PCY Questionnaire

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on adequate minimum wages in the European Union **Impact Assessment** **2020/0310 (COD)**	
Delegations	**AT, BE, BG, CY, CZ DK, EE, EL, ES FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK**
Lead DG	**DG LIFE.4**

1. Are the policy context and the legal basis of the initiative explained clearly?

☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, CY, CZ, ES, FR, IT, LU, PT

No: AT, DK, HR, HU, RO, SE

To some extent/partly: BG, EE, EL, FI, IE, LT, LV, MT, NL, PL, SI, SK

No Response:

Comments:

AT: The Commission uses Article 153 (1) (b) TFEU as the legal basis. However, this is not compatible with Article 153 (5) TFEU, which explicitly exempts "pay". The EU does not have the competence to set either a level or a procedure for minimum wages. Adequacy concerns the level of pay. A directive on adequate wages therefore cannot be based on Art. 153 (1) b. It is of utmost importance to respect national competencies and social partner's contractual freedom. The proposed directive may interfere with the autonomy of social partners as well as their collective bargaining freedom and negatively impact the well-functioning national system, which has significantly contributed to social peace in Austria for decades. Furthermore Art. 4 (Promotion of collective bargaining on wage setting) is not covered by Art. 153 (1) b. If there is a legal basis at all, another one is required.

BE: Yes, and they are considered by Belgium as important.

BG: The proposed justification of the legal bases and the compliance of the proposal with Art. 153, para 5 of the TFEU should be further extended and strengthened. The Republic of Bulgaria welcomes the commitment made by the Legal Service of the Council to submit a written opinion on this issue.

CY: Both the policy context and the legal basis are clearly set out in the proposal for a Directive.

CZ: The CLS opinion on legal basis will be appreciated.

DK: According to article 5 TEUF (2) the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States. According to Article 153 (5) TFEU the provisions of this Article shall not apply to pay. The Danish government is waiting for the opinion from the Council Legal Service on the legal basis. There is a concern that the proposed Directive may interfere in the Danish labour market model where the social partners have full autonomy to regulate wage through collective agreement without interference from the state and full autonomy and responsibility for the collective bargaining coverage in Denmark.

EE: The policy context includes a mention of the Covid-19 outbreak, outlining its heavy impact on sectors with a higher share of low-wage workers and concludes that minimum wages are key to ensure an inclusive recovery. The possible negative effect on employment of raising minimum wages during economic recession is not mentioned. The legal basis is explained, but further analyses would have been necessary, why the minimum wages as part of pay could also be interpreted as part of working conditions. It is cited (p 20) that according to CJEU the exclusion on 'pay' "must be construed as covering measures - such as the equivalence of all or some of the constituent parts of pay and/or the level of pay in the Member States, or the setting of a minimum guaranteed wage - that amount to direct interference by the EU law in the determination of pay within the European Union". However, it is not analysed in sufficient detail, why in Commission´s opinion the requirements foreseen in the proposal do not touch the issue of the level of pay, even though, the proposal directly deals with the adequate level of given categories of workers´ pay. Also, the impact assessment does not address the regulation of collective bargaining in the context of the right of association in Article 153 (5) TFEU. The right of association could be considered an empty right without the right to collective bargaining.

FI: Legal base not clarified very clearly (relationship between the two proposed articles).

FR: La base juridique est clairement exposée par la proposition de directive dont les dispositions font souvent le lien avec cette base juridique. En première lecture, la proposition semble contenir toutes les précautions nécessaires en mentionnant régulièrement l'article 153 du TFUE, paragraphes 1b (relatif aux conditions de travail) et 2 comme base juridique. Par ailleurs, certains éléments présentés par la Commission pourraient également relever de l'article 153 du TFUE, paragraphe 1, f), i) j).

HR: The legal basis needs to be additionally explained due to formulation of provisions, which clearly indicate that this directive is about collective bargaining and setting wages, and the latter is out of the EU jurisdiction.

HU: The Impact Assessment (IA) does not justify adequately why the provisions on mandatory criteria for minimum wage setting, data collection, the application of the proposed international reference values and monitoring are key components of working conditions [Article 153 (1) (b) TFEU] instead of pay requirements [Article 153 (5) TFEU]. The reference to the adoption of the two previous directives (TPWC, WLB, p. 22), which by no means contain such specific, direct intervention in the determination of the minimum wage level, does not in itself justify the declaration of Article 153 (1) (b) TFEU as a legal basis of this directive. Furthermore, the case law presented by the IA reflects a one-sided perspective, listing only the judgments that support the Commission's position. However, different conclusion can be found e.g. in the case C-307/05 Yolanda Del Cerro Alonso v Osakidetza-Servicio Vasco de Salud, where the CJEU declared, that: " More particularly, the exception relating to 'pay' set out in Article 137(5) EC is explained by the fact that fixing the level of wages falls within the contractual freedom of the social partners at a national level and within the relevant competence of Member States." [40.] With regards to the legal basis the IA fails to refer to the fact, that the provisions of the proposal on the promotion of collective bargaining of the social partners (Article 4) are likely be based on Article 153 (1) (f) TFEU, which requires unanimity.

IE: The policy context is explained. However, there remain questions about the legal basis of the initiative and Ireland is unable to support this proposal without further legal assessment from the Council Legal Service. The Commission uses Article 153 (1) (b) TFEU as the legal basis. However, this may not be compatible with Article 153 (5) TFEU, which explicitly exempts "pay", stating that the "provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs".

LT: The policy context is explained but link with the legal basis is missing, especially regarding TFEU 153(5) and 153(1)(f). It raises additional questions therefore clear answers from Council Legal Service are very welcome.

LU: Concerning the legal basis, Article 153 TFEU provides that the Union supports and complements the action of Member States inter alia in the context of working conditions. In addition, the right of workers to fair and adequate working conditions is included in several EU political and strategic documents. Also the Charter of Fundamental Rights of the European Union (Article 31: "Fair and just working conditions") recognizes the right of all workers to working conditions that respect their health, safety and dignity. The European Pillar of Social Rights, in its Principle 6 on 'Wages', requires adequate and transparent, predictable minimum wages and setting wages. Therefore, the legal basis is sufficiently explained.

LV: The policy context is explained, however a further assessment of the legal basis is needed by the Council Legal Service.

MT: Malta looks forward to the Council Legal Service legal opinion. The impact analysis on minimum wage levels and their revisions seems insufficient as it does not take into account the circumstances, including the economic level, of each Member State.

NL: The Legal basis raises questions**.** According to the text (Chapter 2, Legal basis, p.6), the Directive 'fully respects the limits imposed to Union action by Article 153(5) TFEU', since 'it does not contain measures directly affecting the level of pay'.

The Dutch government is of the opinion that the setting of pay levels must remain a national competence.

It is positive that the Commission acknowledges this and chooses a framework which gives Member States the possibility to choose their own system, without imposing a certain level of pay. According to the Commission, the measures do not affect the level of pay in a direct manner. However, the Netherlands still has several questions considering the legal basis of the proposal, as well as questions regarding clarification of the legal text.

The Dutch government is of the opinion that it is up to national governments to decide on whether minimum wage variations and minimum wage deductions are proportionate, necessary and legitimate etc, since this directly relates to the level of pay. Article 6 does not specify who, in the end, assesses whether deviations and deductions are sufficiently justified, proportionate etc. An opinion of the Council Legal Service on this specific article would be appropriate.

Moreover, the Commission does sum up criteria which ought to be taken into account when setting or updating the minimum wage. Many of the specified elements play a role in the negotiations on collective agreements amongst social partners in the Netherlands, which – consequently – determine indirectly, through indexation, the setting of the minimum wage. Many of these elements are also included in the national evaluation, which takes place every four years.

The Dutch government is, furthermore, of the opinion that the indexation mechanism in the Netherlands ensures social partners' indirect involvement in the setting of minimum wages. Additionally, social partners are involved during the evaluation rounds (every 4 years) through a tripartite platform. Furthermore, the government uses internet consultations for intended policy changes, which is an additional platform for social partners' involvement. However, it is unclear to what extent these types of involvements fall within the frame proposed by the Commission.

Furthermore, it is unclear why a Directive with binding requirements is needed to promote the strengthening of collective bargaining and adequate minimum wages. A Council recommendation could also have provided the necessary guidelines to improve minimum wage setting and collective bargaining coverage.

Last but not least, it must be noted that a majority of the Dutch parliament has passed a parliamentary motion stating that the EU should not enact Directives in policy areas where the Commission has no competences, due to its conflict with the principle of subsidiarity.

In conclusion, both the Dutch government and parliament have several questions concerning the legal basis, as well as on the interpretation of the legal text. Therefore, the Netherlands welcomes that the Council's Legal Service will prepare an opinion on this proposal. Considering the importance of the file and the need for transparency, the Netherlands would strongly prefer that the opinion is made public.

PL: The explanation of policy context is provided, but there are serious doubts regarding legal basis (see point 4(a)).

PT: The policy context is quite clear. Concerning legal basis, Article 153 TFEU provides the Union supports and complements the action of Member States inter alia in the context of working conditions, and the ECJ case law on the exception of applying this provision to pay, cited in the AI, allows the conclusion of COM. In addition, the right of workers to fair and adequate working conditions is included in several EU political and strategic documents. Also the Charter of Fundamental Rights of the European Union (Article 31: "Fair and just working conditions") recognizes the right of all workers to working conditions that respect their health, safety and dignity. The European Pillar of Social Rights, in its Principle 6 on 'Wages', requires adequate and transparent, predictable minimum wages and setting wages.

RO: According to art. 153 (5) TFEU, the provisions of article 153 shall not apply to pay, the right of association, the right to strike and the right to lock-outs, so the fact that the Directive deals with minimum wage under the working conditions umbrella needs a further assessment of the legal basis by the Council Legal Service.

SE: EU competence on the matter is limited. SE welcomes that the Legal Service of the council has been asked to deliver a written opinion on the legal basis. As for the COM IA on the matter SE inter alia questions the relevance of making reference to recent directives TPWC and WLB.

SI: We expect the additional legal opinion of the Council's Legal Service to clarify all doubts and dilemmas regarding the legal basis of the Directive.

SK: The policy context is explained; however, the legal basis and compliance of the initiative with the Treaty should be further clarified due to the legal limitations stemming from the Art. 153 (5). In this regard, we are waiting for the additional opinion of the Council Legal Service analysing the all issues raised during the SQWP.

2. Problem definition

a) Are the problems and the underlying drivers clearly demonstrated and underpinned by evidence including comments and studies submitted by Member States or stakeholders during consultations carried out by the Commission?

b) Is any gap in evidence acknowledged?

2 (a) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BG, CY, ES, FI, FR, HR, IT, LU, SI

No: AT, CZ, HU

To some extent/partly: BE, DK, EE, EL, IE, LT, LV, MT, NL, PL, PT, RO, SE, SK

No Response:

Comments:

AT: There is no need for a horizontal EU initiative as problems arise only in a specific number of Member States. The introduction of an EU-wide minimum wage framework undermines well-functioning collective bargaining systems. Member States should focus on the correct application and enforcement of existing minimum wages. Country-Specific Recommendations with suggestions and guidance in selected countries within the European Semester are an adequate instrument to address specific Member States. The current difficult economic, social and employment circumstances in the context of the Covid-19 crises have not been adequately assessed in the IA. Due to necessary lockdowns, sectors such as retail and tourism have been strongly affected by the crisis. Member States aim to avoid massive job losses and business failures. Rising minimum wages and thus increasing employer costs may contradict these aims. The current crisis cannot be considered as the right time to put additional strain on employers.

BE: In Belgium the social partners fix the minimum wages in the private sector. These are then declared universally binding through a mere administrative extension process. This administrative extension does not interfere in the setting of minimum wages decided by the social partners. The differences listed in the summary overview of measures considered for the initiative (and the internal drivers for each system) seems to be large.

CY: Problems and drivers are well-defined and supported by evidence from an EU perspective. From a national perspective, more relevant evidence and indicators could have been provided to better understand the specificities of national systems.

CZ: Problems and their underlying drivers are poorly analysed in the Impact Assessment from a specific Member State perspective. There are several incorrect or misleading allegations in the IA without any relevant data proving such allegations or based on incorrect understanding of the situation in some MS (on page 12 – the information on decrease of collective bargaining in CZ and unproven connection between the decrease of collective bargaining in CZ and the increase in the number of employees with low income/wage; on pages 15, 52, 128 and 159 – incorrect information regarding the institutional system for setting the level of minimum wage in the Czech republic – alleging insufficient involvement of the social partners).

DK: The problems have been clearly demonstrated. However not all evidence has been underpinned. For example there is no evidence that declining collective bargaining has let to inadequate minimum wages. This has not been the case in Denmark over the years.

Neither has evidence been provided demonstrating regulation on minimum wages leads to adequate minimum wages per se.

EE: The effect of collective bargaining coverage on adequate minimum wages (the share of the minimum wage in the average and median wages) is too weak and indirect. No clear correlation is presented between these two variables. Categorisation of countries into statutory minimum wage systems and collective bargaining minimum wage systems was partly unclearly adressed, in particular insufficient consideration was given to the specificities of some national systems. Categorisation of countries into different systems is with utmost importance in context of transposition, subsequent implementation and examination of the directive.

HU: The IA in relation to in-work poverty focuses exclusively on the inadequacy of minimum wage, ignoring almost entirely the social welfare systems. The IA disproportionately highlights the internal, regulatory drivers (framework, involvement of social partners), and the effect of the external economic drivers and the current situation of the pandemic on the level of minimum wages and their adequacy are not equally described. The IA does not examine whether the higher level of the minimum wage in Member States with high collective bargaining coverage can be explained by the economic/financial environment, the carrying capacity of the Member State or the greater decision-making power of the social partners.

IE: Many of problems are highlighted and supported by evidence. However, insufficient evidence if provided to demonstrate that the introduction of an EU-wide directive is needed and that action at a national level is insufficient.

LT: The problems have been demonstrated, however the identified possible underlying drivers and presented causalities seem to lack sufficient justification.

LV: The problems have been demonstrated, however the identified possible underlying drivers and presented causalities seem to lack sufficient justification.

MT: While the problems have been demonstrated, comments and concerns by Member States have been largely overlooked.

NL: The Dutch government acknowledges that the proposal might have added value if the initiative contributes to upward socioeconomic convergence and the level playing field.

The Commission shows the relation between collective bargaining and the level of wages. Both employees' and employers' organizations have underlined the importance of collective bargaining in their reaction to the consultations. It is positive the Commission addresses this element.

However, it is unclear why the Commission when assessing fairness (the first element of adequacy), only assesses the relative level of gross wages, and not the relative level of net income. The proposal requires Member States to determine reference values to assess the adequacy of the minimum wages, by reflecting these vis-à-vis gross wages. In the opinion of the Dutch government this should not be the sole indicator to review adequacy, since it does not give a complete overview of adequacy. The Commission's impact assessment for instance also refers to net wages. It is unclear what this emphasis on gross wages is based upon. To illustrate: According to graph 1 (p.4), the Dutch minimum wage is not adequate (scoring less than 60%). Nevertheless, when relying on an indicator that uses net wages, the Dutch minimum wage turns out to be adequate (scoring not only more than 60%, but even over 70%). This holds for several Member States, which illustrates that the indicator that uses gross wages does not provide the full picture. Moreover, using this indicator might further widen the gap between the lowest and highest statutory minimum wage (i.e. further divergence of socioeconomic labour and living conditions) between member states, which contradicts with the essence of the proposal. Also Eurofound criticizes the relative approach[1], "due to its sensitivity to shifting median incomes". In addition, focusing too much on the relative indicators for in-work poverty could result in missing those that are actually materially deprived (Darvas, 2017 and 2020)". Also the OECD underlines the common objection to this measure, since "it primarily relates information about inequality, not about basic economic needs"[2]. See in annex 1 of the OECD study a representation of the correlation and deviation of country-performances depending on the absolute or the relative scale.

Moreover, it is unclear why, when assessing the decent living condition of low-pay workers (the second and last element of adequacy), the Commission only focuses on the set minimum wage; and why the Commission does not complement it with other income measures that Member States use to fight poverty and indecent living conditions.

In other words, why is a framework of adequate minimum wage setting the sole solution to tackle unfair or indecent living conditions of low-payed workers? According to the OECD, policies on the minimum wage seem to have a limited effectiveness in fighting in-work poverty as it is not well targeted . Policies on in-work benefits, on the other hand, may constitute a valuable policy response to tackle in-work poverty. (See also Eurofounds'2020 Annual review of minimum wages, which lists more policy measures in table 14).

[1] Eurofound Annual minimum wage review, box 11, page 62.

[2] https://www.oecd.org/els/emp/45219514.pdf. See also https://ec.europa.eu/eurostat/documents/1001617/4577263/1-1-I-MARX.pdf

When assessing the different kind of adequacy indicators, it becomes clear that only certain Member States consequently score poorly on all kinds of indicators.

PL: It is acknowledged that problems regarding minimum wage occur only in certain Member States. It is not therefore obvious that an EU instrument in the form of a directive is needed to deal with the situation.

PT: The problems and drivers identified are mainly presented in a European Union perspective. The indicators presented could not be sufficient to understand all differences among Member-States. It could also be important to add more information about the current difficult economic, social and employment effects and where possible complement with information related with the effects of the increase of MW.

RO: It is not clear how extensive coverage of the minimum wage can be approached and what the benefits of European action will be in terms of adjusting the minimum wage given the differences in Member States' systems, including taxation.

SE: The drivers are more complex than is described in the IA, Graph 3a on page 10. Without an understanding of the underlying reasons for the development that can be observed in terms of collective agreement coverage and compliance, there is a risk that the proposals will have unwanted consequences. The precarious work problem is a complex one and if you solve one problem, another one might arise. The trends that are sketched out in the section are largely based on a relatively favourable economy. There is a need for an updated analysis of how the different drivers are affected by the Covid 19 pandemic and the effect it has had on labour market. We agree that the groups in the labour market that the proposal addresses are particularly affected. At the same time, they are vulnerable groups and an analysis is needed that is based on the new reality we are in, so that no unexpected and undesirable effects arise. The commission uses the Covid -19 crisis as an argument for implementing the proposal. Temporary/external crises do not occur due to structural problems in the economy but do decrease the demand for hours worked. Increases in wages (or high wage levels) during a crisis increase costs when demand declines and often reduces employment/hours worked and thus disposable income among those who are most vulnerable. Among those it is likely that many receive minimum wages.

SK: We think that the efforts to promote collective bargaining on wage setting under the Draft Directive on MW are not sufficiently justified. We are of the opinion that the solution to the determination of the percentage of collective bargaining coverage is not related to the process of determining the adequacy of the minimum wage and the issue should not be part of the directive in question, but requires special separate regulation. It remains the fact, that the wage growth in the Central and Eastern part of the EU has been raising over the past decades more rapidly, despite of the low coll. bargaining coverage.

2 (b) ☐ Yes ☐ No ☐ To some extent/partly (please comment, if necessary)

Yes: AT, BG, CY, DK, EL, FI, FR, HU, IE, LT, LU, LV, MT, PL, PT, RO

No: BE, ES, HR, IT, SI

To some extent/partly: CZ, EE, NL, SE, SK

No Response:

Comments:

BE: No gaps detected.

BG: Data sources and econometric models used should be part of the IA.

DK: Yes, reference is made to the reply above.

