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RAPPORT

Origine:	Secrétariat général du Conseil
Destinataire:	délégations
Objet:	Proposition de DIRECTIVE DU PARLEMENT EUROPÉEN ET DU CONSEIL relative à des salaires minimaux adéquats dans l'Union européenne

Les délégations trouveront ci-joint le texte de la proposition susvisée ayant fait l'objet d'un accord provisoire, étant entendu qu'il doit être approuvé par le Comité des représentants permanents, l'objectif étant de parvenir à un accord en première lecture avec le Parlement européen.

Les modifications par rapport à la proposition de la Commission sont signalées par des caractères *gras et italiques* et les suppressions qui n'ont pas été remplacées par un autre texte par le symbole

■ .

PE-CONS No/YY - 2020/0310(COD)

DIRECTIVE (EU) 2022/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

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 Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C , , p. .

² OJ C , , p. .

³ Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of

Whereas:

- (1) Pursuant to Article 3 of the Treaty on European Union, the aims of the Union are, inter alia, to promote the well-being of its peoples and to work for the sustainable development of Europe based on a highly competitive social market economy, ***aiming to ensure full employment, social progress, a high level of protection and an 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 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, have as their objectives 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 a dialogue between management and labour.***

- (3) Article 31 of the Charter of Fundamental Rights of the European Union⁴ (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 a 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 European Social Charter (*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 or international organisations for the protection of their economic and social interests and the right to bargain collectively.*

⁴ OJ C, 26.10.2012, p. 326.

- (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 the workers' right to fair wages that provide for a decent standard of living. It also provides that adequate minimum wages shall be ensured, in a way that provides for the satisfaction of the needs of the worker and his/her family in the light of national economic and social conditions, whilst safeguarding access to employment and incentives to seek work. Furthermore, it recalls that in-work poverty shall be prevented and that all wages shall be set in a transparent and predictable way *according to national practices* and respecting the autonomy of the social partners. *Principle No 8 of the Pillar provides that social partners are to be consulted on the design and implementation of economic, employment and social policies according to national practices and 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 of Council Decision 2020/1512/EU⁵ *calls on Member States having 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. The 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 Annual Sustainable Growth Strategy 2021⁶ states that Member States should adopt measures to ensure fair working conditions. In addition, the Annual Sustainable Growth Strategy 2020⁷ recalled that in the context of growing social divides, it is important to ensure that each worker earns *a fair* wage. Several Country Specific Recommendations have also been issued to some Member States in the field of minimum wages *with the aim of improving the setting and updating of minimum wages*.

⁵ Council Decision 2020/1512/EU of 13 October 2020 on guidelines for the employment policies of the Member States (OJ L 344, 19.10.2020, p. 22).

⁶ COM(2020)0575 final.

⁷ COM(2019)0650 final.

- (7) Better working and living 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 EU labour market, ***preventing and reducing wage and social inequalities, and to promoting economic and social progress and upward convergence.*** Competition in the Single Market should be based on high social standards, ***including a high level of workers' protection, the creation of quality jobs,*** innovation and productivity improvements, ***while*** ensuring a level playing field.
- (8) When set at adequate levels, minimum wages, ***as provided for in national law or in collective agreements,*** protect the income of ***workers, in particular of*** disadvantaged workers, help ensure a decent living, ***as pursued by*** in Convention 131 of the International Labour ***Organization (ILO)*** on the establishment of a system of minimum wage fixing. Minimum wages ***that provide for a decent standard of living, thus meet a threshold of decency, can contribute to the reduction of poverty at national level, can*** contribute to sustaining domestic demand ***and purchasing power,*** strengthen incentives to work, reduce wage inequalities, ***the gender pay gap,*** and in-work poverty ***as well as limit the fall in income during bad times.***

- (9) *In-work poverty in the Union has increased over the past decade and more workers are experiencing poverty. During economic turndowns, the role of adequateminimum wages in protecting low-wage workers is particularly important, as they are more vulnerable to the consequences, and is essential for the purpose of supporting a sustainable and inclusive economic recovery which should lead to more quality employment. To ensure sustainable recovery, it is vital that businesses, in particular micro-enterprises 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 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 non-standard and precarious work, *often including part-time, seasonal, platform and temporary agency workers*. These 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* by 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*. Statutory minimum wages are *usually* low compared to other wages in the economy in several Member States. In 2018, the statutory minimum wage did not provide sufficient income for a single minimum-wage earner to reach the *at-risk-of- poverty* threshold in nine Member States. ■
- (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 in practice a remuneration below the statutory minimum wage due to *non-compliance with* existing rules. In particular, such non-compliance has been found to affect notably women, young workers, *low-skilled workers, migrant workers, single parents*, people with disabilities, *workers in non-standard forms of employment such as temporary workers and part-time workers, as well as agricultural and hospitality workers, which as a consequence drives down wages*. In Member States where minimum wage protection is provided *by* collective agreements *only*, 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. This 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, in part due to structural shifts in the economy towards less unionised sectors, and to the decline in trade union membership *which is notably due to union-busting and* to 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 wages 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 working and living 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 working and living 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 purpose of this Directive. ***This Directive also promotes collective bargaining on wage-setting.***

