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COM(2020) 682 final

2020/0310 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on adequate minimum wages in the European Union**

{SEC(2020) 362 final} - {SWD(2020) 245 final} - {SWD(2020) 246 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • **Reasons for and objectives of the proposal**

Ensuring that workers in the Union earn adequate wages is essential to guarantee adequate working and living conditions, as well as to build fair and resilient economies and societies in line with the United Nations 2030 Agenda for Sustainable Development and its Sustainable Development Goals. Adequate wages are an essential component of the EU model of a social market economy. Convergence across Member States in this area contributes to the promise of shared prosperity in the Union.

In November 2017, the European Parliament, the Council and the Commission proclaimed the European Pillar of Social Rights (hereafter the Pillar) to deliver on Europe's promise of prosperity, progress and convergence, and make social Europe a reality for all. Principle 6 of the Pillar on 'Wages' calls for adequate minimum wages as well as for transparent and predictable wage setting to be put in place, according to national practices and respecting the autonomy of the social partners. The Strategic Agenda for 2019-2024, agreed at the European Council in June 2019, called on the implementation of the Pillar at EU and national level.

The Political Guidelines for the Commission 2019-2024 announced an Action Plan to fully implement the Pillar, including an initiative on fair minimum wages. The Communication of 14 January 2020 on "Building a Strong Social Europe for Just Transitions"<sup>1</sup> set out a roadmap for the preparation of the Action Plan and confirmed the commitment to an initiative on minimum wages among the key actions to be pursued at EU level in this context. A first-stage consultation of the social partners on how to ensure adequate minimum wages for workers in the Union was launched on the same day<sup>2</sup>.

In her State of the Union address of September 2020, President von der Leyen stated that: *"The truth is that for too many people, work no longer pays. Dumping wages destroys the dignity of work, penalises the entrepreneur who pays decent wages and distorts fair competition in the Single Market. This is why the Commission will put forward a legal proposal to support Member States to set up a framework for minimum wages. Everyone must have access to minimum wages either through collective agreements or through statutory minimum wages."*

Better working and living conditions, including through adequate minimum wages, benefit both workers and businesses in the Union. Addressing large differences in the coverage and adequacy of minimum wages contributes to improving the fairness of the EU labour market, to stimulating productivity improvements and to promoting economic and social progress. Competition in the Single Market should be based on innovation and productivity improvements, as well as on high social standards.

In recent decades, low wages have not kept up with other wages in many Member States. Structural trends reshaping labour markets such as globalisation, digitalisation and the rise in non-standard forms of work, especially in the service sector, have led to an increased job polarisation resulting in turn in an increasing share of low-paid and low-skilled occupations,

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<sup>1</sup> Commission Communication, *Building a Strong Social Europe for Just Transitions*, COM(2020) 14 final

<sup>2</sup> Consultation document, First phase consultation of the Social Partners under Article 154 TFEU on a possible action addressing the challenges related to fair minimum wages, C(2020) 83 final.

and have contributed to an erosion of traditional collective bargaining structures. This has led to more in-work poverty and wage inequality.

The role of minimum wages becomes even more important during economic downturns. The Covid-19 crisis has particularly hit sectors with a higher share of low-wage workers such as retail and tourism and has had a stronger impact on the disadvantaged groups of the population. Ensuring workers in the Union have access to employment opportunities, and to adequate minimum wages is essential to support a sustainable and inclusive economic recovery.

Minimum wage protection can be provided by collective agreements (as is the case in 6 Member States) or by statutory minimum wages set by law (as is the case in 21 Member States).

When set at adequate levels, minimum wage protection ensures a decent living for workers, helps sustain domestic demand, strengthens incentives to work, and reduces in-work poverty and inequality at the lower end of the wage distribution. Minimum wage protection also supports gender equality, since more women than men earn wages at or around the minimum wage.

However, many workers are currently not protected by adequate minimum wages in the EU.

In the majority of Member States with national statutory minimum wages, minimum wages are too low vis-à-vis other wages or to provide a decent living, even if they have increased in recent years. National statutory minimum wages<sup>3</sup> are lower than 60% of the gross median wage and/or 50% of the gross average wage in almost all Member States<sup>4</sup>. In 2018, the statutory minimum wage did not provide sufficient income for a single minimum-wage earner to reach the at-risk-of-poverty threshold in nine Member States. In addition, specific groups of workers are excluded from the protection of national statutory minimum wages. Member States with a high collective bargaining coverage tend to have a low share of low-wage workers and high minimum wages. However, also in Member States relying exclusively on collective bargaining, some workers do not have access to minimum wage protection. The share of workers not covered is between 10% and 20% in four countries, and 55% in one country.

Against this background, the proposed Directive aims to ensure that the workers in the Union are protected by adequate minimum wages allowing for a decent living wherever they work. In order to reach this general objective, the proposal establishes a framework to improve the adequacy of minimum wages and to increase the access of workers to minimum wage protection. These objectives are relevant both for statutory minimum wage systems and for those relying on collective bargaining. The proposed Directive is designed to achieve these objectives while taking into account and fully respecting the specificities of national systems, national competencies, social partners' autonomy and contractual freedom. It is also designed in such a way to safeguard access to employment and take into account the effects on job creation and competitiveness, including for SMEs. It provides sufficient flexibility to take into account social and economic developments, including productivity and employment trends.

In order to reach these objectives, the proposed Directive aims at promoting collective bargaining on wages in all Member States. Collective bargaining plays a key role for adequate

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<sup>3</sup> The indicators and related reference values refer to monthly minimum wages.

<sup>4</sup> Adequacy indicators commonly used at international level, e.g. the Kaitz index, compare the minimum wage to the median wage or the average wage. In addition, a standard of decent living defined by the Council of Europe's compares the net minimum wage to the net average wage.

minimum wage protection. The countries with high collective bargaining coverage tend to display a lower share of low-wage workers, higher minimum wages relative to the median wage, lower wage inequality and higher wages than the others. In the Member States where minimum wage protection is exclusively provided by collective agreements, its adequacy and the share of workers protected are directly determined by the features and functioning of the collective bargaining system. In Member States with statutory minimum wages, collective bargaining has also a strong effect on minimum wage adequacy. By affecting general wage developments, collective bargaining ensures wages above the minimum level set by law and induces improvements in the latter. It also pushes increases in productivity.

For the countries where statutory minimum wages exist, the proposed Directive aims at ensuring that Member States put in place the conditions for statutory minimum wages to be set at adequate levels, while taking into account socio-economic conditions as well as regional and sectoral differences. Criteria, defined in a clear and stable way and aiming at promoting adequacy, together with a governance framework providing for regular and timely updates and for an effective involvement of the social partners, help ensure adequacy of statutory minimum wages. The proposed Directive also aims at achieving further improvements in adequacy by limiting to a minimum the application of variations of statutory minimum wage rates for specific groups of workers or of deductions from the remuneration.

Finally, workers may not be adequately protected by minimum wages due to lack of compliance with the existing collective agreements or national legal provisions. Ensuring compliance and effective enforcement is essential for workers to benefit from effective access to minimum wage protection and businesses to be protected from unfair competition. Therefore, the proposed Directive aims at promoting compliance as well as strengthening enforcement and monitoring in all Member States in a proportionate way, so it does not create excessive and disproportionate administrative burden for Union businesses, including small, medium-size and micro enterprises.