EE: Though the IA mentions the Covid-19 crises several times, it doesn't seem to include enough consideration of the crises, especially impacts on the SME-s, who mainly employ workers with minimum wage in many countries and thus would face even more difficulties. Also, the IA points out that the crisis has particularly hit sectors with a higher share of low-wage workers such as retail and tourism, and it is likely to have a stronger impact on vulnerable workers. Despite of that, IA still finds that raising minimum wages is the key to ensure an inclusive recovery from the crisis, although many studies have indicated, that it will possibly have negative impact on employment of the low-wage workers. Moreover, the IA relies on the average value of the employment elasticities found on the basis of sources which have not been made in the context of the economic crisis and, in addition, employment elasticities can vary significantly from country to country. Therefore, there is a high risk that the elasticity used will strongly underestimate the recession and weak demand environment.

FI: The problem definition clear, but COVID-19 has affected the statistical part considerably.

HU: The IA overvalues the significance of the internal drivers, compared to the effect of external conditions. In our view, the conclusion is wrong and gives the false impression that, by changing internal regulatory methods, the adequate level of minimum wages in the Member States can be guaranteed automatically, regardless of the external economic environment. In our opinion, the determination of the minimum wage level cannot be separated from the current economic possibilities and competitiveness. The particular developmental differences – due to very diverging histories - amongst Member States and even blocks of Member States are not taken into consideration.

IE: There is insufficient evidence provided in relation to the differing industrial relation traditions in Europe.

LV: Taking into account the specific context of the Member States minimum wages can have a different impact on economies, labour markets and labour market participation. The evidence provided by the Commission seems to make the impression that it is not the case and that the impact of both – minimum wages and collective bargaining would be the same irrespective of traditions, economic structures and productivity levels.

NL: The Dutch government misses evidence on the following issues, amongst others.

Evidence stating that minimum wages are an effective tool to fight in-work poverty, most notably when acknowledging a very significant share of low-payed workers do not work full-time; and acknowledging the role that social benefits play as public institutions can target groups more directly.

Evidence stating that implementing the basket of measures of the directive will strengthen the upward socioeconomic convergence of workers within the EU;

Evidence stating that the following measures have a significant and positive effect in establishing an adequate minimum wage: a) criteria and reference values that link the gross minimum wage to gross wages; b) advise of consultative bodies; c) the direct involvement of social partners in all separate steps of the minimum wage setting process and the introduction of variations and exemptions.

Evidence stating that the four prescribed criteria and the commonly used international reference values are the most relevant to affect the adequacy of minimum wages.

PL: There seems to be insufficient assessment of the impact on SME and on employment (see point 7) and the current pandemic situation has not been fully taken into account. This aspect is important in the context of the discussion about higher minimum wages.

As regards information concerning specifically Poland, there are also some remarks to be made.

The provided information gives imprecise description of setting the minimum wage in Poland. According to the Act on minimum wage, in Poland the amount of minimum wage is negotiated on an annual basis within the Social Dialogue Council (the country's tripartite negotiation platform for the government, employers and trade unions). The minimum wage is calculated based on the forecasted and actual macroeconomic factors, including inflation and the increase in real gross domestic product (GDP). The increase of the amount of minimum wage for the next year should not be lower than the forecast price index for that year. If in the year in which the negotiations take place, the amount of minimum wage is lower than half of the average wage in national economy in the first quarter of this year, the minimum wage is additionally raised by 2/3 of the forecast real growth rate of the gross domestic product (GDP).

The information concerning macroeconomic situation in Poland (such as the price index in the previous year, forecast price index in the next year, forecast average wage and salary index in the next year, average wage in national economy in the first quarter, information on expenditures of households in the previous year) is submitted by the Council of Ministers to the Social Dialogue Council as an additional information taking into account during negotiations.

Also in case of information concerning minimum wage in table A6.2 “Summary of statutory national minimum wage setting systems” there is no information on the statutory mechanism for minimum indexation of the minimum wage.

As to the table A9.3 “Summary tables of exemptions and variations in statutory national minimum wages” the provided exemption (people providing certain care services) does not concern minimum wage for workers, but minimum hourly rate, which is a different instrument applicable only to civil law contracts.

There has also been some misunderstanding regarding reforms related to the coverage of minimum wages in Annex 10 (first two sentences concerning Poland should be deleted). Reforms relating to the salaries in the health service do not apply to the statutory minimum wage.

PT: It is not clear how to assess the coverage and adequacy when the minimum wages are established by collective agreements. gaps in coverage were recognized as a result of specific provisions of the minimum wage legislation that allow exemptions or variations for specific groups.

RO: It is not clear how the identified solutions will lead to the adequacy of the minimum wage, taking into account the standard of living in each Member State.

SE: The fact that the coverage of collective agreements has decreased is true for many countries but is a questionable conclusion with regards to Sweden. 90 percent of employees aged 16–64 were covered by collective agreements (including so-called suspension agreements) in Sweden 2018. It has practically been the same the last ten years. Graph 1 in IA does not give a correct picture of lowest wages in Sweden. From a sample of occupations Eurofound has picked employees in elder care (in the private sector) aged 19 or above without training or experience. The lowest wage among this sample according to Eurofound was SEK 18,552 (€1,752) in 2019. It is important to recognize that this is just an example of one (low) wage. It nowhere near covers the whole wage spectrum of wage floors in Sweden. The evidence provided by the Commission gives the impression that the effect of measures proposed on minimum wages and collective bargaining, would be the same irrespective of traditions, economic structures and productivity levels, which vary between the MS. SE finds this questionable.

SK: There is a lack of persuasive justification, that the lower wages in the Central and Eastern Europe are directly linked to the attempts of those MS to maintain their competitive advantage in the Internal Market. This kind of information is more of presumption then factual information. In addition, more consideration should be given to the COVID-19 crises and its impacts on the SME´s (backbone of our economy).

3. <u>Policy objectives</u> **a) Coherence of the intervention logic: Do the objectives correspond to the problems?** **b) Are the objectives consistent with the broad policy strategies and other relevant policy initiatives?** **c) Does the IA set out clear policy objectives, including general aims and more specific/operational objectives?** **d) Are objectives linked to measurable monitoring indicators?**
3 (a) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary) **Yes:** BE, CY, CZ, ES, FR, HR, IT, LU, SI **No:** AT, PL **To some extent/partly:** BG, DK, EE, EL, FI, HU, IE, LT, LV, MT, NL, PT, RO, SK **No Response:** SE

Comments:

AT: Systems of introducing minimum wages and the role of social partners vary widely in the different Member States. In Austria, the economy has implemented the minimum wage of 1,500 euros (14 times a year) in practically all collective agreements as planned - despite the Corona crisis. Austria also has the highest collective bargaining coverage worldwide of 98 % according to OECD (or 94% according to "Statistik Austria"). This ensures that the minimum wages are tailored to the needs of the respective industries and their employees. There is no need for the introduction of new European criteria to determine the level of minimum wages. Some small areas are not covered by collective agreements but determined by legal act ("minimum-wage rates"). In particular, the provisions laid down in Chapter II, as well as the reporting obligations and regulations with regard to transparency in wage setting, may massively interfere with the Austrian system of wage determination and potentially negatively impact the well-functioning and historically grown Austrian system of social partnership. The proposed directive does not respect the principle of subsidiarity as well as the division of competences between the EU and its Member States. Moreover it is not in line with the principle of proportionality. Numerous vague and unclear terms lead to legal uncertainty, leave wide scope for interpretation by the ECJ and violate fundamental principles of the rule of law.

EE: The coverage of collective bargaining does not always lead to high minimum wages. Unique national circumstances have not been taken into account enough.

FI: See 2.b.

FR: Le choix d'une directive permet de mettre en place des critères de détermination d'un salaire minimum « adéquat » pour tous les travailleurs, améliorant ainsi leurs conditions de travail et de vie. Elle nous paraît donc répondre à l'objectif recherché, tout en respectant l'organisation de tous les Etats membres, notamment en n'imposant pas d'introduire un salaire minimum légal dans les Etats membres dans lesquels il n'existe pas.

HU: Fair wages are one of the preconditions for ensuring decent working and living conditions and creating fair and resilient economies and societies for workers in the Union is a fair wage, this study (IA) does not take into account the specificities of national economies, the different well-functioning social dialogue systems or the impact of these obligations (set out in the Directive) on the budgets competitiveness of employers. Accordingly, it is a blunt instrument applied to a very delicate and complex issue. In that sense, the measures of the Directive do not provide an answer to the problem, but generate a number of new problems. The statement about "low wages that have not kept up with other wages in recent years" is not valid for Hungary. (See steps and rate of increase regarding minimal wage.) If we contrast low earnings with unemployment, it is also a misconception that the ability of those working on the minimum wage to cope with economic difficulties is negatively affected by the current system. In addition, the initiative violates the right of Member States to decide freely on the level of minimum wage increases, in accordance with their national traditions and characteristics as well as with their national competences and involvement of the social partners. The general objective of the European Union to improve the adequacy of minimum wages and increase coverage and by minimum wages is also counterproductive. The IA acknowledges that some collective agreements do not include provisions about wages at all (p.7, footnote) The IA also considers the collective bargaining coverage as one of the most important internal factors, regardless of the percentage of workers that are affected by a minimum wage definition laid down by the collective agreement. This does not serve the interest of workers in precarious positions, who would otherwise be fully covered by statutory minimum wage in Hungary. The target is only to achieve 70% coverage for Member States applying both systems, completely ignoring the proportion of workers protected by the provisions on minimum wage as a result. The IA erroneously identifies the adequacy of the minimum wage level with the extent of coverage by collective agreements.

IE: In general, higher minimum wages should minimise the problem of inadequate wages. However, there is scant evidence presented as to whether inadequate wages are a problem in Ireland. For example, Figure 2 in the IA shows that Ireland has the second highest net income for a single minimum wage earner working full time, relative to the at-risk-of poverty threshold in the EU. It is unclear why the Commission focuses on the relative level of gross wages, and not the relative level of net income. Ireland has the lowest tax wedge at the minimum wage (Graph A8.5), which significantly affects any assessment of the size of Ireland's minimum wage relative to other Member States (compare Graph 1 with Graph A8.4). Further, the fact that Ireland already has the second highest statutory minimum wage level in the EU (see Graph A8.8) and the third lowest level of in-work poverty in the EU (see Graph A8.3), despite a low level of union coverage (See Graph A9.3), would appear to demonstrate that high union coverage is not an absolute requirement to reach a high minimum wage or low level of in-work poverty. Furthermore, the correspondence of the precise objectives of 70% union coverage and harmonised minimum wage setting institutions with this problem are not clear. The choice of a 70% target seems rather arbitrary.

LT: There is no sufficient explanation how the framework of MW in the Directive and its specific parts are linked to the objectives and problems of the IA. Moreover, specific objectives "In all Member States the collective bargaining coverage rate would be at a level of at least 70%" is not analysed taking in to consideration of chosen legal base and link to TFEU 153(5) and 153(1)(f).

LV: Though there is a clear logic for having more evidence based setting of minimum wages the suggested link with collective bargaining coverage and social partner capacity points to incoherence in the intervention logic.

NL: Overall, the objectives correspond to the problems. Nevertheless, the relation between objectives and problems is not always clear due to the distinction made between Member States with a Statutory Minimum wage and Member States which use collective bargaining exclusively to establish a set of sectoral minimum wages.

The Dutch government sees an incoherence, since it is unclear why 1) it suffices for Member States with a collective bargaining system but a low coverage to merely present an action plan to try to increase their coverage, where, on the other hand, 2) Member states with well-functioning systems which deliver high statutory minimum wages and low scores of workers having difficulty to make ends meet, must amend their systems to include criteria, references values or consultative bodies that had not been necessary to this date.

In the Dutch government's opinion, the IA lacks evidence to conclude that the current or recent Dutch statutory minimum wages were not adequate.

PL: The proposed regulation goes beyond what is necessary to achieve the assumed goals, especially in the context of promoting collective bargaining and the complex mechanism of setting and monitoring the minimum wage in the Member States. As problems related to minimum wage occur only in some Member States, there is no need for a binding instrument of EU law applicable to all Member States, notably one of such complexity.

PT: This initiative aims to improve working conditions by ensuring that Union workers have access to minimum wage protection, either through legislation or through collective bargaining, thus providing them with a dignified life wherever they work.

The initiative does not interfere with the freedom of Member States to establish national minimum wages or to promote access to collective bargaining, in accordance with the traditions and specificities of each country and in full respect of national competences and the freedom of social partners.

The objective of 70% coverage of collective bargaining is identified (specific objective), but this threshold is not clear. However, according to the EC this is just a reference value, not mandatory to achieve. Either way, this topic should be clarified, as should be the rational concerning the relation between collective bargaining coverage and MW adequacy.

RO: It is not clear the impact of the objectives on the problems identified in each and every system in the Member States.

SK: We express doubts about the ambition to increase the coll. bargaining coverage in the MS with the statutory minimum wage and the aim to decrease the share of the lower-wage earners. National specificities should be considered more in depth. In Slovakia, the raise of the statutory minimum wage has been significant over the past decade, even without the EU intervention or the high union coverage.

3 (b) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, CY, ES, FI, FR, HR, IT, LU, PT, SI

No: AT, HU

To some extent/partly: BG, CZ, DK, EE, EL, IE, LT, LV, MT, NL, PL, RO, SK

No Response: SE

Comments:

AT: When addressing minimum wages at EU level, it is of fundamental importance to respect the principles of subsidiarity and proportionality. The initiative is supposed to be part of a broader action plan to implement the European Pillar of Social Rights. However, there is no legal basis for introducing an EU initiative on adequate minimum wages, as Article 153 (5) TFEU explicitly exempts "pay".

BG: Clearer link should be established between the policy objectives and the objectives of the proposal related to the collective bargaining.

DK: Yes, but the underlying question is whether there is a legal basis and whether the principle of subsidiarity is fully met.

EE: The aim of a certain level of collective bargaining coverage seems to go further from the involvement of social partners in the Pillar of Social Rights. It might interfere the autonomy of social partners and the collective bargaining regulation. See also comments at p 1.

EL: Without prejudice to the position of the Greek Ministry of Labour and Social Affairs, one could broadly accept that there is consistency between the objectives contained in the proposal, and other policy announcements (for example, President Von der Leyen "State of the EU 2020" speech).

HU: Minimum wages are determined differently in different countries. Still generally they are determined in the context of the social dialogue, where governments seek to set minimum wages taking into account especially the performance/economic capabilities of low-profit producing SMEs. It means, that statements of the IA are inconsistent with broader policy strategies, as raising minimum wages beyond the performance of the economy as a whole does not help maintain domestic demand, stimulate employment, but increase in-work poverty and inequality. These facts are not included in the IA. Although the existence of minimum wages theoretically supports gender equality, in the present case it predicts rapid impoverishment; although it is true that equal opportunities would be achieved in this dimension. Among the identified problems, the IA also highlights the negative aspects of the free movement of workers (p.20) triggered by low wages, which – according to the statements of the IA - could be balanced by adequate level of the minimum wage, halting "unfavourable" demographic trends. Among the expected positive effects of the proposed directive, the IA lays down that ensuring decent working conditions (including adequate minimum wages) could reduce intra-EU labour mobility from low-wage Member States to other regions. We are extremely concerned to observe that a declining volume of exercising the fundamental right of free movement of workers ensured by the Treaties of the European Union [Article 3 (2) TEU] can be declared as an objective for any EU initiative.

IE: These objectives may be in conflict with the broader principle of subsidiarity. Article 5(3) of the TEU explains this stating that "in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level." Further, it may be in conflict with the aim of achieving a "competitive" economy as described in Article 3 of the TEU: "The Union… shall work for the sustainable development of Europe based on balanced economic growth … a highly competitive social market economy".

LT: Better job quality has been one of the objective in different EU policy strategies, however some elements (e.g. reaching a specific collective bargaining coverage) seem not to be consistent with the economic reality in many Member States and are not justified by broad policy strategies. Additionally wages play a role in economic/monetary policies as well and thus should not be analysed only as part of working conditions, the latter seems to be the case of the current Commission proposal. Reaching a specific collective bargaining coverage goes far beyond effective involvement of social partners in policy design and implementation, the latter being linked to the European Pillar of Social Rights as well.

NL: The objectives are consistent with the broad policy strategies and some other relevant policy initiatives, though not all goals have a clear relation to the articles. More emphasis on a constructive social dialogue among social partners with a strong capacity may improve the coverage to which the bargaining applies and it may improve the adequacy of (minimum) wages. More comparability and coherence among setting systems may lead to an improvement of the level playing field. However, it is unclear to what extent the initiative contributes to the policy objective of upward socioeconomic convergence on the EU and whether the requirements solve rather than exacerbate a potential widening of the existing gap between the lowest and the highest minimum wages in the EU.

PL: Even though improvement of working conditions might be an important EU policy goal, broad policy strategies do not provide basis or sufficient justification for the proposal, esp. for setting a specific threshold for collective bargaining coverage or a binding, complex mechanism for setting minimum wage for all Member States.

PT: It could contribute to strengthen the social dimension of the single market and to enhance the underlining goals of the "Fair Working Conditions" chapter of the European Pillar of Social Rights.

RO: It is not clear how the Union action respects the proportionality principle and does not go beyond what is necessary to meet the desired objectives.

3 (c) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, CY, EL, ES, FI, FR, HR, IE, IT, LU, SI

No: LV, NL

To some extent/partly: AT, BG, CZ, DK, EE, HU, LT, MT, PL, PT, RO, SK

No Response: SE

Comments:

EE: Whether the 70% of collective bargaining coverage is an aim or not an aim, remains unclear as on the contrary to some explanations in the SQWP, the IA points out in p 4.2 that the collective bargaining coverage rate at a level of at least 70% in all Member States is a specific objective. It remains highly questionable whether a collective bargaining coverage rate of 70% is a clear and realistic objective for all Member States taking into account the specificities of the systems of national labour markets. The use of possible indicative reference values in order to reach general objectives could be also analysed more and presented more clearly. The choice of reference values, the nature of being mandatory or voluntary reference value and different timeline scenarios for reaching the values would have been appreciated. The IA uses two main indicators (while rec 21 of the proposal gives an impression of a wider choice), analysing only how high values should be used without clearly presenting options for gradually raising the level.

LV: By mixing the role of minimum wages and thus income from work for the lower qualified with collective bargaining that covers all wage scales and with social partner capacity the specific and operational objectives of the proposal seem unclear and the links between those are thus questionable.

NL: According to the Impact Assessment, the initiative aims at improving working conditions by ensuring that all workers in the Union have access to adequate minimum wage protection either in the form of statutory minimum wages or wages set in collective agreements, allowing for a decent living wherever they work, as laid down by principle 6 of the European Pillar of Social Rights and the Treaty. It is unclear which is the ultimate goal. According to the Directive, it is adequate minimum wage protection, which is considered to be adequate if the minimum wage is both 'fair' and provides for 'a decent living'. In comparison, the ultimate goal of principle 6 of the European Pillar of Social Rights is more explicit: the goal is the provision of decent standards of living. In the opinion of the Dutch government, the adequacy of minimum wage is an intermediate goal to achieve the ultimate goal of the provision of decent standards of living, as set in principle 6, considering the Dutch system of additional income support measures.

Furthermore, fairness is to be expressed as a relative comparison of minimum wages vis-à-vis other wages, whereas the provision of a decent standard of living is to be assessed by a nominal comparison of minimum wages vis-a-vis the costs of a decent standard of living. It is unclear why the guidance of adequacy is to be assessed by reference values commonly used at the international level, which use solely the relative component (fairness).

