



Council of the  
European Union

Brussels, 26 November 2021  
(OR. en)

14366/21

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**Interinstitutional File:  
2020/0310(COD)**

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**SOC 692  
EMPL 520  
CODEC 1544**

**NOTE**

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| From:          | Permanent Representatives Committee (Part 1)   |
| To:            | Council  |
| No. Cion doc.: | COM(2020) 682 final  |
| Subject:       | Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a framework for adequate minimum wages in the European Union<br>- General Approach |

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**I. INTRODUCTION**

On 28 October 2020, the Commission submitted a proposal for a Directive on adequate minimum wages in the European Union. The proposal seeks to create four main obligations for Member States, namely obligations to:

- 1) promote collective bargaining, in particular on wage setting,
- 2) respect a number of procedural obligations, if and when Member States set / update statutory minimum wages and assess their adequacy,

- 3) take measures to enhance effective access to minimum wage protection of workers, who are entitled to a minimum wage under national law, and
- 4) collect data and report it to the Commission, in order to monitor the coverage and adequacy of minimum wage protection.

Through this initiative, the Commission aims to contribute in particular to the implementation of principles 6 (wages) and 8 (social dialogue and involvement of workers) of the European Pillar of Social Rights.

Under the relevant legal basis, i.e. Article 153(2) TFEU, in conjunction with point (b) of Article 153(1) thereof, the Council is to act by qualified majority, in accordance with the ordinary legislative procedure.

The European Parliament adopted its mandate on 25 November 2021.

The Economic and Social Committee adopted its opinion in its plenary session on 25 March 2021<sup>1</sup>.

The Committee of the Regions adopted its opinion in its plenary session on 19 March 2021<sup>2</sup>.

## **II. DISCUSSIONS UNDER THE SLOVENIAN PRESIDENCY**

The work of the Slovenian Presidency has built upon the good progress made under its Trio Partners, Germany and Portugal, as set out in the progress report of the Portuguese Presidency<sup>3</sup>. The Slovenian Presidency has presented to the Social Questions Working Party (SQWP) four successive compromise proposals, which were discussed during six full working party meeting days and in many bilateral discussions at all levels.

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<sup>1</sup> Document 7886/21

<sup>2</sup> Document 7421/21

<sup>3</sup> Document 9142/21 + COR1

The objectives of the Presidency's objectives when steering the discussions at working party level, were manifold:

- 1) Considering the specific carve out in Article 153(5) TFEU, which safeguards the competence of Member States for setting minimum wages, the Presidency ventured to adapt the text in the light of the Council Legal Service's written opinion<sup>4</sup>
- 2) The Presidency carefully and intensively listened to the concerns of delegations stemming from the different national labour market models and systems of wage setting. The Presidency as well worked intensively with the aim of improving the overall technical quality of the text.
- 3) Intensive work concentrated on finding compromise solutions to accommodate various concerns raised by delegations in order to strike a proper balance in the text and garner the support of a broad majority of Member States.

The main issues discussed in the Council preparatory bodies are summarised below.

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<sup>4</sup> Document 6817/21

## **Main issues addressed in the Council preparatory bodies**

### (1) Procedural framework for adequate minimum wages (Title, Article 1, recital 15)

The working party discussed extensively the character and subject matter of this Directive and the type of obligation for which it provides. Following that discussion, it has been clarified, through changes made to the title of the Directive and throughout the text, that this Directive does set a Union framework of a procedural nature for adequate minimum wages.

It has also been clarified that the objective of adequacy is pursued by different means, depending on whether minimum wage protection is provided by statutory minimum wages, if it is provided exclusively by collective bargaining on wage setting or provided by a combination of these two approaches:

For the setting of statutory minimum wages, Chapter II lays down different procedural obligations to promote that the statutory minimum wages are set at an adequate level, without interfering with the competence of Member States to determine this level.

For minimum wages set by collective bargaining, including in Member States where wages are exclusively based on collective bargaining, the promotion of collective bargaining is the means of improving minimum wage protection as a higher collective bargaining coverage serves the promotion of adequate minimum wages (recital 19).

In order to mirror better the main provisions of the Directive, Article 1 (and recital 15) has been streamlined: Point (a) of Article 1(1) corresponds to Chapter II of the Directive on the promotion of the adequacy of statutory minimum wages, point (aa-new) corresponds to Article 4 on the promotion of collective bargaining and point (b) corresponds to the Articles 8, 9, 10a, 11 and 12, which deal with the enforcement of the existing individual entitlements of workers to a minimum wage.

(2) Assimilation of universally applicable collective agreements to collective agreements (Article 3)

The proposal contains different provisions for statutory minimum wages and those fixed by collective agreements. Therefore, the distinction between these two is crucial. However, as the content of universally applicable collective agreements stems from the social partner agreement and not from the act of public law, which makes them applicable to a given group of workers, it has been clarified that universally applicable collective agreements are not to be considered statutory minimum wages.

Along the same lines, it has been clarified that the outcome of the minimum wage setting mechanism for seafarers in the framework of the Maritime Labour Convention should be dealt with in the same way as a collective agreement.