- **Consistency with existing policy provisions in the policy area**

Guideline 5 of Council Decision (EU) 2020/1512/EU<sup>5</sup> calls on Member States, including those with national 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 and allowing for an adequate responsiveness of wages to productivity developments, with a view to upward convergence. The Guideline also calls on Member States to promote social dialogue and collective bargaining on wage setting. It also calls on Member States and social partners to ensure that all workers have adequate and fair wages by benefitting from collective agreements or adequate statutory minimum wages, and taking into account their impact on competitiveness, job creation and in-work poverty. The general aim of the proposal is to ensure that the workers in the Union are protected by adequate minimum wages. Its goals include the promotion of collective bargaining, supporting the involvement of social partners, and the establishment of clear and stable criteria, that support statutory minimum wage adequacy.

Directive 2019/1152/EU<sup>6</sup> calls for informing workers of the essential aspects of their jobs including remuneration. The proposed Directive provides for Member States to define clear and stable criteria, ensure regular and timely updates of statutory minimum wages, as well as

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<sup>5</sup> Council Decision (EU) 2020/1512/EU of 13 October 2020 on *guidelines for the employment policies of the Member States*.

<sup>6</sup> Directive (EU) 2019/1152/EU of the European Parliament and the Council of 20 June 2019 on *transparent and predictable working conditions in the European Union*.

an effective involvement of the social partners, hence making developments in statutory minimum wage more transparent.

Directive 2014/67/EU<sup>7</sup> provides for improving the access to information for posted workers, in particular, by putting in place single official national websites on posting. It also requires, that the relevant information covers the different minimum rates of pay and their constituent elements in case terms and conditions of employment are laid down in collective agreements in accordance with Directive 96/71. Directive 2014/67/EU also provides for a sub-contracting liability mechanism to be set up covering at least the construction sector and the minimum rates of pay. Easy access to information on the statutory minimum rates of pay as foreseen in Directive 2014/67/EU supports the objectives of this proposal, namely to ensure adequate minimum wage protection in the EU. By strengthening the enforcement of statutory minimum wage frameworks, supporting the development of reliable monitoring and data collection systems and by providing access to effective dispute resolution mechanisms and right to redress to workers, the proposed Directive also contributes to the objectives of Directive 2014/67/EU.

Directive 2006/54/EC<sup>8</sup> aims to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. The majority of minimum wage earners being women, this proposal supports gender equality and the reduction of the gender pay gap by setting a framework for adequate minimum wages in the EU. Therefore, the proposed Directive indirectly contributes to the effective implementation of the policy objectives of Directive 2006/54/EC.

Directive 2000/78/EC<sup>9</sup> prohibits direct or indirect discrimination in employment, notably based on age, in relation to working conditions including pay (Article 3(c)). It allows for differences of treatment if objectively and reasonably justified by a legitimate aim such as employment policy or vocational training objectives. The proposed Directive is consistent with this approach as it requires variations in the rates of statutory minimum wages to be kept to a minimum and, if relevant and objectively and reasonably justified by a legitimate aim, to be non-discriminatory, proportionate and limited in time.

The Commission Recommendation of 3 October 2008 on the active inclusion of people excluded from the labour market<sup>10</sup> puts the promotion of quality jobs through adequate income support and inclusive labour market policies, including pay and working conditions, at the centre of Union and Member States' action, with a view to preventing in-work poverty. The proposed Directive aims at improving working conditions and reducing in-work poverty by establishing a framework for adequate minimum wage levels and access to minimum wage protection provided by collective agreements or set in legal provisions.

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<sup>7</sup> Directive (EU) 2014/67/EU of the European Parliament and the Council of 15 May 2014 *on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation')*.

<sup>8</sup> Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006 *on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)*.

<sup>9</sup> Council Directive 2000/78/EC of 27 November 2000 *establishing a general framework for equal treatment in employment and occupation*.

<sup>10</sup> Commission Recommendation of 3 October 2008 *on the active inclusion of people excluded from the labour market* (2008/867/EC).

The proposed Directive directly refers to the ‘social clause’ of Directive 2014/24/EU<sup>11</sup> on public procurement, which can be also found in related Directive 2014/23/EU<sup>12</sup> and Directive 2014/25/EU<sup>13</sup>. The referred ‘social clause’ requires Member States to take measures to ensure that economic operators comply with the applicable labour law obligations in the performance of public procurement and concession contracts. To this end, the proposed Directive requires Member States to take appropriate measures to ensure that in the performance of public or concession contracts economic operators comply with the wages set in relevant collective agreements or with the statutory minimum wages when they exist. This can contribute to strengthening the enforcement of the requirements set in the ‘social clause’ of the aforementioned Directives.

The content of the above-mentioned acts has been duly analysed and taken into account during the preparation process of the proposed Directive. As a result, the proposal is, on the one hand, coherent with the existing provisions and, on the other hand, introduces legislative developments necessary to achieve the Union’s goals.

- **Consistency with other Union policies**

The proposed Directive will contribute to the goals of the Union of promoting the well-being of its peoples, developing a highly competitive social market economy (Article 3 TFEU) and promoting improved living and working conditions (Article 151 TFEU). It also addresses the rights set out in the Charter of Fundamental Rights of the EU in relation to workers’ right to fair and just working conditions (Article 31). The proposed Directive equally contributes to implementing the following principles of the European Pillar of Social Rights:

- Principle 6 (Wages): In line with this principle, the proposal is intended to ensure adequate minimum wages, so that workers in the Union have the right to fair wages that provide for a decent standard of living, in full respect of national traditions and social partners’ autonomy. It also provides for statutory minimum wages to be set in a transparent and predictable way.
- Principle 8 (Social dialogue and involvement of workers): The proposal aims at promoting collective bargaining on wage setting with a view to foster minimum wage protection provided by collective agreements and promote the involvement of social partners in setting, updating, and implementing statutory minimum wages.
- Principle 2 (Gender equality): As the majority of minimum wage earners are women, by supporting adequate minimum wages, the proposal will support gender equality and contribute to the reduction of the gender pay gap.
- Principle 3 (Equal Opportunities): Everyone has the right to equal treatment and opportunities regarding employment regardless of gender, age, racial or ethnic origin, religion or belief, disability or sexual orientation. By aiming at ensuring access to adequate minimum wage protection for the workers in the

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<sup>11</sup> Directive 2014/24/EU of the European Parliament and the Council of 26 February 2014 *on public procurement and repealing Directive 2004/18/EC*.

<sup>12</sup> Directive 2014/23/EU of the European Parliament and the Council of 26 February 2014 *on the award of concession of contracts*.

<sup>13</sup> Directive 2014/25/EU of the European Parliament and 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*.

Union, the proposal will help ensure equal treatment and foster equal opportunities in employment.

The proposed Directive is also coherent with the European Semester priorities. In line with Employment Guideline 5, the initiative supports the call made to Member States in the Annual Sustainable Growth Strategy 2021<sup>14</sup> to adopt measures to ensure fair working conditions. In addition, it also supports the goals set in the Annual Sustainable Growth Strategy 2020<sup>15</sup>, according to which, in the context of growing social divides, ensuring that each worker in the Union earns a fair wage is an important policy objective. It is also consistent with the Country-Specific Recommendations issued to some Member States since 2011<sup>16</sup>.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

The proposed Directive is based on Article 153(1) (b) of Treaty on the Functioning of the European Union (TFEU), which prescribes the Union to support and complement the activities of Member States in the field of working conditions, within the boundaries of the principles of subsidiarity and proportionality (Article 5(3) and 5(4) TEU). Since it does not contain measures directly affecting the level of pay, it fully respects the limits imposed to Union action by Article 153(5) TFEU.