(19) In full respect of Article 153(5) *TFEU*, this Directive neither aims to harmonise the level of minimum wages across the Union nor to establish an uniform mechanism for setting minimum wages. It does not interfere with the freedom of Member States to set statutory minimum wages or promote access to minimum wage protection provided by collective agreements, according to the *laws, practices* and specificities of each country and in full respect of national competences and social partners' *right to conclude agreements*. This Directive does not impose *and should not be construed as imposing* an obligation on the Member States where minimum wage protection is ensured exclusively via collective agreements to introduce a statutory minimum wage nor to make the collective agreements universally applicable. Also, this Directive does not establish the level of pay, which falls within the *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, 2006, as amended, Member States who ratified that Convention are, after consulting representative ship-owners' and seafarers' organizations, to establish procedures for determining minimum wages for seafarers. Representative ship-owners' and seafarers' organizations 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 organizations and seafarers' organizations.*
- (21) *While respecting Regulation (EC) 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I)⁸, 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 sector, 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.*

⁸ OJ L 177, 4.7.2008, p. 6.

- (22) *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.*
- (23) Well-functioning collective bargaining on wage setting is an important means 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 working and living conditions of workers*. In the Member States where minimum wage protection is provided exclusively by collective bargaining, their level as well as the share of protected workers are directly determined by the functioning of the collective bargaining system and collective bargaining coverage. Strong and well-functioning collective bargaining together with a high coverage of sectorial or cross-industry collective agreements strengthen the adequacy and the coverage of minimum wages.

(24) *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 these Member States, wages, including minimum wage protection, are provided exclusively by collective bargaining between 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 set by a collective agreement made universally applicable without any discretion of the adopting authority as to the content of the applicable provisions should not be considered to be a statutory minimum wage.*

- (25) 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 by collective agreements *to improve workers' minimum wage protection*. Member States *have ratified ILO Convention 87 on the Freedom of Association and Protection of the Right to Organise and Convention 98 on the Right to Organise and Collective Bargaining. The right to bargain collectively is recognised under these ILO Conventions, under ILO Convention 151 on Labour Relations (Public Services) and 154 on Collective Bargaining, as well as under the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter. Articles 12 and 28 of the Charter of Fundamental Rights of the European Union guarantee respectively the freedom of assembly and association and the right of collective bargaining and action. According to its Preamble, the Charter reaffirms these 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 laws 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.*

(26) Member States with a high collective bargaining coverage tend to have a low share of low-wage workers and high minimum wages. Member States with a small share of low wage earners have a collective bargaining coverage rate above 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, Member States with a collective bargaining coverage rate below 80% should adopt measures with a view to enhancing such collective bargaining. Member States 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 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. That action plan should be reviewed, at least every five years, and, if needed, revised on a regular basis. The action plan and any updates should also be notified to the Commission and be made public. Member States might decide on the appropriate form of the action plan. Such action plan might have been adopted prior to the entry into force of this Directive, provided that it contains actions to effectively promote collective bargaining and fulfils the obligations under this Directive. The action plan should be established either after consultation with social partners, by agreement with them or agreed between them following their joint request. Member States' collective bargaining coverage rates vary significantly owing to a number of factors, including national tradition and practice and their historic contexts. 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.*

(27) Sound rules, procedures and *effective* practice 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 *micro*, small and medium-sized enterprises. They 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 social partners. A timely and effective involvement of the latter *in the setting and in updating of statutory minimum wages as well as in the establishment or modification of automatic indexation mechanisms, where they exist*, is another element of good governance that allows for an informed and inclusive decision-making process. *Member States should provide social partners with relevant information on statutory minimum wage setting and updating. Giving social partners the possibility to provide opinions and 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 social partners.*

- (28) *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 to the statutory minimum wage, at least every four years. These regular updates should consist of an evaluation of the minimum wage taking into account the guiding criteria, followed, if necessary, by a modification of the amount. The frequency of the automatic indexation 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.*
- (29) Minimum wages are considered adequate if they are fair in relation to the wage distribution in the country and if they provide a decent standard of living *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 as well as— regional and sectoral developments. *For that determination, Member States should take into account the purchasing power, the long-term national productivity levels and developments, as well as the wage levels, their* distribution and growth.

