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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on adequate minimum wages in the European Union - Outcome of the European Parliament's first reading (Strasbourg, 12 to 15 September 2022)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Employment and Social Affairs, Dragoş PÎSLARU (RE, RO), presented on behalf of the Committee a compromise amendment (amendment number 107/REV) to the abovementioned proposal for a Directive. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

¹ OJ C 145, 30.6.2007, p. 5.

II. VOTE

When it voted on 14 September 2022, the plenary adopted the compromise amendment (amendment number 107/REV) to the abovementioned proposal for a Directive. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

P9_TA(2022)0316

Adequate minimum wages in the European Union *I**

European Parliament legislative resolution of 14 September 2022 on the proposal for a directive of the European Parliament and of the Council on adequate minimum wages in the European Union (COM(2020)0682 – C9-0337/2020 – 2020/0310(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2020)0682),
 - having regard to Article 294(2) and Article 153(2), in conjunction with point (b) of Article 153(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0337/2020),
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Danish Parliament, the Maltese Parliament and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 25 March 2021³,
 - having regard to the opinion of the Committee of the Regions of 19 March 2021⁴,
 - having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 15 June 2022 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rules 59 and 40 of its Rules of Procedure,
 - having regard to the opinion of the Committee on Women's Rights and Gender Equality,
 - having regard to the report of the Committee on Employment and Social Affairs (A9-0325/2021),
1. Adopts its position at first reading hereinafter set out;

³ OJ C 220, 9.6.2021, p. 106.

⁴ OJ C 175, 7.5.2021, p. 89.

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P9_TC1-COD(2020)0310

Position of the European Parliament adopted at first reading on 14 September 2022 with a view to the adoption of Directive (EU) 2022/... of the European Parliament and of the Council on adequate minimum wages in the European Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee⁵,

Having regard to the opinion of the Committee of the Regions⁶,

Acting in accordance with the ordinary legislative procedure⁷,

⁵ Opinion of 25 March 2021 (not yet published in the OJ).

⁶ Opinion of 19 March 2021 (not yet published in the OJ).

⁷ Position of the European Parliament of 14 September 2022.

Whereas:

- (1) Pursuant to Article 3 of the Treaty on European Union (TEU), the aims of the Union are, inter alia, to promote the well-being of its peoples and to work for the sustainable development of Europe based on a highly competitive social market economy, ***aiming to ensure full employment and social progress, a high level of protection and improvement of the quality of the environment, while promoting social justice and equality between women and men. Pursuant to Article 9 of the Treaty on the Functioning of the European Union (TFEU), the Union is to take into account, inter alia, requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, and the fight against social exclusion.***

- (2) ***Article 151 TFEU provides that the Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter (ESC), have as their objectives, inter alia, the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection and dialogue between management and labour.***

- (3) Article 31 of the Charter of Fundamental Rights of the European Union⁸ (the ‘Charter’) provides for the right of every worker to working conditions which respect his or her health, safety and dignity. *Article 27 of the Charter provides for the right of workers to information and consultation. Article 28 of the Charter provides for the right of workers and employers, or their respective organisations, in accordance with Union law and national laws and practices, to negotiate and conclude collective agreements at the appropriate levels. Article 23 of the Charter provides for the right to equality between women and men in all areas, including employment, work and pay.*
- (4) *The ESC* establishes that all workers have the right to just conditions of work. It recognises the right of all workers to a fair remuneration sufficient for a decent standard of living for themselves and their families. *It also* recognises the role of freely concluded collective agreements, as well as of statutory minimum wage-setting mechanisms, to ensure the effective exercise of this right, *the right of all workers and employers to organise in local, national and international organisations for the protection of their economic and social interests and the right to bargain collectively.*

⁸ OJ C 326, 26.10.2012, p. 391.

- (5) Chapter II of the European Pillar of Social Rights (*the 'Pillar'*), proclaimed at Gothenburg on 17 November 2017, establishes a set of principles to serve as a guide towards ensuring fair working conditions. Principle No 6 of the Pillar ■ reaffirms workers' right to fair wages that provide for a decent standard of living. It also provides that adequate minimum wages are to be ensured, in a way that provides for the satisfaction of the needs of the worker and his or her family in light of national economic and social conditions, while safeguarding access to employment and incentives to seek work. Furthermore, it recalls that in-work poverty is to be prevented and that all wages are to be set in a transparent and predictable way, *according to national practices* and respecting the autonomy of the social partners. *Principle No 8 of the Pillar provides that the social partners are to be consulted on the design and implementation of economic, employment and social policies according to national practices and that they are to be encouraged to negotiate and conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action.*

- (6) Guideline 5 in the annex to Council Decision (EU) 2020/1512⁹ *calls on Member States that have in place national mechanisms for the setting of statutory minimum wages* to ensure an effective involvement of social partners in wage-setting, providing for fair wages that enable a decent standard of living, *while paying particular attention to lower and middle income groups* with a view to upward convergence. That Guideline also calls on Member States to promote social dialogue and collective bargaining *with a view to* wage-setting. It also calls on Member States and the social partners to ensure that all workers have adequate and fair wages by benefitting from collective agreements or adequate statutory minimum wages, and taking into account their impact on competitiveness, job creation and in-work poverty, *while respecting national practices*. The Commission communication of 17 September 2020 entitled ‘Annual Sustainable Growth Strategy 2021’ states that Member States should adopt measures to ensure fair working conditions. Moreover, the Commission communication of 17 December 2019 entitled ‘Annual Sustainable Growth Strategy 2020’ recalled that, in the context of growing social divides, it is important to ensure that each worker earns *a fair* wage. Country-specific recommendations have been issued to a number of Member States in the field of minimum wages *with the aim of improving the setting and updating of minimum wages*.