Article 153(2) allows setting minimum requirements by the means of directives, while avoiding imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

### **• Subsidiarity (for non-exclusive competence)**

Having access to a minimum wage guaranteeing a decent standard of living is a pivotal element of adequate working conditions. While pay at national level falls unequivocally under the competence of the Member States, the large differences in standards for accessing an adequate minimum wage are part of working conditions, and create important discrepancies in the Single Market, which can be best addressed at Union level.

Workers in the majority of Member States are affected by insufficient adequacy and/or gaps in coverage of minimum wage protection. These problems affect workers both in the countries with statutory minimum wages and in those relying on collective bargaining. Moreover, more workers are likely to be affected in the future due to the secular decline in collective bargaining and to an increasing polarisation of the labour markets. Looking forward, this creates challenges for building a level playing field in the Single Market and ensuring that competition is based on high social standards, innovation and productivity improvements.

Minimum wage policies have been subject to multilateral surveillance within the European Semester, and the EU has issued policy guidance to selected Member States. Nevertheless, while over the last years several Member States have taken steps towards improving their minimum wage systems, national action has not been enough to address the problem of insufficient adequacy and/or coverage of minimum wage protection. Without policy action at

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<sup>14</sup>Commission Communication COM(2020) 575 final.

<sup>15</sup>Commission Communication COM(2019) 650 final.

<sup>16</sup>See Annex A12.11 of the Impact Assessment.

EU level, individual countries may be little inclined to improve their minimum wage settings because of the perception that this could negatively affect their external cost competitiveness.

Action at EU level will be more effective in strengthening minimum wage setting systems than action at national level. It will set clearer expectations, ensure that progress is not partial or uneven, and reinforce trust among Member States and social partners. This will help provide the necessary momentum for reforming minimum wage setting mechanisms at national level. Action at EU level will therefore contribute to ensuring a level playing field in the Single Market by helping address large differences in the coverage and adequacy of minimum wages that are not justified by underlying economic conditions. This cannot be sufficiently achieved by uncoordinated action by the Member States.

The proposed Directive sets a framework for minimum standards and respects Member States' competences to set higher standards, without prejudice to the role Member States may entrust to social partners, according to national traditions and in full respect of social partners' contractual freedom. In line with Article 153(2) (b) TFEU, the proposed Directive will support and complement the activities of the Member States through minimum requirements for gradual implementation.

- **Proportionality**

The proposed Directive provides for minimum standards thus ensuring that the degree of intervention will be kept to the minimum necessary in order to reach the objectives of the proposal. Member States which have already in place more favourable provisions than those put forward in this proposed Directive will not have to change their minimum wage setting systems. Member States may also decide to go beyond the minimum standards set out in the proposed Directive.

The proposal respects well-established national traditions in minimum wage setting. In particular, it fully respects the competences of Member State and social partners to determine the level of their minimum wages in line with Art 153(5) TFEU. Minimum wage protection will continue to be provided through collective agreements or through legal provisions, in full respect of national competences and social partners' contractual freedom.

Moreover, the proposed Directive allows Member States to implement its provisions, notably those related to collective bargaining and statutory minimum wages, taking into account their national economic circumstances and the specificities of their minimum wage setting systems.

Therefore, the proposal leaves as much scope for national decisions as possible, whilst still achieving the objectives of improving working conditions by establishing a framework for workers in the Union to have access to minimum wage protection. The principle of proportionality is respected considering the size and nature of the identified problems.

- **Choice of the instrument**

Article 153(2) (b) TFEU in combination with 153(1) (b) TFEU foresees explicitly that Directives may be used for establishing minimum requirements concerning working conditions to be gradually implemented by Member States.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Stakeholder consultations**

In line with Article 154 TFEU, the Commission has carried out a two-stage consultation of the social partners on possible EU action in the area of minimum wages:

- In the first stage, between 14 January and 25 February 2020, the Commission consulted social partners on the need for an initiative on minimum wages, and its possible direction<sup>17</sup>.
- In the second stage, between 3 June and 4 September 2020, the Commission consulted social partners on the content and legal instrument of the envisaged proposal<sup>18</sup>.

Workers' organisations generally agreed with the objectives and possible content of the initiative, as identified in the second-stage consultation document. They stressed that national traditions and social partners' autonomy should be respected. Employers' organisations generally showed support for most of the objectives and possible direction of an EU initiative, stated in the consultation document. However, some of them questioned the added value of EU regulatory action regarding minimum wage setting in view of the diversity of national frameworks and stressed that the competences of Member States and/or social partners need to be fully respected.

While the trade unions called on the Commission to propose a Directive with binding minimum requirements, none of the employers' organisations was in favour of a binding directive in the area of minimum wages.

There was no agreement among social partners to enter into negotiations to conclude an agreement at Union level, as foreseen in Article 155 TFEU.

Public views were also collected through the replies to the Standard Eurobarometer 92 (Autumn 2019), which included questions about the European Union's priorities (including the minimum wage).

Targeted exchanges of views with the Member States have been carried out through the following Council Committees: the Employment Committee, the Social Protection Committees, and the Economic Policy Committee<sup>19</sup>. The European Parliament<sup>20</sup> and the European Economic and Social Committee<sup>21</sup> have also adopted opinions of relevance for an EU initiative on adequate minimum wages<sup>22</sup>.

#### • **Collection and use of expertise**

The Commission contracted studies from external experts to gather evidence that was used to support the impact assessment. This included:

- A study on "Indexation of statutory minimum wage" by Diane Delaurens and Etienne Wasmer<sup>23</sup>;
- A study on "Effects of statutory minimum wages on small and medium-sized enterprises" by Attila Lindner, University College London<sup>24</sup>;

<sup>17</sup> Consultation Document, *First phase consultation of the Social Partners under Article 154 TFEU on a possible action addressing the challenges related to fair minimum wages* C(2020) 83 final.

<sup>18</sup> Consultation Document, *Second phase consultation of the Social Partners on a possible action addressing the challenges related to fair minimum wages*, C(2020) 3570 final, accompanied by Staff Working Document SWD(2020) 105 final.

<sup>19</sup> See Annex A.2.3 of the Impact Assessment.

<sup>20</sup> European Parliament Resolution of 10 October 2019 on *Employment and social policies of the euro area*, 2019/2111.

<sup>21</sup> EESC opinion of 18 September 2020 on Decent minimum wages across Europe, SOC/632.

<sup>22</sup> See Annex A.2.4 of the Impact Assessment.

<sup>23</sup> Study produced by an external contractor, commissioned mid-2019 for the purposes of preparing the Impact Assessment.

- A study on “Effects of collectively agreed minimum wages in the Nordic countries” by Per Skedinger, Research Institute of Industrial Economics (IFN)<sup>25</sup>.

The Commission additionally drew on its existing contracts to gather evidence that was used to support this impact assessment. This included:

- A set of expert reports on the minimum wage setting systems of EU Member States (one expert report for each Member State) provided by the European Centre of Expertise (ECE);
- Simulations, within the framework of an existing contract, with the OECD tax-benefit model on adequacy indicators and incentive effects of minimum wages.

Within the existing cooperation framework with Eurofound, the Commission requested and received:

- Three country reports on the setting and adequacy of minimum wages as well as related policy debates focusing, respectively, on Austria, Italy and Cyprus.

