracts are only awarded to companies evidencing respect of collective agreements



Capacity building

3

3.1 Context

Capacity building can be defined as the enhancement of skills, abilities and powers of social partners to engage effectively and at different levels in social dialogue and in public policy-making¹⁵.

Thus, capacity building covers a range of activities including training, technical and logistical support and funding. As far as recruitment of members and organising are concerned, the ETUC is taking steps to support its members to develop a strong trade union renewal agenda.

The policy context is one of stronger emphasis on the active contribution of social dialogue to inclusive and resilient growth. The European Pillar of Social Rights states that social partners are to be consulted on a range of policies and that they are to be encouraged to engage in collective bargaining. The European Pillar of Social Rights also raises the need to increase the capacity of social partners to promote social dialogue¹⁶. It is indeed recognised that due to insufficient financial and human resources, trade unions can struggle to meet the challenges.

Since 2021, the main EU instrument for the support of capacity building activities is the European Social Fund Plus ('ESF+'). The overall objective of the ESF + is to support the implementation of the European Pillar of Social Rights. The Fund also intends to support the socio-economic recovery from the pandemic.

The ESF+ Regulation strengthens the obligation of Member States to support capacity building of social partners¹⁷. Member States that have a European Semester country-specific recommendation relating to social dialogue should allocate at least 0.25% of their ESF+ resources to this aim. This currently affects Hungary, Poland and Romania. All the other Member States are required to allocate an "appropriate" amount of their ESF+ resources for capacity building

of the social partners, although understanding and agreeing on what constitutes an “appropriate” amount in each national context is unclear.

Regarding areas of support, the ESF+ is aligned to the principles of the European Pillar of Social Rights, also taking into consideration the priorities set out in the European Semester country reports. Regarding implementation, each Member State shall organise the implementation process according to the partnership principle. The partnership principle is a key aspect of cohesion policies, and it refers to the close cooperation between all public authorities and social partners in the accomplishment of the policy objectives.

The total ESF+ budget for the period 2021-2027 is 99 billion euros. Trade unions face challenges in ensuring that the appropriate levels of funding for capacity building are secured and that there is a sufficient differentiation between social partners and other civil society organisations in the allocation of funding. Another issue is the interruption of continuity of project activities due to delays in the use of the funds, leaving big gaps where no follow-up activities can be started.

3.2 What does the Council Recommendation say?

Measures to strengthen the capacities of social partners are mentioned as a part of ensuring an enabling environment for social dialogue and collective bargaining (paragraph 1).

Paragraph 10 specifically refers to the need to promote the building and strengthening of social partner capacity at all levels, depending on their needs, as well as support from, inter alia, the ESF+.

The Council Recommendation encourages Member States to take measures to strengthen capacity building of trade unions and employers’ organisations. It clearly states that appropriate technical capacities are among the enabling conditions for a well-functioning social dialogue (recital 10).

The Recommendation insists increased capacities of social partners would contribute to more effective social dialogue and collective bargaining, and that this is a bottom-up process, dependent on the identification of needs by social partners (Recital 18).

3.3 Union demands

Activities

Training is likely to be a central aspect of trade union needs. Training programmes can be adapted to the needs of union officials and workers' representatives. The objective of training activities is to build educational programmes about social dialogue as well as to develop expertise in technical and/ or emerging areas. Training can take various forms, including physical events, publications, online pedagogical contents etc., often as part of project activities.

Capacity building can also facilitate policy discussions, information gathering and exchange of good practices between unions across the EU. These efforts should be directed at strengthening cooperation between trade unions, particularly at cross-industry and sectoral levels. Thus, logistics and financial support should help the organisation of session debates, workshops, conferences. Translations of relevant documents also continues to be an important need.

Sufficient financial resources are needed to foster the cooperation between trade unions and cover the costs of expert personnel, such as legal expertise and assistance. Trade unions should have access to social dialogue funds supporting the capacity building activities of social partners in a timely and useful manner. Access to funding can be delayed, and, in any case, it often requires technical expertise. In many cases access to such funding is necessary to ensure that trade unions have the capacity to participate in social dialogue on equal foot with employers and governments.

Finally, technical support can help consolidate research processes. Public institutions collecting labour market and employment data should ensure wide public access to the statistics. Also, the collection of public data should be accurate and applicable to the various aspects of working conditions. Unfortunately, very often trade unions do not have access to the relevant data due to lack of statistics or limited public access. Accordingly, governments should ensure that the relevant data on working conditions is collected and publicly disseminated at the national and European level.