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

- (7) Better living and working conditions, including through adequate minimum wages, benefit **workers and businesses in the Union *as well as society and the economy in general*** and are a prerequisite for achieving *fair*, inclusive and sustainable growth. Addressing large differences in the coverage and adequacy of minimum wage protection contributes to improving the fairness of the Union's labour market, ***to preventing and reducing wage and social inequalities, and to promoting economic and*** social progress and upward convergence. Competition in the internal market should be based on high social standards, ***including a high level of worker protection and the creation of quality jobs, as well as on*** innovation and improvements in productivity, ***while*** ensuring a level playing field.
- (8) When set at adequate levels, minimum wages, ***as provided for in national law or collective agreements***, protect the income of ***workers, in particular of*** disadvantaged workers, help ensure a decent living, ***as pursued by*** International Labour Organization (ILO) Minimum Wage Fixing Convention No 131 (1970). Minimum wages ***that provide for a decent standard of living and thus meet a threshold of decency can contribute to the reduction of poverty at national level and*** to sustaining domestic demand ***and purchasing power***, strengthen incentives to work, reduce wage inequalities, ***the gender pay gap*** and in-work poverty, ***and limit the fall in income during economic downturns***.

- (9) *In-work poverty in the Union has increased over the past decade and more workers are experiencing poverty. During economic downturns, the role of adequate minimum wages in protecting low-wage workers is particularly important, as they are more vulnerable to the consequences of such downturns, and is essential for the purpose of supporting a sustainable and inclusive economic recovery, which should lead to an increase in quality employment. To ensure sustainable recovery, it is vital that businesses, in particular microenterprises and small enterprises, thrive. In view of the effects of the COVID-19 pandemic, it is important to assess the adequacy of wages in low-paid sectors that have proven to be essential and of great social value during the crisis.*
- (10) Women, *younger workers, migrant workers, single parents*, low-skilled workers, *persons with disabilities, and in particular persons who suffer from multiple forms of discrimination, still* have a higher probability of being minimum wage or low wage earners than other groups. *Given the over-representation of women in low-paid jobs, improving the adequacy of minimum wages* contributes to gender equality, closing the gender pay and pension gap, as well as elevating women *and their families* out of poverty, *and contributes to sustainable economic growth in the Union.*

- (11) The crisis caused by the COVID-19 pandemic is having a significant impact on the services sector, *microenterprises* and small *enterprises*, which have a high share of *low-wage and* minimum-wage earners. Minimum wages are *therefore* also important in view of the structural trends that are reshaping labour markets and which are increasingly characterised by high shares of precarious and non-standard forms of work, *often including part-time, seasonal, platform and temporary agency workers*. Those trends have led, *in many cases*, to an increased job polarisation resulting in an increasing share of low-paid and low-skilled occupations *and sectors* in most Member States, as well as to higher wage inequality in some of them. *It is more difficult for workers with non-standard contracts to organise and negotiate for collective agreements.*
- (12) While minimum wage protection exists in all Member States, in some that protection stems from legislative *or administrative provisions* and from collective agreements while in others it is provided exclusively through collective agreements. *The different national traditions in the Member States should be respected.*

- (13) Minimum wage protection *provided for in* collective agreements in low-paid occupations is adequate *and therefore provides a decent standard of living* in most cases, *and has proven to be an effective means by which to reduce in-work poverty*. In several Member States, statutory minimum wages are *usually* low compared to other wages in the economy. In 2018, the statutory minimum wage did not provide sufficient income for a single minimum-wage earner to reach the *at-risk-of-poverty* threshold in nine Member States. ■
- (14) Not all workers in the Union are *effectively* protected by minimum wages, *as* in some Member States some workers, even though they are covered, receive a lower remuneration than the statutory minimum wage in practice, due to *non-compliance with* existing rules. Such non-compliance has been found to affect, in particular, women, young workers, *low-skilled workers, migrant workers, single parents*, persons with disabilities, *workers in non-standard forms of employment such as temporary workers and part-time workers, and agricultural and hospitality workers, which as a consequence drives down wages*. In Member States where minimum wage protection is provided for in collective agreements *alone*, the share of workers not covered is estimated to vary from 2 % to 55 % of all workers.

- (15) *The United Nations' Convention on the Rights of Persons with Disabilities requires that workers with disabilities, including those in sheltered employment, receive equal remuneration for work of equal value. That principle is also relevant with regard to minimum wage protection.*
- (16) While strong collective bargaining, *in particular* at sector or cross-industry level, contributes to ensuring adequate minimum wage protection, traditional collective bargaining structures have been eroding during *recent* decades, due, inter alia, to structural shifts in the economy towards less unionised sectors and to the decline in trade union membership, *in particular as a consequence of union-busting practices and* the increase of *precarious and non-standard* forms of work. *In addition, sectoral and cross-industry level collective bargaining came under pressure in some Member States in the aftermath of the 2008 financial crisis. However, sectoral and cross-industry level collective bargaining is an essential factor for achieving adequate minimum wage protection and therefore needs to be promoted and strengthened.*