The Commission’s assessment has also relied on its mapping of policies in Member States, and the review of literature and related policy debates in the field. Moreover, analytical inputs were provided by different Directorates-General of the European Commission<sup>26</sup>. In particular, microsimulation analysis of economic, social and fiscal impacts of minimum wages has been conducted using the Euromod model. Moreover, model-based simulations to assess the macroeconomic impact of minimum wages have been conducted using the QUEST model. Finally, an analysis of the characteristics of minimum wage and low-wage earners has been conducted based on anonymised individual data from the EU-SILC and EU-SES surveys.

- **Impact assessment**

Following the policy on Better Regulation the Commission carried out an Impact Assessment of several policy options. This work was supported by structured consultation within the Commission via an Inter-Service Steering Group.

The Impact Assessment was presented to and discussed with the Regulatory Scrutiny Board (RSB). Recommendations made by the RSB in its first (negative) opinion of 2 October 2020 were notably addressed by: (i) better distinguishing to what extent the problems, specific objectives, proposed solutions, and their impacts apply to the different types of minimum wage setting systems; (ii) further clarifying how the problem analysis assesses the inadequacy of minimum wages across Member States; (iii) further substantiating how the legislative initiative is in line with the chosen legal base and the subsidiarity and proportionality principles; and (iv) clarifying the rationale behind the composition of the assessed policy packages. To address the reservations raised by the Board in its second opinion (positive opinion with reservations) of 14 October 2020, the Impact Assessment Report has further clarified a number of elements: the rationale behind the composition of option packages, the most relevant measures for the success of each option package, the impacts on SMEs, the

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<sup>24</sup>Study produced by an external contractor, commissioned mid-2019 for the purposes of preparing the Impact Assessment

<sup>25</sup>Study produced by an external contractor, commissioned mid-2019 for the purposes of preparing the Impact Assessment

<sup>26</sup>Directorate-General for Employment, Social Affairs and Inclusion, Directorate-General Economic and Financial Affairs, and the Joint Research Centre.

choice of the preferred package and its implications for countries relying on collective bargaining<sup>27</sup>.

Throughout the Impact Assessment work, a range of measures were considered across all important areas for addressing the insufficient adequacy and gaps in coverage of minimum wages. The Impact Assessment examined three policy packages, each being composed of a combination of different measures. Following an assessment of their effectiveness, efficiency and coherence, a preferred package was identified.

The preferred package asks all Member States to support collective bargaining on wage setting, in particular when collective bargaining coverage is low, as well as to strengthen the enforcement of minimum wages and the monitoring of their adequacy and coverage. In addition, for Member States with statutory minimum wages, it requires the use of clear and stable criteria to guide the setting and updating of minimum wages and an enhanced role of social partners. Moreover, it limits the use of deductions to and variations in statutory minimum wages to a strict minimum.

This package has been assessed in the Impact Assessment as the most effective, efficient and coherent. The quantitative analysis carried out on a scenario based on a hypothetical increase of minimum wages to 60% of the gross median wage shows that it would improve the adequacy of minimum wages in about half of the Member States. Between 10 and 20 million workers would benefit from these improvements. In several countries, improvements in minimum wage protection would result in a reduction of in-work poverty and wage inequality by over 10% and a reduction in the gender pay gap by about 5% or more<sup>28</sup>. They are also expected to improve work incentives, as well as to support gender equality and help reduce the gender pay gap as the majority of minimum wage earners (about 60% in the EU) are women.

The expected economic impacts include increased labour costs for firms, increased prices and, to a lesser extent, lower profits. The impact on firms would be mitigated by increases in the consumption of low-wage earners, which would support domestic demand. Firms, in particular SMEs, would also benefit from more gradual and predictable minimum wage increases, which would improve the business environment.

The possible negative impact on employment is expected to be limited. It would remain below 0.5% of total employment in most cases, but would reach 1% in three Member States<sup>29</sup>. The benefits of an improved minimum wage protection for the concerned workers would greatly outweigh the possible negative employment impact on these workers.

In addition, impacts on aggregate competitiveness are expected to be small. The preferred package includes sufficient flexibility to allow Member States to determine the pace of improving the adequacy of minimum wages in light of economic conditions and risks, including to specific sectors, regions and SMEs.

- **Fundamental rights**

The objectives of the proposed Directive are in line with the Charter of Fundamental Rights of the European Union, in particular Article 31(1) on fair and just working conditions, which

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<sup>27</sup> See Annex I of the Impact Assessment.

<sup>28</sup> Average results of impacts on Member States for the scenario where the minimum wage is raised to 60% of the gross median wage or 50% of the gross average wage. See Annex A.12.2 in the Impact Assessment.

<sup>29</sup> The sensitivity of employment to wage increases has been estimated based on the average result of 48 international studies compiled by Dube, A. (2019): "Impacts of minimum wages: review of the international evidence". Report prepared for the UK Low-Pay Commission.

provides that *‘Every worker has the right to working conditions which respect his or her health, safety and dignity’*. The proposal also facilitates the exercise of the rights recognised in Article 23<sup>30</sup> of the Charter of Fundamental Rights, which specifically refer to equality between men and women, since it facilitates the reduction of the gender wage gap.

#### **4. BUDGETARY IMPLICATIONS**

The proposal does not require additional resources from the European Union's budget.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Member States must transpose the Directive two years after the adoption and communicate to the Commission the national execution measures via the MNE-Database. In line with Article 153(3) TFEU, they may entrust the social partners with the implementation of the Directive.

To assess the effectiveness of the initiative, the Commission will report every year to the European Parliament and to the Council its assessment of developments in the adequacy and coverage of minimum wage protection on the basis of annual data and information to be provided by Member States. In addition, progress should be monitored in the framework of the process of economic and employment policy coordination at EU level (European Semester). In this context, the Employment Committee will examine every year the situation of collective bargaining on wage setting and of adequacy of minimum wage protection in the Member States on the basis of the reports produced by the Commission.

The Commission stands ready to provide technical support to Member States, notably through the Technical Support Instrument<sup>31</sup> and the European Social Fund plus<sup>32</sup>, to implement the Directive.

The Commission will also conduct an evaluation of the Directive five years after its transposition. Moreover, the Commission will thereafter submit a report reviewing the implementation of this Directive to the European Parliament and the Council.

- **Detailed explanation of the specific provisions of the proposal**

*Chapter I – General provisions*

*Article 1 – Subject matter*

This provision defines the subject of the Directive, namely to establish a framework at Union level to ensure both that minimum wages are set at adequate level and that workers have access to minimum wage protection, in the form of a statutory minimum wage or of wages set by collective agreements.

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<sup>30</sup>Article 23 (Equality between men and women) of the Charter of Fundamental Rights of the European Union states that *“Equality between women and men must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex”*.

<sup>31</sup>Proposal for a Regulation of the European Parliament and of the Council of 28 May 2020 on the establishment of the Technical Support Instrument, COM(2020) 409 final.

<sup>32</sup>Proposal for a Regulation of the European Parliament and of the Council on the European Social Fund Plus, COM/2018/382 final.

The Article also clarifies that the Directive 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 national traditions and in full respect of social partners' contractual freedom. It clarifies further that the Directive does not impose any obligation to introduce a statutory minimum wage in the Member States where it does not exist nor to make the collective agreements universally applicable.

#### *Article 2 – Scope*

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

This approach to the personal scope of the proposed Directive was also followed for the purpose of Directives 2019/1152 and 2019/1158. It allows to address risks to exclude from the scope of the proposed Directive growing numbers of workers in non-standard forms of employment, such as domestic workers, on-demand workers, intermittent workers, voucher-based workers, bogus self-employed, platform workers, trainees and apprentices. The proposed Directive would apply to such workers, as long as they fulfil the criteria established by the Court of Justice as regards the definition of a 'worker'.