(3) Promotion of collective bargaining on wage setting (Articles 4, 13, recital 19)

It has been clarified that the objective of increasing the collective bargaining coverage is with a view to enhancing wage setting provided by collective agreements and thus promote adequacy of minimum wages. Given that Member States cannot oblige social partners to conclude collective agreements, it has been clearly set out in the recital that the 70% of collective bargaining coverage is not an objective, but only a threshold triggering the obligation to provide for a framework of enabling conditions and an action plan to promote collective bargaining. It has also been stated explicitly in Article 13 that Member States may allow social partners to establish jointly the action plan themselves.

4) Promotion of statutory minimum wages adequacy (Article 5, recitals 20 to 21)

Article 5 was at the centre of the work of the working party at all of its meetings, with many delegations calling for a softening of the obligations and others defending the initial Commission proposal. Following these discussions, some adjustments were made. However, the successive presidencies left the core of the provisions on the promotion of the adequacy of statutory minimum wages untouched.

While there were many calls by delegations to allow for more flexible use of the elements in Article 5(2), the Presidency left in place the obligation to use all four elements of Article 5(2). However, taking into account the Legal Service’s written opinion, it has been clarified that their relevance and relative weight may be decided by Member States in accordance with their prevailing national socio-economic conditions.

Along the same lines, the obligation for Member States to use the indicative reference values to assess the adequacy of their statutory minimum wages remained, while it has been made more explicit that each Member State may choose the indicative reference values it uses. The fact that the initial Commission proposal put a strong focus on 50% of the gross average wage and 60% of the gross median wage as potential indicative reference values was criticised by many Member States. These Member States called for acknowledgment that adequacy is not only about fairness (relationship between the minimum wage and other wages in a given Member State), but also about the decency of the minimum wage in line with Article 5(1) and principle 6 of the European Pillar of Social Rights<sup>5</sup>. Decency indicators are mostly used at national level. The Presidency therefore limited the description of the reference values in Article 5(3) to those ‘commonly used’ and extended in recital 21 the list of examples of such reference values. In doing so, the Presidency took into account the fact that at the latest meeting of the Social Questions Working Party, there were still many comments on this subject. Member States had called for more clarity, with some Member States calling for the deletion of the 50% and 60% reference values and others wanting to return closer to the Commission proposal, though there was no majority for either course of action.

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“Principle 6 Wages

- a) *Workers have the right to fair wages that provide for a decent standard of living.*
- b) *Adequate minimum wages shall be ensured, in a way that provide for the satisfaction of the needs of the worker and his / her family in the light of national economic and social conditions, whilst safeguarding access to employment and incentives to seek work. In-work poverty shall be prevented.”*

The obligation for all Member States to update their statutory minimum wages in a regularly and timely manner using their criteria as set out in Article 5(1) and (2) was not modified. However, in order to take into account the specific situation of several Member States, which use an indexation formula to increase the amount of their statutory minimum wages in between these regular updates, a new paragraph 2a and new recital (20a) has been added.

5) Variations and deductions (Article 6, point(c) of Article 7, recital 22)

It has been made more explicit, in recital 22, that variations and deductions may in certain cases negatively affect the adequacy of statutory minimum wages and that it is therefore important to avoid wide use thereof. It was also made more explicit that the treaties leave the competence to set minimum wages – and therefore also to decide on variations and deductions – with the Member States, which must respect the principles of non-discrimination and proportionality as general principles of Union law.

6) Public procurement (Article 9, recital 24)

In line with the European Commission's intention to recall, in a provision of a declaratory nature, the obligations of the public procurement directives in order to support and strengthen the implementation of those directives, the presidencies have further aligned the article and the recital with the language of those directives.

7) Monitoring and data collection (Art. 10, recital 25)

The provisions in Article 10 on monitoring and data collection were of major concern to many Member States, as they feared additional red tape without clear value added. Of particular concern was the obligation to provide for disaggregated data, and notably to disaggregate by disability, as such data are rarely collected– for privacy reasons. After intense exchanges the Presidency and delegations had with the European Commission, the text of Article 10 was modified as follows in order to take Member States' concerns into account:

- Considering that minimum wages do not usually change drastically from one year to another, the obligation to report annually was seen as an unnecessary burden by many Member States. Therefore, this was changed to reporting every second year.
- In the recital it was clarified that it is the Member States' choice, which data sources they use, and in particular that they may use national data, sample surveys and estimates in the absence of better data sources.
- The obligation to provide disaggregated data is now accompanied by the safeguard that these data only need to be provided insofar as they are available to the Member State.
- The description of the data to be provided by Member States was restructured for editorial reasons. In order to lighten the reporting obligations and to take into account which data are easily available, the following adjustments were made:
  - Member States only need to provide a description of deductions and variations from statutory minimum wages;
  - for minimum wage protection provided only by collective agreements,
    - the reporting on minimum wages in collective agreements is limited to the lowest pay rates set by collective agreements covering low-wage earners or an estimation thereof and the share of workers covered by them,
    - the reporting on wages of workers not covered by collective agreements can be provided on the basis of paid wages.
- The Commission proposal contained a provision, which would have explicitly empowered the Commission to request that Member States provide further data on a case-by-case basis. This provision lacked support. Considering that the Commission can always ask for data under the general principle of good cooperation, this provision was deleted.