- (17) The Commission has consulted management and labour in a two-stage process with regard to possible action to address the challenges related to adequate minimum wage protection in the Union, in accordance with Article 154 TFEU. There was no agreement among the social partners to enter into negotiations with regard to those matters. It is, however, important to take action at Union level, ***while respecting the principle of subsidiarity, to improve living and working conditions*** in the Union, ***in particular the adequacy of*** minimum wages, taking into account the outcomes of the social partners' consultation.
- (18) ***With a view to improving living and working conditions as well as upward social convergence in the Union***, this Directive establishes minimum requirements at Union level ***and sets out procedural obligations for the adequacy of statutory minimum wages, and enhances effective access of workers*** to minimum wage protection, in the form of a statutory minimum wage ***where it exists, or provided for in*** collective agreements as defined for the purposes of this Directive. ***This Directive also promotes collective bargaining on wage-setting.***

(19) In accordance with Article 153(5) *TFEU*, this Directive neither aims to harmonise the level of minimum wages across the Union nor does it aim to establish a uniform mechanism for setting minimum wages. It does not interfere with the freedom of Member States to set statutory minimum wages or to promote access to minimum wage protection provided for in collective agreements, in accordance with national *law and practice* and the specificities of each Member State and in full respect for national competences and the social partners' *right to conclude agreements*. This Directive does not impose *and should not be construed as imposing* an obligation on the Member States where wage formation is ensured exclusively via collective agreements to introduce a statutory minimum wage or to declare collective agreements universally applicable. Moreover, this Directive does not establish the level of pay, which falls within the *right* of the social partners *to conclude agreements* at national level and within the relevant competence of Member States.

(20) *This Directive takes into account that, in accordance with the Maritime Labour Convention, 2006¹⁰, as amended, Member States who ratified that Convention are, after consulting representative ship-owners' and seafarers' organisations, to establish procedures for determining minimum wages for seafarers. Representative ship-owners' and seafarers' organisations are to participate in such procedures. In light of their specific nature, the acts of Member States resulting from such procedures should not be subject to the rules on statutory minimum wages set out in Chapter II of this Directive. Such acts should not interfere with free collective bargaining between ship-owners or their organisations and seafarers' organisations.*

¹⁰ Council Decision 2007/431/EC of 7 of June 2007 authorising Member States to ratify, in the interests of the European Community, the Maritime Labour Convention, 2006, of the International Labour Organisation (OJ L 161, 22.6.2007, p. 63).

(21) ***While complying with Regulation (EC) No 593/2008 of the European Parliament and of the Council¹¹***, this Directive should apply to workers who have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State, with consideration to the criteria established by the Court of Justice of the European Union for determining the status of a worker. Provided that they fulfil those criteria, **workers in both the private and the public sectors, as well as domestic workers, on-demand workers, intermittent workers, voucher-based workers, platform workers, trainees, apprentices and other non-standard workers, as well as bogus self-employed and undeclared workers could** fall within the scope of this Directive. Genuinely self-employed persons do not fall within the scope of this Directive since they do not fulfil those criteria. The abuse of the status of self-employed persons, as defined in national law, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work. Bogus self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations. Such persons should fall within the scope of this Directive. The determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of the work and not by the parties' description of the relationship.

¹¹ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

- (22) Well-functioning collective bargaining on wage-setting is an important means by which to ensure that workers are protected by adequate minimum wages *that therefore provide for a decent standard of living*. In the Member States with statutory minimum wages, collective bargaining supports general wage developments and therefore contributes to improving the adequacy of minimum wages *as well as the living and working conditions of workers*. In the Member States where minimum wage protection is provided for exclusively by collective bargaining, their level as well as the share of protected workers are directly determined by the functioning of the collective bargaining system and the collective bargaining coverage. Strong and well-functioning collective bargaining together with a high coverage of sectorial or cross-industry collective agreements strengthen the adequacy and the coverage of minimum wages.

(23) *Minimum wage protection through collective agreements is beneficial to workers and employers as well as businesses. In some Member States there are no statutory minimum wages. In those Member States, wages, including minimum wage protection, are provided for exclusively by collective bargaining between the social partners. Average wages in those Member States are among the highest in the Union. Those systems are characterised by very high collective bargaining coverage as well as high levels of affiliation to both the employer associations and trade unions. Minimum wages that are provided for in collective agreements that have been declared universally applicable without any discretion of the declaring authority as to the content of the applicable provisions should not be considered to be statutory minimum wages.*

- (24) In a context of declining collective bargaining coverage, it is essential that the Member States promote collective bargaining, *facilitate the exercise of the right of collective bargaining on wage-setting and thereby enhance the wage-setting* provided for in collective agreements *to improve workers' minimum wage protection*. Member States *have ratified the ILO Freedom of Association and Protection of the Right to Organise Convention No 87 (1948) and Right to Organise and Collective Bargaining Convention No 98 (1949). The right to bargain collectively is recognised under those ILO Conventions, under the ILO Labour Relations (Public Services) Convention No 151 (1978) and the Collective Bargaining Convention No 154 (1981), as well as under the Convention for the Protection of Human Rights and Fundamental Freedoms and the ESC. Articles 12 and 28 of the Charter guarantee, respectively, the freedom of assembly and association and the right of collective bargaining and action. According to its preamble, the Charter reaffirms those rights as they result, in particular, from the Convention on the Protection of Human Rights and Fundamental Freedoms and the Social Charters adopted by the Union and by the Council of Europe. Member States should take, as appropriate and in accordance with national law and practice, measures promoting collective bargaining on wage-setting. Such measures might include, among others, measures easing the access of trade union representatives to workers.*