#### *Article 3 – Definitions*

This provision defines a number of terms and concepts necessary to interpret the provisions of the Directive.

#### *Article 4 – Promotion of collective bargaining on wage setting*

This provision aims at increasing the collective bargaining coverage. To this end, Member States are required to take action to promote the capacity of social partners to engage in collective bargaining on wage setting, and to encourage constructive, meaningful and informed negotiations on wages.

Moreover, it requires that Member States where collective bargaining coverage (as defined in Article 3) does not reach at least 70% of the workers, provide for a framework for collective bargaining and establish an action plan to promote collective bargaining.

#### *Chapter II – Statutory minimum wages*

The provisions of this chapter only apply to Member States with statutory minimum wages.

#### *Article 5 – Adequacy*

With a view to ensuring statutory minimum wage adequacy, this provision requires Member States with statutory minimum wages to provide for the following elements: national criteria for statutory minimum wage setting and updating defined in a stable and clear way; regular and timely updates; and the establishment of consultative bodies.

The national criteria should include at least the purchasing power of minimum wages, the general level of gross wages and their distribution, the growth rate of gross wages, and labour productivity developments. They should be defined in accordance with national practices, either in relevant national legislation, in decisions of the competent bodies or in tripartite agreements. The Member States are also requested to use indicative reference values to guide

the assessment of the adequacy of statutory minimum wages, such as those commonly used at international level<sup>33</sup>.

#### *Article 6 – Variations and deductions*

To promote adequacy of minimum wages for all groups of workers, this provision asks Member States, in consultation with the social partners, to limit the use of statutory minimum wage variations and their application in time and extent.

The article also provides for protection of statutory minimum wages against unjustified or disproportionate deductions. Some deductions to statutory minimum wages may indeed be justified by a legitimate aim, for instance when ordered by a judicial authority. Others, such as deductions related to the equipment necessary to perform a job or deductions of allowances in kind, such as accommodation, may be unjustified or disproportionate.

#### *Article 7 – Social partners' involvement in statutory minimum wage setting and updating*

This provision requires an effective and timely involvement of social partners in setting and updating of statutory minimum wages, including through participation in the consultative bodies mentioned under Article 5. It requires Member States to involve social partners in the definition of the criteria referred to in Article 5, the updates of minimum wages, the establishment of variations and deductions mentioned in Article 6, and the collection of data and carrying out studies in the field.

Besides contributing to ensuring and preserving minimum wage adequacy, a timely and effective involvement of the social partners is also an element of good governance that allows for an informed and inclusive decision-making process.

#### *Article 8 – Effective access of workers to statutory minimum wages*

This provision requires Member States to take the necessary action, in cooperation with the social partners, to ensure effective access of workers to statutory minimum wage protection. The required action would notably consist of reinforcing the controls and field inspections system, providing guidance for enforcement authorities, and giving workers adequate information on applicable statutory minimum wages.

### *Chapter III - Horizontal provisions*

#### *Article 9 – Public procurement*

This provision requires that, in the performance of public procurement and concession contracts, economic operators (including the subcontracting chain thereafter) respect the applicable collectively agreed wages and statutory minimum wages where they exist. Non-respect of statutory minimum wage provisions or wages set in collective agreements may indeed occur in the execution of such contracts, resulting in workers being paid less than the applicable minimum wage protection.

The obligation set in this provision falls within applicable obligations in the field of labour law set in Articles 18(2) and 71(1) of Directive 2014/24/EU on public procurement, Articles 36(2) and 88(1) of Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and Articles 30(3) and 42(1) of Directive

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<sup>33</sup> Adequacy indicators commonly used at international level, e.g. the Kaitz index, compare the minimum wage to the median wage or the average wage. In addition, a standard of decent living defined by the Council of Europe's compares the net minimum wage to the net average wage. Comparisons are also frequent between the minimum wage and the at-risk-of-poverty rate.

2014/23/EU on the award of concession contracts. Clarifying and explicitly referring to the above provisions is intended to support and strengthen their implementation in the field of minimum wages.

#### *Article 10 – Monitoring and data collection*

This provision refers to the setting-up of an effective monitoring and data collection system. Member States are required to task their competent authorities with developing effective and reliable data collecting tools, which should enable Member States to report the relevant coverage- and adequacy-related data annually to the Commission.

The provision requires Member States to ensure that the information regarding collective agreements and their wage provisions is transparent and publicly available.

With a view to monitoring the implementation of this Directive, this provision also foresees that the Commission reports to the European Parliament and the Council its assessment of developments in the adequacy and coverage of minimum wages on the basis of the information provided by Member States. In addition, based on the Commission's report, the Employment Committee would be tasked with examining the promotion of collective bargaining on wage setting and the adequacy of minimum wages in the Member States, in the framework of the process of economic and employment policy coordination at EU level.

#### *Article 11 - Right to redress and protection against adverse treatment or consequences*

This provision requires Member States to ensure that, without prejudice to specific forms of redress and dispute resolution provided for, where applicable, in collective agreements, workers and their representatives have access to effective and impartial dispute resolution and a right to redress, including to adequate compensation, as well as effective protection from any form of detriment in case they decide to exercise their right of defence of their rights with regard to established minimum wage protection. Member States have to make sure that protection is given to workers and their representatives from adverse treatment or consequences by the employer, which could deter workers from lodging complaints while their rights are violated.

#### *Article 12 – Penalties*

This provision requires Member States to provide for effective, proportionate and dissuasive penalties for breaches of national provisions establishing minimum wage protection.

### *Chapter IV – Final provisions*

#### *Article 13 – Implementation*

This provision highlights that, pursuant to Article 153(3) TFEU, Member States may entrust the social partners with the implementation of the Directive, where social partners request to do so and as long as the Member States take all the necessary steps to ensure that they can at all times guarantee the results sought under this Directive.

#### *Article 14 - Dissemination of information*

This provision aims at ensuring awareness-raising in Member States on the rights granted by this Directive, as well as other already existing provisions in the same field.

#### *Article 15 – Evaluation and review*

This provision stipulates that the Commission will conduct an evaluation of the Directive five years after its transposition. The Commission will report to the co-legislator thereafter reviewing the implementation of the Directive and, if it considers necessary, make proposals to revise and update it.

#### *Article 16 – Non-regression and more favourable provisions*

This is a standard provision allowing Member States to provide a higher level of protection than that guaranteed by the proposed Directive, and preventing its use to lower existing standards in the same fields.

#### *Article 17 - Transposition*

These are standard provisions establishing the maximum period that Member States have in order to transpose the Directive into national law and communicate the relevant texts to the Commission (two years) and the obligation for Member States to communicate to the Commission information concerning the application of this Directive.

#### *Article 18 – Entry into force*

This is a standard provision stipulating that the Directive is to enter into force on the twentieth day following its publication in the Official Journal.

#### *Article 19 - Addressees*

This is a standard provision on addressees, making clear that the Directive is addressed to the Member States.