- The Commission proposal provided in Article 10(5) that the Employment Committee should carry out each year an examination of the promotion of collective bargaining on wage settings and of the adequacy of the minimum wages in the Member States. As the tasks of the Employment Committee directly follow from Article 150 TFEU, and as that provision empowers the Council to adopt a decision establishing that committee, this Directive should not further specify those tasks. Therefore, the reference to the examination by the Employment Committee has been moved to the recital, recalling that under the Treaty the Council and the Commission may request such an examination. Taking into account the fact that the Employment Committee deals only with employment policies (Title IX, Articles 143-150 TFEU), whereas the Social Protection Committee deals with social policy (Title X, Articles 151-160 TFEU, including working conditions – point (b) of Article 153(2)), the latter has been added in the recital.

8) Information for workers (Article 10a(new), recital 25a(new) )

The Commission proposal contained provisions on informing workers about the minimum wage protection they are eligible for in Article 8(3) and in Article 10(3). With a view to streamlining the text, these two provisions have been merged in the new Article 10a.

9) Right to redress and penalties (Articles 11 and 12, recitals 26 and 26a)

Following a call from delegations, it has been clarified that the right to redress and the obligation to apply penalties only concern rights relating to minimum wage protection, which are already established under national law. As to the penalties to be adopted by Member States for the infringement of rights relating to minimum wages, it has been clarified that contractual penalties in rules on the enforcement of collective agreements are sufficient for complying with Article 12.

In Coreper on 24 November 2021 a broad majority of delegations supported the work done by the Presidency and agreed with the Presidency that the text it presented reflects the centre of gravity of the Council. Many delegations insisted that no further change should be made to the text as it represents a delicate balance with no further margin for adjustment. Delegations agreed that the text is mature enough to be forwarded to the EPSCO Council for discussion and agreement, only DK indicating that it will vote against.

#### Remaining reservations

General scrutiny reservations: AT, DE, EE, FI, HU, PL, RO, SE

Parliamentary reservations: NL

### **III. CONCLUSION**

The Council (EPSCO) is invited to mark its agreement on the text (general approach) as set out in the annex to this report and mandate the Presidency to enter into negotiations on this file with the representatives of the European Parliament and the Commission.

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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on a framework for adequate minimum wages in the European Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 153 (2), in conjunction with point (b) of Article 153 (1) thereof

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>6</sup>,

Having regard to the opinion of the Committee of the Regions<sup>7</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Pursuant to Article 3 of the Treaty on European Union, the aims of the Union are, inter alia, to promote the well-being of its peoples and to work for the sustainable development of Europe based on a highly competitive social market economy.

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<sup>6</sup> OJ C , , p. .

<sup>7</sup> OJ C , , p. .

- (2) Article 31 of the Charter of Fundamental Rights of the European Union<sup>8</sup> provides for the right of every worker to working conditions which respect his or her health, safety and dignity.
- (3) The European Social Charter establishes that all workers have the right to just conditions of work. It recognises notably the right of all workers to a fair remuneration sufficient for a decent standard of living for themselves and their families, the right of all workers and employers to freedom of association in national or international organisations for the protection of their economic and social interests and the right to bargain collectively.
- (4) Chapter II of the European Pillar of Social Rights, proclaimed at Gothenburg on 17 November 2017, establishes a set of principles to serve as a guide towards ensuring fair working conditions. Principle No 6 of the European Pillar of Social Rights reaffirms the workers' right to fair wages that provide for a decent standard of living. It also provides that adequate minimum wages shall be ensured, in a way that provides for the satisfaction of the needs of the worker and his/her family in the light of national economic and social conditions, whilst safeguarding access to employment and incentives to seek work. Furthermore, it recalls that in-work poverty shall be prevented and that all wages shall be set in a transparent and predictable way according to national practices and respecting the autonomy of the social partners.

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<sup>8</sup> Charter of Fundamental Rights of the European Union, 2012/C 326/02 OJEU C326/391 of 26.10.2012.

- (5) Guideline 5 of Council Decision 2020/1512/EU on guidelines for the employment policies of the Member States<sup>9</sup> calls on Member States to ensure an effective involvement of social partners in wage-setting, providing for fair wages that enable a decent standard of living and allowing for an adequate responsiveness of wages to productivity developments, with a view to upward convergence. The Guideline also calls on Member States to promote social dialogue and collective bargaining on wage setting. It also calls on Member States and the social partners to ensure that all workers have adequate and fair wages by benefitting from collective agreements or adequate statutory minimum wages, and taking into account their impact on competitiveness, job creation and in-work poverty. The Annual Sustainable Growth Strategy 2021<sup>10</sup> states that Member States should adopt measures to ensure fair working conditions. In addition, the Annual Sustainable Growth Strategy 2020<sup>11</sup> recalled that in the context of growing social divides, it is important to ensure that each worker earns a fair wage. Several Country Specific Recommendations have also been issued to some Member States in the field of minimum wages.
- (6) Better working and living conditions, including through adequate minimum wages, benefit both workers and businesses in the Union and are a prerequisite for achieving inclusive and sustainable growth. Addressing large differences in the coverage and adequacy of minimum wage protection contributes to improving the fairness of the EU labour market and promote economic, social progress and upward convergence. Competition in the Single Market should be based on high social standards, innovation and productivity improvements, while ensuring a level playing field.

