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#### **NOTE**

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on adequate minimum wages in the European Union - <i>Progress report</i>

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#### **I. INTRODUCTION**

On 28 October 2020, the Commission adopted a proposal for a Directive on adequate Minimum Wages in the European Union. The proposal aims to strengthen the minimum wage protection of workers by establishing minimum requirements at Union level to ensure both that minimum wages are set at adequate level and that workers have access to minimum wage protection, in the form of a statutory minimum wage (SMW) or in the form of wages set under collective agreements as defined for the purpose of this Directive.

The members of the Social Questions Working Party (SQWP) discussed the proposal during eleven informal videoconferences (four under the DE Presidency and seven under the PT Presidency). Since the outset of discussions, several Member States opposed the Commission proposal, considering that it lacks a valid legal basis, and in particular is contrary to the carve out clause in Art. 153 (5) TFEU. Several Member States welcomed, on the contrary, the initiative as an important step for delivering on principle 6 of the European Pillar of Social Rights. Other Member States have not yet reached a position at national level.

Considering the question of the legal basis as essential for further progress on the proposal, the DE Presidency asked the Council Legal Service to deliver a written opinion on the question of the legal basis. The Council Legal Service delivered its opinion on 9 March 2021 (doc 6817/21).

On basis of the exploratory work of the DE Presidency, the members of the SQWP continued examination of the file under the PT Presidency during seven informal videoconferences. The progress made is summarised in Section II below.

The compromise proposal of the Portuguese Presidency is to be found in Annex 1 to this Report. The changes in relation to the Commission proposal (doc. 12477/20) are marked in **bold** and deletions with [...]. This compromise proposal covers those parts of the Commission proposal that had, by that time, been examined by the SQWP members.

On 21 January 2021 the eight week period for the consultation of national parliaments according to Article 6 of the Protocol No 2<sup>1</sup> annexed to the Treaties ended. By this date, national parliaments of three Member States (DK, MT, SE) had sent reasoned opinions, thus not reaching the threshold which according to Article 7 paragraph 2 of this protocol triggers the obligation for revision for non-compliance with the principle of subsidiarity.

The European Parliament has not yet delivered its position in the first reading. On the proposed legal basis of Article 153 (2), in conjunction with point (b) of Article 153 (1) of the Treaty on the Functioning of the European Union (TFEU), the Council is required to act in accordance with the ordinary legislative procedure with the European Parliament.

The European Economic and Social Committee and the Committee of the Regions have both delivered opinions on the proposal<sup>2</sup>.

At this stage, all delegations are considered to have general scrutiny reservations on the proposal.

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<sup>1</sup> Protocol (No 2) on the application of the principles of subsidiarity and proportionality, OJ C 326, 26.10.2010, p. 206-209.

<sup>2</sup> Documents 7886/21(EESC) and 7421/21 (CoR)

## **II. THE COUNCIL'S WORK UNDER THE PORTUGUESE PRESIDENCY**

While awaiting the opinion of the Council Legal Services on the legal basis, which was considered by many delegations as a political precondition for moving ahead, the SQWP members evaluated the Commission impact assessment (12477/21 ADD3). A questionnaire was sent to delegations on 2 November 2020 on which 26 Member States replied. The Impact Assessment (IA) was thoroughly analysed and discussed at an informal videoconference of the members of the SQWP on 20 January 2021. The Presidency summary of this evaluation is to be found in Annex 2 to this report.

Taking into account the Council Legal Service opinion and views expressed by delegations, the Presidency presented, at the end of April 2021, a compromise text. The recitals were not covered in this text as these had not yet been subject to discussion by the SQWP members, nor Article 10 as the related discussion had been postponed until the presentation of additional written technical information by the Commission (WK 5391/21).

## **III. MAIN ISSUES DISCUSSED AT WORKING PARTY LEVEL**

### **Subject matter**

After thorough discussion on the obligations created by Article 1, the Presidency inserted - in line with the views expressed by many delegations - the word "**promoting**" in the chapeau of paragraph 1 in order to clarify the overall aim of the Directive, also replacing the word "setting" before *adequate levels of minimum wages* in paragraph 1 lit.(a).

With a slight reformulation, the Presidency also made clear that Article 1 paragraph 3 contains two clarifications: 1) that Member States relying for wage setting exclusively on collective agreements are not obliged to introduce a statutory minimum wage (SMW), and 2) that no Member State is obliged to make collective agreements universally applicable.