It is unclear why the Commission has chosen 70% as the threshold of the collective bargaining coverage rate.

It is unclear why the Commission has chosen to propose more requirements to Member States that set a national statutory rather than a collectively agreed minimum wage. Especially considering that some Member States that use collective bargaining have relatively low minimum wages, and considering that some Member States that set a national statutory minimum wage have relatively high minimum wages.

PT: However, it is not clear if all operational objectives/criteria are cumulatively mandatory.

RO: It is not clear the role of interventions in policies related to the autonomous action of the social partners at national level.

SK: We express doubts, whether the objective (or threshold?) of 70% of coll. bargaining coverage is realistic due to the different national circumstances in the MS.

3 (d) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, ES, FR, IT, LU

No: CZ, FI, HU, MT, RO, SE

To some extent/partly: AT, BG, CY, DK, EE, EL, HR, IE, LT, LV, NL, PL, PT, SI, SK

No Response:

Comments:

BE: However, considerable technical progress still has to be made on comparative indicators at the European level. As the text refers to collective bargaining coverage in general, we wonder if it should not rather refer more specifically to collective wage bargaining coverage.

BG: The availability of data for monitoring is not fully explored, and there are gaps that should be addressed, especially in terms of unified and consistence data to be collected through Eurostat.

CY: More technical work needs to be undertaken to come up with appropriate EU-wide indicators, which are clearly defined, strongly linked to policy objectives and easy to measure (easy to obtain relevant data). For example, more work is needed with respect to the indicator of "collective bargaining coverage rate".

EE: It is not quite clear how all objectives shall be measured, for example existing variations and existing deductions. The collective bargaining coverage indicator is not measurable at this point, as the respective data is not comparable and reliable in order to monitor the development of collective bargaining coverage in the Member States.

EL: Indeed, the objectives should be linked to measurable monitoring indicators, however, these should be carefully selected in order to measure the impact in an holistic approach, as much as possible. For example, the in-work poverty, the effect on employment, social conditions.

FI: There is no simple definition of minimum wages based on collective agreements. It seems impossible to compare “minimum wages” according to collective agreements and minimum wages based on legislation. Concerning wages based on collective agreements only statistics on real wages are available and can be produced.

HR: There is an open question of (different) methodology MS are to use when assessing objectives achievement.

HU: Appropriate monitoring indicators require clear and stable definitions (e.g. minimum wage, collective bargaining coverage). Comparing data with different elements distorts the end result and the achievement of objectives. The indicators focus exclusively on the level of the minimum wage, but a complex assessment of the achievements set by the objectives also requires the information about the number of people affected by the minimum wage (by territorial, company size, sectoral and majority ownership) and the required resources in order to finance the increased wage bill. In addition, Member States' GDP and productivity growth, inflation rates and macroeconomic forecasts should also be given special attention when examining the issue. Planning would be greatly supported by the ideas of neighbour Member states or Member states in similar or same socio-economic situation regarding increasing their minimum wage. These information and data, as well as the indicators that could be calculated from them, are not included in the IA, thus leading to a falsely oversimplified solution to a very complex matter.

IE: “Union coverage” is not a concept that was designed to be used in legislation and there are many problems associated with its measurement. Annex 4.6 of the Impact Assessment addresses some of these and they are of major importance.

IT: Yet, we need a more adequate/quality indicator to measure collective bargaining coverage at national level.

LT: In the IA itself it is clearly stated that there is no enough data to compare statutory MW systems and systems which MW set by collective agreements.

LV: Data on mandatory minimum wages is available, however less so information on social partner coverage and collective bargaining coverage, however a specific threshold is being proposed for the latter.

MT: The data for the monitoring indicators suggested is not easy to collect. Also the reporting measures, especially when it comes to assessing collective bargaining coverage, is vague.

NL: The objectives can be linked to measureable indicators. Nevertheless, these will not be easily comparable, since the Member States have the freedom to choose them. Moreover, as elaborated on before, some of the presented indicators are considered to be arbitrary.

PL: The indicators as regard minimum wage are proper, but there are possible problems with their availability (scope, frequency, etc.) in Member States (e.g. in Poland). Also data on collective bargaining coverage seems to pose problems for several Member States and so it is unclear how reaching the 70% threshold is to be assessed.

PT: Annex 13 presents a set of core indicators to monitor minimum wage levels and coverage. However, the Eurostat data may not be enough and have the necessary timeliness, detail and accuracy to this effect (or account for each MS specificity). There's also a lack of clarity in the explanation on time frame for analyses.

RO: There is no specific methodology for some indicators (absolute/relative).

SE: Regarding "General objective 4.1": "The initiative aims at improving working conditions by ensuring that all workers in the Union have access to adequate minimum wage protection either in the form of statutory minimum wages or wages set in collective agreements". This is a complicated objective for countries without statutory levels. One can interpret the goal in a number of ways. In Sweden, it is more common among employees who have collective agreements that minimum wages are not included in the collective agreement. This is mostly because it's not needed. This applies to doctors, civil engineers, judges, financial brokers, lawyers, teachers, managers, etc. This raises the question how the directive is to be applied in those cases. Raising minimum wages to level the thresholds of 50% of the average wage or 60% of the medium wage will narrow the wage dispersion within countries. But it also requires relatively higher increases in € for countries who already have high average or medium wages. This will lead to an even wider spread of minimum wage levels between countries, thus counteracting social convergence.

SI: There could be some problems with the exact measurability of indicators, such as collective agreements coverage.

SK: At this point, it is not very clear how all objectives should be measured. Measuring the extent of coll. (wage) bargaining is difficult, as many MS do not keep central registers of CA, coll. bargaining is organized in different ways.

4. Subsidiarity & Proportionality

a) Is the Union's competence clearly established, and the legal basis?

b) Does the IA analyse whether acting is consistent with the principle of subsidiarity? Are necessity and added value of EU action clearly demonstrated?

c) Does the IA analyse whether acting is consistent with the principle of proportionality?

d) Does the IA contain consideration of action already taken or planned by EU and Member States, if relevant?

4 (a) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, CY, ES, FR, IT, LU, PT

No: AT, BG, DK, FI, HR, HU, IE, LT, MT, PL, SE

To some extent/partly: CZ, EE, EL, LV, NL, RO, SI, SK

No Response:

Comments:

AT: The IA does not sufficiently substantiate the chosen legal basis of the proposed directive. The Commission uses Article 153 (2) (b) TFEU as the legal basis, arguing that minimum wages are a key component of working conditions. However, this interpretation is not compatible with the wording of Article 153 (5) TFEU. The proposal for a directive on adequate minimum wage would not have only an indirect effect on pay (like e.g. the 2019 Directive on work-life balance for parents and the 2019 Directive on transparent and predictable working conditions), but would have direct interference in the determination and the level of pay. The Commission's interpretation would make Article 153 (5) TFEU completely redundant. Furthermore, the ECJ explicitly states that "determining the amount of the various components of pay" and thus the obligation to introduce minimum wages falls within the competence of the Member States (Case C-268/06). In addition Art. 4 of the proposed Directive requires another legal basis, if there's one at all.

BG: The Republic of Bulgaria welcomes the commitment made by the Legal Service of the Council to submit a written opinion on this issue.

CZ: The prompt delivery of the CLS opinion will be appreciated.

DK: According to Article 153 (5) TFEU the provisions of this Article shall not apply to pay. The Danish government is waiting for the opinion from the Council Legal Service on the legal basis. Case law that the Commission refers to has concerned ancillary regulation of pay (in the context of non-discrimination etc.) ECJ has never stated that pay can be regulated as the main purpose of a directive as long as there is no direct intervention in the level of pay etc.

EE: See comments at p 1.

FI: See above question 1.

FR: La base juridique est clairement exposée par la proposition de directive dont les dispositions font souvent le lien avec cette base juridique. En première lecture, la proposition semble contenir toutes les précautions nécessaires en mentionnant régulièrement l'article 153 du TFUE, paragraphes 1b (relatif aux conditions de travail) et 2 comme base juridique. Par ailleurs, certains éléments présentés par la Commission pourraient également relever de l'article 153 du TFUE, paragraphe 1, f), i) j).

HU: The legal basis indicated in the draft directive seeks to bring wage regulation in line with EU law by referring to the title 'Social policy' of TFEU, Article 153 (1) (b), i.e. working conditions and Article 153 (2) governing Member States' tasks. Although it is possible to set minimum standards for working conditions within the current contractual framework, Article 153 (5) TFEU explicitly excludes the application of this article to remuneration, with a clear provision that Member States have national competence to do so. Nor can the minimum requirements for working conditions listed in Article 153 be regulated in a way that the rules laid down should be applicable to pay. In contrast, the proposal indirectly imposes an obligation on Member States for minimum wage setting, as well as the preferred system to it and the proposed method of calculating such, so that if adopted, the EU legislator would deprive Member States of their competence laid down by the TFEU. It is also unclear how the proposed directive complies with Article 153 (2) (prohibition of measures holding back the creation and development of SMEs) as legal basis, when the IA finds that two thirds of the cost of increased minimum wage will fall on this sector. (p. 219)

IE: As stated above, the legal basis the Union's competence for this initiative is not clearly established and Ireland is unable to support this without further legal assessment from the Council Legal Service. The Commission uses Article 153 (1) (b) TFEU as the legal basis. However, this may not be compatible with Article 153 (5) TFEU, which explicitly exempts "pay".

LT: The EU competence is limited by TFEU 153(5) and the IA do not sufficiently analyse it. Moreover the IA clearly identifies two specific objectives: 1) Member States with statutory minimum wages would ensure that the minimum wage is set and maintained at an adequate level (as guided by reference values commonly used at the international level). 2) In all Member States the collective bargaining coverage rate would be at a level of at least 70%. While there are some explanations in the IA regarding the first specific objectives, the second one is missing as it should be linked to the TFEU (153(1)(f). For these reasons it is not clear if the Directive is in line with the EU competence (TFEU 153(5)) and if so is the legal base is chosen correctly (not choosing or including 153(1)(f)). Therefore, we are looking forward for the opinion by the Council Legal Service.

LV: The union competence of the proposal is linked to the notion of working conditions what seems to need further elaboration by the Council Legal Service.

MT: Malta looks forward to the Council Legal Service legal opinion.

NL: See answer to question 1.

PL: According to Treaty article 153 (5) the EU has no competence to introduce a binding legal instrument on the level of minimum wages as that matter is the competence of national social partners and Member States. Although the proposed directive does not directly establish a uniform level of the minimum wage throughout the EU, it influences the determination of wage levels in individual Member States, through the use of strictly defined mechanisms of shaping the adequacy of the minimum wage in countries with a statutory minimum wage. Defining the adequacy of minimum wages does influence their level in the Member States, and as such is covered by art. 153 (5) TFEU. In addition, as upward convergence in minimum wages seems to be the expected effect of the proposal, it also seems difficult to argue that the proposal does not concern the level of minimum wage. As regards the obligation to promote collective bargaining in the Member States, the directive or the IA in no place point to the EU competence in this field, while that obligation goes beyond the assumed legal basis of article 153 (1) (b) TFEU. As it is, in order to fully respect the prerogatives of the Member States and national social partners, all initiatives taken by the European Commission in those fields should be non-binding.

PT: The proposal for the directive is based on Article 153 (1) (b) of the TFEU, which states that the EU will support and complement the action of Member States in the field of working conditions, within the limits of the principles of subsidiarity and proportionality (Article 5, paragraphs 3 and 4, TFEU). Since it does not contain measures that directly affect or establishes the level of remuneration, it fully respects the limits imposed on EU action in Article 153 (5) TFEU.

RO: In respect to the chosen legal basis, it is unclear whether it is appropriate and respects the national competence to take action in this field.

SE: EU competence on the matter is limited. SE welcomes that the Legal Service of the council has been asked to deliver a written opinion on the legal basis. As for the COM IA on the matter SE inter alia questions the relevance of making reference to recent directives TPWC and WLB.

SI: Here we expect the additional legal opinion of the Council's Legal Service on the legal basis to clarify all concerns and dilemmas of the MS.

SK: As stated above legal opinion of the CLS will be extremely helpful to scatter all doubts about compliance of the proposal with the principle of subsidiarity as well as proportionality. Especially, when the whole Chapter II is addressed to the MS with the statutory minimum wage only.

4 (b) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, BG, CY, CZ, ES, FI, FR, IT, LU, PT, SI

No: AT, HU, SK

To some extent/partly: DK, EE, EL, HR, IE, LT, LV, MT, NL, PL, RO

No Response: SE

Comments:

AT: The principle of subsidiarity as well as the division of competences between the EU and its Member States need to be respected and are necessary to ensure that political priorities are efficiently delivered.

DK: The Danish government is in the process of assessing the principle of subsidiarity. The comments below are only preliminary: Looking at the IA and the analysis the Danish government raises doubts whether the added value and necessity of the EU action is clearly demonstrated. It is important that the social partners' autonomy and right to freely negotiate and conclude collective agreements are respected. In the IA it is stated that this approach (the Directive) would not interfere with Member States and social partners' competence to determine the detailed modalities of their minimum wage setting frameworks and in particular the level of minimum wage. However, the autonomy of the social partners and there responsibility for the collective bargaining coverage will be affected. In Article 4 (1) 2, read in connection with the considerations that if the collective agreement coverage is below 70 per cent, the Member State must by law or tripartite agreement create or strengthen a framework for collective bargaining. In accordance with the principle of subsidiarity it should be possible to do so by agreement only between the social partners. In this context, Article 13 of the proposal, which reflects the Treaty, states that the parties may be left to implement the Directive. This is not possible if the Member state is responsible for making laws or tripartite agreements for a regulatory framework. Articles 11 and 12 of the proposal contain provisions on enforcement / punishment that are not sufficiently clear, and therefore may risk giving a worker without collective agreement the right to go to court to demand collective bargaining pay or otherwise interfere in the parties' conflict resolution mechanisms. The mentioned provisions go too far in relation to the principle of subsidiarity.

EE: The IA analyses the principle of subsidiarity, but added value of EU action does not seem to be demonstrated clearly enough. It is unclear how the purpose of setting adequate level of minimum wage is in correspondence with the principle of subsidiarity while the whole chapter of requirements for adequacy of minimum wages is set only for MS with statutory minimum wages, leaving aside MS with collective bargaining minimum wages, and also taking into account that the MS are free to choose which system they use. Also, when the MS where wage setting is ensured exclusively via collective agreements do not have to introduce a statutory minimum wage nor to make the collective agreements universally applicable, there still will be workers without any minimum wage protection. Therefore, it seems possible that the objectives could have been reachable without a binding instrument at the MS level at least as effectively.

FR: La partie relative à la valeur ajoutée de l'action de l'Union en la matière pourrait être utilement développée/consolidée, notamment compte tenu des retours négatifs sur cet instrument déjà émis par plusieurs États membres.

HU: Regulation at EU level may have an impact not only on the functioning of the labour market in the Member States but also on its social protection system and, because of the care system, indirectly on the budgets of the Member States, going beyond the powers[3] of the EU legislature. This issue is not covered by the IA.

IE: The principle of subsidiarity requires that the Union only intervene outside its areas of exclusive competence if an objective "cannot be sufficiently achieved by the Member States" (TEU Article 5(3)). The Impact Assessment states that "Action at national level has proven insufficient to address the problem". If this is the case, then the principle of subsidiarity has been met. However, the Impact Assessment does <u>not</u> demonstrate or provide sufficient evidence that action at national level has proven insufficient.

LT: The IA do not explain why it is necessary to take action at the EU level and why not to leave it at the national level for MS although admitting that two separate MW setting models exists and are possible in the EU. In addition, it does not justify why some measures, which address the same objective, are part of some packages for one group of MS and not for other MS.

LV: The added value of EU action is not sufficiently demonstrated and the impression is created that minimum wages can be looked at separately from the economic development of the Member State and more so – the questionable argument is made that higher minimum wages would considerably contribute to economic development in all cases.

MT: While the EU action does demonstrate some added value, Malta does not believe that it is fully consistent with the principle of subsidiarity, in particular with relation to the adequacy rules being proposed, as contrary to the Commission's opinion such measures are indirectly effecting wages across the EU as well as would have direct interference in determination and setting a certain level of pay.

3

NL: Chapter 3.2 of the IA analyses whether acting is consistent with principle of subsidiarity. The Dutch government assesses the principle of subsidiarity as positive with reservations. As the Commission concludes, EU action on fair minimum wages might 'improve the fairness of the EU labour market' (i.e. a stronger level playing field), 'promote economic and social progress and cohesion, help reduce the gender pay gap, and contribute to upward social convergence'. Nevertheless, the government places a reservation due to the fact that to promote convergence it is first and foremost necessary to strengthen the economic fundamentals of lagging Member States, these economic fundamentals need to be addressed by the Member States themselves.

PL: The European Commission's proposal for legally binding wage legislation is in breach of the EU's subsidiarity principle, that decisions should be taken at the lowest administrative possible level.

In light of the subsidiarity principle, it is not justified to define economic indicators that are to serve as the basis for determining the minimum wage in each country. In practice, this leads to a limitation of the autonomy of national legislators, who may be forced to determine the minimum wage according to a top-down pattern, not adapted to local economic conditions, the specificity of the legal systems of individual countries and their wage shaping systems. At the same time, this means a violation of the democratic principle of making decisions as close as possible to the citizens of the Union, as national legislators will be deprived of the possibility of a full selection of minimum wage indicators adapted to the domestic market and the remuneration system.

The proposed solutions are aimed in practice at the unification of systems of wage formation in individual countries according to a model similar to the Scandinavian one, based on the dominant role of collective bargaining and collective agreements. The proposed regulations are aimed at introducing this model in countries where, like in Poland, the minimum wage is established mainly by law, with the significant participation of social partners. Contrary to the declarations of the European Commission, contained in the documents justifying the proposal for a directive, this action is not in line with the principle of respecting national traditions and the autonomy of social partners.

It is not sufficiently explained on what basis rests the assumption that the assumed social goals cannot be achieved by the Member States without such far-reaching measures adopted at the EU level. The Commission also does not sufficiently justify how the proposed solutions will better achieve the assumed objectives. The documents accompanying the proposal for a directive mainly contain general declarations, but they contain too few detailed quantitative and qualitative indicators that would justify a statement that the proposed solutions will best serve the achievement of the assumed objectives.

In particular, the Commission does not take into account the dynamics of the minimum wage growth in individual EU countries, although it itself quotes in the Impact Assessment data showing a dynamic increase in the level of these wages over the last 20 years (IA p. 152). In particular, one should bear in mind the dynamic changes in the minimum wage in Poland in recent years, which have led to a significant increase in the amount and approach to the average values, with the prospect of further increasing the minimum wage. In this respect, the Commission does not take into account, inter alia, the specificity of the countries of Central and Eastern Europe, especially Poland, where economic development over the past decades has led to dynamic GDP growth and a change in the economic growth model and wage structure, leading to a gradual convergence of wages to the level of richer EU countries. These changes are made at the national level, without the need for top-down interference by the EU legislator. With regard to the European level, the Commission acknowledges in the IA (p. 4) that the adequacy of the statutory minimum wage has improved in many countries over the past years.

The European Commission cites examples of some Member States in which the rules of determining the minimum wage are assessed as non-transparent. However, it should be borne in mind that in most EU countries these rules are already established according to the model of shaping the minimum wage adopted in a given country. Moreover, in recent years there has been a tendency to introduce regulations on the minimum wage in those countries where it has not been legally regulated so far, or to extend the scope of these regulations (e.g. Germany - MiLoG from 2015), as well as to gradually increase the minimum wage in these countries. In the light of these facts, the argumentation of the European Commission regarding the need to increase the transparency of the systems of shaping the minimum wage and the top-down enforcement of its increase is doubtful.