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<sup>9</sup> Council Decision 2020/1512/EU of 13 October 2020 on guidelines for the employment policies of the Member States (OJ L 344, 19.10.2020, p. 22–28).

<sup>10</sup> Commission Communication COM(2020) 575 final.

<sup>11</sup> Commission Communication COM(2019) 650 final.

- (7) When set at adequate levels, minimum wages protect the income of disadvantaged workers, help ensure a decent living, and limit the fall in income during bad times. Minimum wages contribute to sustaining domestic demand, strengthen incentives to work, reduce wage inequalities and in-work poverty.
- (8) Women, young and low-skilled workers and persons with disabilities have a higher probability of being minimum wage or low wage earners than other groups. During economic downturns, such as the Covid-19 crisis, the role of minimum wages in protecting low-wage workers becomes increasingly important and is essential to support a sustainable and inclusive economic recovery. Addressing minimum wage contributes to gender equality, closing the gender pay and pension gap as well as elevating women out of poverty.
- (9) The Covid-19 pandemic is having a significant impact on the services sector and small firms, which both have a high share of minimum wage earners. In addition, minimum wages are also important in view of the structural trends that are reshaping labour markets and which are increasingly characterised by high shares of non-standard and precarious work. These trends have led to an increased job polarisation resulting in an increasing share of low-paid and low-skilled occupations in most Member States, as well as to higher wage inequality in some of them.
- (10) While minimum wage protection exists in all Member States, in some that protection stems from legislative or administrative provisions and from collective agreements while in others it is provided exclusively, through collective agreements.
- (11) Minimum wage protection set out by collective agreements in low-paid occupations is adequate in most cases; statutory minimum wages are low compared to other wages in the economy in several Member States. In 2018, the statutory minimum wage did not provide sufficient income for a single minimum-wage earner to reach the at-risk-of-poverty threshold in nine Member States. In addition, the use of reduced minimum wage rates (variations) and deductions from statutory minimum wages negatively affect their adequacy.

- (12) Not all workers in the Union are effectively protected by minimum wages, as in some Member States some workers, even though they are covered, receive in practice a remuneration below the statutory minimum wage due to the non-respect of existing rules. In particular, such non-compliance has been found to affect notably women, young workers, people with disabilities and agricultural workers. In Member States where minimum wage protection is provided only through collective agreements, the share of workers not covered is estimated to vary from 2% to 55% of all workers.
- (13) While strong collective bargaining contributes to ensuring adequate minimum wage protection, traditional collective bargaining structures have been eroding during the last decades, in part due to structural shifts in the economy towards less unionised sectors and to the decline in trade union membership related to the increase of atypical and new forms of work.
- (14) The Commission has consulted management and labour in a two-stage process with regard to possible action to address the challenges related to adequate minimum wages protection in the Union, in accordance with Article 154 of the Treaty on the Functioning of the European Union. There was no agreement among the social partners to enter into negotiations with regard to those matters. It is, however, important to take action at Union level to promote that workers in the Union are protected by adequate minimum wages, taking into account the outcomes of the social partners' consultation.
- (15) This Directive establishes a framework at Union level to promote adequate level of minimum wages, collective bargaining on wage setting, particularly for the benefit of low wage earners, and effective access of workers to minimum wage protection to the extent minimum wages exist in the form of statutory minimum wages or in the form of wages set under collective agreements.

- (16) In full respect of Member States' competences preserved by Article 153(5) of the Treaty on the Functioning of the European Union, this Directive neither aims to harmonise the level of minimum wages across the Union nor to establish an uniform mechanism for setting minimum wages. It does not interfere with the freedom of Member States to set statutory minimum wages or promote access to minimum wage protection provided by collective agreements, according to the laws, practices and specificities of each country and in full respect of national competences and social partners' contractual freedom. This Directive sets out obligations of a procedural nature, it does not impose an obligation on the Member States where minimum wage protection is ensured exclusively via collective agreements to introduce a statutory minimum wage nor to make the collective agreements universally applicable. Also, this Directive does not establish the level of pay, which falls within the contractual freedom of the social partners at national level and within the relevant competence of Member States.
- (17) While respecting Regulation (EC) 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I), this Directive should apply with regard to workers who have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State, with consideration to the criteria established by the Court of Justice of the European Union for determining the status of a worker. Provided that they fulfil those criteria, domestic workers, on-demand workers, intermittent workers, voucher based-workers, bogus self-employed, platform workers, trainees and apprentices could fall within the scope of this Directive.