Priority topics

Capacity building could help create more synergies between European and national debates, thus increasing the expertise for advocacy activities. According to a 2020 report by the European social partners¹⁸, an important obstacle to the engagement of national unions in European issues can be attributed to poor capacity. Unions facing limited financial means tend to prioritise domestic issues over European social dialogue.

Furthermore, the Council Recommendation advises 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 conditions¹⁹.

In addition, the ETUC has identified in its guide to cohesion funds a number of topics relating to decent work, social protection, access to labour market and financial literacy. The guide also raises the need for specific training in the management of EU funding²⁰.

Finally, the development of joint proposals with employers may increase the chances of getting funding.

Potential pitfalls

As mentioned above, the partnership principle is a key aspect of cohesion policies. The ETUC has expressed concerns about weaknesses in this partnership principle due in particular to the insufficient space left for trade unions in the monitoring and evaluation of EU funds obligations.

Some ETUC members have also expressed concerns about the long delays in delivering the funding. This provides particular challenges to the continuity of activities that build upon previous work. Conditioning future capacity building funding for social partners on meeting social dialogue or collective bargaining milestones could also be an obstacle. The development of strong social partners requires a respect of their autonomy to target the areas they see fit.

Checklist of challenges and actions to consider

Challenges to Social Dialogue	Actions to consider
<p>Lack of technical expertise for Social Partners to fully contribute to policy development</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Dedicated funding training for employees of trade unions in relevant policy areas <input type="checkbox"/> Collection and access to labour market and employment data in a timely and accessible manner
<p>Insufficient resources dedicated to strengthening social dialogue from the ESF+ and other funding streams</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Differentiation between social partners and civil society organisations <input type="checkbox"/> Dedicated tracks for social partners in funding streams <input type="checkbox"/> Ensuring that activities can be continued in a timely manner that avoids funding gaps
<p>Lack of involvement of social partners in the planning, use, monitoring and evaluation of Union and national funds</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Specific requirements for national authorities on the inclusion of social partners in the use of Union funding, enforced at European level by the Commission with the involvement of EU social partners <input type="checkbox"/> Reporting mechanism for the misapplication of the partnership principle <input type="checkbox"/> Training for national officials on the role of trade unions, social partners, and social dialogue

Final Considerations

The timeline set by the Recommendation obliges Member States to submit to the Commission by December 2025 a list of measures, drawn up in consultation with social partners, to implement the Recommendation. This process should require a comprehensive consultation with social partners, or allow social partners to implement the Recommendation directly themselves.

The issues identified in this handbook are not exhaustive, and the Council Recommendation provides a broad framework upon which trade unions can develop their demands to reinforce collective bargaining and social dialogue structures at national level. This handbook has been developed based on the contribution from trade unions at national and sectoral levels.

It is important to note that the Recommendation does not exist in isolation. The Directive on Adequate Minimum Wages in the EU provides a strong legal basis to deliver trade union demands on collective bargaining. The Recommendation should be regarded as complementary to the provisions of the Directive.

An evaluation of the actions taken by Member States isn't foreseen until 6 years from the publication of the Recommendation, in June 2029, however in the meantime the Recommendation will be regarded as a vehicle to strengthen trade unions demands in European social policy discussions, including in the context of the European Semester.

Lastly, this handbook is intended to support ETUC affiliates in their demands to strengthen social dialogue through the effective implementation of the Recommendation. It is a living document that will be updated to cover other issues that arise during the implementation period. ETUC affiliates will be invited to provide updates on the state of play of implementation at national level and the handbook will provide an important resource in developing European level demands to support and strengthen social dialogue.

**Annex:
Recommendation
on Strengthening Social
Dialogue in the EU**



C/2023/1389

6.12.2023

COUNCIL RECOMMENDATION
of 12 June 2023
on strengthening social dialogue in the European Union

(C/2023/1389)

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 of Social Rights also states that support to increase the capacity of the social partners to promote social dialogue is to be encouraged. The Porto Social Commitment⁽¹⁾ 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, sectoral 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) 2022/2296 ⁽⁹⁾ 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 2019 ⁽⁹⁾ 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 survey ⁽⁹⁾ 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 ⁽⁹⁾, 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 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 those 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

⁽⁹⁾ 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).