Moreover, the Commission acknowledges that it has instruments for multilateral scrutiny of Member States' minimum wage policies under the European Semester and can issue policy guidelines in this regard.

It is not sufficiently justified how the proposed solutions will minimize any financial or administrative burdens imposed on the Union, national governments, regional or local authorities, economic operators and citizens. On the contrary, the new burdens should be considered disproportionate to the intended purpose and excessively burdensome on the economy (Article 5 of Protocol No. 2), especially in the context of the crisis caused by the COVID pandemic.

The Commission is not sufficiently demonstrating that there are no better tools at European level to achieve the social goals pursued, including more flexible solutions that would allow countries to possibly deviate from the adopted rules in the event of economic downturn or economic competitiveness in the Member States.

RO: The added value of EU action is not sufficiently demonstrated.

SE: The considerations in the IA on the application of the principle of subsidiarity are not entirely convincing.

SK: National legislation, as amended, guarantees employees a minimum wage at a higher level than proposed by the Draft Directive (57%). At the same time, national legislation guarantees the participation of the social partners in the process of determining the amount of the minimum wage, and the determined minimum wage applies to all employees. The added value of the Directive is not entirely clear in this context.

4 (c) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, CY, ES, FI, FR, IT, LU, PT, SI

No: AT, HU, MT

To some extent/partly: BG, CZ, DK, EE, EL, HR, IE, LT, LV, NL, PL, RO, SK

No Response: SE

Comments:

AT: The IA does not sufficiently substantiate how the proposed directive is in line with the principle of proportionality. Unclear wording and notions in the directive leave a broad room for interpretation. The directive might considerably interfere with well-established national wage-finding systems and social partner autonomy.

BG: The proportionality of the measures proposed should be addressed further, as the burden on changes to the national system and practices for MS with statutory minimum wages is much higher compared to the MS with collective bargaining systems.

CZ: The prompt delivery of the CLS opinion will be appreciated.

DK: The IA does not sufficiently analyze that the proposed directive is in line with the principle of proportionality and the objectives could not be met using the existing mechanism in the European Semester etc.

EE: The IA includes proportionality considerations, but as regards collective bargaining regulation, the considerations are partly based on data that are not reliable nor comparable and go broadly into the entire collective bargaining not limited to minimum wages. MS circumstances as regards minimum wage setting systems, national differences could have been taken more into account. Some of the measures seem to go into more detail than needed. More in depth analyses would have been appreciated on the consistency of the principle of proportionality and the autonomy and capacity of social partners and the feasibility of specific aims of the proposal.

FR: Cf. 4.a)

HU: The IA only formally analyse the proportionality, dodges the important questions.

IE: The principle of proportionality requires that "the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties" (TEU Article 5(4)). It is unclear that this proposed directive, which may have major implications for the operation of well-established national industrial relations systems, meets this principle.

LT: The considerations in the IA on the application of the principle of proportionality are not entirely convincing especially taking in to account that the comparable data is missing.

LV: Though the analysis regarding proportionality seems to be consistent with actions proposed in the area of minimum wages (e.g. not proposing any reference values but more evidence based policies and elements that have been part of the European Semester/CSRs), there is no clear explanation about how actions proposed as regards collective bargaining and social partner involvement and capacity would be consistent with the proportionality principle especially given the very different traditions in this field and this variety being reiterated in many Council Conclusions.

NL: In chapter 3.1 the IA analyses the principle of proportionality by assessing whether EU action goes beyond what is necessary to achieve the policy objectives.

Nevertheless, the Dutch government assesses the principle of proportionality as partly positive and partly negative.

The partly negative opinion is explained by the Commission's choice for a Directive as the legal instrument. The Dutch government is of the opinion that new legislation must not be the first choice in all cases. For the purpose of the second consultation round with social partners, the Commission suggested a Council Recommendation as a possible instrument, besides the option of the Directive. A Council recommendation could also have provided the necessary guidelines to improve and encourage the collective bargaining coverage.

PL: The proposal is not in line with the principle of proportionality. It is agreed that workers should earn a decent living, but the proposed regulation goes beyond what is necessary to achieve the assumed goals, especially in the context of promoting collective bargaining and the complex mechanism of setting and monitoring the minimum wage in the Member States. The European Commission's proposal affects the competences of national social partners and Member States. It is particularly important in relation to the freedom of collective bargaining and in the light of the voluntary nature of collective bargaining. The assumption that only setting minimum wage through collective bargaining and gradually reaching the 70% threshold of coverage by collective agreements guarantee adequate minimum wage goes too far and lacks sufficient justification. If that assumption was correct, what would be the point of establishing a complex mechanism of setting statutory minimum wage.

As regards the mechanism of setting the minimum wage there are doubts in particular about the obligation for Member States to use - in addition to the indicators (elements) used to define the criteria in art. 5(2) - also indicative reference values (such as those commonly used at international level – art. 5(3)). Taking them into account may amount to an excessive (double) burden on the Member States as regards the requirements imposed on them, while the adequacy is supposed to be guaranteed by the use of elements set in art. 5 (2) of the proposal.

RO: The directive might interfere with national wage setting systems and social partners' autonomy.

SE: The considerations in the IA on the application of the principle of proportionality are not entirely convincing.

4 (d) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, CY, DK, ES, FR, HR, IT, SI

No: HU, NL, SK

To some extent/partly: AT, BG, CZ, EE, EL, FI, IE, LT, LU, LV, MT, PL, PT, RO

No Response: SE

Comments:

AT: The initiative is supposed to be part of a broader action plan to implement the European Pillar of Social Rights. However, there is no legal basis for introducing an EU initiative on adequate minimum wages, as Article 153 (5) TFEU explicitly exempts "pay".

CY: At a great extent it does, even though there is more room for improving the analysis of actions already taken or planned by MS.

DK: Yes, e.g. reference is made principle 6 of the European Pillar of Social Rights.

EE: The IA contains consideration of action already taken or planned by EU. The IA could have contained more considerations of actions already taken or planned by the MS.

HU: Clearly not. The IA is based on outdated data and does not consider the significant efforts made by Member States, e.g. the minimal wage in Hungary has been raised to 219% of its 2010 level and steadily increasing. There is no justification for Union action (neither is legal basis) considering such a steep wage increase done by the Member State.

IE: There is substantial consideration of action already taken in the Impact Assessment. However, given the need to demonstrate that an objective "cannot be sufficiently achieved by the Member States" in order to meet the principle of subsidiarity, the Impact Assessment does not sufficiently consider the actions already taken at a national level.

LT: Actions taken or planned at Member State level have not been analysed and considered reasonably.

LU: This initiative is linked to the EPSR (principle 6) and shall be included in the future action plan to implement the EPSR.

LV: Actions taken or planned at Member State level have not been analysed and considered sufficiently.

NL: The IA takes consideration of ongoing actions by referring to principle 6 of the European Pillar of Social Rights.

However, the Dutch government misses the element of regular evaluation of the national minimum wage setting system and the involvement of social partners in this process. And the increases in the youth minimum wage of 2019.

PL: There seems to be no in depth analysis concerning actions taken or planned by the Member States.

PT: This initiative is linked to the EPSR (principle 6) and shall be included in the future action plan to implement the EPSR.

RO: Actions taken or planned at Member State level have not been analysed sufficiently.

SE: Lessons could be learned from the Working time directive (WTD). That directive also addresses questions often dealt with by social partners and it has shown just how hard it is to create adequate EU measures on matters that are in the very heart of collective bargaining. The inflexibility of the WTD must be avoided in any new proposal.

SK: The Slovak Republic has already introduced measures to set the amount of the minimum wage and in the event that the social partners do not agree on its amount, the determination of the amount of the minimum wage is linked to one criterion (57% of the average wage). We think that this criterion also aggregates in some way the other criteria proposed in the Directive and that Member States should choose the set of “ancillary” criteria to achieve the Directive's objective, or not mention them at all if they are not necessary to meet the 50% of average wage.

5. Policy Options

a) Does the IA identify all feasible policy options (regulatory and, where appropriate in accordance with the 2003 IIA, non-regulatory) to meet the objectives, including the "no EU action" option, alternatives to regulation and further harmonisation?

b) Are the most affected subjects/stakeholders identified?

c) Has the information on how the inputs from end-users and stakeholders informed the policy options been provided?

d) If options favoured by stakeholders in open consultations are discarded, is thorough examination provided?

5 (a) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, BG, CY, CZ, DK, ES, FI, FR, IT, LU, PT, SI

No: AT, HU

To some extent/partly: EE, EL, HR, IE, LT, LV, MT, NL, PL, RO, SK

No Response: SE

Comments:

AT: The rationale behind the option packages is not made clear in the IA.

FR: Le choix de l'instrument juridique a été examiné dans le cadre de l'étude d'impact, qui conclut que le choix d'une Directive est préférable à l'option d'une Recommandation du Conseil. En effet, une Directive permet de fixer des objectifs minimums, tout en laissant aux États membres une certaine liberté pour définir la méthode en vue de les atteindre.

HU: Although examining several options, the IA does not provide a sufficiently thorough justification as regards the option chosen and therefore included in the proposal (e.g. when choosing proposed international reference values; or deciding between a directive and a recommendation or a combination of these as a legal instrument).

IE: A substantial consideration of various options is given. But consideration is not adequately given to a "no EU action", national-level approach.

LT: Non-regulatory options have not been sufficiently examined

LV: The “no EU action” option seems exaggerated and implies that Member States would have an incentive to take no action in the area of minimum wages what does not seem feasible.

PT: Article 153 seems to be the appropriate legal basis for an EU initiative on fair MW. Article 153 (5) TFEU contains limitations on EU competence. It follows that, in the light of Article 153 (5) TFEU and the settled case law of the ECJ, any EU action in the field of MW should not seek to harmonize the level of MW across the EU, nor seek to establish a standard for setting MW. Therefore, the diversity of MW setting systems in Europe will be preserved. MW would continue to be fixed by collective agreements or legal provisions, in full respect of the national competences and of the autonomy of social partners. The initiative would allow Member States to implement measures, including those related to collective bargaining and national frameworks for statutory minimum wages, taking into account their national economic circumstances and the specificities of their minimum wage setting systems. The limits on the legal possibilities for EU action also imply that EU action would not make it binding on Member States that use collective bargaining to introduce mandatory minimum wages.

SK: The proposal provides a variety of alternative policy packages, however, it is not exhaustive. For instance, the IA gives little space to considering the no-EU action alternative, assuming that countries would not reform their own wage setting mechanisms over time. Outlining broad policy trends, and assuming their continuation into the future, would make the baseline scenario more realistic.

5 (b) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: AT, BE, BG, CY, DK, EE, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, NL, PL, PT, RO, SI, SK

No:

To some extent/partly: CZ, EL, MT

No Response: SE

Comments:

CZ: "Identification" does not mean "consultations".

HU: The proposal will likely to have a profound and negative effect on SMEs. This avenue is left unexplored by the IA.

LV: Stakeholders have been mentioned, however the assessment of impact on competitiveness and real exchange rates is missing, thus it seems that the arguments provided in the Commission assessment are inconsistent with the advice provided to a number of Member States during the financial and economic crisis that followed 2009.

SK: The relevant stakeholders are identified in Section 2.6.

5 (c) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, BG, CY, DK, EL, ES, FR, HR, IE, IT, LT, LU, PT, RO, SI, SK

No: NL

To some extent/partly: CZ, HU, LV, MT, PL, SE

No Response: AT, EE, FI

Comments:

AT: This Question is unclear.

CZ: Stakeholders are identified across the document, however they were not necessarily part of consultations. Moreover, entities addressed might not represent all relevant stakeholders. For example, persons from socially excluded localities may not be always represented by trade unions. Trade unions are not the only "end-users" or "stakeholders".

EE: This question is unclear.

LV: Information on stakeholder consultation has been provided, however with a number of stakeholders presenting opposing views an explanation why some of those views were favoured over others would have been helpful.

SE: Separate input from Nordic countries trade unions is not mentioned. "Reply of the Danish, Norwegian, Icelandic and Swedish trade union federations on the Second Phase Consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges related to fair minimum wages".

SK: The consultation process is described in Annex 2.

5 (d) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, CY, ES, FR, IT, LU, MT, SI, SK

No: HU

To some extent/partly: AT, BG, CZ, DK, EE, EL, HR, IE, LT, LV, NL, PL, PT, RO

No Response: FI, SE

Comments:

AT: According to the IA, during the consultation phase, ETUC and CESI called on the European Commission to propose an EU Framework Directive while CEC European Managers considered a Council Recommendation as the most effective tool. Most employers' organisations advocated that the EU has no competence to introduce a legal instrument, however, several organisations stated that a Council Recommendation could be considered, provided that the autonomy of social partners and freedom of collective bargaining are fully respected and well-functioning national wage setting mechanisms are not undermined. In the IA, a Council Recommendation or Combination of a Directive and a Recommendation are only briefly mentioned, a thorough examination however has not been provided.

DK: For MS with labour market models where the social partners are the solely responsible for wage setting through collective agreements the issue of monitoring and enforcement of collective agreements, including conflict resolution mechanism is lacking in the AI**.**

EE: IA could have provided more thorough reasoning on discarding some of the views of stakeholders.

HU: None of the employers' organization wanted this proposal, in fact, the major social partners were clearly objecting to it and requesting the Commission not to present any legally binding proposal. The trade unions of the Nordic Member States – members of ETUC and representing over six million workers – objected against any proposal by the Commission in their open letter in September 2020. None of the above mentioned major factors influenced the policy options.

IE: Substantial information is provided on the stakeholder consultation. However, it is clear that stakeholders presented opposing views, with the majority of employers' representations being substantially more critical of the initiative than employees' representations. Explanation for why the opinions of employees' representations appear to have been preferred would be helpful.

LT: Some opinions (opposite) seem to have been ignored, in particular as regards the legal form of the initiative.

LV: The examination seemed incomplete with some views disregarded – in particular linked to the legal form of the initiative.

PT: All options and respective measures seems to have been duly considered and analysed, resulting in three policy packages, which represent coherent sets of measures and which comply with the Treaty provisions.

RO: Taking into account that the employers' organisations opted mainly that a Council Recommendation could be considered, there is no in depth justification for discarding this option.

SK: The relevant information is provided in Section 5.5.

6. Analysis of impacts

a) Are the positive and negative impacts of each policy option and for the 'no EU action' option, including the direct and indirect environmental, economic, and social impacts, clearly considered?

b) Are impacts of different policy options expressed in a comparable format and compared against a clear set of criteria?

c) Are impacts on the main groups of affected subjects/stakeholders clearly analysed, for each policy option, especially for the preferred option?

6 (a) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, CY, EL, ES, FR, IT, LU, PT, SI

No:

To some extent/partly: AT, BG, CZ, DK, EE, HR, HU, IE, LT, LV, MT, NL, PL, RO, SE, SK

No Response: FI

Comments:

BG: The assumption that no EU action would leave significant negative effect should be adjusted. For instance a number of MS have ratified ILO Convention 131. In Bulgaria currently the social partners are continuing the negotiations on a framework for minimum wage setting.

EE: The analysis of positive impacts is more thorough than analysis of the possible negative impacts (i.e. impact on SME-s that cannot absorb the increased labour costs). It is assumed that impacts are similar (and positive) in all EU countries, regardless of their different economic, historic etc background and starting point. Possible risks that come with different policy options are not clearly stated.

EL: Yes, they are considered, to the extent that there is also mere reference to the Baseline Scenario (p. 26).

HR: The policies have been considered without enough consideration of other circumstances, which deeply impact the mentioned areas.

HU: The IA does not analyze the effects of the increased minimum wage on Member States' budgets and emphasizes mainly its assumed positive effects, while the negative effects are marginally mentioned (especially for the SME sector). From Hungary's point of view, the increase in package B would mean a one-time increase, approx. 25% which in absolute terms does not mean an extreme increase, as there has been a similar situation when, for 2012, the minimum wage increased by 19%, from HUF 78,000 to HUF 93,000. However, in the current economic crisis, the Directive would be a mistake. It endangers the well-functioning industrial relations in many Member States, also endangers the creation of low-wage jobs by making it impossible for many SMEs hire new employees , due to the sudden cost increase.

IE: As stated in response to question 5(a), consideration is not adequately given to a “no EU action”, national-level approach.

LT: The effect was considered, but the analysis would require a calculation of the correlation strength.

LV: Impacts are considered, however analysis lacks in depth impact assessments and seems that observed correlations are taken for causalities especially as regards the economic impact.

MT: While no one is in disagreement that there should be efforts to assure adequate minimum wages, the economic impacts as well as the labour market have not been sufficiently analysed.

PL: The presentation on the impact of the minimum wage on employment (Impacts on employment and unemployment, p. 46) is vague. It contains only general statements about the positive impact of the minimum wage, while there are no data supporting the conclusions presented. The analysis does not contain complete information on the negative effects related to the functioning of the minimum wage in the Member States, and they may appear (in particular, that it is expected that the increase in the minimum wage will be faster than before).

RO: The impact on each system of minimum wage setting is not clear.

SE: The IA lacks an analysis of how the Covid -19 crisis can be expected to affect the impacts of the different policy options.

SK: Some of the scenarios (such as the baseline scenario) have been given less thought and some of the impacts (especially the environmental impact of increased household consumption) have also received little space in the IA.

6 (b) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, CY, DK, EE, EL, ES, FR, IE, IT, LU, PT, SI, SK

No: HU

To some extent/partly: AT, BG, CZ, HR, LT, LV, MT, NL, PL, RO

No Response: FI, SE

Comments:

EL: Yes, the IA is abundant with Tables, criteria, comparisons

LV: There is no clear set of criteria for the different policy options mainly because the impact assessment seems to be skewed towards the assertation that increasing minimum wages or increasing collective bargaining would be beneficial in all cases and in all stages of economic cycles.

MT: The different policy options are based on the same presumptions which are not robust in their formulation.

NL: While chapter 6 of the report is very rich in the description of the positive and negative impacts in various dimensions (economic, social etc), it is difficult to use this information to make a clear comparison. More use of visual elements such as tables and figures would help to get a better feeling of how various impacts relate to each other.

6 (c) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, CY, ES, FR, IE, IT, PT, SI, SK

No: LV

To some extent/partly: AT, BG, CZ, DK, EE, EL, HR, HU, LT, LU, MT, NL, PL, RO, SE

No Response: FI

Comments:

AT: See question 5.

DK: No substantive analysis of the impact of a Council Recommendation has been made.

EE: The negative impacts on low-wage earners' employment could be analysed more, especially in countries where the impact is greater. The analysis shows that 1% of employees will become unemployed in Estonia if the minimum wage is immediately raised to 60% of the median wage. The impact will probably be even greater during an economic recession. Therefore for a share of low-wage earners the initiative will actually have a negative effect if minimum wages are raised too fast to reach the adequacy thresholds.

EL: Impacts on work incentives could be further analysed (p. 47). Impact on undeclared work and "envelope wages", could be further explained by means of objective measurement/monitoring of compliance (p. 48). Also, some concerns are raised vis-a-vis the methodology applied at the level of Minimum Wage elasticity, across-the-board, for all Member States (OWE p. 117, p. 196).