(25) Member States with a high collective bargaining coverage tend to have a small share of low-wage workers and high minimum wages. Member States with a small share of low-wage earners have a collective bargaining coverage rate above **80 %**. Similarly, the majority of the Member States with high levels of minimum wages relative to the *average* wage have a collective bargaining coverage above **80 %**. ***Therefore, each Member State with a collective bargaining coverage rate below 80 % should adopt measures with a view to enhancing such collective bargaining. Each Member State with a collective bargaining coverage below a threshold of 80 % should provide a framework of enabling conditions for collective bargaining, and establish an action plan to promote collective bargaining to progressively increase the collective bargaining coverage rate. In order to respect the autonomy of the social partners, which includes their right to collective bargaining and excludes any obligation to conclude collective agreements, the threshold of 80 % of collective bargaining coverage should only be construed as an indicator triggering the obligation to establish an action plan.***

The action plan should be reviewed on a regular basis, at least every five years, and, if needed, revised. The action plan and any update thereof should be notified to the Commission and be made public. Each Member State should be able to decide on the appropriate form of its action plan. An action plan that a Member State has adopted before the entry into force of this Directive may be considered to be an action plan under this Directive provided that it contains actions to effectively promote collective bargaining and fulfils the obligations under this Directive. Each Member State should establish such an action plan after consulting the social partners or by agreement with them, or, following a joint request by the social partners, as agreed between them. Member States' collective bargaining coverage rates vary significantly owing to a number of factors, including national tradition and practice as well as historic context. This should be taken into account when analysing progress towards a higher collective bargaining coverage, particularly with regard to the action plan provided for in this Directive.

- (26) Sound rules, procedures and *effective* practices for setting and updating statutory minimum wages are necessary to deliver adequate minimum wages, while safeguarding *existing and creating new employment opportunities, a level playing field* and the competitiveness of firms including *microenterprises*, small enterprises and medium-sized enterprises (SMEs). Those rules, procedures and practices include a number of *components to contribute to* the adequacy of statutory minimum wages, including criteria *to guide Member States in setting and updating statutory minimum wages* and indicators to assess *their* adequacy, regular and timely updates, the existence of consultative bodies and the involvement of the social partners. A timely and effective involvement of the latter *in the setting and updating of statutory minimum wages as well as in the establishment or modification of automatic indexation mechanisms, where they exist*, is another element of good governance that allows for an informed and inclusive decision-making process. *Member States should provide the social partners with relevant information on statutory minimum wage-setting and updating. Giving the social partners the possibility to provide opinions, and to receive a reasoned response to opinions expressed prior to the presentation of proposals, on statutory minimum wage-setting and updating and before any decisions are taken could contribute to the proper involvement of the social partners in that process.*

- (27) *Member States which use an automatic indexation mechanism, including semi-automatic mechanisms in which a minimal obligatory increase of statutory minimum wage is at least guaranteed, should also carry out the procedures for updating the statutory minimum wages, at least every four years. Those regular updates should consist of an evaluation of the minimum wage taking into account the guiding criteria, followed, if necessary, by a modification of the amount. The frequency of the automatic indexation adjustments on the one hand and the updates of the statutory minimum wages on the other hand might differ. Member States where automatic or semi-automatic indexation mechanisms do not exist should update their statutory minimum wage at least every two years.*
- (28) Minimum wages are considered to be adequate if they are fair in relation to the wage distribution in the relevant Member State and if they provide a decent standard of living *for workers based on a full-time employment relationship*. The adequacy of statutory minimum wages is determined *and assessed by each Member State* in view of *its* national socio-economic conditions, including employment growth, competitiveness and regional and sectoral developments. *For the purpose of that determination, Member States should take into account* purchasing power, *long-term national* productivity levels and *developments, as well as* wage levels wage distribution and wage growth.

Among other instruments, a basket of goods and services at real prices established at national level can be instrumental to determining the cost of living with the aim of achieving a decent standard of living. In addition to material necessities such as food, clothing and housing, the need to participate in cultural, educational and social activities could also be taken into consideration. It is appropriate to consider the setting and updating of statutory minimum wages separately from income support mechanisms. Member States should use indicators and associated reference values to guide their assessment of statutory minimum wage adequacy. The Member States might choose among indicators commonly used at international level and/or indicators used at national level. The assessment might be based on reference values commonly used at international level such as the ratio of the gross minimum wage to 60 % of the gross median wage and the ratio of the gross minimum wage to 50 % of the gross average wage, which are currently not met by all Member States, or the ratio of the net minimum wage to 50 % or 60 % of the net average wage. The assessment might also be based on reference values associated to indicators used at national level, such as the comparison of the net minimum wage with the poverty threshold and the purchasing power of minimum wages.