- (17a.-new) Genuinely self-employed persons do not fall within the scope of this Directive since they do not fulfil those criteria. The abuse of the status of self-employed persons, as defined in national law, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work. Bogus self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations. Such persons should fall within the scope of this Directive. The determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of the work and not by the parties' description of the relationship.
- (17b.-new) This Directive takes into account that the Maritime Labour Convention, 2006, as amended, lays down a minimum wage setting mechanism with regard to seafarers. For the purposes of this Directive, decisions of the Governing Body of the International Labour Office resulting from such minimum wage setting mechanism and put into practice by a Member State, should be deemed to be collective agreements.
- (18) Well-functioning collective bargaining on wage setting is an important means to ensure that workers are protected by adequate minimum wages. In the Member States with statutory minimum wages, collective bargaining supports general wage developments and therefore contributes to improving the adequacy of minimum wages. In the Member States where minimum wage protection is provided exclusively by collective bargaining, their level as well as the share of protected workers are directly determined by the functioning of the collective bargaining system and collective bargaining coverage. Strong and well-functioning collective bargaining together with a high coverage of sectorial or cross-industry collective agreements strengthen the adequacy and the coverage of minimum wages.

- (19) In a context of declining collective bargaining coverage, it is essential that the Member States promote collective bargaining and thereby enhance the wage setting provided by collective agreements to improve workers' minimum wage protection. Member States with a high collective bargaining coverage tend to have a low share of low-wage workers and high minimum wages. Member States with a small share of low wage earners have a collective bargaining coverage rate above 70%. Similarly, the majority of the Member States with high levels of minimum wages relative to the median wage have a collective bargaining coverage above 70%. Therefore, Member States with a collective bargaining coverage rate below 70% should adopt measures with a view to enhancing such collective bargaining. However, in order to respect the autonomy of social partners, which includes their right to collective bargaining and excludes any obligation to conclude collective agreements, the threshold of 70% of collective bargaining coverage should not be construed as an objective, but is only used as an indicator triggering the obligations to provide for a framework of facilitative procedures and institutional arrangements enabling the conditions for collective bargaining as well as to establish an action plan. Such plan might take any form and it might have been adopted prior to the entry into force of this Directive, provided that it contains actions striving to effectively promote collective bargaining and it was established in consultation with social partners.
- (20) Sound rules, procedures and practice for setting and updating statutory minimum wages, are necessary to deliver adequate minimum wages, while safeguarding jobs and the competitiveness of firms including small and medium-sized enterprises. They include a number of components to preserve the adequacy of statutory minimum wages, including criteria to guide Member States in setting and updating minimum wages and indicators to assess their adequacy, regular and timely updates, the existence of consultative bodies and the involvement of social partners. A timely and effective involvement of the latter in the setting and in updating of statutory minimum wages as well as in the establishment or modification of automatic indexation formulas, where they exist, is another element of good governance that allows for an informed and inclusive decision-making process.

(20a-new) Member States which use an automatic indexation mechanism, including semi-automatic mechanisms in which a minimal obligatory increase of minimum wage is guaranteed, should ensure that, if such a mechanism is part of their framework, the framework also requires timely updates to the statutory minimum wage at regular intervals in order to continue promoting their adequacy. These regular updates should consist of an evaluation of the minimum wage taking into account the guiding criteria, followed, if necessary, by a modification of the amount. The frequency of the automatic indexation on the one hand and the updates of the statutory minimum wages on the other hand might differ.

(21) Minimum wages are considered adequate if they are fair in relation to the wage distribution in the country and if they provide a decent standard of living. The adequacy of statutory minimum wages is determined and assessed by each Member State in view of its national socio-economic conditions, including employment growth, competitiveness as well as regional and sectoral developments, taking into account the purchasing power, the productivity levels and developments as well as the wage levels, their distribution and growth. The use of indicators and associated reference values can help each Member State by guiding its assessment of minimum wage adequacy. These should be chosen by Member States among indicators commonly used at international level and, as appropriate, indicators commonly used at national level. They might include reference values commonly used at international level, such as the ratio of the gross minimum wage to 60% of the gross median wage, the ratio of the gross minimum wage to 50% of the gross average wage and the ratio of the net minimum wage to 50% or 60 % of the net average wage, and reference values associated to indicators commonly used at national level, such as the comparison of the net minimum wage with the poverty threshold and the purchasing power of minimum wages.

- (22) Member States should involve social partners in case they set different levels of statutory minimum wages (variations) or allow for reductions of the remuneration paid under the level of the statutory minimum wage (deductions). Without prejudice to the Member State competence to set the minimum wage and possible variations and deductions, in order to promote adequacy of minimum wages, it is important to avoid that variations and deductions are used widely and to make sure that these respect the principles of non-discrimination and proportionality. Some deductions to statutory minimum wages may be appropriate as they serve a legitimate aim, including overstated amounts paid or deductions ordered by a judicial or administrative authority. Others, such as deductions related to the equipment necessary to perform a job or deductions of allowances in kind, such as accommodation, may negatively impact the adequacy of the minimum wage.
- (23) An effective enforcement system, including controls and field inspections, is necessary to ensure the functioning of national statutory minimum wage frameworks. To strengthen the effectiveness of enforcement authorities, a close cooperation with the social partners is also needed, including to address critical challenges such as those related to sub-contracting, bogus self-employment or non-recorded overtime.