FR: L'impact de la proposition de directive sur les principaux groupes affectés fait l'objet d'un examen approfondi dans le cadre de l'étude d'impact. On peut souligner notamment les bénéfices que pourrait avoir cette directive pour les femmes, puisque l'écart salarial serait diminué de 5% en moyenne si les Etats membres disposant d'un salaire minimum légal fixaient son niveau tel qu'il représente 60% du salaire médian ou 50% du salaire moyen (indicateurs avancés dans le considérant 21 de la directive).

HU: The significant increase of the minimum wage does not have a major effect on multinational companies while it does have on SMEs. The measures likely to lead to many non-desired phenomena. On is undeclared work, or partly undeclared work There is a real possibility that no new employees will be hired at all. In this case, not even the full elimination of social contributions (currently at a rate of 15.5%) would be able to compensate the prescribed increase in the minimum wage in Hungary. Argument in Section 6.2.2 on page 56. - where Hungary is mentioned by name that “pocket pay” for SMEs can mitigate the negative effects of a drastic increase in the minimum wage - quasi acknowledges a possible negative impact but does not consider the phenomenon to be a problem. Given our commitment to fight against undeclared work and also in light of the aspirations of the European Platform tackling undeclared work and more recently, ELA, this is concerning. However, the consequence is clear: it incentivizes SMEs even more into the grey and black zone of the economy, as companies report the employee to the National Tax office at a lower salary. In summary, employers of the private sector can be forced to pay higher wages - but under such circumstances they are more likely to the freeze hiring of new employees, or resort to undeclared work and risk fined by the labour authority than going bankrupt by default.

LT: A clearer and more detailed analysis of the impact on consumers and small businesses is needed.

LV: The impact on the economies of Member States is not sufficiently analysed and seems to be inconsistent with advice provided in the past (especially during the financial and economic crisis of 2009).

MT: The noted impacts on employers/businesses are poor and do not take into consideration issues of competitiveness for example.

NL: No substantive analysis of the impact of a Council Recommendation has been made.

PL: Member States costs linked to the establishment of a new data collection system for monitoring purposes and potential growth in reporting burden on entities and burden on NSI have not been taken into account. Also the costs related to the establishment of minimum wage advisory bodies were not sufficiently assessed, nor was the additional burden on social partners related to Article 7 of the Directive. The assessment of these costs was treated as marginal, while the costs are also borne by enterprises outside the public sector.

RO: The risk and indirect impact is not clear.

SE: The report describes that it is companies and consumers who will carry the main costs. We believe this is a too simplified description. The costs of higher wages in one group are taken from the wage space, and how this is distributed between employees and employers (companies) depends on the balance of power between employers and employees. If companies do not have any profits, or the possibility to reduce other costs, either wages must be reduced for other employees or the number of employees has to be reduced (the latter is more likely since nominal wage cuts are rare). In practice, this can lead to the minimum wage becoming a salary cap for all employees in the company where wages are set locally. Currently unemployed persons may also take a part of the costs if they miss out on job opportunities they otherwise should have had. In addition, vulnerable workers can end up in a situation where they lose their jobs – instead of an increased minimum wage, they do not get any wage at all but will have to rely on unemployment benefits or social assistance

SK: A short summary is provided in Annex 3.

7. Where relevant, are specific impacts[4] clearly presented, both in qualitative and quantified terms, for each option in a comparable manner and assessed on the basis of appropriate data and evidence?

☐ **a) Economic impacts**

☐ **aa) Impacts on competition**

7 (aa) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, BG, IT, LU, SI

No: AT, HR, HU, LT, LV

To some extent/partly: CY, CZ, DK, EE, EL, ES, FR, IE, MT, NL, PL, PT, RO, SE, SK

No Response: FI

Comments:

CY: Concrete empirical evidence could have been included.

CZ: Differences between Member States are not sufficiently considered. The descriptions of impacts are too generally and often insufficiently distinguished between different measures.

EE: The impact will be different for enterprises in different member states depending on the circumstances.

EL: To know the impact on competition, one ought to analyse the impact of MW adjustment on prices.

FR: L'impact sur la concurrence entre les pavillons européens n'est pas pris en compte notamment avec ceux où le salaire minimal n'existe pas.

IE: See answer to 7(ac) below.

[4] For a detailed list of possible impacts see section 8 of the Commission's Impact Assessment Guidelines (footnote 2), see http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_en.pdf

LT: We believe that impact on competition has not been sufficiently studied in countries where the minimum wage is insufficient and in countries where minimum wage protection is provided by collective agreements.

LV: Explained in 5 and 6.

MT: Analysis on competition rests on the assumption that compliance is enforced equally throughout MS leading to obtaining a level playing field.

NL: The IA does not address the issue of the possible further divergence of (minimum) wages. This development will put pressure on the competitiveness of enterprises. The IA should make a presentation of the expected minimum wage development following different scenario's and the impact on competition, amongst which the scenario in which all Member States with statutory minimum wages apply the two most commonly used reference values at international level.

PL: It is difficult to agree with the assessment of the impact of the increase in the minimum wage on migration issues among countries (page 19). The analysis ignores the importance of allocative efficiency, which is one of the main foundations for the proper functioning of the common market and competition not only in the product but also service markets.

PT: Quantitative information only.

RO: Unpredictable and no presentation of the impact on trade.

SK: Due to the different economic developments within the MS, we have some doubts about the overall positive economic impacts for enterprises, especially when we are entering in the period of recession due to the COVID crises.

ab) Impacts on consumers

7 (ab) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, BG, CY, ES, IE, LU, PT, SI, SK

No: EL, LV

To some extent/partly: AT, CZ, DK, EE, HR, HU, IT, LT, MT, NL, PL, RO

No Response: FI, FR, SE

Comments:

AT: According to the IA, consumption of lower-income groups is expected to increase. On the other hand, employers are expected to pass increased labour costs on to the consumers by increasing prices. These two arguments contradict each other to a certain extent.

EE: The possible impact on prices and overall cost of living is not emphasized enough, considering that increases in the minimum wages will lead to wage increases higher up the wage distribution and therefore will impact the cost of labour in all enterprises.

EL: Yes, presented, not substantiated (p. 56-57).

HU: Consumers can also be workers with a minimum wage, so if businesses pass on to consumers the extra costs of increasing wages, they will possibly reduce the purchasing power of the wages of some minimum wage earners.

IT: The immediate impact on consumers is well acknowledged, yet long-term effect on overall consumption – and therefore on GDP – is unexplored.

LT: See aa)

LV: Explained in 5 and 6.

MT: Impact of minimum wage increases on consumer prices and consumption are only presented at EU level and not for each individual MS. The impact of the initiative on inflationary pressures is missing from the analysis.

NL: The IA relies heavily on a sole research for consumption on consumer prices. It is a study focusing on Hungary only. A broader set of studies will provide a broader and more representative scope. These studies should include more Member States in different economic transition stages.

RO: Unpredictable.

SK: Appropriate evidence is mentioned in the IA (especially in Annex 12). However, the text appears to contradict itself in some points. On the one hand, empirical results suggest a small positive impact on aggregate consumption (which the IA might spell out more clearly in Section 6.2.2). On the other, the IA also emphasizes that estimated changes in minimum wage would inflate consumer prices. This makes results more ambiguous and the conclusions of the two arguments are contradictive.

☐ ac) Impacts on competitiveness

7 (ac) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, CY, ES, IT, LU, SI, SK

No: HR, LT, LV

To some extent/partly: AT, CZ, DK, EE, EL, FR, HU, IE, MT, NL, PL, PT, RO, SE

No Response: BG, FI

Comments:

AT*:* It is the role of national social partners (or Member States' governments) to balance the needs and interests of both, enterprises and workers, when setting minimum wages. Indicative targets of 60% of the gross median wage and 50% of the gross average wage are not appropriate. Any numerical specification, and in particular that of 60% of median income, is to be rejected. Such a figure is aimed at equality, not poverty reduction. 60% is not enough to avoid poverty in low-wage countries. In high-wage countries, on the other side, the target is far too high and prevents the employment of young, unqualified workers, in particular. In the current labour market situation, this is harmful. An adequate minimum wage based on criteria such as the gross median wage or the gross average wage may also jeopardize competitiveness within the EU.

CY: Concrete empirical evidence could have been included.

EE: Impact on the competitiveness of businesses, including innovation capacity could have been analysed.

EL: Brief reference on p. 57.

HU: The IA does not actually measure or estimate the impacts on competitiveness. It bluntly makes assumptions as statements, and those assumptions are not even logical, neither are substantiated. When the cost of labour is increased in labour intensive sectors, the employers will obviously lose their competitiveness against other Member States.

IE: Given the substantial differences in minimum wage levels, in both absolute and relative terms, the differences in union coverage between member states, and the difference in the preponderance of minimum wage employment by sector, this directive may have a highly heterogeneous impact. Some countries and some businesses may be dramatically more affected than others. This could have significant impact on competition and competitiveness both at a national and a firm level. The difference in impact and risk of divergence across countries and sectors is not sufficiently assessed.

LT: See aa)

LV: Explained in 5 and 6.

MT: The impact of an increase in minimum wage on competitiveness is not quantified for each individual Member State. Moreover, the analysis is based on the assumption that since the increase in overall wage bill rarely exceeds 1%, the initiative is not expected to significantly impact aggregate competitiveness of Member States. Such assumption is not backed up by the analysis. In addition, average increases in the wages of those affected by the increase in minimum effects should include spill-over effects. In particular, low-income earners above the statutory minimum wage who will become minimum wage earners as a result of the increase in minimum wage, will highly likely demand a wage increase so as not to fall within the minimum-wage-earners bracket. This spill-over effect is very likely to take place and is to be accounted for when estimating the possible costs of the directive on firms and the total wage bill.

NL: The proposed criteria for the adequacy of minimum wages seems to rely heavily on indicators that may put upward pressure on the statutory minimum wages. Several Member States currently use other criteria that take competitiveness into account, like unemployment and (expected) GDP growth. The IA could elaborate in more detail on the effects on competitiveness.

PL: Doubts arise concerning the statement (used on p. 24 of IA and in recital 28) that 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. The proposed directive does not strive to bring the level of wages equal, and therefore, after its implementation, the levels of minimum wages in individual Member States will continue to differ. The use of a competitive advantage based on a lower price, provided that all applicable regulations are complied with, cannot be considered illegal or qualified as the so-called 'social dumping'. The analysis underestimates the effects of external conditions. Secondly, the specific cases indicated in the analysis (Ireland, Germany - especially in the latter case - the changes were introduced in 2015) do not analyse long-term consequences, hence neglecting the effects on productivity seems problematic.

PT: Quantitative information only.

RO: Unpredictable.

SE: The text is very brief and does not contain any analysis of how competitiveness between EU countries can be affected. It would have been interesting to have a more detailed assessment of these consequences.

SK: Parts of section 6.2.2 provide appropriate qualitative analysis of impacts on competitiveness within the customs union. It is also discussed that a rise in the level of minimum wage will deteriorate external competitiveness only in the sectors of agriculture and industry, however additional information about impact on the external competitiveness would be appreciated.

☐ **ad) Impacts on Small and Medium Enterprises including micro-enterprises**[5]

7 (ad) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, BG, CY, DK, ES, IT, MT, SI

No: HU

To some extent/partly: AT, CZ, EE, EL, HR, IE, LT, LU, LV, NL, PL, PT, RO, SE, SK

No Response: FI, FR

[5] Impact assessments should assess SME impacts, and should also analyse the case for allowing (a) exemptions for micro-enterprises with <10 employees and <€2 mio turnover or balance sheet, and (b) lighter regimes for SMEs. See http://ec.europa.eu/governance/impact/key_docs/docs/meg_guidelines.pdf.

Comments:

AT: According to the IA, employers are expected to be able to pass on increased labour costs to consumers by increasing prices. Also, it is expected, that increased minimum wages may increase the demand for their services. This however does not apply to all sectors. Moreover, SMEs may find it difficult to compete for workers when minimum wages are increased. Further, the current crisis cannot be considered as the right time to put additional strain on employers. Especially SMEs are already struggling to maintain jobs and to survive.

BG: More detailed information has to be provided for the burden on the MSE with a view of COVID-19 impact (tourism and construction).

EE: The impact on SME-s depends on their ability to absorb the increases in labour costs. This may be different for SME-s in different Member States and also depends on the economic environment. The possible negative effect of SMEs going bankrupt is not analysed.

EL: In Greece, more than 90% of businesses/employers are micro-enterprises. Furthermore, given the structure of the country's economy, the sectors which contribute the most to the Greek output (tourism-related professions and catering) are over-sensitive to Minimum Wage adjustments due to high share of minimum wage earners. Consequently, Greece cannot be compared on an equitable footing with other EU member state economies. Also, an IA should also analyse the case for allowing exemptions for micro-enterprises with less than 10 employees and less than 2 million turnover or balance sheet. (cf. footnote 2 in this Questionnaire).

HU: The IA states that 87% of workers earning minimum wage are employed in the small and medium-sized enterprise sector and states that two-thirds of the costs of increasing wages are also expected to be borne by this sector. However, it declares, that all this, in addition to the expected positive effects, would not undermine the competitiveness of the sector. This is a non sequitur and understandably, it is not adequately substantiated.

IE: Given the high levels of minimum wage employment by SMEs, see the answer to 7(ac) above.

LT: It seems that analysis overlooks the economic impact especially linked to productivity differentials across Member States. See aa)

LV: Explained in 5 and 6. Small and Medium Enterprises were mentioned, however the analysis seemed to overlook the economic impact especially linked to productivity differentials across Member States.

MT: Impact on SMEs is clearly presented but not for the case of Malta. However, this may be the result of lack of data for Malta in this regard.

NL: The IA does not emphasize on the different impacts of the Directive on the different economies, with varying characteristics. Some countries and some businesses may be substantially more affected than others. This could have significant impact on competition and competitiveness both at a national and a firm level. The difference in impact and risk of divergence across countries and sectors is not sufficiently assessed.

It raises concerns to realise "that some small companies, especially in low-wage regions, may find it difficult to compete for workers when minimum wages are increased". This leads to less cohesion and further divergence of living standards. This is in sharp contrast with cohesion policies and the aim of upward socioeconomic convergence.

PL: The proposed directive, as also stated in the Impact Assessment, will have a particular impact on the situation of the service sector and small enterprises, numerous in this sector. The service sector was particularly hard hit by the ongoing crisis caused by the pandemic. Consequently, new burdens may arise on entrepreneurs in this sector. In our opinion, the Impact Assessment does not sufficiently analyze the impact of the proposed regulations on the service sector in the current complex situation. Considering the impact of all factors at the same time, i.e. the new minimum wage regulations, the pandemic crisis and already existing barriers to activity in this area, there are concerns about the future condition of the service sector.

The above is related to the obligation of the Member States, expressed in recital 30, to avoid imposing administrative, financial and legal restrictions on micro, small and medium-sized enterprises in the process of implementing the proposed regulations. Moreover, Member States are required to evaluate the impact of the measures adopted on this business sector and to publish the results of this evaluation. It should be noted that Member States may not be able to avoid negative effects on SMEs by implementing the proposed regulations, especially considering the other factors mentioned above.

Costs linked to the establishment of a new data collection system for monitoring purposes and potential growth in reporting burden on entities also have not been evaluated.

Many studies are internal (ie EC(2019) Macroeconomic effects of minimum wages: Model-based simulations using the QUEST model) , and due to the strong sensitivity to the adopted solutions and parameters (not only for public finance, p.208), it is difficult to obtain an unambiguous opinion. In our opinion, simulation analyses should be accompanied by the presentation of key model solutions, along with the assessment of the uncertainty of the results and the limitations of a methodology used.

RO: The risks of robotisation and digitalisation, migration or COVID-19 crisis are not clear.

SE: The number of micro enterprises in directly affected countries can be expected to rise. Monitoring costs of bogus self-employment can be expected to be significant. This is only briefly examined in the report.

SK: IA states that some negative impacts on the SME/ micro-enterprises are foreseen due to the increase of the labour costs in practice. This factor, which may lead to the bankruptcy of the most vulnerable businesses, has not been sufficiently analysed. Although the IA clearly spells out the positive impacts of different scenarios (a boost in domestic demand in selected sectors and a more stable and transparent business environment), it also sheds light on the negative ramifications and admits that the results come with a degree of uncertainty.

☐ **b) Social impacts**[6]

(for example impacts on employment and labour markets, social inclusion and protection of particular groups, public health and safety, etc.)

7 (b) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, BG, EL, ES, MT, SI, SK

No: SE

To some extent/partly: AT, CY, CZ, DK, EE, FR, HR, HU, IE, IT, LT, LU, LV, NL, PL, PT, RO

No Response: FI

Comments:

AT: According to the IA, very high levels of the minimum wage may involve higher employment risks. In face of the Covid-19 pandemic, Member States primarily aim to avoid massive job losses and business failures. Rising minimum wages and thus increasing employer costs may contradict these aims. The IA does not take the current economic crisis sufficiently into account.

CY: Even though social impacts were presented in a comprehensive manner, more empirical evidence could have been provided to illustrate that a minimum wage system cannot, on its own, combat in-work poverty, but instead it should be combined with other measures, which in many cases are more effective depending on the national circumstances and peculiarities, such as adequate income support, inclusive labour markets and access to quality services. Furthermore, the impact on the employment of seafarers has not been evaluated in the IA. It is a fact that seafarers are covered by the relevant provisions of the International ILO Conventions and MLC.

DK: The IA does not analyse of the impact of right to free collective bargaining and the autonomy of the social partners in relation to the provision in the Directive that the MS has to interfere if the coverage is less than 70 percent. In the IA it is stated that the proposal is expected to support gender equality and help reduce the gender pay gap as the majority of minimum wage earners but this is not justified any further.

6 See also Guidance for assessing Social Impacts within the Commission Impact Assessment system (http://ec.europa.eu/governance/impact/commission_guidelines/commission_guidelines_en.htm)

EE: See 6 c).

FR: L'impact sur l'emploi des gens de mer et des pêcheurs n'a pas été pris en compte. En revanche, on peut souligner l'examen approfondi de l'impact de cette directive sur les travailleurs pauvres et les autres groupes vulnérables, y compris les femmes.

HU: Among the labour market effects, the IA marginally mentions the potential impact on employment indicators and concludes that no significant reduction is expected. The introduction of the German minimum wage as an example is not representative because the economic environment in the Member States is very different. It cannot be compared to the situation in Germany in 2015 - a period of upwards trend in economic environment, with no relevant effect of the increased minimum wage on employment data and therefore declare, that it will have the same effect now in other Member States, especially without awareness of the impact of the coronavirus pandemic on the future. Businesses are under forced closure in certain sectors when trying to retain the workforce and maintain the operations as the primary goal.

IE: The employment risks associated with this proposal could be more substantially considered.

IT: While impact on workers and firms is well explored, it is not clear how minimum wage affects households' income, taking into account that part of the cost of the initiative may be transferred on prices.

LT: Social impacts were presented. The MW are not the only measure to fight poverty. Also, there is a lack of analysis in the IA what impact this Directive would have for poverty in general, not only for low wage earners. See aa)

LV: Social impacts were presented, however it seemed that an argument is made that minimum wages should be the main instrument for fighting poverty, though other instruments including the social protection systems play an important role as well.

NL: The studies the IA refers to are studies which look into the relation between marginal changes in the minimum wages to changes in unemployment. Since the Commission is proposing to use reference values commonly used at international level, it is important to deliver an assessment of the consequences to unemployment (amongst other elements) when applying significant minimum wage increases, like the 50% minimum wage increase Greece would have to apply to deliver a minimum wage that would mirror 50% of the average gross wage. This is necessary to assess the degree of expected upward socioeconomic convergence, since a significant minimum wage increase (between 20 and 50%, according to some calculations) would affect a majority of Member states with a statutory minimum wage.