(29) *Without prejudice to the competence of Member States to set the statutory minimum wage and to allow for variations and deductions, it is important to avoid variations and deductions being used widely, as they risk negatively impacting the adequacy of minimum wages. It should be ensured that variations and deductions respect the principles of non-discrimination and proportionality. Variations and deductions should therefore pursue a legitimate aim. Examples of such deductions might be the recovery of overstated amounts paid or deductions ordered by a judicial or administrative authority. Other deductions, such as those related to the equipment necessary to perform a job or deductions of allowances in kind, such as accommodation, present a high risk of being disproportionate. Moreover, nothing in this Directive should be construed as imposing an obligation on Member States to introduce any variations of or deductions from minimum wages.*

- (30) An effective enforcement system, including *reliable monitoring*, controls and field inspections, is necessary to ensure the functioning of *and compliance with* national statutory minimum wage frameworks. To strengthen the effectiveness of enforcement authorities, a close cooperation with the social partners is also needed, including to address critical challenges such as those related to *abusive* sub-contracting, bogus self-employment, non-recorded overtime *or health and safety risks linked to an increased work intensity*. *The capabilities of enforcement authorities should also be developed, in particular through training and guidance. Routine and unannounced visits, judicial and administrative proceedings and penalties in the case of infringements are important means by which to dissuade employers from effecting infringements.*

- (31) The effective implementation of minimum wage protection set out by legal provisions or provided for in collective agreements is essential in the **awarding and the** performance of public procurement and concession contracts. Non-respect for collective agreements providing for minimum wage protection ■ may indeed occur in the execution of such contracts or in the sub-contracting chain thereafter, resulting in workers being paid less than the wage level agreed in the sectoral collective agreements. To prevent such situations, ■ in accordance with Articles 30(3) and 42(1) of Directive 2014/23/EU¹², Articles 18(2) and 71(1) of Directive 2014/24/EU¹³ and Articles 36(2) and 88(1) of Directive 2014/25/EU¹⁴, of the European Parliament and the Council, **public procurement contracting authorities and contracting entities are to take appropriate measures, including the possibility to introduce contract performance conditions, and ensure that economic operators apply to their workers the wages provided for in collective agreements for the relevant sector and geographical area and respect the rights of workers and trade unions arising from the ILO Freedom of Association and the Protection of the Right to Organise Convention No 87 (1948) and Right to Organise and Collective Bargaining Convention No 98 (1949), as referred to in those Directives, in order to abide by applicable obligations in the field of labour law. However, this Directive does not create any additional obligation in relation to those Directives.**

¹² Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contract (OJ L 94, 28.3.2014, p. 1).

¹³ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

¹⁴ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

- (32) *For applicants for financial support from Union funds and programmes under Regulation (EU) 2021/1060 of the European Parliament and of the Council¹⁵ and the enabling conditions therein, the rules for public procurement and concessions should be applied adequately, including with regard to compliance with collective agreements provisions.*
- (33) Reliable monitoring and data collection are *essential for effective minimum wage protection. For the purposes of data collection, Member States may rely on sufficiently representative sample surveys, national databases, harmonised data from Eurostat and other publicly accessible sources such as the Organisation for Economic Co-operation and Development. In exceptional cases where accurate data is not available, Member States might use estimates. Employers, in particular microenterprises and other SMEs, should not bear an unnecessary administrative burden with regard to the implementation of data collection requirements.* The Commission should report every *second* year to the European Parliament and to the Council its *analysis of levels and* developments in the adequacy and coverage of *statutory* minimum wages *as well as the collective bargaining coverage* on the basis of  data and information to be provided by Member States.

¹⁵ Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).

In addition, progress should be monitored in the framework of the process of economic and employment policy coordination at Union level. In that context, the ***Council or the Commission can request the Employment Committee and the Social Protection Committee, in accordance with Articles 150 and 160 TFEU respectively, to examine, in their respective area of competence, the development of the collective bargaining coverage and the adequacy of statutory minimum wages*** in the Member States on the basis of the ***report*** produced by the Commission and other multilateral surveillance tools such as benchmarking. ***During such an examination, the Committees are to involve the social partners at Union level, including cross-sectoral social partners, in accordance with Articles 150 and 160 TFEU respectively.***

- (34) ***Workers should have easy access to comprehensive information on statutory minimum wages as well as on minimum wage protection provided for in universally applicable collective agreements to ensure transparency and predictability as regards their working conditions, including for persons with disabilities in accordance with Directive (EU) 2016/2102 of the European Parliament and of the Council¹⁶.***

¹⁶ Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies (OJ L 327, 2.12.2016, p. 1).

- (35) Workers *and workers' representatives, including those who are trade union members or representatives*, should be in a position to exercise their right of *defence* when their rights relating to minimum wage protection are *provided for in national law or collective agreements and have been* violated. In order to prevent workers from being deprived of their rights *provided for in national law or collective agreements* and without prejudice to specific forms of redress and dispute resolution provided for in collective agreements, including systems of collective dispute resolution, Member States should take the necessary measures to ensure that *workers* have access to effective, *timely* and impartial dispute resolution and a right to redress, ■ as well as effective *judicial and/or administrative* protection from any form of detriment, *if* they decide to exercise their right of *defence*. *Social partners' involvement in the further development of impartial dispute resolution mechanisms in Member States can be beneficial. Workers should be informed about the redress mechanisms for the purpose of exercising their right to redress.*

- (36) The Commission should conduct an evaluation providing the basis for a review on the effective implementation of this Directive. The European Parliament and the Council should be informed of the results of such a review.
- (37) The reforms and measures adopted by the Member States to promote adequate minimum wage protection of workers, while being steps in the right direction, have not *always* been comprehensive and systematic. Moreover, *action taken at Union level* to improve the adequacy and coverage of minimum wages *can contribute to further improving living and working conditions in the Union and mitigating concerns about possible adverse economic effects resulting from isolated measures of Member States*. Since the objectives of this Directive cannot be sufficiently achieved by the Member States, but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

