



Republic of Bulgaria
ECONOMIC
AND SOCIAL COUNCIL

OPINION

on the topic of:

**"Approaches to developing an action plan to promote collective
labour bargaining in Bulgaria"**

(developed on own initiative)

**Sofia,
March 2023**

The Activity Plan of the Economic and Social Council for 2023 includes the preparation of an own-initiative opinion on the topic "Approaches to developing an action plan to promote collective labour bargaining in Bulgaria".

The drafting of the opinion was assigned to the Commission on Labour, Incomes, Living Standards and Industrial Relations and the Commission on European Policies and the European Process. The Commission on Labour, Incomes, Living Standards and Industrial Relations was appointed as the leading commission for the preparation of the draft opinion, and Chavdar Hristov - Confederation of Independent Trade Unions in Bulgaria, from Group II and Ivelin Zhelyazkov - Bulgarian Industrial Capital Association, from Group I were appointed as rapporteurs.

At a joint meeting of the commissions held on 20.02.2023 and 09.03.2023, the draft opinion was adopted.

At its plenary session held on 24.03.2023, the Economic and Social Council discussed and adopted this opinion.

ABBREVIATIONS USED

ESC - Economic and Social Council

DAMW - Directive on Adequate Minimum Wages

MW - Minimum Wage

CLA - Collective Labour Agreement

CLD - Collective Labour Dispute

S/BCLA – Sector/Branch Collective Labour Agreement

NICA - National Institute for Conciliation and Arbitration

MLSP - Ministry of Labour and Social Policy

NSI - National Statistical Institute

LC - Labour Code

LSCLD - Law on the Settlement of Collective Labour Disputes

LCS - Law on Civil Servants

SB of NICA - Supervisory Board of the National Institute for Conciliation and Arbitration

ILO- International Labour Organization

OECD - Organization for Economic Cooperation and Development

ESC - European Social Charter (revised)

LOC - Law on Obligations and Contracts

1. Conclusions and Recommendations

- 1.1. ESC finds that Bulgaria is among the countries that do not have 80% coverage through CLA, in view of which and in accordance with Art. 4, §2 of the Directive on Adequate Minimum Wages (also referred to in the text below as the Directive) should prepare an action plan to promote collective labour bargaining. At the same time, it should not be allowed to adopt legislative texts which by their nature and philosophy harm collective bargaining.¹
- 1.1.1. The above conclusion is necessitated by the fact that regardless of the good practices for the development of collective labour agreements in some sectors and a number of enterprises, the CLA coverage of the employed in the country is generally too low in scope.
- 1.1.2. ESC considers that there are symptoms of a crisis of collective bargaining in individual industries, both at the sector level and at the enterprise level, mainly due to cases where disagreements over individual clauses of collective agreements lead to the failure of entire collective agreements.
- 1.1.3. NSI research shows that in Bulgaria, for employees covered by CLA, the average gross hourly wage is 8.3% higher, the average gross monthly wage is 18.6% higher, and the average gross annual wage - by 22.4% higher than the wages of persons not covered by CLA.²
- 1.2. ESC is of the opinion that the preparation and final adoption of the action plan under Art. 4, § 2 of the Directive on Adequate Minimum Wages should be carried out through consultations and with tripartite cooperation with the social partners. For ESC, this is the only rational, logically possible format that guarantees the implementation of the plan. ESC emphasizes that the state must stop "not noticing" its role as a party in a number of cases where collective bargaining is both possible and necessary.

¹ To these cases we relate the last example with the adoption of a formula for the amount of the minimum wage, which is justified by the transposition of the Directive on Adequate Minimum Wages, but in practice it represents a limitation of social dialogue and affects collective bargaining in determining some of the most important wage parameters in the country.

² NSI – structure of wages, 2018, C, 2021 ,p.25; p.166, table 2.4; p. 266, table 3.4.