Proposal for a

**DIRECTIVE 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), in conjunction with point (b) of Article 153 (1) thereof

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Pursuant to Article 3 of the Treaty on European Union, the aims of the Union are, inter alia, to promote the well-being of its peoples and to work for the sustainable development of Europe based on a highly competitive social market economy.
- (2) Article 31 of the Charter of Fundamental Rights of the European Union<sup>3</sup> provides for the right of every worker to working conditions which respect his or her health, safety and dignity.
- (3) The European Social Charter establishes that all workers have the right to just conditions of work. It recognises the right of all workers to a fair remuneration sufficient for a decent standard of living for themselves and their families. Article 4 of the Charter recognises the role of freely concluded collective agreements as well as of statutory minimum wage setting mechanisms, to ensure the effective exercise of this right.
- (4) Chapter II of the European Pillar of Social Rights, proclaimed at Gothenburg on 17 November 2017, establishes a set of principles to serve as a guide towards ensuring fair working conditions. Principle No 6 of the European Pillar of Social Rights reaffirms the workers' right to fair wages that provide for a decent standard of living. It also provides that adequate minimum wages shall be ensured, in a way that provides for the satisfaction of the needs of the worker and his/her family in the light of national economic and social conditions, whilst safeguarding access to employment and incentives to seek work. Furthermore, it recalls that in-work poverty shall be prevented and that all wages shall be set in a transparent and predictable way and respecting the autonomy of the social partners.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> Charter of Fundamental Rights of the European Union, 2012/C 326/02 OJEU C326/391 of 26.10.2012.

- (5) Guideline 5 of Council Decision 2020/ 1512/EU on guidelines for the employment policies of the Member States<sup>4</sup> calls on Member States to ensure an effective involvement of social partners in wage-setting, providing for fair wages that enable a decent standard of living and allowing for an adequate responsiveness of wages to productivity developments, with a view to upward convergence. The Guideline also calls on Member States to promote social dialogue and collective bargaining on wage setting. It also calls on Member States and the social partners to ensure that all workers have adequate and fair wages by benefitting from collective agreements or adequate statutory minimum wages, and taking into account their impact on competitiveness, job creation and in-work poverty. The Annual Sustainable Growth Strategy 2021<sup>5</sup> states that Member States should adopt measures to ensure fair working conditions. In addition, the Annual Sustainable Growth Strategy 2020<sup>6</sup> recalled that in the context of growing social divides, it is important to ensure that each worker earns an adequate wage. Several Country Specific Recommendations have also been issued to some Member States in the field of minimum wages. However, individual countries may be little inclined to improve their minimum wage settings because of the perception that this could negatively affect their external cost competitiveness.
- (6) Better working and living conditions, including through adequate minimum wages, benefit both workers and businesses in the Union and are a prerequisite for achieving inclusive and sustainable growth. Addressing large differences in the coverage and adequacy of minimum wage protection contributes to improving the fairness of the EU labour market and promote economic, social progress and upward convergence. Competition in the Single Market should be based on high social standards, innovation and productivity improvements ensuring a level playing field.
- (7) When set at adequate levels, minimum wages protect the income of disadvantaged workers, help ensure a decent living, and limit the fall in income during bad times, as recognised in Convention 131 of the International Labour Organisation on the establishment of a system of minimum wage fixing. Minimum wages contribute to sustaining domestic demand, strengthen incentives to work, reduce wage inequalities and in-work poverty.
- (8) Women, young and low-skilled workers and persons with disabilities have a higher probability of being minimum wage or low wage earners than other groups. During economic downturns, such as the Covid-19 crisis, the role of minimum wages in protecting low-wage workers becomes increasingly important and is essential to support a sustainable and inclusive economic recovery. Addressing minimum wage contributes to gender equality, closing the gender pay and pension gap as well as elevating women out of poverty.
- (9) The Covid-19 pandemic is having a significant impact on the services sector and small firms, which both have a high share of minimum wage earners. In addition, minimum wages are also important in view of the structural trends that are reshaping labour markets and which are increasingly characterised by high shares of non-standard and precarious work. These trends have led to an increased job polarisation resulting in an

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<sup>4</sup> Council Decision 2020/1512/EU of 13 October 2020 on guidelines for the employment policies of the Member States (OJ L 344, 19.10.2020, p. 22–28).

<sup>5</sup> Commission Communication COM(2020) 575 final.

<sup>6</sup> Commission Communication COM(2019) 650 final.

increasing share of low-paid and low-skilled occupations in most Member States, as well as to higher wage inequality in some of them.

- (10) While minimum wage protection exists in all Member States, in some that protection stems from legislative provisions (“statutory minimum wages”) and from collective agreements while in others it is provided exclusively, through collective agreements.
- (11) Minimum wage protection set out by collective agreements in low-paid occupations is adequate in most cases; statutory minimum wages are low compared to other wages in the economy in several Member States. In 2018, the statutory minimum wage did not provide sufficient income for a single minimum-wage earner to reach the at-risk-of-poverty threshold in nine Member States. In addition, the use of reduced minimum wage rates (variations) and deductions from statutory minimum wages negatively affect their adequacy.
- (12) Not all workers in the Union are protected by minimum wages. In some Member States some workers, even though they are covered, receive in practice a remuneration below the statutory minimum wage due to the non-respect of existing rules. In particular, such non-compliance has been found to affect notably women, young workers, people with disabilities and agricultural workers. In Member States where minimum wage protection is provided only through collective agreements, the share of workers not covered is estimated to vary from 2% to 55% of all workers.
- (13) While strong collective bargaining at sector or cross-industry level contributes to ensuring adequate minimum wage protection, traditional collective bargaining structures have been eroding during the last decades, in part due to structural shifts in the economy towards less unionised sectors and to the decline in trade union membership related to the increase of atypical and new forms of work.
- (14) The Commission has consulted management and labour in a two-stage process with regard to possible action to address the challenges related to adequate minimum wages protection in the Union, in accordance with Article 154 of the Treaty on the Functioning of the European Union. There was no agreement among the social partners to enter into negotiations with regard to those matters. It is, however, important to take action at Union level to ensure that workers in the Union are protected by adequate minimum wages, taking into account the outcomes of the social partners’ consultation.
- (15) This Directive establishes minimum requirements at Union level to ensure both that minimum wages are set at adequate level and that workers have access to minimum wage protection, in the form of a statutory minimum wage or in the form of wages set under collective agreements as defined for the purpose of this Directive.
- (16) In full respect of Article 153(5) of the Treaty on the Functioning of the European Union, this Directive neither aims to harmonise the level of minimum wages across the Union nor to establish an uniform mechanism for setting minimum wages. It does not interfere with the freedom of Member States to set statutory minimum wages or promote access to minimum wage protection provided by collective agreements, according to the traditions and specificities of each country and in full respect of national competences and social partners’ contractual freedom. This Directive does not impose an obligation on the Member States where minimum wage protection is ensured exclusively via collective agreements to introduce a statutory minimum wage nor to make the collective agreements universally applicable. Also, this Directive does

not establish the level of pay, which falls within the contractual freedom of the social partners at national level and within the relevant competence of Member States.