- (38) This Directive lays down *procedural obligations as* minimum requirements, thus leaving untouched Member States' prerogative to introduce and maintain more favourable provisions. Rights acquired under the existing national legal framework should continue to apply, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights for workers, nor can it constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this Directive, *including, in particular, with regard to the lowering or abolition of minimum wages.*
- (39) In implementing this Directive Member States should avoid imposing *unnecessary* administrative, financial and legal constraints, in *particular if they* hold back the creation and development of SMEs. Member States are therefore *encouraged* to assess the impact of their transposition measures on SMEs in order to ensure that they are not disproportionately affected, paying particular attention to microenterprises and to the administrative burden, and to publish the results of such assessments. If Member States find that SMEs are disproportionately affected by the transposition measures, they should consider introducing measures to support SMEs to adjust their remuneration structures to the new requirements.

- (40) Regulations (EU) 2021/240¹⁷ and (EU) 2021/1057¹⁸ are available to Member States to develop or improve the technical aspects of minimum wage frameworks, including on the assessment of adequacy, monitoring and data collection, broadening access, as well as on enforcement and on general capacity building relating to the implementation of those frameworks. ***In accordance with Regulation (EU) 2021/1057, Member States are to allocate an appropriate amount to the capacity building of the social partners,***

HAVE ADOPTED THIS DIRECTIVE:

¹⁷ Regulation (EU) 2021/240 of the European Parliament and of the Council of 10 February 2021 establishing a Technical Support Instrument (OJ L 57, 18.2.2021, p. 1).

¹⁸ Regulation (EU) 2021/1057 of the European Parliament and of the Council of 24 June 2021 establishing the European Social Fund Plus (ESF+) and repealing Regulation (EU) No 1296/2013 (OJ L 231, 30.6.2021, p. 21).

CHAPTER I
GENERAL PROVISIONS

Article 1

Subject matter

1. With a view to improving living and working conditions in the Union, ***in particular the adequacy of minimum wages for workers in order to contribute to upward social convergence and reduce wage inequality***, this Directive establishes a framework for:
 - (a) ***adequacy of statutory minimum wages with the aim of achieving decent living and working conditions;***

- (b) *promoting collective bargaining on wage-setting;*
- (c) *enhancing effective access of workers to **rights to** minimum wage protection **where provided for in national law and/or** collective agreements* ■ .

■

2. *This Directive shall be without prejudice to the full respect for the autonomy of the social partners, as well as their right to negotiate and conclude collective agreements.*
3. *In accordance with Article 153(5) TFEU, this Directive shall be without prejudice to the competence of Member States in setting the level of minimum wages, as well as to the choice of the Member States to set statutory minimum wages, to promote access to minimum wage protection provided **for in** collective agreements, **or both**.*

4. ***The application of this Directive shall be in full compliance with the right to collective bargaining. Nothing in this Directive shall be construed as imposing an obligation on any Member State:***
- (a) where wage formation is ensured exclusively via collective agreements, to introduce a statutory minimum wage; or***
 - (b) to declare any collective agreement universally applicable.***
5. ***The acts by which a Member State implements the measures concerning minimum wages of seafarers periodically set by the Joint Maritime Commission or another body authorised by the Governing Body of the International Labour Office shall not be subject to Chapter II of this Directive. Such acts shall be without prejudice to the right to collective bargaining and to the possibility to adopt higher minimum wage levels.***

Article 2

Scope

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

Article 3

Definitions

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

- (1) ‘minimum wage’ means the minimum remuneration *set by law or collective agreements* that an employer, *including in the public sector*, is required to pay to workers for the work performed during a given period **■** ;
- (2) ‘statutory minimum wage’ means a minimum wage set by law or other binding legal provisions, *with the exclusion of minimum wages set by collective agreements that have been declared universally applicable without any discretion of the declaring authority as to the content of the applicable provisions*;

- (3) ‘collective bargaining’ means all negotiations which take place ***according to national law and practice in each Member State*** between an employer, a group of employers or one or more employers’ organisations on the one hand, and one or more ***trade unions*** on the other, for determining working conditions and terms of employment; ■
- (4) ‘collective agreement’ means ***a written agreement*** regarding ***provisions on*** working conditions and terms of employment concluded by the social partners that ***have the capacity to bargain on behalf of workers and employers respectively according to national law and practice, including collective agreements that have been declared universally applicable***;
- (5) ‘collective bargaining coverage’ means the share of workers at national level to whom a collective agreement applies, ***calculated as the ratio of the number of workers covered by collective agreements to the number of workers whose working conditions may be regulated by collective agreements in accordance with national law and practice.***

Article 4

Promotion of collective bargaining on wage-setting

1. With the aim of increasing the collective bargaining coverage *and of facilitating the exercise of the right to collective bargaining on wage-setting, Member States, with the involvement of the* social partners, *in accordance with national law and practice, shall:*
 - (a) promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting, *in particular* at sector or cross-industry level;
 - (b) encourage constructive, meaningful and informed negotiations on wages *between* the social partners, *on an equal footing, where both parties have access to appropriate information in order to carry out their functions in respect of collective bargaining on wage-setting;*
 - (c) *take measures, as appropriate, to protect the exercise of the right to collective bargaining on wage-setting and to protect workers and trade union representatives from acts that discriminate against them in respect of their employment on the grounds that they participate or wish to participate in collective bargaining on wage-setting;*