### **Individual rights**

Several Member States called for assurances that this directive would not create individual rights for workers. Also taking into consideration the suggestions for better clarifications in the CLS opinion, the Presidency responded to this - in line with Article 1 of the proposal - by changing the title of the directive to "Directive on **a framework for** adequate minimum wages in the European Union". For that same reason the word "other" was deleted from the standard non-regression clause in Article 16 paragraph 3. These changes were welcomed by several Member states. However, requests for further clarifications, e.g. in article 1 and 11, were expressed.

### **Limitation to the scope**

At the request of a couple of Member States, the Presidency included a new paragraph 2 to article 2, which allows Member States to exclude seafarers, covered by the Maritime Labour Convention 2006 as amended, from the application of this directive. While this was welcomed, there was also a call for non-application on sea-fishermen in certain cases. The specific problem of civil servants, who in many Member States have a work relationship under public law, was raised by several Member States.

### **Minimum Wage protection by collective bargaining versus protections by SMW**

Several Member States raised the question whether minimum wages negotiated by social partners and then made generally applicable by an administrative act would be considered as a statutory minimum wage or as minimum wages set by collective bargaining. The Presidency responded by adjusting the definitions in Article 3 of 'statutory minimum wage', of 'collective agreement' and of 'collective bargaining coverage'. This was welcomed by most delegations.

### **Obligation to promote collective bargaining coverage**

In order to reply to the requests of many delegations, which drew attention to the specificities of their national systems of collective bargaining and in particular the importance of company level collective agreements in some Member states, the Presidency included the words "**in accordance with national laws and practices**" in the chapeau of article 4 paragraph 1 as well as the words "**in particular**" in subpoint (a).

Answering the call of many Member States for more certainty as to their obligations in case they would not reach a collective bargaining coverage of 70% and in order to streamline the obligations, it was clarified in article 4 paragraph 2 that they would only need to establish an action plan including a framework of enabling conditions, which would only need to be revised at a regular interval of [x] years, to be fixed in the directive.

### **Adequacy of SMW**

The Presidency clarified that the directive aims at promoting the adequacy of minimum wages by modifying the title of Article 5. By introducing the word 'framework' in Article 5 paragraph 1 the Presidency has once again underlined the fact that this directive is a framework directive.

In response to the insistence of many Member States for more flexibility, the Presidency has added the clarification to Article 5 paragraph 2 that "**the relevance and relative weight**" of the criteria in that paragraph "**may be decided by Member States in accordance with their prevailing national socio-economic conditions.**" While this change was appreciated, many delegations asked the Presidency to go further and not to keep the use of all four criteria as compulsory.

several Member States called for the deletion of paragraph 3 in Article 5.

### **Variations and deductions**

Article 6 on variations and deductions was reformulated in order to respond to the criticism that the formulation in the Commission proposal "Member States may allow" ... would presuppose that the Union has, in the first place, the competence to set such rates or remuneration and could then authorise Member States to derogate therefrom, which would be contrary to Article 153(5) TFEU. While some delegations welcomed the Presidency text, other delegations called for strengthening the Commission text even further and some other delegations called for the deletion of the whole article.

### **Public procurement**

Article 9 dedicated to public procurement, which was intended by the Commission as a mere repetition of existing obligations from Directives 2014/24/EU, 2014/25/EU and 2014/23/EU, was criticised by several Member States as superfluous, requiring therefore its deletion. The Presidency preferred however (with the support of several delegations), to modify the article with the aim to clarify its content, notably that this obligation extends also to sub-contractors and that it concerns the wage related obligations of Union law, national law, collective agreements and of international labour law provisions.

### **Reporting obligations of Member States**

After a first discussion at working party level, a broad majority of Member States considered that they would need additional elements from the Commission in written form and notably information on how far the data to be reported on under Article 10 paragraph 2 would already be collected and therefore made available, for example by Eurostat or Eurofound. The Commission delivered on 22 April 2021 a non-paper with more detailed information (WK 5391/21), which was discussed by the members of the SQWP on 4 May 2021. During that meeting many delegations still considered that these reporting obligations, and in particular the wide range and disaggregation of data, would create a disproportionate administrative burden for Member States, Social Partners and enterprises.

#### IV. CONCLUSIONS

In parallel to the work at technical level, the Portuguese Presidency has explored at political level, whether a qualified majority for the proposal could be reached. It has concluded that the file is not yet mature enough to achieve such a majority. It will therefore be up to the next Presidency to continue the deliberations in the Council and its preparatory bodies in view of agreeing on a General Approach.

The Portuguese Presidency considers that solid ground exists for the completion of technical and political work on this file.

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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>3</sup>,

Having regard to the opinion of the Committee of the Regions<sup>4</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>3</sup> OJ C , , p. .

<sup>4</sup> OJ C , , p. .