(24) The effective implementation of minimum wage protection set out by legal provisions or provided by collective agreements is essential in the performance of public procurement and concession contracts. Non-respect of collective agreements providing for minimum wage protection in a given sector may indeed occur in the execution of such contracts or in the sub-contracting chain thereafter, resulting in workers being paid less than the wage level agreed in the sectoral collective agreements. To prevent such situations, it is important, that public procurement contracting authorities ensure in accordance with Articles 18(2) and 71(1) of Directive 2014/24/EU of the European Parliament and the Council on public procurement<sup>12</sup>, Articles 36(2) and 88(1) of Directive 2014/25/EU of the European Parliament and the Council<sup>13</sup> on procurement by entities operating in the water, energy, transport and postal services sectors and Articles 30(3) and 42(1) of Directive 2014/23/EU of the European Parliament and the Council<sup>14</sup> on the award of concession contracts that economic operators apply to their workers the wages set by collective agreements for the relevant sector and geographical area in order to abide by applicable obligations in the field of labour law, however without this Directive creating any additional obligation in relation to those Directives.

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<sup>12</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

<sup>13</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

<sup>14</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contract (OJ L 94, 28.3.2014, p. 1).

- (25) Reliable monitoring and data collection are key to map the developments of minimum wages. Member States might choose the way they collect data. In particular, they might rely on sufficiently representative sample surveys, national databases, EU harmonised data from Eurostat and other publically accessible sources such as the OECD. When the relevant data are not readily available, they might use estimations. The Commission should report every second year to the European Parliament and to the Council its analysis of developments in the adequacy and coverage of minimum wages on the basis of data and information to be provided by Member States. In addition, progress should be monitored in the framework of the process of economic and employment policy coordination at Union level. The Council or the Commission can request the Employment Committee and the Social Protection Committee, in accordance with Articles 150 and 160 TFEU respectively, to examine in their respective area of competence the promotion of collective bargaining on wage setting and of the adequacy of minimum wages in the Member States on the basis of the report produced by the Commission and other multilateral surveillance tools such as benchmarking.
- (25a.-new) Workers should have easy access to appropriate information on applicable minimum wages to ensure an adequate degree of transparency and predictability as regards their working conditions.
- (26) Workers should be in a position to exercise their right of defence when their rights relating to minimum wage protection established under national law are violated. In order to prevent that workers are deprived from their rights, in case they exist according to national law, and without prejudice to specific forms of redress and dispute resolution provided for in collective agreements, including systems of collective dispute resolution, Member States should take the necessary measures to ensure that they have access to effective and impartial dispute resolution and a right to redress, as well as effective protection from any form of detriment in case they decide to exercise their right of defence.

- (26a.-new) Member States should lay down rules on penalties in case of infringement of national provisions providing for minimum wages resulting from national law or collective agreements. Those rules might contain or be limited to a referral to compensation and/or contractual penalties provided for, where applicable, in rules on enforcement of collective agreements.
- (27) The Commission should conduct an evaluation providing the basis for a review on the effective implementation of this Directive. The Council and the European Parliament should be informed of the results of such review.
- (28) The reforms and measures adopted by the Member States to promote adequate minimum wage protection of workers, while being steps in the right direction, have not always been comprehensive and systematic. Moreover, if action at EU level is taken, it can contribute to further improving living and working conditions in the Union and it can mitigate possible concerns about adverse economic impacts resulting from isolated measures of Member States to improve the adequacy and coverage of minimum wages. Since the objectives of this Directive cannot be sufficiently achieved by the Member States, but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (29) This Directive lays down minimum requirements for a procedural framework, thus leaving untouched Member States' prerogative to introduce and maintain more favourable provisions. Rights acquired under the existing national legal framework should continue to apply, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights for workers, nor can it constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this Directive.

- (30) In implementing this Directive Member States should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of micro, small and medium-sized enterprises. Member States are therefore invited to assess the impact of their transposition act on small and medium-sized enterprises in order to ensure that they are not disproportionately affected, giving specific attention to micro-enterprises and to the administrative burden, and to publish the results of such assessments. If found that micro, small and medium-sized enterprises are disproportionately affected, Member States should consider introducing measures to support these enterprises to adjust their remuneration structures to the new requirements.
- (31) The Technical Support Instrument<sup>15</sup> and the European Social Fund plus<sup>16</sup> are available to Member States to develop or improve the technical aspects of minimum wage frameworks, including on assessment of adequacy, monitoring and data collection, broadening access, as well as on enforcement and on general capacity building related to the implementation of said frameworks.

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<sup>15</sup> Proposal for a Regulation of the European Parliament and of the Council of 28 May 2020 on the establishment of the Technical Support Instrument, COM(2020) 409 final

<sup>16</sup> Proposal for a Regulation of the European Parliament and of the Council on the European Social Fund Plus, COM/2018/382 final.



HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

##### Subject matter

1. With a view to improving working and living conditions in the Union, in particular the adequacy of minimum wages, this Directive establishes a framework for:
  - (a) promoting adequate levels of statutory minimum wages;
  - (aa-new) promoting collective bargaining on wage setting;
  - (b) enhancing effective access of workers to minimum wage protection [...] where it exists.
- 1a(new). This Directive shall be without prejudice to the competence of Member States in setting the level of minimum wages and to the full respect of the autonomy of social partners, as well as their right to negotiate and conclude collective agreements.
2. This Directive shall be without prejudice to the choice of the Member States to set statutory minimum wages, to promote access to minimum wage protection provided by collective agreements or to combine these two approaches.
3. Nothing in this Directive shall be construed as imposing an obligation
  - (a) on the Member States where wage setting is ensured exclusively via collective agreements to introduce a statutory minimum wage,
  - (b) on any Member State to make any collective agreements universally applicable.

## *Article 2*

### Scope

This Directive shall apply with regard to workers in the Union who have an employment contract or employment relationship as defined by law, collective agreements or practice in force in each Member State, with consideration to the case-law of the Court of Justice of the European Union.

## *Article 3*

### Definitions

For the purposes of this Directive, the following definitions apply:

- (1) ‘minimum wage’ means the minimum remuneration that an employer is required to pay to workers, according to national law or collective agreements, for the work performed during a given period, calculated on the basis of time or output;
- (2) ‘statutory minimum wage’ means a minimum wage set by law, or other binding legal provisions, with the exclusion of those minimum wages set by a collective agreement made universally applicable without any discretion of the adopting authority as to the content of the applicable provisions;
- (3) ‘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 employers’ organisations, on the one hand, and one or more workers’ organisations, on the other, for determining working conditions and terms of employment; and/or regulating relations between employers and workers; and/or regulating relations between employers or their organisations and a worker organisation or worker organisations, whose intended outcome is a collective agreement;
- (4) ‘collective agreement’ means any agreement in writing regarding working conditions and terms of employment concluded by the parties referred to in paragraph 3, including those that are made universally applicable.

A minimum wage setting arrangement adopted in accordance with the Maritime Labour Convention and put into practice by a Member State, shall be deemed to be a collective agreement in that Member State.

- (5) ‘collective bargaining coverage’ means the share of workers at national level to whom a collective agreement applies, calculated as the ratio of:
- a) the number of workers covered by collective agreements, including those agreements that do not contain provisions on wages, to
  - b) the number of workers whose working conditions may be regulated by collective agreements in accordance with national laws and practices.

#### *Article 4*

##### Promotion of collective bargaining on wage setting

1. With the aim to increase the collective bargaining coverage and thereby enhance the wage setting provided by collective agreements, Member States, in consultation with the social partners and in accordance with national laws and practices, shall:
  - (a) promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage setting, including at sector or cross-industry level; and
  - (b) encourage constructive, meaningful and informed negotiations on wages among social partners.
2. In addition, Member States shall where collective bargaining coverage is below an threshold of 70% provide for a framework of enabling conditions for collective bargaining, either by law after consultation of the social partners or by agreement with them, and shall, in consultation with social partners, establish an action plan to promote collective bargaining. The action plan shall be made public and shall be notified to the European Commission.

## CHAPTER II

### STATUTORY MINIMUM WAGES

#### *Article 5*

##### Promotion of statutory minimum wages adequacy

1. Member States with statutory minimum wages shall establish the necessary framework for setting and updating the statutory minimum wages. Such setting and updating shall be guided by criteria set to promote adequacy with the aim to achieve decent working and living conditions, social cohesion and upward convergence. Member States shall define those criteria in accordance with their national practices, either in relevant national legislation, in decisions of the competent bodies or in tripartite agreements. The criteria shall be defined in a stable and clear way.
2. The national criteria referred to in paragraph 1 shall include at least the following elements, whose relevance and relative weight may be decided by Member States in accordance with their prevailing national socio-economic conditions:
  - (a) the purchasing power of statutory minimum wages, taking into account the cost of living and the contribution of taxes and social benefits;
  - (b) the general level of wages and their distribution;
  - (c) the growth rate of wages;
  - (d) productivity levels and developments.

- 2a.(new) In addition to the obligations set out in paragraphs 1, 2 and 4, Member States may use an automatic indexation mechanism for adjusting statutory minimum wages based on any appropriate criteria and in accordance with national laws or practices.
3. Member States shall use commonly used indicative reference values to guide their assessment of adequacy of statutory minimum wages.
4. Member States shall take the necessary measures to ensure the regular and timely updates of statutory minimum wages in order to continue promoting their adequacy.
5. Member States shall ensure that consultative bodies are in place to advise the competent authorities on issues related to statutory minimum wages.

#### *Article 6*

##### Variations and deductions

Where Member States allow for different rates of statutory minimum wage for specific groups of workers or for deductions that reduce the remuneration paid to a level below that of the relevant statutory minimum wage, they shall ensure that these variations and deductions respect the principles of non-discrimination and proportionality.