PL: It can be assumed that an increase in the minimum wage would have a positive effect on the income situation of workers. However, some people who have not worked before may experience difficulties in finding employment, while it may be difficult for those in employment to maintain this employment. Which of the effects will prevail depends on many factors, especially the macroeconomic situation of the country. In this context, however, it is important to bear in mind the difficult situation related to the pandemic, which has not been adequately addressed in the analysis. There are also some doubts regarding methodology. The results of the simulation of the TaxBen model for work incentives need to be specified (p. 195). Information on this matter in terms of the tax and contribution burden and benefits is insufficient, and without providing details it cannot be commented on. Such simulations are usually conducted for several types of families (single / couple - with one working partner / couple - with two working partners / with or without children). Though according to the methodological description (p. 120), the simulations were carried out for 4 types of family, one result was presented (p. 198) without a detailed comment on who it concerns. Many benefits in Poland are due to having children, therefore net income may react "differently" depending on the type of family. Therefore, the presentation of the effects of raising the minimum wage on the net income is necessary for several types of families. It would also be necessary to estimate the number of potential beneficiaries of the minimum wage increase versus the number of those who would possibly lose from the increase. In the case of Poland, when simulating the increase in the minimum wage from the level in 2019, it is necessary to pay attention to the significant reforms carried out in the second mid-2019 aimed at reducing the tax wedge: lowering the tax rate and significantly increasing tax deductible costs. The question arises to what extent the authors of the IA have included these reforms in their simulation. Other effects will also apply to people up to 25 years old, whose income (up to PLN 85,528 per year) is tax-exempt. Due to the dynamic changes in recent years in terms of the tax burden, it seems necessary to conduct a simulation for Poland, taking into account more current conditions, i.e. 2020.

RO: Unpredictable.

SE: The IA does not reflect the fact that not all collective agreements contain wage levels. In fact the majority of collective agreements in Sweden does not.

A number of questions regarding social impacts could have been given more attention in the IA. Is there an alternative labour market for workers directly affected by the increase in minimum wage should their jobs disappear? Are there sufficient measures in affected countries regarding labour market programmes and education and training targeted to these groups or is there a risk that they become discouraged workers or end up in an even more precarious situation? The IA does not reflect if there may be implications on unemployment benefits or social assistance. How can wage levels on the rest of the labour market be expected to change? The female participation rate could also have been given more attention in this perspective. Living conditions and actual income among employees depends on both the wage (per hour) and hours worked. Different aspects of part time work are briefly mentioned in the IA but could also have been given more attention.

Page 162 describes the risk of noncompliance and undeclared work. Among other things, problems with so-called envelope wages are described, i.e. that in reality a higher salary is paid but that only part of the compensation is reported as a way of tax planning. However, there is a risk that the reverse may occur. Vulnerable workers can be forced to pay back part of their salary to the employer. This is a type of compliance issue that we believe should definitely be taken seriously. The interpretation of employment effects from higher minimum wages seems to have been misunderstood, see Q10. The employment effects are also reported in a general way. The consequences for employment can be assumed to differ significantly depending on how favourable the labour market situation is. Under current economic situation in the EU, IA should distinguish between empirical evidence that takes this into account and other more descriptive conclusions based on data from years and countries with favourable labour markets.

SK: Section 6.1 describes adequately the impacts of different packages. Annex 12 provides qualitative scope of the initiative. In addition to positive social impacts, the IA clearly encompasses negative outcomes on the employment rate and provides additional country specific impacts in terms of wage inequality, in-work poverty and gender pay gap. In our view, the tool of the minimum wage should be considered in the border context of the tax and other welfare policies, if we aim to improve the standard living of lower-wage earners and tackle the risk of poverty. In particular, taking into account regional disparities;

☐ **c) <u>Environmental impacts</u>** (for example impacts on climate, air and water quality, use of the renewable or non-renewable resources, the likelihood or scale of environmental risks, use of energy etc.)
7 (c) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary) **Yes:** CY, CZ, EE, EL **No:** AT, BE, BG, FI, HR, HU, IT, LU, MT, NL, PT, SI **To some extent/partly:** IE, LV, RO, SK **No Response:** DK, ES, FR, LT, PL, SE **Comments:** **AT:** According to the IA, there will be no environmental impact. **HU**: The IA states that there will be no environmental impact, but this is not substantiated. **IE:** It is unlikely this directive would have substantial environmental impacts, but some links were made to the idea of the green transition. **LV**: Some links were suggested to the green transition. **MT**: No environmental impact has been identified for any of the options. **SI**: No environmental impact is expected. **SK**: Although the IA does not contain a specific section devoted to environmental impacts, we expect a slight increase in the use of natural resources as an indirect impact of the rise in aggregate consumption. Our assumption is based on conclusions from Annex 12.

☐	**d) Regulatory costs (including administrative burdens and compliance costs, especially for businesses or business operators)**

7 (d) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, BG, ES, HR, MT, NL, SI, SK

No: FI, LV

To some extent/partly: AT, CY, CZ, DK, EE, EL, FR, HU, IE, IT, LT, LU, PL, PT, RO, SE

No Response:

Comments:

AT: The proposed directive creates new bureaucratic burdens and additional costs especially with regard to Article 10, which is aiming to establish a data collection and monitoring system. The establishment of data systems according to Art. 10 would entail considerable costs and additional bureaucracy not only for Member States but also for social partners.

CY: This is an important dimension which requires more in-depth analysis, especially with regards to the administrative burden for SMEs.

DK: The cost for the comprehensive monitoring and data collection (which are not further justified in a Directive, which is not supposed to regulate the level of wages) is not analysed adequately, including costs for SMV.

EE: The IA includes the overview of costs only in case of the preferred package.

EL: The main regulatory cost here involves checks/inspections/monitoring of compliance and how this can be ensured.

FI: Production of the statistics on wages based on collective bargaining would increase considerably the administrative burden of enterprises.

IE: The cost of increased data collection and monitoring of union coverage are not substantially considered. The administrative costs from the proposed monitoring regulation could be substantial, for both businesses and public authorities. The IA does not mention how information on collective bargaining coverage should be collected. This could result in an extensive administrative burden for firms, particularly SMEs which have less administrative capacity.

LT: There is no sufficient analysis what administrative burdens there will be due to monitoring and data collection system.

LV: Such costs could emerge in situations where mandatory minimum wages are promoted in Member States with considerable collective bargaining traditions and the other way round.

NL: The cost of increased data collection and monitoring of union coverage are not substantially considered. Box 2, concerning the expected costs for business, is very insightful, though a similar representation on the national level would be very welcome.

PL: Member States costs linked to the establishment of a new data collection system for monitoring purposes and potential growth in reporting burden on entities and burden on NSI have not been taken into account.

SE: The administrative costs from the proposed monitoring regulation can be substantial, for both businesses and public authorities. The IA does not mention how information in countries with high collective bargaining coverage should be collected. For businesses reporting requirements include which employee belongs to which collective agreement. For large businesses with many employees this can result in an extensive administrative burden as well as for SME which have less administrative capacity.

SK: Section 6.2.2 provides sufficient qualitative comparison of costs and benefits stemming from the proposal to a wide range of stakeholders. The initiative will bring additional costs to the public authorities, however it is not possible to quantify their magnitude. SMEs will face major costs related to increased minimum wages. This is quantitatively specified in Annex 12. Both problems are interrelated, we need to be cautious about pace and scope of implementation to prevent negative impacts in public or private sectors.

e) Impacts on individual Member States / regional or local authorities

7 (e) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, CY, ES, IT, SI

No: AT, CZ, EL, MT

To some extent/partly: DK, EE, FI, HR, HU, IE, LT, LU, LV, NL, PL, PT, RO, SE, SK

No Response: BG, FR

Comments:

AT*:* According to the IA, the strengthening of enforcement of minimum wage rules may have direct costs for public administrations, arising from the provisions of enforcement, monitoring and data collection. At the same time, however, it may also result in increased revenue. The IA does not provide clarity on costs for public authorities. Additional bureaucratic burdens and costs are not appropriate. The requirement to set up a data collection system is to be rejected.

CZ: The IA does not sufficiently consider possible negative impacts of a measure 2.1 (mandatory indicators). Setting and updating MW could be in practice more complicated as a result, since those mandatory indicators are mutually incomparable in nature and it is not clear how they should be adequately taken into account compared to each other. Moreover, the IA does not explain why these indicators were selected and what expert reasons were taken into account.

DK: According to the IA, the strengthening of enforcement of minimum wage rules may have direct costs for public administrations, arising from the provisions of enforcement, monitoring and data collection. This should have been analyzed further.

EE: The obligation to establish an action plan to promote collective bargaining might become a significant regular burden for Member States with a collective bargaining level of well below 70% without a significant positive development in coverage rate. The IA is lacking the thorough assessment on creating a new consultative body or modifying the existing ones. Creating of the obligatory specific consultative body might become an excessive burden compared to the obligatory involvement of social partners. Also, the IA diminishes the impact of data collection and monitoring on the member states expecting to bring only some costs to the public authorities.

IE: As stated in the answer to question 7(ac), difference in impact across countries and sectors and the risk of divergence is not sufficiently assessed.

LV: It is mentioned that those impacts are different, however the ensuing arguments make the impression that it is taken for granted that the proposed actions would lead to beneficial results in all situations.

MT: The impact on individual Member States is overlooked for some important variables including inflation and competitiveness.

NL: The IA should include an assessment of the consequences in the cases all Member States choose to apply Statutory minimum wages that mirror at least the reference values commonly used at international level. In this case, the unemployment benefit costs would be larger than assumed in the IA. Moreover, the assessment on the costs of the statistical requirements needs to be included in the IA. These are expected to be significant.

PL: The impacts on individual Member States seems understated, as tough they were marginal in comparison to the benefits. The costs borne by each Member State may be different and difficult to assess with precision, but while the benefits are formulated in mostly general terms, the costs of setting up a system for data monitoring and collection, strengthening enforcement, introducing changes to the minimum wage mechanism or launching action plan will be very real and may be burdensome. The impacts on individual Member States seems understated, as tough they were marginal in comparison to the benefits. The costs borne by each Member State may be different and difficult to assess with precision, but while the benefits are formulated in mostly general terms, the costs of setting up a system for data monitoring and collection, strengthening enforcement, introducing changes to the minimum wage mechanism or launching action plan will be very real and may be burdensome. Taking into account the presented statutory MW value for PL in 2019 (Annex 12, page 184 of Impact Assessment), it can be concluded that the European Commission adopted the EUR exchange rate at the level of approx. PLN 4.3. Thus, the values adopted by the European Commission differ from the average monthly gross salary in the national economy in 2019, which amounted to PLN 4,918.17[7], or even the average monthly salary in the enterprise sector without payment of bonuses from profit in 2019, which was PLN 5,167.98[8]. It should be emphasized that the minimum wage doesn’t only apply to employees working in enterprises. Therefore, the analysis should be based on the average monthly salary in the national economy. This means that the level of average wages in Poland adopted in IA is overestimated by approx. 10.7%.

PT: If regions of a MS have different MW.

RO: Double action and gap between the public salary system and the private system.

SE: The administrative costs of collecting the information required for the different indicators proposed for countries based on collective agreements could be significant. See also Q9 and Summary.

[7] https://stat.gov.pl/en/latest-statistical-news/communications-and-announcements/list-of-communiques-and-announcements/average-monthly-gross-wage-and-salary-in-national-economy-in-2019,283,7.html

[8] https://stat.gov.pl/en/latest-statistical-news/communications-and-announcements/list-of-communiques-and-announcements/average-monthly-wage-and-salary-in-enterprise-sector-excluding-payments-from-profit-in-2019,280,7.html

SK: Annex 12 describes quantitatively and qualitatively country-specific impacts of the initiative, using the latest available data at the time of the evaluation. Euromod provides detailed information on the development of wage inequality, in-work poverty and gender pay gap, as indirect outcomes of the initiative. Section 6.2.2 defines the expected impact on public budgets and the IA uses suitable methods to compare results among countries. In our view, some MS and some sectors of the economy may be seriously more affected than others by this initiative. Nevertheless, it would be useful to update some of the comparative tables using figures from 2020. An example is Table A12.1, which includes data from 2019. In several EU countries, including Slovakia, minimum wage has increased substantially between 2019 and 2020 and data from 2019 do not represent a good enough approximation. Furthermore, the IA argues that the Slovak republic does not provide for adequate minimum wage levels. Specifically, in paragraph 1 on p.14, the IA lists the Slovak Republic among those nations that do not provide for adequate minimum wage levels. However, the 2020 minimum wage in the Slovak Republic is very likely above 60 percent of the median wage and above 50 percent of the average wage. It is also well above the national statutory subsistence income. In addition we expect the negative impacts on public authorities regarding the obligations to collect the date and monitoring tasks (Art.10).

☐ f) Impacts on third countries/ international aspects

7 (f) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BG, CY, EE, LU, PT, SI

No: AT, EL, HR, HU, IT, LT, LV, MT, NL, PL

To some extent/partly: BE, CZ, FI, IE, RO, SK

No Response: DK, ES, FR, SE

Comments:

AT: The IA considers it unlikely that international competitiveness will be affected due to the somewhat increased prices. The IA does not properly take into account effects on international competitiveness. Additional bureaucratic burdens caused by this directive might also affect international competitiveness especially considering the danger of business failures in connection with the COVID 19 crisis. With regard to international competiveness red tape has to be avoided as far as possible.

BE: This initiative may have an impact on the ratification of Convention nr. 131 of the ILO.

IE: It is unlikely there would be significant third country aspects, but nevertheless, it is not analysed in depth.

LT: The impact may be, but it is not analysed.

LV: There might be an impact, however it is not analysed in depth.

PL: In the face of coordinated action at the EU level, it is difficult to expect significant spill overs. However, in the case of potential long-term effects on productivity, they may materialize.

PT: Through worker mobility.

SK: The IA states that industry and agriculture (as sectors producing tradeable goods for the world market) will likely be negatively impacted due to a loss in international competitiveness. This implies that the initiative is likely to have a small positive impact on the main competitors of the EU in the agriculture and industry sectors.

☐ **g) Impacts on fundamental rights**
7 (g) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary) **Yes:** BE, BG, CY, EE, ES, FI, HR, IT, LU, MT, PT, SI, SK **No:** **To some extent/partly:** AT, CZ, EL, HU, IE, LT, LV, NL, PL, RO **No Response:** DK, FR, SE **Comments:** **AT:** According to the IA, adequate wages as well as strengthened collective bargaining support gender equality and help reduce the gender pay gap. To our knowledge there is no evidence that collective bargaining helps reducing the Gender Pay Gap. Even in countries with a high collective agreements coverage and well-functioning collective bargaining the gender pay gap can be high. Furthermore, he proposed directive interferes with social partners' autonomy and the freedom to negotiate. The IA does not assess how these fundamental rights will be guaranteed and fully respected. **DK:** The IA does not analyse of the impact of right to free collective bargaining and the autonomy of the social partners in relation to the provision in the Directive that the MS has to interfere if the coverage is less than 70 percent. In the IA it is stated that the proposal is expected to support gender equality and help reduce the gender pay gap as the majority of minimum wage earners but this is not justified any further. **HU:** Without presenting data, the IA assumes that, if the level of the minimum wage in the Member States is adequate, the dynamic migration of workers will be reduced, which will almost offset its negative effects in the Member States. This objective is incompatible with one of the four fundamental freedoms of the Union, the principle of free movement of workers. **IE**: Part 6.3 of the Impact Assessment considers the impacts on fundamental rights. However, only the gender pay gap is considered in any depth. Other impacts on fundamental rights are not considered.

LV: Decent wages are considered part of fundamental rights, however the proposal looks at minimum wages rather from the perspective of poverty and the internal market.

NL: Only the gender pay gap is considered in depth. On this issue the IA states that the proposal is expected to support gender equality and help reduce the gender pay gap, but this needs a more exhaustive elaboration. The IA should assess the principle of the autonomy of social partners.

PL: According to the Charter of Fundamental Rights (art. 28), one of the fundamental rights is - right of collective bargaining and action ("*Workers and employers, or their respective organizations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action").*

The Impact Assessment focuses on fundamental rights related to gender equality, but does not explain what impact it can have on the right to collective bargaining, in particular the principle of voluntary participation and the autonomy of social partners.

PT: The objectives of the proposed directive are in line with the Charter of Fundamental Rights of the European Union, in particular the right enshrined in Article 31 (1), which states that "All workers are entitled to healthy working conditions, safe and worthy". The proposal also facilitates the exercise of the rights recognized in Article 23 of the Charter of Fundamental Rights of the European Union, which specifically refers to equality between men and women, as it facilitates the reduction of the pay gap.

RO: Considering the freedom of collective bargaining and action, this proposal interferes with the social partners' autonomy.

SK: As the evidence presented in Section 6.3 shows, the initiative has a capacity to strengthen equality among various social groups.

8. Opinion of the Impact Assessment Board[9] (IAB) of the Commission

a) Are all comments and recommendations of the IAB (as presented in its latest opinion) considered in the Impact Assessment report?

8 (a) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, BG, CY, EE, ES, FR, IE, IT, LU, PT

No: AT, DK, HU, LT, MT, NL

To some extent/partly: CZ, EL, FI, LV, RO, SI, SK

No Response: HR, PL, SE

Comments:

AT: In particular, the IA does still not sufficiently substantiate the chosen legal basis of the proposed directive.

DK: There is no separate analysis of the preferred option for countries relying on collective bargaining exclusively. The IA should have provided greater clarity on costs for public authorities.

9 Available by searching by Commission DG and date of publication at the following website http://ec.europa.eu/governance/impact/ia_carried_out/cia_2012_en.htm

HU: The overall opinion of the Regulatory Scrutiny Board (SEC (2020) 362 of 6 October 2020) was negative and indicated that the IAR had significant deficiencies. It noted that the report did not differentiate between the extent to which the problems, the specific objectives, the proposed solutions and their effects could be applied to the different types of minimum wage-setting systems; it was not clear enough how the problem analysis assesses the inadequacy of minimum wages in the Member States; the IAE did not sufficiently substantiate whether the legislative initiative was in line with the chosen legal basis and the principles of subsidiarity and proportionality; finally, the reason for the composition of the three sets of options was not clear. In its first opinion, the RSB also complained that the impact assessment did not cover all elements. Although the RSB in the second round of evaluation second gave a positive opinion, still had reservations and expectations the legislators rectify significant aspects. According to the RSB's reservations the IAR still does not include sufficient evidence on how declining collective bargaining has led to inadequate minimum wages, the rationale behind the composition of option packages is still unclear. The opinion states that the impact analysis does not clarify which measures matter most for the success of the options packages. It remains incomplete in exploring their consequences on labour markets, the internal market, administrative costs and SMEs. And finally, according to RSB's opinion the comparison of options is not coherent, incomplete and it does not sufficiently justify the choice of preferred option. According to the proposed Directive there is no separate analysis of the preferred option for countries relying on collective bargaining of 2 minimum wages. Due to these significant deficiencies, Hungary considers that the overall opinion of the RSB could not be positive. The seriousness of the deficiencies listed above makes it doubtful that the shortcomings and inconsistencies could be resolved in the negotiations between the Member States and the institutions.

IE: They appear to be fully addressed in Annex 1.