- (2) Article 31 of the Charter of Fundamental Rights of the European Union<sup>5</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 the right of all workers to a fair remuneration sufficient for a decent standard of living for themselves and their families. Article 4 of the Charter recognises the role of freely concluded collective agreements as well as of statutory minimum wage setting mechanisms, to ensure the effective exercise of this right.
- (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 and respecting the autonomy of the social partners.

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<sup>5</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>6</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>7</sup> states that Member States should adopt measures to ensure fair working conditions. In addition, the Annual Sustainable Growth Strategy 2020<sup>8</sup> recalled that in the context of growing social divides, it is important to ensure that each worker earns an adequate wage. Several Country Specific Recommendations have also been issued to some Member States in the field of minimum wages. However, individual countries may be little inclined to improve their minimum wage settings because of the perception that this could negatively affect their external cost competitiveness.
- (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 ensuring a level playing field.

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<sup>6</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>7</sup> Commission Communication COM(2020) 575 final.

<sup>8</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, as recognised in Convention 131 of the International Labour Organisation on the establishment of a system of minimum wage fixing. 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 provisions (“statutory minimum wages”) 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 protected by minimum wages. 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 at sector or cross-industry level 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 ensure 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 minimum requirements at Union level to ensure both that minimum wages are set at adequate level and that workers have access to minimum wage protection, in the form of a statutory minimum wage or in the form of wages set under collective agreements as defined for the purpose of this Directive.

- (16) In full respect of 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 traditions and specificities of each country and in full respect of national competences and social partners' contractual freedom. This Directive 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) This Directive should apply 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. **Given the specificities of seafarers employment conditions, in particular regarding the determination of minimum wages in accordance with the procedures laid down in the Maritime Labour Convention, 2006, as amended, Member States should be able decide to exclude this category of workers from 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.
- (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 to enhance workers' access to minimum wage protection provided by collective agreements. 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%. While all Member States should be encouraged to promote collective bargaining, those who do not reach this level of coverage should, in consultation and/or agreement with the social partners, provide for or, where it already exists, strengthen a framework of facilitative procedures and institutional arrangements enabling the conditions for collective bargaining. Such framework should be established by law or by tripartite agreement.
- (20) Sound rules, procedures and practice for setting and updating statutory minimum wages, **including through automatic indexation**, 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 elements to preserve the adequacy of statutory minimum wages, including criteria and indicators to assess adequacy, regular and timely updates, the existence of consultative bodies and the involvement of social partners. A timely and effective involvement of the latter is another element of good governance that allows for an informed and inclusive decision-making process.

- (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 in view of the national socio-economic conditions, including employment growth, competitiveness as well as regional and sectoral developments. Their adequacy should be assessed at least in relation to their purchasing power, to the productivity developments and to their relation to the gross wage levels, distribution and growth. The use of indicators commonly used at international level, such as 60% of the gross median wage and 50% of the gross average wage, can help guide the assessment of minimum wage adequacy in relation to the gross level of wages.
- (22) To promote adequacy of minimum wages for all groups of workers, variations and deductions from statutory minimum wages should be limited to a minimum, while ensuring that social partners are duly consulted in their definition. Some deductions to statutory minimum wages may be justified by a legitimate aim, including overstated amounts paid or deductions ordered by a judicial authority. Others, such as deductions related to the equipment necessary to perform a job or deductions of allowances in kind, such as accommodation, may be unjustified or disproportionate.
- (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. Moreover, workers should have easily access to appropriate information on applicable statutory minimum wages to ensure an adequate degree of transparency and predictability as regards their working conditions.



- (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, economic operators have to 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, 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>9</sup>, Articles 36(2) and 88(1) of Directive 2014/25/EU of the European Parliament and the Council<sup>10</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>11</sup> on the award of concession contracts.
- (25) Reliable monitoring and data collection are key to ensure the effective protection of minimum wages. The Commission should report every year to the European Parliament and to the Council its assessment of developments in the adequacy and coverage of minimum wages on the basis of annual 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. In that context, the Employment Committee should examine every year the situation in the Member States on the basis of the reports produced by the Commission and other multilateral surveillance tools such as benchmarking.

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<sup>9</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>10</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>11</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).