<https://www.nsi.bg/bg/content/18665/%D0%BF%D1%83%D0%B1%D0%BB%D0%B8%D0%BA%D0%B0%D1%86%D0%B8%D1%8F%D1%81%D1%82%D1%80%D1%83%D0%BA%D1%82%D1%83%D1%80%D0%B0-%D0%BD%D0%B0-%D0%B7%D0%B0%D0%BF%D0%BB%D0%B0%D1%82%D0%B8%D1%82%D0%B5-2018>
See also the research carried in previous periods - 2002, 2006, 2010 , 2014

- 1.3. ESC, taking into account the possible and required content of the plan arising from specific texts of the Directive, **proposes to approach developing the plan in a structural-content aspect as follows:**
- 1.3.1. Introductory part reflecting the goals, tasks, stages, expected effects of the implementation of the included measures.
- 1.3.2. Part containing measures comprehensively directing to take legislative actions to improve and promote collective bargaining in order to gradually increase the extent of its scope.
- 1.3.3. Part containing measures beyond the set legislative measures, resulting from a set of actions agreed with the social partners or independently set by the state in the plan, based on the directions, possibilities, contained in Art. 4, §1, letters "a", "b", "c" and "d" of the Directive.
- 1.3.4. Other parts containing measures in the general direction and purpose of the plan, depending on the discussions in the relevant expert formats³ and in view of their expected effects.
- 1.3.5. Given the requirements of Art. 4 of the Directive, the measures should be accompanied by a specific schedule for their implementation, reflecting their internal interdependence and priority, and all of them should be planned in reasonable and justified terms for the implementation of the plan, also assessed in the light of item 25 of the Preamble and Art. 4, § 2, last paragraph.
- 1.4. ESC established that:
- 1.4.1. The legal framework of collective bargaining existing in the Labour Code has exhausted its initial stimulating effect and has a restraining role, i.e. is inconsistent with the requirements of both the Directive and the findings on the role and place of collective bargaining in the ILO⁴ and OECD⁵ reports.

³ Order No. RD-02-7/25.01.2023 of the Minister of Labor and Social Policy for forming an interdepartmental working group for the transposition into Bulgarian legislation of Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on Adequate Minimum Wages in the European Union.

⁴ In its fundamental report on the future of labor, ILO places collective bargaining as a fundamental right, part of the proclaimed universal employment guarantee. It is emphasized that all workers must enjoy the right to collective bargaining, and the state is the guarantor of these rights.

⁵ Collective bargaining is also highlighted in the OECD's Annual Employment Survey for 2019. According to the report, collective bargaining is a key tool for preventing market failures in the context of Industry 4.0, and it can assist governments in their efforts to make labor markets more adaptive and secure.

- 1.4.2. From the moment of its entry into force until now, there has been no legal regulation of collective bargaining in the Law on Civil Servants, despite the attempts to create one, including compliance with Art. 6 of the European Social Charter (revised).
- 1.4.3. ESC draws attention to the fact that, apart from the Labour Code, there are regulations in acts of the same degree, which formally, but at the expense of this, permanently blocking collective bargaining, especially at the sectoral level. Such is the example of the Law on the Ministry of Internal Affairs.⁶
- 1.5. According to ESC and in relation to the above, the main and priority part of the content of the plan should be related to legislative measures through which:
- 1.5.1. The system of legal regulations will be optimized so that they are adequate and take into account the differences between the real sector, the budget-financed spheres of activity, incl. in territorial aspect, with possible different decisions regarding the parties to the contracts, the procedures for negotiation and conclusion, the terms of the contracts, etc.
- 1.5.2. The above can be achieved through introducing significant amendments and additions to the Labour Code and also introducing legal regulations regarding collective bargaining in the Law on Civil Servants (LCS), the Law on the Ministry of Internal Affairs and other laws governing the functioning of various budget systems. Through these amendments, the problems identified in the field of legal regulation of collective labour agreements should be settled in an adequate way and with a perspective for a long period ahead. One of the main objectives of these legislative changes should be to increase the scope of collective agreements.
- 1.5.3. In relation to the above, ESC is of the opinion that:
- 1.5.3.1. In the system of legal regulations governing collective bargaining, the liberalization of bargaining opportunities should be set, including through the principle of "everything that is not prohibited is allowed" both at the level of the enterprise and at the level of the sector, in relation to the mandatory provisions of the law, incl.