Among other instruments, a basket of goods and services at real prices established at national level can be instrumental to determine 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. That 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, 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.

- (30) *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 that variations and deductions are used widely, as they risk to negatively impact 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. This might be for example the case of 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 and deductions from minimum wages.*

- (31) 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~~or~~, 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 by training and guidance. Routine and unannounced visits, judicial and/or administrative proceedings and sanctions in case of infringements are important means to dissuade employers from infringements.***

(32) The effective implementation of minimum wage protection set out by legal provisions or provided by collective agreements is essential in the **awarding and the** performance of public procurement and concession contracts. Non-respect of 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 18(2) and 71(1) of Directive 2014/24/EU of the European Parliament and the Council on public procurement⁹, Articles 36(2) and 88(1) of Directive 2014/25/EU of the European Parliament and the Council¹⁰ on procurement by entities operating in the water, energy, transport and postal services sectors and Articles 30(3) and 42(1) of Directive 2014/23/EU of the European Parliament and the Council¹¹ on the award of concession contracts, ***public procurement contracting authorities or 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 set by collective agreements for the relevant sector and geographical area and respect the rights of workers and trade unions following from ILO convention 87 on Freedom of Association and the Protection of the Right to Organise and ILO Convention 98 on the Right to Organise and Collective Bargaining, 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.***

⁹ 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).

¹⁰ 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).

¹¹ 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).

- (33) *For applicants of financial support of the funds and programs of the Union, in line with relevant Common Provisions Regulation 2021-2027¹² and enabling conditions, the rules for public procurement and concessions should be applied adequately, including with regard to compliance with collective agreements provisions.*
- (34) Reliable monitoring and data collection are *essential for an effective minimum wage protection. For the data collection Member States may rely on sufficiently representative sample surveys, national databases, EU harmonised data from Eurostat and other publicly accessible sources such as the OECD.*

In those exceptional cases where accurate data is not available, they might use estimates. Employers, in particular SMEs and microenterprises, should not bear an unnecessary administrative burden with regard to the implementation of Article 10(1). 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.

¹² 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 this 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.***

- (35) ***Workers should have easy access to comprehensive information on statutory minimum wages as well as on minimum wage protection provided by 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 on the accessibility of the websites and mobile applications of public sector bodies¹³.***

¹³ 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).

- (36) Workers *and workers' representatives, including those who are trade union members or representatives*, should be in a position to exercise their right of *defense* when their rights relating to minimum wage protection are *provided for in national law or in collective agreements and have been* violated. In order to prevent that workers are deprived from their rights *provided for in national law or in 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 *defense*. *Social partners' involvement in a further development of impartial dispute resolution mechanisms in Member States can be beneficial. Workers should be informed about the redress mechanisms to be able to exercise their right to redress.*

- (37) The Commission should conduct an evaluation providing the basis for a review on the effective implementation of this Directive. The Council and the European Parliament should be informed of the results of such review.
- (38) 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 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

- (39) 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.***
- (40) 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 micro, small and medium-sized enterprises. Member States are therefore ***encouraged*** to assess the impact of their transposition act on small and medium-sized enterprises in order to ensure that they are not disproportionately affected, giving specific attention to micro-enterprises and to the administrative burden, and to publish the results of such assessments. If found that micro, small and medium-sized enterprises are disproportionately affected, Member States should consider introducing measures to support these enterprises to adjust their remuneration structures to the new requirements.

- (41) The Technical Support Instrument¹⁴ and the European Social Fund plus¹⁵ are available to Member States to develop or improve the technical aspects of minimum wage frameworks, including on assessment of adequacy, monitoring and data collection, broadening access, as well as on enforcement and on general capacity building related to the implementation of said frameworks. ***In accordance with the ESF+-Regulation¹⁶ Member States are to allocate an appropriate amount to the capacity building of the social partners.***

¹⁴ Proposal for a Regulation of the European Parliament and of the Council of 28 May 2020 on the establishment of the Technical Support Instrument, COM(2020)0409 final.

¹⁵ Proposal for a Regulation of the European Parliament and of the Council on the European Social Fund Plus, COM(2018)0382 final.

¹⁶ 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).