#### *Article 7*

##### Involvement of social partners in statutory minimum wage setting and updating

Member States shall take the necessary measures to enable the involvement of the social partners in a timely and effective manner in statutory minimum wage setting and updating, including through participation in consultative bodies referred to in Article 5(5) and notably as concerns:

- (a) the selection and application of criteria referred to in Article 5 (1) and (2) for the determination of statutory minimum wage levels;

- (aa)new the establishment of an automatic indexation formula and its modification, where such a formula exists;
- (bb)new the selection and application of indicative reference values referred to in Article 5 (3);
- (b) the updates of statutory minimum wage levels referred to in Article 5 (4);
- (c) the establishment of variations and deductions in statutory minimum wages referred to in Article 6;
- (d) decisions on the data collection and the carrying out of studies for the information of statutory minimum wage setting authorities;

*Article 8*

Effective access of workers to statutory minimum wages

Member States shall, in consultation or cooperation with social partners, take the following measures where appropriate, to enhance the access of workers to statutory minimum wage protection:

- (a) provide for appropriate controls and field inspections conducted by labour inspectorates or the bodies responsible for the enforcement of statutory minimum wages; those controls and inspections shall be proportionate and non-discriminatory; and
- (b) develop guidance for enforcement authorities to proactively target and pursue non-compliant employers;

## CHAPTER III

### HORIZONTAL PROVISIONS

#### *Article 9*

##### Public procurement

Member States shall take appropriate measures, in accordance with Directive 2014/24/EU, Directive 2014/25/EU and Directive 2014/23/EU, to ensure that in the performance of public procurement or concession contracts economic operators, and their subcontractors, comply with the applicable obligations regarding wages in the field of labour law established by Union law, national law, collective agreements or by international labour law provisions.

#### *Article 10*

##### Monitoring and data collection

1. Member States shall monitor the coverage and adequacy of minimum wages.
2. Member States shall report the following data and information to the Commission every second year, before 1 October of the reporting year:
  - (a) the rate of collective bargaining coverage;
    - (a) for statutory minimum wages:
      - (i) the level of the statutory minimum wages and the share of workers covered by it;
      - (ii) a description of existing variations and deductions;

- (b) for minimum wage protection provided only by collective agreements:
  - (i) the lowest pay rates set by collective agreements covering low-wage earners or an estimation thereof and the share of workers covered by them or an estimation thereof;
  - (iii) the level of wages paid to workers not covered [...] by collective agreements and its relation to the level of wages paid to workers covered by collective agreements.

Member states are not obliged to report the data referred to in Article 10(2)(b)(i) for firm level collective agreements.

Member States shall provide the statistics and information referred to in this paragraph disaggregated by sex, age, disability, company size and sector as far as available.

The first report shall cover years [*X, Y, Z: the three years preceding the transposition year*] and shall be delivered by [*1<sup>st</sup> of October YY: year after transposition*]. The Member States may omit statistics and information which are not available before [*date of transposition*].

4. The Commission shall analyse the data and information transmitted by the Member States in the reports referred to in paragraph 2, and shall report thereof every second year to the European Parliament and to the Council.

#### ***Article 10a(new)***

##### Information on minimum wage protection

Member States shall ensure that information regarding minimum wage protection is publicly available in a comprehensive and easily accessible way. This does not apply to firm-level collective agreements.



## *Article 11*

### Right to redress and protection against adverse treatment or consequences

1. Member States shall ensure that, without prejudice to specific forms of redress and dispute resolution provided for, where applicable, in collective agreements, workers, including those whose employment relationship has ended, have access to effective and impartial dispute resolution and a right to redress in case rights relating to statutory minimum wages or minimum wage protection are provided for in national law or in collective agreements and have been infringed.
2. Member States shall take the measures necessary to protect workers, including those who are workers' representatives, from any adverse treatment by the employer and from any adverse consequences resulting from a complaint lodged with the employer or resulting from any proceedings initiated with the aim of enforcing compliance in case rights relating to minimum wage protection are provided for in national law or collective agreements and have been infringed.

## *Article 12*

### Penalties

Member States shall lay down the rules on penalties applicable to infringements of rights and obligations relating to minimum wages, to the extent that these rights and obligations are provided for in national law or in collective agreements. The penalties provided for shall be effective, proportionate and dissuasive.

## CHAPTER IV

### FINAL PROVISIONS

#### *Article 13*

##### Implementation

Member States may entrust the social partners with the implementation of this Directive, in all or in part, including the establishment of the action plan according to article 4 (2), where the social partners jointly request to do so. In so doing, the Member States shall take all necessary steps to ensure that the obligations set by this Directive are complied with at all times.

#### *Article 14*

##### Dissemination of information

Member States shall ensure that the national measures transposing this Directive, together with the relevant provisions already in force relating to the subject matter as set out in Article 1, are brought to the attention of workers and employers, including SMEs.

#### *Article 15*

##### Evaluation and review

The Commission shall conduct an evaluation of this Directive by [five years after the date of transposition]. The Commission shall submit thereafter a report to the European Parliament and the Council reviewing the implementation of this Directive and propose, where appropriate, legislative amendments.

## *Article 16*

### Non-regression and more favourable provisions

1. This Directive shall not constitute valid grounds for reducing the general level of protection already provided to workers within Member States.
2. This Directive shall not affect Member States' prerogative to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers or to encourage or permit the application of collective agreements which are more favourable to workers.
3. This Directive is without prejudice to any rights conferred on workers by other legal acts of the Union.

## *Article 17*

### Transposition

1. Member States shall adopt the measures necessary to comply with this Directive by [*two years from the date of entry into force*]. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

*Article 18*

Entry into force

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

*Article 19*

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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