⁽⁹⁾ Communication from the Commission Annual Growth Survey 2019: For a stronger Europe in the face of global uncertainty, COM/2018/770 final.

⁽⁹⁾ Communication from the Commission Annual Sustainable Growth Survey 2022, COM/2021/740 final.

⁽⁹⁾ Communication from the Commission The European Pillar of Social Rights Action Plan, COM/2021/102 final.

Recommendation on ensuring a fair transition towards climate neutrality ^(*) 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.

- (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, in the private and public sector, at all levels, including dialogue at cross-sectoral, sectoral, enterprise level, 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.
- (14) 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

^(*) 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).

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.

- (15) 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.
- (16) 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.
- (17) 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.
- (18) 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.

- (19) 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.
- (20) 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.
- (21) 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.
- (22) Directive 2014/24/EU ⁽⁷⁾ on public procurement, Directive 2014/25/EU ⁽⁸⁾ on procurement by entities operating in the water, energy, transport and postal services sectors and Directive 2014/23/EU ⁽⁹⁾ 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.
- (23) 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 workers ⁽¹⁰⁾. 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' ⁽¹¹⁾.
- (24) In its guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons ⁽¹²⁾ 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/ counterparties.

⁽⁷⁾ OJ L 94, 28.3.2014, p. 65.

⁽⁸⁾ OJ L 94, 28.3.2014, p. 243.

⁽⁹⁾ OJ L 94, 28.3.2014, p. 1.

⁽¹⁰⁾ 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.

⁽¹¹⁾ Judgment of 4 December 2014, FNV Kunsten Informatie en Media v Staat der Nederlanden, C-413/13, EU:C:2014:2411, paragraph 32.

⁽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).

- (25) Regulation (EU) 2021/1057 of the European Parliament and of the Council ⁽¹⁾ 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.

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 those 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 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 declared universally applicable.
- (4) 'Capacity building' means enhancement of the skills, abilities and powers of the social partners to engage effectively and at different levels in social dialogue.

⁽¹⁾ 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).

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 a mediation function which can be activated 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) 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.
- (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 7 December 2025 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, and deliver an opinion to the Council on the possibility to improve the scope and relevance of data collection at Union and national level on social dialogue, including on collective bargaining, 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 7 December 2029.

Done at Luxembourg, 12 June 2023.

For the Council
The President
J. PEHRSON

End notes

1. ILO (1996), Glossary of Industrial Relations and Related terms ILO (1996), Glossary of Industrial Relations and Related terms
2. H. Knudsen, J. Lind and B. Refslund (2023), Denmark: Trade unions still afloat at ebb tide, in ETUI Trade unions in the European Union
3. W. Been and M. Keune (2023) The Netherlands: decentralization and growing power imbalances within a stable institutional context, in ETUI Trade unions in the European Union
4. Collective contract representativeness and Pirate agreements: what are the effects? (wageindicator.org)
5. <https://www.dgbrechtsschutz.de/fuer/arbeitnehmer/zeitarbeitsbranche-unterliegt-vor-bundesverfassungsgericht/>
6. Article 5.3 of Directive 2008/104 on temporary agency work
7. ETUC (March 2023), Position on the Social Dialogue Initiative
8. Collective bargaining and social dialogue – Back to normal in 2021? | European Foundation for the Improvement of Living and Working Conditions (europa.eu)
9. Collective bargaining with a single employer, at company level
10. T. Müller, Z. Rasnaca, K. Vandaele (2019), Wages and collective bargaining - time to deliver on the European Pillar of Social Rights
11. Telework: Legislative action needed by EU Commission | ETUC
12. industriAll Europe | NEWS | Gas employers deny gas workers a fair and green transition (industrial-europe.eu)
13. https://www.ituc-csi.org/IMG/pdf/ituc_final_brief_on_the_right_to_strike.pdf
14. Social dialogue and tripartism (Social dialogue and tripartism) (ilo.org)
15. Eurofound (2020), Capacity building for effective social dialogue in the European Union
16. EPSR, Principle 8
17. Regulation 2021/1057 establishing the European Social Fund Plus (ESF+)
18. A. Alfaiate and P. Scherrer (2020), Supporting better implementation of EU social partners' autonomous framework agreements and strengthening capacities of social partner organisations
19. Para 10 (e)
20. ETUC (2023), Trade union guide to the effective use of available funds for cohesion policy



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