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

1. With a view to improving working and living conditions in the Union, ***in particular the adequacy of minimum wages, 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 to achieve 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 by national law and/or*** collective agreements¹ ,
2. ***This Directive shall be without prejudice to the full respect of the autonomy of social partners, as well as their right to negotiate and conclude collective agreements.***
3. ***In accordance with Article 153(5)***, this Directive shall be without prejudice to the ***competence of Member States in setting the level of minimum wages, and 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*
- (a) on the Member States where wage formation is ensured exclusively via collective agreements to introduce a statutory minimum wage or*
 - (b) on any Member State to make 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 authorized by the Governing Body of the International Labour Office shall not be subject to Chapter II. Such acts shall be without prejudice to the right of 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 those minimum wages set by a collective agreement made universally applicable without any discretion of the adopting authority as to the content of the applicable provisions***;

- (3) ‘collective bargaining’ means all negotiations which take place ***according to national laws and practices in each Member State*** between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more ***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 ***having the capacity to bargain on behalf of workers and employers respectively according to national law and practices, including those that are made universally applicable***;
- (5) ‘collective bargaining coverage’ means the share of workers at national level to whom a collective agreement applies, ***calculated as the ratio of:***
- (a) ***the number of workers covered by collective agreements, to***
 - (b) ***the number of workers whose working conditions may be regulated by collective agreements in accordance with national laws and practices.***

Article 4

Promotion of collective bargaining on wage setting

1. With the aim to increase the collective bargaining coverage ***and to facilitate the exercise of the right to collective bargaining on wage setting, Member States, with the involvement of the*** social partners, ***in accordance with national laws 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*** social partners, ***on 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***, Member States ***shall***, where ***the*** collective bargaining coverage ***rate*** is less than ***a threshold of 80%***, provide for a framework of enabling conditions for collective bargaining, either by law after consultation of the social partners or by agreement with them. ***These Member States shall also*** establish an action plan to promote collective bargaining, ***either after consultation with social partners, by agreement with them or agreed between them following their joint request. The action plan shall set out a clear timeline and concrete measures to progressively increase the rate of collective bargaining coverage, in full respect of the autonomy of social partners.*** The action plan shall be ***reviewed regularly and updated if needed, either after consultation with social partners, by agreement with them or agreed between them following their joint request. In any event it 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** setting and updating of statutory minimum wages. **Such setting and updating shall be** ~~are~~ guided by criteria set to **contribute to their** adequacy, with the aim **of achieving a** decent **standard of living, of reducing in-work poverty, as well as of promoting** social cohesion and upward **social** convergence, **and of reducing the gender pay gap**. Member States shall define those criteria in accordance with their national practices, either in relevant national legislation, in decisions of the competent bodies or in tripartite agreements. The criteria shall be defined in a **clear way**. **Member States may decide on the relative weight of these criteria, including the elements according to 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 this 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. *For that purpose, 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, no later than 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 enable its operational functioning.*

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 *these 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 and deductions from statutory minimum wages.***

Article 7

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

Member States shall take the necessary measures to ***involve 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 notably 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* 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* :

- (1) *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 **■** ;
- (2) develop *the capability of* enforcement authorities, *in particular by training and guidance*, to proactively target and pursue non-compliant *employers*.

■

CHAPTER III

HORIZONTAL PROVISIONS

Article 9

Public procurement

In accordance with Directive 2014/24/EU, Directive 2014/25/EU and Directive 2014/23/EU, Member States shall take appropriate measures to ensure that, in the ***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 by international social and labour law provisions, including ILO Convention 87 on Freedom of Association and the Protection of the Right to Organise and ILO Convention 98 on the Right to Organise and Collective Bargaining.***

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 only by collective agreements:
- (i) the *-lowest pay rates set by 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*.

For sectoral, geographical and other multi-employer collective agreements, including those declared universally applicable, Member States shall report the data referred to in Article 10(2)(c)(i).

■

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 years [X, Y, Z: the three years preceding the transposition year] and shall be delivered by 1st of October ... [insert year after transposition]. The Member States may omit statistics and information which are not available before ... [insert date of transposition].

█

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 *thereof every second year* to the European Parliament and to the Council *and 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 by universally applicable collective agreements, including information on redress mechanisms, is publicly available, where necessary in the most relevant language(s), 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 in** 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 in*** 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 these rights and obligations are provided for in national law or in 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

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

Article 16

Non-regression and more favourable provisions

1. This Directive shall not constitute valid grounds for reducing the general level of protection already *provided* to workers within Member States, *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... [insert two years from the date of entry into force]. They shall immediately inform the Commission thereof.

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

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

3. *Member States shall take, in accordance with their national law and practice, the adequate measures to ensure the effective involvement of social partners with a view to the implementation of this Directive. To do so, they may entrust the social partners with this implementation, in all or in part, including the establishment of the 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 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
The President

For the Council
The President