- (26) Workers should be in a position to exercise their right of defence when their rights relating to established minimum wage protection are violated. In order to prevent that workers are deprived from their rights, 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, including to adequate compensation, as well as effective protection from any form of detriment in case they decide to exercise their right of defence.
- (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 been comprehensive and systematic. Moreover, individual countries may be little inclined to improve the adequacy and coverage of minimum wages because of the perception that this could negatively affect their external cost competitiveness. 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, 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>12</sup> and the European Social Fund plus<sup>13</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>12</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>13</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, this Directive establishes a framework for **promoting**:
  - (a) [...] adequate levels of minimum wages;
  - (b) access of workers to minimum wage protection, in the form of wages set out by collective agreements or in the form of a statutory minimum wage where it exists.
- 1a(new).** This Directive shall be without prejudice 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 or promote access to minimum wage protection provided by collective agreements.
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 a Member State** to make the collective agreements universally applicable.

## *Article 2*

### Scope

1. This Directive applies 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.
- 2.(new) **Member States may decide not to apply this Directive to seafarers whose minimum wages are determined by the procedures established in Maritime Labour Convention, 2006, as amended.**

## *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 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 set by a collective agreement made universally applicable;**

- (3) ‘collective bargaining’ means all negotiations which take place 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 all agreements in writing regarding working conditions and terms of employment concluded by the social partners as an outcome of collective bargaining, **including those that are made universally applicable;**
- (5) ‘collective bargaining coverage’ means the share of workers at national level to whom a collective agreement applies; **for the purpose of calculating the collective bargaining coverage, Member States shall take into account:**
- a) **the categories of workers whose working conditions, including wages, may be regulated by collective agreements in accordance with national laws and practices;**
  - b) **all collective agreements, including those that do not have an effect on wages.**

## Article 4

### Promotion of collective bargaining on wage setting

1. With the aim to increase the collective bargaining coverage Member States **and to enhance the access of workers to minimum wage protection provided by collective agreements**, shall take, in consultation with the social partners **and in accordance with national laws and practices**, at least the following measures:
  - (a) promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage setting **in particular** at sector or cross-industry level;
  - (b) encourage constructive, meaningful and informed negotiations on wages among social partners.
2. Member States where collective bargaining coverage is less than 70% [...] shall in addition **establish an action plan to promote collective bargaining, which shall include a framework of enabling conditions [...], either by law after consultation of the social partners or by agreement with them. [...]** The action plan shall be made public and shall be notified to the European Commission **[x] months after the transposition period as set out in Article 17 paragraph 1. The action plan shall be revised [x] years after its notification.**

## 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 of 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;  
the general level of gross wages and their distribution;
  - (c) the growth rate of gross wages;
  - (d) [...] productivity **levels and** developments.



3. Member States shall use indicative reference values to guide their assessment of adequacy of statutory minimum wages in relation to the general level of gross wages, such as those commonly used at international level.
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 by law that reduce the remuneration paid to a level below that of the relevant statutory minimum wage, they shall ensure that these variations and deductions are non-discriminatory, proportionate and objectively justified by a legitimate aim.**

#### *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 and indicative reference values referred to in Article 5 (1) (2) and (3) for the determination of statutory minimum wage levels;
- (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 collection of data 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[...]:

- (1) strengthen the 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;
- (2) develop guidance for enforcement authorities to proactively target and pursue non-compliant **employers**;
- (3) ensure that information on statutory minimum wages is made publicly available in a **comprehensive**, clear [...] and easily accessible way.

## CHAPTER III

### HORIZONTAL PROVISIONS

#### *Article 9*

##### Public procurement

In accordance with Directive 2014/24/EU, Directive 2014/25/EU and Directive 2014/23/EU, Member States shall take appropriate measures 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 task their competent authorities with developing effective data collection tools to monitor the coverage and adequacy of minimum wages.
2. Member States shall report the following data to the Commission on an annual basis, before 1 October of each year:
  - (a) for statutory minimum wages:
    - (i) the level of the statutory minimum wage and the share of workers covered by it;

- (ii) the existing variations and the share of workers covered by them;
  - (iii) the existing deductions;
  - (iv) the rate of collective bargaining coverage.
- (b) for minimum wage protection provided only by collective agreements:
- (i) the distribution in deciles of such wages weighted by the share of covered workers;
  - (ii) the rate of collective bargaining coverage;
  - (iii) the level of wages for workers not having minimum wage protection provided by collective agreements and its relation to the level of wages of workers having such minimum protection.

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

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*].

The Commission may request Member States to provide further information on a case by case basis where it considers such information necessary for monitoring the effective implementation of this Directive.

3. Member States shall ensure that information regarding minimum wage protection, including collective agreements and wage provisions therein, is transparent and publicly accessible.

4. The Commission shall assess the data transmitted by the Member States in the reports referred to in paragraph 2, and shall report annually to the European Parliament and to the Council.
5. On the basis of the report issued by the Commission, the Employment Committee set up in accordance with Article 150 TFEU shall carry out every year an examination of the promotion of collective bargaining on wage setting and of the adequacy of minimum wages in the Member States.