(d) for the purpose of promoting collective bargaining on wage-setting, take measures, as appropriate, to protect trade unions and employers' organisations participating or wishing to participate in collective bargaining against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. *In addition, each Member State in which the collective bargaining coverage rate is less than a threshold of 80 % shall provide for a framework of enabling conditions for collective bargaining, either by law after consulting the social partners or by agreement with them. Such a Member State shall also establish an action plan to promote collective bargaining. The Member State shall establish such an action plan after consulting the social partners or by agreement with the social partners, or, following a joint request by the social partners, as agreed between the social partners. The action plan shall set out a clear timeline and concrete measures to progressively increase the rate of collective bargaining coverage, in full respect for the autonomy of the social partners. The Member State shall review its action plan regularly, and shall update it if needed. Where a Member State updates its action plan, it shall do so after consulting the social partners or by agreement with them, or, following a joint request by the social partners, as agreed between the social partners. In any event, such an action plan shall be reviewed at least every five years. The action plan and any update thereof shall be made public and notified to the Commission.*

CHAPTER II
STATUTORY MINIMUM WAGES

Article 5

Procedure for setting adequate statutory minimum wages

1. Member States with statutory minimum wages shall *establish* the necessary *procedures for* the setting and updating of statutory minimum wages. *Such setting and updating shall be* guided by criteria set to *contribute to their* adequacy, with the aim *of achieving a* decent *standard of* living, *reducing in-work poverty, as well as promoting* social cohesion and upward *social* convergence, *and reducing the gender pay gap*. Member States shall define those criteria in accordance with their national practices in relevant national law, in decisions of their competent bodies or in tripartite agreements. The criteria shall be defined in a *clear way*. *Member States may decide on the relative weight of those criteria, including the elements referred to in paragraph 2, taking into account their national socio-economic conditions.*

2. The national criteria referred to in paragraph 1 shall include at least the following elements:
 - (a) the purchasing power of statutory minimum wages, taking into account the cost of living ■ ;
 - (b) the general level of ■ wages and their distribution;
 - (c) the growth rate of ■ wages;
 - (d) *long-term national* productivity *levels and* developments-
3. ***Without prejudice to the obligations set out in this Article, Member States may additionally use an automatic mechanism for indexation adjustments of statutory minimum wages, based on any appropriate criteria and in accordance with national laws and practices, provided that the application of that mechanism does not lead to a decrease of the statutory minimum wage.***
4. Member States shall use indicative reference values to guide their assessment of adequacy of statutory minimum wages. ***To that end, they may use indicative reference values commonly used at international level such as 60 % of the gross median wage and 50 % of the gross average wage, and/or indicative reference values used at national level.***

5. Member States shall **■** ensure *that* regular and timely updates of statutory minimum wages *take place at least every two years or, for Member States which use an automatic indexation mechanism as referred to in paragraph 3, at least every four years.*
6. *Each* Member *State* shall *designate or* establish *one or more* consultative bodies to advise the competent authorities on issues related to statutory minimum wages, *and shall enable the operational functioning of those bodies.*

Article 6

Variations and deductions

1. *Where* Member States **■** allow *for* different rates of statutory minimum wage for specific groups of workers *or for deductions that reduce the remuneration paid to a level below that of the relevant statutory minimum wage, they shall* ensure that *those variations and deductions respect the principles of non-discrimination and proportionality, the latter including the pursuit of* a legitimate aim.

2. ***Nothing in this Directive shall be construed as imposing an obligation on Member States to introduce variations of or deductions from statutory minimum wages.***

Article 7

Involvement of the social partners in ***the*** setting and updating ***of statutory minimum wages***

Member States shall take the necessary measures to ***involve the social partners in the setting and updating of statutory minimum wages*** in a timely and effective manner ***that provides for their voluntary participation in the discussions throughout the decision-making process***, including through participation in ***the*** consultative bodies referred to in Article 5(6) and in particular as concerns:

- (a) the selection and application of criteria ***for the determination of the level of the statutory minimum wage, and the establishment of an automatic indexation formula and its modification where such formula exists***, referred to in Article 5(1), (2) and (3);

- (b) *the selection and application of indicative reference values referred to in Article 5(4) for the assessment of the adequacy of statutory minimum wages;*
- (c) the updates of statutory minimum *wages* referred to in Article 5(5);
- (d) the establishment of variations and deductions in statutory minimum wages referred to in Article 6;
- (e) *the decisions both on* the collection of data and the carrying out of studies *and analyses to provide information to authorities and other relevant parties involved in* statutory minimum wage-setting **■** .

Article 8

Effective access of workers to statutory minimum wages

Member States shall, *with the involvement of* the social partners, take the following measures to enhance the *effective* access of workers to statutory minimum wage protection as appropriate, *including, where appropriate, strengthening its enforcement:*

- (a) *provide for effective, proportionate and non-discriminatory* controls and field inspections conducted by labour inspectorates or the bodies responsible for the enforcement of statutory minimum wages **■** ;

- (b) develop *the capability of* enforcement authorities, *in particular through training and guidance*, to proactively target and pursue non-compliant *employers*.