⁶ The Law on the Ministry of Internal Affairs allows for the creation of union structures and uniformed employees in the ministry (and such actually exist), but expressly forbids police unions to be members of national trade union confederations. According to the Labour Code, only representative industry and branch trade union structures can participate in sectoral collective bargaining, and membership in a nationally representative organization is the main and irrevocable criterion for representativeness at the sectoral/branch level. At the same time, the Law on the Ministry of Internal Affairs allows (!) Bulgarian police unions to participate in ... European trade union police confederations. We consider this a classic example of the obstruction of collective bargaining in state institutions.

and subject to the sanction of a certain state institution, on certain matters of negotiation on which imperative norms exist.⁷

1.5.3.2. Through new legal regulations and in the most favourable way for the parties to the contracts, to settle the unresolved issues regarding the relationship and the possibilities for negotiation between the CLA at the level of enterprise and sectoral level, incl. also territory, regarding their content and action at the respective levels.

1.5.3.3. To explicitly regulate the possibility of negotiation at the national level on fundamental issues related to collective bargaining, as well as on other issues within the scope of collective bargaining and within the competence of the social partners.

1.6. ESC is of the opinion that particular attention should be paid to the legal framework of:

- non-legal and legal disputes related to the conclusion and implementation of collective labour agreements and their settlement, incl. also to the institute's definition of a "collective" labour dispute, which at this stage, incompletely and not in accordance with the developed practice of collective bargaining, are regulated by the Law on the Settlement of Collective Labour Disputes adopted in 1990;
- establishing legal guarantees of good faith^{8/9} in the process of collective bargaining and implementation of collective labour agreements.

1.6.1. In this regard, it is possible to consider and include in the plan a measure related to supplements to the Constitution, providing for:

- constitutional principle for tripartite cooperation¹⁰;
- establishing a constitutional right to collective bargaining for workers and employees joint in trade unions;

⁷ For example, in Bulgarian practice there is a case of a branch agreement valid for a limited territory - an area in which there are agreements to support anti-corruption measures.

⁸ In the context of Convention 154 and Recommendation 163 of ILO, according to which collective bargaining can only function effectively, if it is conducted in good faith by both parties and the legislative framework promotes this. Encouraging measures are needed in the direction of: actual and constant efforts by both parties to reach an agreement; constructive negotiations – avoiding unjustified delays; compliance with the terms of the agreements reached; effective procedures for providing information necessary for negotiations.

In line with good foreign experience, legislation can outline detailed requirements for what is expected of employers, employers' organizations and trade unions, and in some cases even consider non-compliance will be deemed an unfair labour practice.

⁹ The Directive also requires the creation of guarantees for "good faith" - Art. 4, 1, letter "b" "promoting constructive, meaningful and informed negotiations between the social partners on wages on an equal basis, where both parties have access to appropriate information to perform their functions in relation to collective bargaining for determination of wages";

¹⁰ *Similar to the Constitution of the Republic of Poland.*

- admissibility for creation by law of special jurisdictions with a view to out-of-court settlement of collective labour disputes similar to regimes existing in other countries.¹¹

1.7. ESC considers it appropriate to include in the development of the action plan measures for:

1.7.1. Creating an environment and conditions for strengthening sectoral collective bargaining:

- promoting the building and strengthening of the capacity of the social partners by predicting and indicating the sources of funding;
- outlining sufficiently ambitious goals for gradually expanding the scope of collective bargaining, which will bring us as close as possible to the 80% scope of CLA coverage adopted by the Directive in all sectors of the economy;
- developing and strengthening of branching in the sectors, of dialogue and negotiation based on traditional partnerships for individual economic activities;
- creating new industry partnerships, expanding the scope of negotiations with new topics for negotiation - CLA models in digital and green transformation, etc.;
- entering into innovative sectors with non-standard, atypical employment.

1.7.2. Organizing and conducting a coordinated process for negotiating wages with the active participation of partners at all levels of bargaining, which will balance the trend of decentralization of collective negotiations and achieve a gradual increase in the number of wage agreements. And in this direction, adopting measures for:

1.7.2.1. Resumption of negotiations on the development and adoption of a transparent mechanism for strengthening the contractual basis for determining the minimum wage for the country, in accordance with Convention 131 of ILO, and upgrading it with a procedure for subsequent negotiation of minimum wages for economic activities. Repealing the minimum insurance incomes by economic activities and groups of professions. Creating a working mechanism that does not allow the refusal of negotiations by any of the participants in them.^{12/13}

¹¹ Norway.