### *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, including adequate compensation, in the case of infringements of their rights relating to statutory minimum wages or minimum wage protection provided by collective agreements.
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 with the rights relating to statutory minimum wages or minimum wage protection provided by collective agreements.

## *Article 12*

### Penalties

Member States shall lay down the rules on penalties applicable to infringements of national provisions **adopted pursuant to this Directive or the respective provisions already in force**. 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, 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 the 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 the 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 afforded 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. Member States shall determine how such reference is to be made.

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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**Presidency summary of the evaluation of the Impact Assessment**

Most delegations find the **policy context** clearly explained, although consider the **legal basis** either only partially or not sufficiently clearly explained. Almost all Member States welcome and await the legal opinion of the Council's Legal Service in that respect. Many Member States would have liked to see further clarifications regarding the chosen legal basis (Article 153 (1) (b) TFEU) and of the limitations of Union action set by Article 153 (5) TFEU.

The assessment on the completeness of the **problem definition** varies among delegations. A majority of replies concur that the Impact Assessment **acknowledges the existing gaps** in evidence. Most Member States consider **the problems and the underlying drivers** are, at least partly, clearly demonstrated and underpinned by evidence. Some Member States, however, stress that the IA isn't comprehensive enough regarding national specificities such as traditions and economic structure, in particular regarding the evolution of minimum wage levels in their national context. Respondents also raise the point that the underlying distinction between national models could better reflect the plurality of structures and realities in the EU. Despite the analysis presented in the IA on the impacts of the COVID-19 pandemic, concluding that minimum wages are key to ensure an inclusive recovery, many Member States would have wished for a better consideration of the pandemic effects on the economy and in particular on SMEs.

All but two Member States consider that the **policy objectives, including general aims and more specific/operational objectives**, are fully or to some extent clearly set out. However, according to several Member States, the correspondence between broad policy objectives and the identified problems could have been presented in a clearer way. Many Member States would have wished more explanations on specific objectives, in particular on those linked to the degree of collective bargaining coverage and the causal link between that coverage and the increase in minimum wages. Most Member States pointed to the challenge of comparing data as wage setting models vary from a country to another, and related data collection practices are uneven among MS and inexistent in some of them. Most delegations would have welcomed more clarity on the information sources and monitoring indicators. In addition, regarding the **coherence of the intervention logic**, all but two delegations consider that the objectives correspond to the identified problems, at least partly.

A broad majority of delegations is of the opinion that the **necessity and added value of EU action** is at least to some extent clearly demonstrated, while some are of the opinion that consistency with the principle of subsidiarity could be better substantiated. Many Member States share the view that considerations of the proportionality of the measures proposed only take into account to a limited extent the differences among economic models. Many Member States state that actions already taken or planned at national level were only partially addressed by the IA.

Most Member States agree that the IA identifies many feasible **policy options**, but some would have welcomed a better consideration of "no EU action" option. All Member States find that the most affected subjects/ stakeholders have been identified, at least partly. They also agree that they have been provided with the information on how the inputs from end-users and stakeholders informed the policy options, with some Member States noting that views of employers' organisations could be better represented in the IA. Several Member States consider that further explanations should have been given on the choice of a directive as the legal instrument.

All Member States are of the opinion that the IA gives consideration to the **impacts of each policy option**, although most Member States consider that the analysis could have been more detailed. Some delegations pointed that the challenges of the current economic context, and especially for SMEs, could have been explored further, as they are likely to influence the policy outcome. All but one Member States replies consider that impacts of different policy options are expressed at least partially in a comparable format and compared against a clear set of criteria. A considerable number of Member States would have preferred more details on the potential impact and related risks for minimum wage workers, consumers, SMEs and competitiveness in their given national context.

Many Member States consider that the IA should have taken the Covid-19 pandemic more into account when presenting the **social impact** of the proposal. All but one considered that social impacts are, or at least to some extent, clearly presented both in qualitative and quantified terms, although some Member States would have wished that the IA would deal more with employment risks and other means of addressing poverty than wages. Almost all Member States consider that the IA assessed, at least partially, the regulatory costs of the proposal in respect of the differences of national models.

Member States appreciated that the **opinion of the Impact Assessment Board (IAB)** of the Commission was addressed to varying degrees by the IA. As to the **measuring**, several delegations highlighted the challenges of comparative data collection and the difficulty to measure the intended effects with the proposed indicators. The majority of delegations considered the **methodology and methodological choices** partially appropriate **while uncertainties** on implementation constrains in national context remain.