LT: The IA do not address IAB (C) para (3)

LV: The proposal seems to lack consistency and focus due to linking minimum wages, collective bargaining and social partner capacity.

MT: While it seems that there was some effort made in addressing the IAB's opinion, it still did not take into consideration important issues such as distinguishing between the two types of minimum wage setting systems and explaining how external drivers of wages amplify the internal drivers of inadequate minimum wages. The report also does not justify why there is a need for horizontal EU intervention in an area where the problem is specific to a number of Member States.

NL: The Regulatory Scrutiny Board has presented an opinion on the Directive, although not yet on the IA attached to the Directive. Such an opinion would be welcome.

SI: Detailed legal basis clarification is expected.

9. <u>Monitoring, transposition, compliance</u>

a) Will the proposed indicators enable the intended effects to be measured? Are those responsible for monitoring (and compliance) identified?

b) Are operational monitoring and evaluation arrangements proposed?

c) Does the IA contain information on the impact of the transposition deadline proposed in the context of MS legislative processes?

9 (a) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, ES, FR, NL, SI

No:

To some extent/partly: AT, BG, CY, CZ, DK, EE, EL, FI, HR, HU, IE, IT, LT, LU, LV, MT, PL, PT, RO, SE, SK

No Response:

Comments:

AT: According to the IA, the monitoring framework will be subject to further adjustment according to the final legal and implementation requirements and timeline.

CY: More technical work needs to be undertaken to come up with appropriate EU-wide indicators, which are clearly defined, strongly linked to policy objectives and easy to measure (easy to obtain relevant data). For example, more work is needed with respect to the indicator of "collective bargaining coverage rate".

CZ: Methodology for monitoring and comparability of data is not sufficiently clear.

DK: Detailed data collection as proposed in the Directive is not necessary in order to measure the overall intentions.

EE: Proposed indicators do not give enough information on the adequacy of the minimum wage or the well-being of low-wage earners. Those responsible for monitoring are not clearly identified.

FI: In case of minimum wages based on legislation the whole wage would be taken into account, but in the additional parts of wages (relating for example to unconventional working hours) based on collective agreements would not be taken into account.

FR: Oui, dans la mesure où l'article 10 impose aux Etats membres de mettre en place un système efficace de suivi et de collecte de données concernant la couverture et le caractère adéquat des salaires minimaux, et de communiquer ces informations à la Commission européenne chaque année pour évaluation.

HU: As explained in details in the 3. point the indicators focus exclusively on the level of the minimum wage, but a complex assessment of the achievements set by the objectives also requires the knowledge of number of people affected by the minimum wage (by territorial, company size, sectoral and majority ownership) and the required resources in order to finance the increased wage bill. In addition, Member States' GDP and productivity growth, inflation rates and macroeconomic forecasts should also be given special attention when examining the issue. Planning would be greatly supported by the ideas of neighbour countries (eg V4) regarding increasing their minimum wage. As these information and data, as well as the indicators that can be calculated from them, are not included in the IA, the evaluation of the required impact is not adequate. As the economic development, living standards, social organization, etc. of the 27 EU Member States is very different comparisons of the effects of different policy options are neither appropriate nor developed, so transposition cannot be assessed.

IE: As mentioned in response to question 3 (d), “Union coverage” is not a concept that was designed to be used in legislation and there are many problems associated with its measurement. Annex 4.6 of the Impact Assessment addresses some of these and they are of major importance.

LT: We believe that the proposed monitoring system for collective bargaining and the social partners is superfluous and is not justified by the legal base.

LV: Those for monitoring are identified, however the suggested monitoring framework as regards collective bargaining and social partners seems to be redundant and not linked to the actual aim of the initiative to ensure adequate income from work for the lower qualified.

MT: While those responsible for monitoring and compliance are identified, data for the indicators might be difficult to collect and not comparable across Member States.

NL: In Annex 13 of the IA.

PL: Yes, as regards the level of minimum wage. However, Poland doesn’t have all data required in art. 10 of the draft directive on an annual basis (e.g. the level of the statutory minimum wage and the share of workers covered by it). Also some data is also not available broken down by gender, age group and sector. No, as regards promotion of collective bargaining on wage setting and collective bargaining coverage. In particular it is not clear how the coverage is to be measured, as well as on what basis and according to what criteria The EC is going to assess national action plans.

PT: The indicators and respective sources should be better thought out if we would like to have timely and comparable assessments. For some indicators, national sources could be more suitable, but they do not allowed comparisons among MS, suggesting a mix of European and national indicators could be desirable.

SE: In our opinion, there is a very vague link between the indicators and the objectives for the proposal regarding collective agreement-based systems. The motives for the proposal are based entirely on the outcome, to strengthen the position of weak groups in the labour market. The choice of indicators indicates that the Commission is interested in wage formation per se rather than the outcome for workers.

Collective agreement coverage: Introducing a regulation connected to a certain level of collective agreement coverage presupposes that it is clear how this is to be measured. However, the definitions given of how collective agreement coverage should be measured are unclear. 70 percent can mean completely different things depending on what you measure. Furthermore, the directive does not say anything about what age range should be measured. The collective bargaining coverage of 90 % in Sweden are calculated on the basis of workers 16–64 years. If the age range would be altered to 15–74 years, the coverage will fall to 88 % according to domestic statistics. The commission should clarify what age range to apply.

Wages with/without collective agreement: In Sweden it is not currently possible to produce information that fully corresponds to the proposal's requirements. Moreover, we do not see that the requirements are justified, given the objectives of the proposal

Collective bargaining coverage: At present, Sweden's figures are based on summary data. Furthermore, there are methodologic challenges that have not been addressed.

Open and accessible information on collective agreements: Article 10:3 stipulates that Member States shall ensure that information regarding minimum wage protection, including collective agreements and wage provisions therein, is transparent and publicly accessible. This is not elaborated in the IA. The proposal would need to be further developed in order to make it possible to understand the implications.

SI: There could be some problems with the exact measurability and comparability of indicators, such as collective agreements coverage.

9 (b) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: AT, BE, BG, CY, DK, EL, ES, FI, FR, IE, LT, LU, LV, MT, NL, PT, SI

No: HU

To some extent/partly: CZ, EE, HR, IT, PL, RO, SK

No Response: SE

Comments:

AT: Article 10 of the proposed directive is seen very critically by Austria. The autonomy of social partners is affected (which is not covered by Article 153 TFEU). Additional bureaucratic burdens and costs are not appropriate. The requirement to set up a data collection system is therefore rejected.

DK: Reference is made to the reply in a.

EE: Operational monitoring and evaluation arrangements are proposed but problems with the available data are not addressed. Collective bargaining coverage is measured differently in the Member States and the data might not be comparable or even accurate (i.e. if coverage is asked from the workers who might not always be aware that their wage is covered by collective agreements). It is not clear how data on existing deductions and variations should be collected and if the data will be comparable between the Member States. Annex 13 (“Monitoring and evaluation”) mentions that these statistics and information would be disaggregated by gender, age group, and sector. Disability and company size seem to lack.

HU: In the absence of the above mentioned, monitoring and evaluation cannot be performed either.

IE: Arrangements are proposed.

IT: Indicators and their comparability among MS and frequency of the availability of data and transposition processes are aspects that are not in-depth analysed**.**

LV: Arrangements are proposed.

NL: In Annex 1 of the IA.

PL: Although the Directive refers to information obligations and statistics, it does not contain any provisions aimed at data collection by the European Statistical System (ESS) pursuant to Art. 338 TFEU, so it may imply that some other than ESS common standards are taken into account and that aspect should be clarified. In the Annex 13 of IA most of the time national data (not the ESS ones) are mentioned as the source for proposed monitoring indicators.

It seems necessary to specify in advance the details of expected data (for instance: age - for which age groups?; disability - according to which criteria: national legal or others?; sector - is this about economic activity of the unit or ownership sector?), as well as, to work out the way of transmission of these data to the Commission (in which form? to whom?). Moreover, there is a lack of consistency between IA and the proposal of the Directive. For example, in IA (Annex 13 Monitoring and Evaluation) the disaggregation by disability is not mentioned whereas in the draft Directive it is (Article 10). Moreover, in IA the EU SES is mentioned as the source of data (which in the ESS it is 4-yearly survey, not covering all units and all sectors; data are delivered to Eurostat 18 months after the reference period), while the Article 10 of draft Directive states "Member States shall report the following data to the Commission on an annual basis, before 1 October of each year."

No statistical data regarding the range of collective bargaining disaggregated by gender, age group, disability, enterprise size and sector (in accordance with Article 10 point 2 (a), (iv)) are currently collected by Statistics Poland. There is a need to clarify and adjust the national legislation to the requirements in the scope of collecting the required data.

Without appropriate methodological works and feasibility studies on the EU level there is a risk of lack of data comparability delivered for monitoring purposes e.g. due to the use of national classifications and definitions, not harmonized within the ESS.

In addition, the proposal was not discussed at the meetings of the Eurostat working group on labor market statistics (LAMAS WG). Therefore, no technical details are known regarding the transmission of this data to the European Commission.

To indicate potential duplication of reporting obligations in the EU, the EU legal acts on the basis of which data are collected under the European Statistical System in the above-mentioned scope in relation to the remuneration structure are listed below:

a) Council Regulation (EC) No 530/1999 of 9 March 1999 concerning structural statistics on earnings and on labour costs
b) Commission Regulation (EC) No 698/2006 of 5 May 2006 implementing Council Regulation (EC) No 530/1999 as regards quality evaluation of structural statistics on labour costs and earnings
c) Commission Regulation (EC) No 1022/2009 of 29 October 2009 amending Regulations (EC) No 1738/2005, (EC) No 698/2006 and (EC) No 377/2008 as regards the International Standard Classification of Occupations (ISCO).

RO: There are arrangements proposed, but Romania does not support the requirement to set up a data collection system as stipulated in article 10. There is no clear relation between the indicators and the adequacy of the minimum wage, thus the data collection could only lead to unnecessary administrative burden.

SK: We express concerns about the availability of data and their comparability across the MS´s.

9 (c) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: BE, BG, ES, FR, LU, SI

No: AT, DK, EE, HU, IE, LT, NL, RO

To some extent/partly: CY, CZ, EL, IT, LV, MT, PL, PT, SK

No Response: FI, HR, SE

Comments:

BG: The proposed transposition period could not be sufficient to comply with the requirements of the directive.

FR: Oui, conformément au programme pour une réglementation affûtée et performante (REFIT), la Commission procèdera à une évaluation de la directive, au plus tard cinq ans après son entrée en vigueur (article 15).

HU: After extensive financial and macroeconomic studies would it be possible only to estimate the effects of the transposition. Regarding the subsequent phases of the pandemic and the uncertain economic processes transposition of a Directive is not well-founded.

IE: No, there is no discussion of a transposition deadline. There does not appear to be a proposed transposition deadline at this stage.

LV: The level of ambition of what the proposal is meant to achieve (for example the 70% collective bargaining coverage) seems very high or even not as realistic given the economic realities, the policy areas affected by the proposal are very Member State specific building on a considerable variety of traditions and approaches thus the MS legislative process might be impacted by this even if the current impact assessment of the transposition deadline in the context of MS legislative processes might be feasible as such.

PL: Two years for implementation of the new data collection may not be enough. The possibility and results of applying for derogations by Member States or introducing some transitional period for the implementation of a new data collection system for monitoring purposes is not covered by IA.

10. Methodology

a) Is an appropriate methodology applied? Are the methodological choices, limitations and uncertainties made clear?

10 (a) ☐ **Yes** ☐ **No** ☐ **To some extent/partly** (please comment, if necessary)

Yes: CY, IE, ES, FR, LU, SI, SK

No: HR, HU, MT

To some extent/partly: BE, BG, CZ, DK, EE, EL, IT, LT, LV, NL, PL, PT, RO

No Response: AT, FI, SE

Comments:

AT: Cannot be assessed.

BE: For Belgium it is not clear on what basis we are classified as a country with a statutory minimum wage setting system.

DK: Combatting working poor calls for a wider agenda about securing the right conditions for growth and job creation, about increased productivity to create a basis for real wage growth and about priorising welfare. The initiative would have benefitted from a more comprehensive assessment taking into account the differences in MS.

EE: Extensive analysis has been done on possible impacts using the best possible methodology available, but the limitations and uncertainties could be expressed clearer.

EL: The decision in the IA to opt for the Own Wage Elasticity may raise methodological concerns.

HU: The decision-making methodology and justification between the different options is missing from the IA. The major problem is that the non-action option (i.e. baseline scenario) has not been fully examined.

IT: Methodology and assessment are not in- depth analysed.

LV: The initiative would have benefitted from a more comprehensive assessment with acknowledging the differences across Member States (including as regards share of minimum wage receivers, economic structures, competitiveness, levels of economic development).

MT: The analysis impact on minimum wage levels and their revisions seems insufficient as it does not take into account the circumstances, including the economic level, of each Member State. It also does not take into consideration the traditions and history of industrial relations in Member States. The impacts on business/employers and the labour market were not thoroughly analysed with the methodology used.

NL: The IA relies heavily on EC studies. A wider array of studies (e.g., Eurofound, OECD, IMF, academic, etc) would be welcome.

Combatting working poor calls for a wider agenda about securing the right conditions for growth and job creation, about increased productivity to create a basis for real wage growth and about prioritizing welfare. The initiative would have benefitted from a more comprehensive assessment taking into account the differences in MS.

The empirical data presented and the conclusions drawn in IA are based on a labour market that looks completely different compared to the labour market that will exist after the Covid -19 crisis. The analysis needs to be updated with discussions on how the changed conditions affects the expected outcome.

PL: Simulations for EUROMOD require a broader commentary in the case of Poland, incl. in terms of the adopted number of people earning the minimum wage. There are serious doubts about the quality of the EU-SILC study (used as a base for EUROMOD micro-simulation) in the scope of presenting data on the minimum wage in the case of Poland. Doubts arise, among others, from the fact that data on salaries in this study are collected using the survey method (respondents' declarations). The EUROMOD simulations also apply to similar comments as in the case of the OECD TaxBen model regarding the timeliness of the estimates. The methodological description (p. 116) indicates that the legal status as at 30 June 2019 and the EU-SILC 2017 data were taken into account for the simulation. This means that these simulations do not reflect the impact on employment of the significant changes in the tax system that took place in 2019 (lowering the tax rate, increasing tax deductible costs and tax relief for young people).

See also point 7 (b).

The draft directive doesn’t show how listed in art. 5 (3) indicators would have an impact on the minimum wage in individual MS, how they would affect the process of setting the minimum wage. Not all elements take the form of a single, well-defined, commonly used indicator (e.g. the distribution of wages is presented in a graph or tabular form), and purchasing power can be taken into account by adopting various inflation indicators - consumer goods baskets.

Difficulties in establishing an unambiguous and clear indicator may arise in the case of the purchasing power criterion, which is also to be related to social transfers and the cost of living. The implementation of such an indicator requires at least some additional explanation. It remains unclear what number of people in the household should be taken into account when calculating the indicated cost of living, with the potential to not be comparable minimum wages at EU level.

The labour productivity index causes similar doubts. Productivity gains contribute wages, but it is not a rule that wages rise only when productivity rises. As a result, the submitted proposal does not specify what steps should be taken in the event of a deterioration in productivity indicators. It is also not clear how the productivity is to be related to other indicators, and the relationship between Art. 5 (3) and the criteria listed in Art. 5 (2).

As regards the relationship between the indicators, the issue of their joint application requires additional explanation. Moreover, it is doubtful whether such a large number of indicators is necessary.

PT: Still to stabilize, namely between the commission, the Member States and the competent national authorities.

SE: IA only mentions in passing various forms of non-traditional and insecure forms of employment. There is very little analysis of what risks there are for increased labour market precariousness as a result of the proposal. Consequences can arise both in the countries that are directly affected by increased minimum wages and in other countries. For example, the impact on employment for the specific group that will be covered by increased minimum wages is not addressed. The analysis would have needed to be stratified.

IA refers to a meta-study that deals with the expected employment effect. The average effect according to this is a 10% increase in the minimum wage would reduce employment by 1.6%. The interpretation is that the negative impact on employment is "less" than the wage increase. It seems here that the commission has misunderstood the study and compares apples and pears. Those who lose their job get 100% less in salary, and 1.6% can mean that thousands of people become unemployed. It is a normative question whether one values wage level over employment, and the balance point is by no means self-evident. In any case, it is too simplified to compare two nominal percentages (in this case 10% vs. 1.6%) in this way as an argument that one effect would be more or less positive impact than the other.

The empirical data presented and the conclusions drawn in IA are based on a labour market that looks completely different compared to the labour market that will exist after the Covid -19 crisis. The analysis needs to be updated with discussions on how the changed conditions affects the expected outcome.

In Annex 6.1 Sweden is mentioned. We do not understand what is meant by double affiliation principle in this context. Swedish employers with collective agreements are obliged to offer the same conditions to employees regardless of union membership or not.

SK: The methods selected (a combination of macroeconomic and micro-level modelling) are largely appropriate. The authors also rely on a broad review of the literature for selecting various parameters and assumptions feeding into the aforementioned models. In particular, we find it important that the authors have provided an appropriate discussion of the uncertainty that goes hand-in-hand with the own wage elasticity they have selected on the basis of findings presented in the current literature.

<u>Summary</u>

Main issues regarding the Commission IA proposed to be discussed during the WP meeting when examining the Commission's IA:

AT:

1. Lack of legal basis: The Commission uses Article 153 (1) (b) TFEU as the legal basis, arguing that minimum wages are a key component of working conditions. However, this interpretation is not compatible with the wording of Article 153 (5) TFEU. The proposal for a directive on adequate minimum wage would not have only an indirect effect on pay (like e.g. the 2019 Directive on work-life balance for parents and the 2019 Directive on transparent and predictable working conditions), but would have direct interference in the determination of pay. The Commission's interpretation would make Article 153 (5) TFEU completely redundant. Furthermore, the ECJ explicitly states that "determining the amount of the various components of pay" and thus the obligation to introduce minimum wages falls within the competence of the Member States (Case C-268/06). Furthermore Art. 4 (Promotion of collective bargaining on wage setting) is not covered by Art. 153 (1) b. Another legal basis for this directive is required, if there is one at all.

2. Subsidiarity and Proportionality: The principle of subsidiarity as well as the division of competences between the EU and its Member States need to be respected and are necessary to ensure that political priorities are efficiently delivered. There is no need for a horizontal EU initiative as problems arise only in a specific number of Member States. The introduction of an EU-wide minimum wage framework undermines well-functioning collective bargaining systems and violates the principles of subsidiarity and proportionality.

3. No legal certainty: Numerous vague and unclear terms lead to legal uncertainty as they leave wide scope for interpretation by the ECJ. Its legal implications are not foreseeable. As already stated, the proposed directive does not even have a legal basis. The proposed directive therefore violates fundamental principles of the rule of law.

4. No need for EU legislation: There is no need for a horizontal EU initiative as problems arise only in a specific number of Member States. The introduction of an EU-wide minimum wage framework undermines well-functioning collective bargaining systems. In Austria the economy has implemented the minimum wage of 1,500 euros (14 times a year) in practically all collective agreements as planned - despite the Corona crisis. Austria also has the highest collective bargaining coverage worldwide of 98 % according to OECD (or 94% according to "Statistik Austria"). This ensures that the minimum wages are tailored to the needs of the respective industries and their employees. Some small areas that are not covered by collective agreements but determined by legal act (called "minimum-wage rates").