- (17) This Directive should apply to workers who have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State, with consideration to the criteria established by the Court of Justice of the European Union for determining the status of a worker. Provided that they fulfil those criteria, domestic workers, on-demand workers, intermittent workers, voucher based-workers, bogus self-employed, platform workers, trainees and apprentices could fall within the scope of this Directive. Genuinely self-employed persons do not fall within the scope of this Directive since they do not fulfil those criteria. The abuse of the status of self-employed persons, as defined in national law, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work. Bogus self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations. Such persons should fall within the scope of this Directive. The determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of the work and not by the parties' description of the relationship.
- (18) Well-functioning collective bargaining on wage setting is an important means to ensure that workers are protected by adequate minimum wages. In the Member States with statutory minimum wages, collective bargaining supports general wage developments and therefore contributes to improving the adequacy of minimum wages. In the Member States where minimum wage protection is provided exclusively by collective bargaining, their level as well as the share of protected workers are directly determined by the functioning of the collective bargaining system and collective bargaining coverage. Strong and well-functioning collective bargaining together with a high coverage of sectorial or cross-industry collective agreements strengthen the adequacy and the coverage of minimum wages.
- (19) In a context of declining collective bargaining coverage, it is essential that the Member States promote collective bargaining to enhance workers' access to minimum wage protection provided by collective agreements. Member States with a high collective bargaining coverage tend to have a low share of low-wage workers and high minimum wages. Member States with a small share of low wage earners have a collective bargaining coverage rate above 70%. Similarly, the majority of the Member States with high levels of minimum wages relative to the median wage have a collective bargaining coverage above 70%. While all Member States should be encouraged to promote collective bargaining, those who do not reach this level of coverage should, in consultation and/or agreement with the social partners, provide for or, where it already exists, strengthen a framework of facilitative procedures and institutional arrangements enabling the conditions for collective bargaining. Such framework should be established by law or by tripartite agreement..
- (20) Sound rules, procedures and practice for setting and updating statutory minimum wages are necessary to deliver adequate minimum wages, while safeguarding jobs and the competitiveness of firms including small and medium-sized enterprises. They include a number of elements to preserve the adequacy of statutory minimum wages, including criteria and indicators to assess adequacy, regular and timely updates, the existence of consultative bodies and the involvement of social partners. A timely and

effective involvement of the latter is another element of good governance that allows for an informed and inclusive decision-making process.

- (21) Minimum wages are considered adequate if they are fair in relation to the wage distribution in the country and if they provide a decent standard of living. The adequacy of statutory minimum wages is determined in view of the national socio-economic conditions, including employment growth, competitiveness as well as regional and sectoral developments. Their adequacy should be assessed at least in relation to their purchasing power, to the productivity developments and to their relation to the gross wage levels, distribution and growth. The use of indicators commonly used at international level, such as 60% of the gross median wage and 50% of the gross average wage, can help guide the assessment of minimum wage adequacy in relation to the gross level of wages.
- (22) To promote adequacy of minimum wages for all groups of workers, variations and deductions from statutory minimum wages should be limited to a minimum, while ensuring that social partners are duly consulted in their definition. Some deductions to statutory minimum wages may be justified by a legitimate aim, including overstated amounts paid or deductions ordered by a judicial authority. Others, such as deductions related to the equipment necessary to perform a job or deductions of allowances in kind, such as accommodation, may be unjustified or disproportionate.
- (23) An effective enforcement system, including controls and field inspections, is necessary to ensure the functioning of national statutory minimum wage frameworks. To strengthen the effectiveness of enforcement authorities, a close cooperation with the social partners is also needed, including to address critical challenges such as those related to sub-contracting, bogus self-employment or non-recorded overtime. Moreover, workers should have easily access to appropriate information on applicable statutory minimum wages to ensure an adequate degree of transparency and predictability as regards their working conditions.
- (24) The effective implementation of minimum wage protection set out by legal provisions or provided by collective agreements is essential in the performance of public procurement and concession contracts. Non-respect of collective agreements providing for minimum wage protection in a given sector may indeed occur in the execution of such contracts or in the sub-contracting chain thereafter, resulting in workers being paid less than the wage level agreed in the sectoral collective agreements. To prevent such situations, economic operators have to apply to their workers the wages set by collective agreements for the relevant sector and geographical area in order to abide by applicable obligations in the field of labour law, in accordance with Articles 18(2) and 71(1) of Directive 2014/24/EU of the European Parliament and the Council on public procurement<sup>7</sup>, Articles 36(2) and 88(1) of Directive 2014/25/EU of the European Parliament and the Council<sup>8</sup> on procurement by entities operating in the water, energy, transport and postal services sectors and Articles 30(3) and 42(1) of Directive

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<sup>7</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

<sup>8</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

2014/23/EU of the European Parliament and the Council <sup>9</sup> on the award of concession contracts.

- (25) Reliable monitoring and data collection are key to ensure the effective protection of minimum wages. The Commission should report every year to the European Parliament and to the Council its assessment of developments in the adequacy and coverage of minimum wages on the basis of annual data and information to be provided by Member States. In addition, progress should be monitored in the framework of the process of economic and employment policy coordination at Union level. In that context, the Employment Committee should examine every year the situation in the Member States on the basis of the reports produced by the Commission and other multilateral surveillance tools such as benchmarking.
- (26) Workers should be in a position to exercise their right of defence when their rights relating to established minimum wage protection are violated. In order to prevent that workers are deprived from their rights, and without prejudice to specific forms of redress and dispute resolution provided for in collective agreements, including systems of collective dispute resolution, Member States should take the necessary measures to ensure that they have access to effective and impartial dispute resolution and a right to redress, including to adequate compensation, as well as effective protection from any form of detriment in case they decide to exercise their right of defence.
- (27) The Commission should conduct an evaluation providing the basis for a review on the effective implementation of this Directive. The Council and the European Parliament should be informed of the results of such review.
- (28) The reforms and measures adopted by the Member States to promote adequate minimum wage protection of workers, while being steps in the right direction, have not been comprehensive and systematic. Moreover, individual countries may be little inclined to improve the adequacy and coverage of minimum wages because of the perception that this could negatively affect their external cost competitiveness. Since the objectives of this Directive cannot be sufficiently achieved by the Member States, but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (29) This Directive lays down minimum requirements, thus leaving untouched Member States' prerogative to introduce and maintain more favourable provisions. Rights acquired under the existing national legal framework should continue to apply, unless more favourable provisions are introduced by this Directive. The implementation of this Directive cannot be used to reduce existing rights for workers, nor can it constitute valid grounds for reducing the general level of protection afforded to workers in the field covered by this Directive.
- (30) In implementing this Directive Member States should avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of micro, small and medium-sized enterprises. Member States are therefore invited to assess the impact of their transposition act on small and medium-

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<sup>9</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contract (OJ L 94, 28.3.2014, p. 1).

sized enterprises in order to ensure that they are not disproportionately affected, giving specific attention to micro-enterprises and to the administrative burden, and to publish the results of such assessments. If found that micro, small and medium-sized enterprises are disproportionately affected, Member States should consider introducing measures to support these enterprises to adjust their remuneration structures to the new requirements.

- (31) The Technical Support Instrument<sup>10</sup> and the European Social Fund plus<sup>11</sup> are available to Member States to develop or improve the technical aspects of minimum wage frameworks, including on assessment of adequacy, monitoring and data collection, broadening access, as well as on enforcement and on general capacity building related to the implementation of said frameworks.

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

##### **Subject matter**

1. With a view to improving working and living conditions in the Union, this Directive establishes a framework for:
  - (a) setting adequate levels of minimum wages;
  - (b) access of workers to minimum wage protection, in the form of wages set out by collective agreements or in the form of a statutory minimum wage where it exists.

This Directive shall be without prejudice to the full respect of the autonomy of social partners, as well as their right to negotiate and conclude collective agreements.

2. This Directive shall be without prejudice to the choice of the Member States to set statutory minimum wages or promote access to minimum wage protection provided by collective agreements.
3. Nothing in this Directive shall be construed as imposing an obligation on the Member States where wage setting is ensured exclusively via collective agreements to introduce a statutory minimum wage nor to make the collective agreements universally applicable.

#### *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

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<sup>10</sup> *Proposal for a Regulation of the European Parliament and of the Council of 28 May 2020 on the establishment of the Technical Support Instrument, COM(2020) 409 final*

<sup>11</sup> *Proposal for a Regulation of the European Parliament and of the Council on the European Social Fund Plus, COM/2018/382 final.*

Member State, with consideration to the case-law of the Court of Justice of the European Union.