CHAPTER III HORIZONTAL PROVISIONS

Article 9

Public procurement

In accordance with Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, Member States shall take appropriate measures to ensure that, in the *awarding and* performance of public procurement or concession contracts, economic operators *and their subcontractors* comply with the *applicable obligations regarding* wages, *the right to organise and collective bargaining on wage-setting, in the field of social and labour law established by Union law, national law*, collective agreements *or international social and labour law provisions, including ILO Freedom of Association and the Protection of the Right to Organise Convention No 87 (1948) and the ILO Right to Organise and Collective Bargaining Convention No 98 (1949)*.

Article 10

Monitoring and data collection

1. Member States shall ***take the appropriate measures to ensure that*** effective data collection tools ***are in place to monitor minimum wage protection.***
2. Member States shall report the following data ***and information*** to the Commission ***every second year***, before 1 October of ***the reporting*** year:
 - (a) ***the rate and development of collective bargaining coverage;***
 - (b) for statutory minimum wages:
 - (i) the level of the statutory minimum wage and the share of workers covered by it;
 - (ii) ***a description of*** the existing variations ***and deductions and the reasons for their introduction*** and the share of workers covered by ***variations, as far as data is available;***

■

- (c) for minimum wage protection provided for only in collective agreements:
- (i) the *lowest pay rates provided for in collective agreements covering low-wage earners or an estimate thereof, if accurate data is not available to the responsible national authorities, and the share of workers covered by them or an estimate thereof, if accurate data is not available to the responsible national authorities;*

■

- (ii) the level of wages *paid to* workers not *covered* by collective agreements and its relation to the level of wages *paid to* workers *covered by collective agreements*.

The Member States that are subject to the reporting obligations referred to in first subparagraph, point (c) shall be required to report the data referred to in point (i) thereof at least with regard to sectoral, geographical and other multi-employer collective agreements, including collective agreements that have been declared universally applicable.

■

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

The first report shall cover ... , ... and ... [X, Y, Z: the three years preceding the year referred to in Article 17(1)] and shall be delivered by 1 October ... [three years after the year of entry into force of this Directive]. The Member States may omit statistics and information which are not available before ... [two years after the date of entry into force of this Directive].

■

3. The Commission shall *analyse* the data *and information* transmitted by the Member States in the reports referred to in paragraph 2 and *in the action plans referred to in Article 4(2)*. *It* shall report in this regard *every second year* to the European Parliament and to the Council *and shall simultaneously publish the data and information transmitted by Member States*.

■

Article 11

Information on minimum wage protection

Member States shall ensure that information regarding statutory minimum wages as well as minimum wage protection provided for in universally applicable collective agreements, including information on redress mechanisms, is publicly available, where necessary in the most relevant language, as determined by the Member State, in a comprehensive and easily accessible way, including to persons with disabilities.

Article 12

Right to redress and protection against adverse treatment or consequences

1. Member States shall ensure that, without prejudice to specific forms of redress and dispute resolution provided for, where applicable, in collective agreements, workers, including those whose employment relationship has ended, have access to effective, **timely** and impartial dispute resolution and a right to redress, **█** in the case of infringements of **█** rights relating to statutory minimum wages or **relating to** minimum wage protection, **where such rights are** provided for in **national law or** collective agreements.

2. Member States shall take the measures necessary to protect workers ***and workers' representatives***, including those who are ***trade union members or*** representatives, from any adverse treatment by the employer and from any adverse consequences resulting from a complaint lodged with the employer or resulting from any proceedings initiated with the aim of enforcing compliance ***in the case of infringements of*** rights relating to **■** minimum ***wage protection, where such rights are*** provided for ***in national law or*** collective agreements.

Article 13

Penalties

Member States shall lay down the rules on penalties applicable to infringements of ***rights and obligations falling within the scope of this Directive, where those rights and obligations are provided for in national law or collective agreements. In Member States without statutory minimum wages, those rules may contain or be limited to a reference to compensation and/or contractual penalties provided for, where applicable, in rules on enforcement of collective agreements.*** The penalties provided for shall be effective, proportionate and dissuasive.

CHAPTER IV
FINAL PROVISIONS



Article 14
Dissemination of information

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

Article 15
Evaluation and review

By ... [insert seven years after the date of entry into force of this Directive], the Commission shall, ***after consulting the Member States and the social partners at Union level***, conduct an evaluation of ***this*** Directive. The Commission shall submit thereafter a report to the European Parliament and the Council reviewing the implementation of ***this*** Directive and propose, where appropriate, legislative amendments.

Article 16

Non-regression and more favourable provisions

1. This Directive shall not constitute valid grounds for reducing the general level of protection already *provided* to workers within Member States, *in particular with regard to the lowering or abolition of minimum wages*.
2. This Directive shall not affect Member States' prerogative to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers or to encourage or permit the application of collective agreements which are more favourable to workers. *It shall not be construed as preventing Member States from increasing statutory minimum wages*.
3. This Directive is without prejudice to any **■** rights conferred on workers by other legal acts of the Union.

Article 17

Transposition *and implementation*

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

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

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

3. *Member States shall take, in accordance with their national law and practice, adequate measures to ensure the effective involvement of the social partners with a view to the implementation of this Directive. To that end, they may entrust the social partners with that implementation, in all or in part, including with regard to the establishment of an action plan in accordance with Article 4(2), where the social partners jointly request to do so. In so doing, the Member States shall take all necessary steps to ensure that the obligations laid down in this Directive are complied with at all times.*

4. *The communication referred to in paragraph 2 shall include a description of the involvement of the social partners in the implementation of this Directive.*

Article 18

Entry into force

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

Article 19

Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament

For the Council

The President

The President