5. Intervention in collective bargaining: The introduction of an EU-wide minimum wage framework undermines the well-functioning collective bargaining system, which has significantly contributed to social peace in Austria for decades. It may interfere with the autonomy of social partners as well as their collective bargaining freedom. In particular, the provisions laid down in Chapter II, as well as the reporting obligations and regulations with regard to transparency in wage setting, may massively interfere with the Austrian system of wage determination and potentially negatively impact the well-functioning and historically grown Austrian system of social partnership.

6. Indicative targets of minimum wage: Indicative targets of 60% of the gross median wage and 50% of the gross average wage are not appropriate. Any numerical specification is to be rejected. 60% of median income is not enough to avoid poverty in low-wage countries. In high-wage countries, on the other side, the target is far too high and prevents the employment of young, unqualified workers, in particular. In the current labour market situation, this is harmful.

7. Enforcement, monitoring and data collection: The proposed directive creates new bureaucratic burdens and additional costs especially with regard to Article 10, which is aiming to establish a data collection and monitoring system. The establishment of data systems according to Art. 10 would entail considerable costs and additional bureaucracy not only for Member States but also for social partners. Additional bureaucratic burdens and costs are not appropriate. The requirement to set up a data collection system is to be rejected.

8. Effects on the labour market in the face of Covid-19: Due to necessary lockdowns, sectors such as retail and tourism have been strongly affected by the crisis. Member States aim to avoid massive job losses and business failures. Rising minimum wages and thus increasing employer costs may contradict these aims, as it will potentially have negative effects on employment and competitiveness. The current crisis cannot be considered as the right time to put additional strain on employers.

BE:

1. We have difficulty to recognize ourselves in the strong distinction and approaches contained in the proposal between statutory minimum wages and collective bargaining based systems. We have a system where the social partners negotiate industry-level minimum wages, but also the national minimum wage, in full autonomy. These levels of wages set by the social partners are then declared universally binding through a mere administrative extension. This administrative extension does not interfere in the setting of minimum wages decided by the social partners. We don’t have a law that sets a minimum wage. For Belgium it is not clear on which basis we are classified as a country with a statutory minimum wage setting systems.

2. Belgium is concerned about the impact of the preferred package B on the ‘level playing field’. The large distinction between the actions to be taken by member states having a statutory minimum wages and member states with only a collective bargaining based systems can have a negative impact on the upward convergence of minimum wages.

3. Considering the Principle 6 of the European Pillar of Social Rights, the President of the European Commission‘s words in the State of the Union address as well as the objectives of the proposal for a directive on adequate minimum wages, Belgium is willing to go deeper in the debate around the criteria proposed for setting and updating statutory minimum wages.

BG:

1. The legal basis and compliance of the content of the proposal for a Directive with the restrictions imposed in Art. 153, para. 5 of the TFEU: The Republic of Bulgaria welcomes the commitment made by the Legal Service of the Council to submit a written opinion on this issue. Bulgaria considers that issue in connection with the inclusion of indicative benchmarks in the operational part of the proposal and in the recitals, which in practice may predetermine the amount of the minimum wage, ignoring the national mechanisms, practices and criteria for its determination.

2. Use of „indicative reference values, such as those commonly used at international level" as means to establish adequacy of the minimum wages: The Republic of Bulgaria believes more in depth discussions has to be conducted regarding the two main reference values, suggested and examined in the IA. The national medians in terms of minimum wages are very different between the Member States and the differences are determined by the nature of the distribution of individual wages and the degree of their differentiation. Use of a lower limit for the minimum wage - 60 percent of the median salary can distort the information between the Member States of the European Union. The average wage contains another significant deficit and in the conditions of growing instability in the labour market this indicator may report an increase. The increase in the average wage may also be a result of the restructuring of the labour market (the reduction of low-paid workers leads to an increase in the average wage), which in practice cannot guarantee adequacy to the specific economic situation.

3. Monitoring and data collection: The Republic of Bulgaria considers that further work should be done on the texts on monitoring and data collection in order to have a clear picture of the current gaps and the measures that have to be taken to overcome them (at EU and national levels). It should be noted that currently the information on the median salary in Bulgaria is calculated once every 4 years by the National Statistical Institute (NSI) within the Eurostat survey "Structure of Earnings", therefore it is not possible to provide annual information on this indicator. It would be useful to have additional information about the future plan of the Commission on data collection.

CY:

We need to further examine the impact on seafarers' employment and the competitiveness of the European shipping flags.

CZ:

1. Overall economic and social impact on individual Member States.
2. Monitoring of compliance. The methodology of data collection and their comparability is unclear.
3. Insufficient justification and incorrect information for some of the conclusions in IA (see comments to the Q2(a)).

DK:

1. The legal basis.
2. The principle of subsidiarity
3. No legal certainty. It should be clear from the Directive that it does not create any individual rights
4. No intervention in collective bargaining and the social partners autonomy. Enforcement, monitoring and data collection. It should be possible for the social partners to be solely responsible for the implementation of the Directive in accordance with the Danish labour market model. This means that provision involving state responsibilities should be deleted or adjusted (art. 4, 2, and article 10 in particularly)

EE:

1. Legal basis;
2. Subsidiarity and proportionality;
3. Effects on the labour market taking into account the impact of Covid-19, including different timeline scenarios for reaching the reference values (60% median wage and 50% average wage);

4. Correlation of collective bargaining coverage and adequacy of the minimum wage in the EU countries. (How is the coverage of collective bargaining and the share of the minimum wage in the average and median wage (adequacy of the minimum wage) correlated in the EU countries?);

5. Collective bargaining coverage rate of 70% as a clear and realistic objective for all Member States taking into account the specificities of the systems of national labour markets;

FI:

1. Legal base

2. Definition of minimum wage based on collective agreements

3. Monitoring and indicators

FR:

1. Examen de la liste des critères définis à l'article 5 sur le caractère adéquat des salaires minimaux légaux (inclusion de la productivité notamment)

2. Justification : L'étude d'impact souligne la nécessité de prendre en compte le critère d'évolution de la productivité. Ce critère n'est pas directement pris en compte dans le calcul du SMIC en France, mais seulement de façon indirecte via le gain de pouvoir d'achat du salaire horaire de base ouvrier et employé, et détaillé par ailleurs dans le rapport du groupe d'expert du SMIC. L'étude d'impact apporte peu d'informations sur la façon dont ce critère doit être considéré par les autorités nationales pour le calcul du salaire minimum.

3. Précisions concernant les éléments à communiquer chaque année dans le cadre du suivi de la mise en œuvre de la Directive (notamment sur les retenues autorisées par la loi)

4. Justification : L'étude d'impact mentionne la nécessité de limiter le recours aux variations et retenues en ce qui concerne les salaires minimaux légaux. A cet effet, l'article 10 de la directive dispose que les Etats membres doivent communiquer chaque année à la Commission les données pertinentes concernant la couverture et le caractère adéquat des salaires minimaux, y compris les données relatives aux retenues existantes. Or, les données publiées dans les études de la DARES contiennent la majorité des éléments demandés, à défaut du point portant sur les retenues autorisées par la loi (retenues faites par les employeurs et retenues faisant l'objet de décisions en justice).

5. L'impact de la directive sur la compétitivité des pavillons européens;

6. L'impact de la directive sur la concurrence entre les pavillons des Etats membres ayant un salaire minimum et ceux où le salaire minimum n'existe pas ;

7. L'impact sur l'emploi maritime ;

8. Le coût de mis en conformité avec la directive pour les armateurs européens.

HR:

1. The legal basis is insufficiently clear.

2. Inadequately defined evaluation and monitoring system.

HU:

1. Indicative benchmarks: For the indicative benchmarks, the package (B) with the highest values among the different options has been selected. The IA finds that a minimum wage level of 55% and 60% of the median wage and 45% and 50% of the average gross wage, respectively, would induce a minimum wage increase in more than two thirds of the Member States. The preamble of the directive includes the highest reference values even within the package, the reason for which is not included in the IA. Moreover, the IA itself concludes that too high a reference value carries an economic risk that may lead to non-compliance with the Directive in some Member States

2. Legal basis: The draft and the IA do not take into account the even more limited competences of the Union with regard to the autonomy of the social partners when prescribing the framework and action plan to increase coverage by collective agreements. Article 153 (1) (f) TFEU provides for a single decision on the provisions on capacity building of the social partners, for which the IA does not provide a justification. The argument made at the Council Working Party meeting that, in the case of a dual legal basis, the Commission may be entitled to choose the qualified majority legal basis, is not laid down in the Treaties.

3. Choice of legal instrument: Both the consultation of the social partners and the Committee raised the option of publishing a recommendation or a combination of a directive containing mandatory elements and a directive containing indicaive standards, but only one paragraph deals with these possible solutions per each. (p. 75)

4. Categorization of Member States' systems: The IA on page 127 details the variety of Member States' systems for setting the minimum wage level, but finally categorises Member States into two categories without any flexibility in terms of requirements. The difference in legal consequences between the two categories (statutory and collectively agreed Member States) is very large, although in some cases the only difference is whether the amount set by the social partners is announced by statutory means or only extended to some sectors (though the latter may be even less efficient, as while the legal coverage is typically close to 100%, the scope of collective agreements, as we see in the case of Cyprus, can be as high as 55%.). It is not clear on what basis Member States using the hybrid system were ultimately categorized (eg where the government is bound by a minimum wage agreement in the event of an agreement but intervenes in the absence of an agreement, it may be automatically indexed).

5. Effects on the SME-s sector: The involvement of the SME sector and the different effects in the Member States must be examined more closely, taking into account differences between Member States, as the aim of reducing the competitiveness of the largest employer sector cannot be the objective at EU level (as prohibited by Article 153 (2) TFEU).

6. The preference of collective bargaining to statutory minimum wages: The IA does not sufficiently explain why the system based on collective bargaining is practically exempted from the directive, while the other system will be closely monitored. This unfair treatment and the creation of uneven playing field should be substantiated with strong arguments in stead of non-sequiturs and possible errors between cause and effect.

IE:

1. Legal Basis**:** There remain questions about the legal basis of the initiative and Ireland is unable to support this without further legal assessment from the Council Legal Service. The Commission uses Article 153 (1) (b) TFEU as the legal basis. However, this may not be compatible with Article 153 (5) TFEU, which explicitly exempts "pay". The EU treaty, Article 153(5), states that the "provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs".

2. Subsidiarity**:** This proposal may be in conflict with the broader principle of subsidiarity. Article 5(3) of the TEU explains this stating that "in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

3. The intervention logic does not seem to apply to Ireland, on the basis of the data presented: The evidence presented does not establish that there is an inadequate wage problem in Ireland. Given that Ireland does have low levels of collective bargaining coverage, this seems to run contrary to the intervention logic.

4. Measurement of Union Coverage**:** "Union coverage" is not a concept that was designed to be used in legislation and there are many problems associated with its measurement. Annex 4.6 of the Impact Assessment addresses some of these and they are of major importance. For this proposal to go ahead a standardised method of calculating union coverage would need to be agreed.

IT:

1. Monitoring framework: is benchmarking sufficient to assess the impact of MW on labour markets?

LT:

1. Legal basis of TFEU 153(5); in line with the scope of the Directive – TFEU 153(1)(f);

2. Subsidiarity and Proportionality;

3. Link between the IA and text of the Directive (especially Art. 5);

4. Comprehensiveness of data used in the IA;

5. Implication for MS and Social partners of the enforcement, monitoring and data collection

LV:

1. *The analysis of impact on minimum wage levels and their revisions seems incomplete and does not take into account the specific circumstances of each Member State – including the share of minimum wage recipients – and asserts that minimum wages would be the main instrument for fighting in-work poverty though poverty is measured on household level and other elements including social protection systems play a crucial role therefore in this domain.*

The analysis that has been carried out by the Commission seems one-sided and incomplete including asserting that increases in minimum wage would contribute to economic development in all cases as well as that the minimum wage is the main instrument for fighting poverty. Poverty is measured on household level with different benefits including minimum income schemes playing a role, equally skills enhancement programmes can play an important role as well. Neither has the current impact of minimum wages including on compression of wage scales or the share of minimum wage recipients and the reasons behind it across Member States been studied in the analysis. Efficiency of labour allocation across firms, thus job mobility and productivity gaps can have a considerable role on wage dispersion in firms and thus for implications for what can be the better approach towards minimum wage or collective bargaining in the respective economy of the Member State. Some parts of the analysis seem to rely on some observed correlations rather than impact evaluations to establish causality.

2. *The threshold proposed for collective bargaining coverage does not seem feasible given the realities in the economies and is a cause of concern as regards the division of competences of the Treaty (if it is not possible to mandate Member States to introduce mandatory minimum wages, neither should it be possible to mandate a certain collective bargaining coverage).*

Structural shifts in the economy and labour markets might have had the most profound impact on collective bargaining structures, social partner organization membership numbers and collective bargaining coverage. For example - nowadays there are more medium and small enterprises and less large ones than in the past as well as the services sectors have gained in importance over the recent decades and digitalization has added to this development. The assumption made that budgetary resources allocated to social partner organizations would reverse the trend might not be true neither has been an assessment made on how previous investment in the capacity of social partners has contributed to better functioning of the social dialogue and mainly - what has been the actual impact of such investment on the membership of trade unions and employer organizations. The autonomy and genuine representations aspects in cases where a large part of financing of social partner organizations is already now provided by the state budget or EU funds has not been looked at as well neither an analysis has been carried out about cases where unionization is very low and thus what could be the legitimacy of collective bargaining and who would be the bargaining sided in for example services sectors with predominantly small and micro enterprises. In Latvia more than 95% of companies are small or micro companies with the services sector playing an important role thus achieving a genuine collective bargaining coverage of 70% is not realistic. Additionally, the 70% threshold seems to have been set arbitrary without carrying out a feasibility analysis. Additionally the idea of workers or companies joining trade unions or employers organizations to reach such a threshold in a meaningful time period would entail some form of a compulsory element that might go against the spirit of collective bargaining, social partner autonomy and the principle of freedom of association.

3. *Subsidiarity – the choice of the instrument to achieve the aim should be left to the Member States (either minimum wage or collective bargaining)*

The economic structures, traditions differ considerably across the EU as regards both - minimum wage setting and social dialogue/collective bargaining - thus laying out provisions for Member States how collective bargaining or social dialogue should function in Member States that rely more on statutory minimum wages could have the same Treaty implications as laying down provisions about how minimum wages should be set in Member States without statutory minimum wages.

MT:

1. The IA does not take into consideration the economic realities of Member States, in particular issues such as competitiveness and impact on employers/businesses.

2. Also, the IA does not take into consideration national traditions and history of industrial relation. The 70% threshold of collective bargaining coverage seems to have been set arbitrarily without carrying out a feasibility study.

3. While impacts of legislation must be measurable, the use of the international indicators suggested such as that of 60% gross median wage and 50% of the gross average wage does not take into consideration the different aspects of the varied MS economies. Also some data might be difficult to collect and will not be comparable across Member States, especially that of collective bargaining coverage. For those MS governments that have minimal input in collective agreements, especially those done on company level such as in Malta, the requirement to make collective agreements transparent and publicly available is problematic due to exposing inside business information and potentially hindering competitiveness of businesses. The criteria chosen for those MS with statutory minimum wages is prescriptive and does not allow for Member States to adapt to their economic and labour market realities.

NL:

1. The legal basis, concerning the division of competences between the Member States and the Commission, and the subsidiarity and proportionality principles.

2. The policy objectives. I.e., the intervention logic problems in relation to the objectives, the division of general aims and specific and operational objectives, and the use of measurable indicators. In particular the effects on convergence/ divergence within the EU should be discussed.

3. The economic impacts; i.e. the relation between wages, adequacy, standards of living, unemployment, competitiveness, productivity and costs for public institutions.

PL:

1) Legal basis – see point 4 (a)

2) Subsidiarity and proportionality of the proposal – see point 4 (b-c)

3) Member States costs linked to the establishment of a new data collection system for monitoring purposes and potential growth in reporting burden on entities and burden on NSI

4) Limited comparability of national data to be delivered for monitoring purposes, not harmonised within ESS – see point 9 (b)

5) The possibility of applying for derogations by Member States or introducing some transitional period for the implementation of a new data collection system for monitoring purposes is not covered by IA – see point 9 (c).

RO:

1. Even if there is a formula involved in establishing the level of minimum wage, social partners should have room for manoeuvre in order to negotiate the final figure, taking into account the concrete conditions at the time of establishing the minimum wage level. For example, situations as the current economic crisis caused by Covid-19.

2. The choice of a Directive as instrument and the real impact of taking action at the European level considering there is no clear evidence that the increase of the collective bargaining or the use of the proposed criteria will improve the adequacy of the minimum wage.

3. The options should consider the risks or possible indirect impact on changing the wage setting systems, including the impact on, trade and intra EU workforce mobility or public and private pay gap.

4. It is not clear to what extent the draft Directive has taken into account the conclusions of the consultations with trade unions and employers at the European level, given that the measures in question will affect both the member states governments, trade unions and employers.

5. The recitals of the directive do not clearly explain and justify the necessity of regulating this matter as a directive.

6. There are contradictions between the recitals part of the directive and the operative part, for example between recital (16):

   "It does not interfere with the freedom of Member States to set statutory minimum wages"

and the text of art. 5 that imposes 4 clear minimum criteria to be used for a formula leading to the level of minimum wage.

SI:

1. Legal basis
2. Exact measurability and comparability of indicators, such as collective agreements coverage in MS

SK:

The Slovak Republic has already expressed support for the main objectives of the presented draft Directive, but provisions of Art. 4, 5, 9, 10 and 16 are subject to the further analysis also in the context of the recently adopted national legislative aiming to improve the adequacy of the minimum wage in the Slovak Republic. The Slovak Republic has reservations about the wording of these articles.

Article No 4 - Promotion of collective bargaining on wage setting.

We are of the opinion that the determination of the percentage of collective bargaining coverage is not related to the process of determining the adequacy of the minimum wage. We think that the Commission intended to use one instrument to address two policy areas.

Article No 5 Adequacy – The Slovak Republic requested deeper clarification regarding the selected criteria and related indicators mentioned in the recital 21.

If the national legislation on MW fulfils the indicators we do not need the set up criterions on obligatory basis. The Slovak Republic prefers that the national criterions shall be given as examples and not obligatory requirements, and that they include also employment / unemployment, including disadvantaged applicants, regional criteria, economic growth and convergence, labor market flexibility.

As regards the article No 9 concerning public procurement, the Slovak Republic recommends to add that the draft Directive must not allow the creation of obstacles to procurement from other member states.

Article No 10 - Monitoring and data collection – The Slovak Republic is concerned about the obligations stemming from the Article 10, which will increase the administrative burden of the member states on annual basis. We do not dispose with the statistical data as regards the rate of collective bargaining coverage e.g.

As regards the non-regression clause in Article 16 the Slovak Republic expressed a reservation. The Slovak Republic recommends considering the wording of the regression clause in the draft directive, e.g. in relation to a possible significant decline in the economy or employment, especially for disadvantaged applicants.

We are expecting the CLS to provide us its opinion in due time to clarify the legal basis together with answers to the above mentioned questions.

Council of the European Union
General Secretariat

Interinstitutional files:
2020/0310(COD)

Brussels, 23 December 2020

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From:	Presidency
To:	Delegations
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on adequate minimum wages in the European Union - Evaluation of the Impact Assessment, Compilations of answers of Member states

In view of the discussion of the Impact Assessment in the Social Questions Working party, delegations find in annex a compilation of the Member States' answers to the questionnaire on the Impact Assessment as received until today.