### *Article 3*

#### **Definitions**

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

- (1) ‘minimum wage’ means the minimum remuneration that an employer is required to pay to workers for the work performed during a given period, calculated on the basis of time or output;
- (2) ‘statutory minimum wage’ means a minimum wage set by law, or other binding legal provisions;
- (3) ‘collective bargaining’ means all negotiations which take place between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more workers’ organisations, on the other, for determining working conditions and terms of employment; and/or regulating relations between employers and workers; and/or regulating relations between employers or their organisations and a worker organisation or worker organisations;
- (4) ‘collective agreement’ means all agreements in writing regarding working conditions and terms of employment concluded by the social partners as an outcome of collective bargaining;
- (5) ‘collective bargaining coverage’ means the share of workers at national level to whom a collective agreement applies;

### *Article 4*

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

1. With the aim to increase the collective bargaining coverage Member States shall take, in consultation with the social partners, at least the following measures:
  - (a) promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage setting at sector or cross-industry level;
  - (b) encourage constructive, meaningful and informed negotiations on wages among social partners;
2. Member States where collective bargaining coverage is less than 70% of the workers defined within the meaning of Article 2 shall in addition provide for a framework of enabling conditions for collective bargaining, either by law after consultation of the social partners or by agreement with them, and shall establish an action plan to promote collective bargaining. The action plan shall be made public and shall be notified to the European Commission.

## CHAPTER II

### STATUTORY MINIMUM WAGES

#### *Article 5*

##### **Adequacy**

1. Member States with statutory minimum wages shall take the necessary measures to ensure that the setting and updating of statutory minimum wages are guided by criteria set to promote adequacy with the aim to achieve decent working and living conditions, social cohesion and upward convergence. Member States shall define those criteria in accordance with their national practices, either in relevant national legislation, in decisions of the competent bodies or in tripartite agreements. The criteria shall be defined in a stable and clear way.
2. The national criteria referred to in paragraph 1 shall include at least the following elements:
  - (a) the purchasing power of statutory minimum wages, taking into account the cost of living and the contribution of taxes and social benefits;
  - (b) the general level of gross wages and their distribution;
  - (c) the growth rate of gross wages;
  - (d) labour productivity developments.
3. Member States shall use indicative reference values to guide their assessment of adequacy of statutory minimum wages in relation to the general level of gross wages, such as those commonly used at international level.
4. Member States shall take the necessary measures to ensure the regular and timely updates of statutory minimum wages in order to preserve their adequacy.
5. Member States shall establish consultative bodies to advise the competent authorities on issues related to statutory minimum wages.

#### *Article 6*

##### **Variations and deductions**

1. Member States may allow different rates of statutory minimum wage for specific groups of workers. Member States shall keep these variations to a minimum, and ensure that any variation is non-discriminatory, proportionate, limited in time if relevant, and objectively and reasonably justified by a legitimate aim.
2. Member States may allow deductions by law that reduce the remuneration paid to workers to a level below that of the statutory minimum wage. Member States shall ensure that these deductions from statutory minimum wages are necessary, objectively justified and proportionate.

#### *Article 7*

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

Member States shall take the necessary measures to ensure that the social partners are involved in a timely and effective manner in statutory minimum wage setting and updating,

including through participation in consultative bodies referred to in Article 5(5) and notably as concerns:

- (a) the selection and application of criteria and indicative reference values referred to in Article 5 (1) (2) and (3) for the determination of statutory minimum wage levels;
- (b) the updates of statutory minimum wage levels referred to in Article 5 (4);
- (c) the establishment of variations and deductions in statutory minimum wages referred to in Article 6;
- (d) the collection of data and the carrying out of studies for the information of statutory minimum wage setting authorities;

#### *Article 8*

##### **Effective access of workers to statutory minimum wages**

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

- (1) strengthen the controls and field inspections conducted by labour inspectorates or the bodies responsible for the enforcement of statutory minimum wages. The controls and inspections shall be proportionate and non-discriminatory;
- (2) develop guidance for enforcement authorities to proactively target and pursue non-compliant businesses;
- (3) ensure that information on statutory minimum wages is made publicly available in a clear, comprehensive and easily accessible way.

### CHAPTER III

#### **HORIZONTAL PROVISIONS**

##### *Article 9*

##### **Public procurement**

In accordance with Directive 2014/24/EU, Directive 2014/25/EU and Directive 2014/23/EU, Member States shall take appropriate measures to ensure that in the performance of public procurement or concession contracts economic operators comply with the wages set out by collective agreements for the relevant sector and geographical area and with the statutory minimum wages where they exist.

##### *Article 10*

##### **Monitoring and data collection**

1. Member States shall task their competent authorities with developing effective data collection tools to monitor the coverage and adequacy of minimum wages.

2. Member States shall report the following data to the Commission on an annual basis, before 1 October of each year:
  - (a) for statutory minimum wages:
    - (i) the level of the statutory minimum wage and the share of workers covered by it;
    - (ii) the existing variations and the share of workers covered by them;
    - (iii) the existing deductions;
    - (iv) the rate of collective bargaining coverage.
  - (b) for minimum wage protection provided only by collective agreements:
    - (i) the distribution in deciles of such wages weighted by the share of covered workers;
    - (ii) the rate of collective bargaining coverage;
    - (iii) the level of wages for workers not having minimum wage protection provided by collective agreements and its relation to the level of wages of workers having such minimum protection.

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

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

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

3. Member States shall ensure that information regarding minimum wage protection, including collective agreements and wage provisions therein, is transparent and publicly accessible.
4. The Commission shall assess the data transmitted by the Member States in the reports referred to in paragraph 2, and shall report annually to the European Parliament and to the Council.
5. On the basis of the report issued by the Commission, the Employment Committee set up in accordance with Article 150 TFEU shall carry out every year an examination of the promotion of collective bargaining on wage setting and of the adequacy of minimum wages in the Member States.

#### *Article 11*

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

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

2. Member States shall take the measures necessary to protect workers, including those who are workers' representatives, from any adverse treatment by the employer and from any adverse consequences resulting from a complaint lodged with the employer or resulting from any proceedings initiated with the aim of enforcing compliance with the rights relating to statutory minimum wages or minimum wage protection provided by collective agreements.

#### *Article 12*

##### **Penalties**

Member States shall lay down the rules on penalties applicable to infringements of national provisions. The penalties provided for shall be effective, proportionate and dissuasive.

### CHAPTER IV

#### **FINAL PROVISIONS**

#### *Article 13*

##### **Implementation**

Member States may entrust the social partners with the implementation of this Directive, where the social partners jointly request to do so. In so doing, the Member States shall take all necessary steps to ensure that the results sought by this Directive are guaranteed at all times.

#### *Article 14*

##### **Dissemination of information**

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

#### *Article 15*

##### **Evaluation and review**

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

#### *Article 16*

##### **Non-regression and more favourable provisions**

1. This Directive shall not constitute valid grounds for reducing the general level of protection already afforded to workers within Member States.
2. This Directive shall not affect Member States' prerogative to apply or to introduce laws, regulations or administrative provisions which are more favourable to workers

or to encourage or permit the application of collective agreements which are more favourable to workers.

3. This Directive is without prejudice to any other rights conferred on workers by other legal acts of the Union.

#### *Article 17*

##### **Transposition**

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

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

#### *Article 18*

##### **Entry into force**

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

#### *Article 19*

##### **Addresses**

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*