¹² In accordance with the National Tripartite Agreement of June 17, 2020. Section IV. Demography, education, labour market and labour migration, item 7.

¹³ National tripartite agreement also provides for the start of bipartite negotiations on minimum wages in 2020 and implementation in 2021 /Section IV, item 7/.

- 1.7.2.2. Annual bipartite negotiation of a recommended index for the growth of wages in the private sector and the possibility of differentiation of the recommended index by sectors, industries and branches depending on the economic situation in them and at the insistence of the branch organizations of the social partners.¹⁴
- 1.7.2.3. Supporting wage bargaining in enterprises of critical sectors: taking concrete actions to resolve disagreements between partners in enterprises by prioritizing wage bargaining, as well as for opposing restrictions on freedom of association.
- 1.7.3. Adoption and implementation of a new strategy for extending the Sectoral/Branch collective labour agreement. The possible new strategy for the extension of sectoral and branch CLAs, which should in principle also lead to important amendments in the Labour Code, should also be discussed between the social partners, in particular between the organizations of employers and organizations of workers and employees represented on national level, and its adoption must be the result of common agreement between them. Discussion and adoption of standard procedures for the action of the social partners at the sectoral and national level, to make the encouraging amendments of the legal framework work - Art. 51b, paragraph 4 /2020/ to extend the validity of the Branch collective labour agreement, with the aim of expanding the coverage of employees hired under CLA, including containing clauses for agreed wages.
- 1.7.4. Carrying out permanent monitoring on collective bargaining by developing the information system for Collective labour agreements and Collective labour disputes of the National Institute for Conciliation and Arbitration and developing a methodology for monitoring the coverage of employees by CLA at all levels - by enterprises, by municipalities, by industries/branches and for the country as a whole.
- 1.7.4.1. Provision of an additional budget of the National Statistical Institute (NSI) for the execution of orders related to the information service of the collective bargaining at the sectoral and branch level, as well as the contractual agreements between the representative organizations of the social partners at the national level.
- 1.7.4.2. Normative settlement of the situation of the various forms of negotiation processes between the social partners (including collective bargaining at the sectoral/branch level and negotiations at the national level) as "formation of national policies" with

¹⁴ Also there, Section IV, item 8.

a view to excluding the possibility of refusing their information service by NSI and treating them as standard "business orders"¹⁵.

- 1.7.5. Gradually creating prerequisites and conditions for the electronic/digitalization of the processes related to the negotiations and conclusion of the contracts and their implementation.
- 1.7.6. Amendments and supplements to other laws, e.g. the law on the state budget, with a view to promoting collective bargaining in the budgetary sphere, incl. in the state administration for civil servants under the Law on Civil Servants.
- 1.8. ESC once again¹⁶ recommends to the next regular government as well as including the current caretaker government to submit the already prepared draft law for the ratification of ILO¹⁷ Convention No. 154 by the next 49th National Assembly, taking into account the leading role of the Directive.
- 1.9. ESC is of the opinion that measures related to strengthening of existing forms of tripartite cooperation, such as the tripartite councils at sectoral and territorial level, should find a place in the plan, as good discussion forum and thus contributing to the creation of trust between the branch employers' organizations and trade unions, as well as at the national level.
- 1.10. Last but not least, ESC believes that the plan should include a comprehensive set of measures to increase trust between the social partners. It may include the resumption of the implementation of good practices of the past, agreements to lower the confrontational tone in the public space and other measures for which there is also a world practice.

/signed/

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¹⁵ The practice so far shows that the needs of the social partners are treated by NSI very restrictively and are generally classified as "business orders" for the implementation of which inadequate amounts are requested.

¹⁶ See "Analysis of the current state of wages in Bulgaria - conclusions and recommendations" of ESC from October 2022, item 1.13. "Conclusions and recommendations".

¹⁷ In accordance with the National Tripartite Agreement, 17 June 2020, Section IV. Demography, education, labour market and labour migration, item 10.