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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}

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on adequate and fair minimum wages in the European Union¹

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) with regards to statutory wages and point (f) of Article 153 (1) with regards to collective bargaining 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,

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

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 Union² 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.

¹ Changes from the original Commission Proposal have been indicated as follows: Additions are *bold and cursive*. Omissions are ~~bold and struck out~~.

² Charter of Fundamental Rights of the European Union, 2012/C 326/02 OJEU C326/391 of 26.10.2012.

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, upward social convergence and gender equality, this Directive establishes a framework for:
 - (a) setting adequate and fair levels of minimum wages in order to ensure at least a decent standard of living of workers and their families;
 - (b) access of all 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, promote access to minimum wage protection provided by collective agreements, or both.
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

1. This Directive applies to workers in the Union who have an employment contract or employment relationship as defined by law, collective agreements, or practice in force in each Member State, with consideration to the case-law of the Court of Justice of the European Union.
2. The Directive does not apply to seafarers permanently residing in third countries in order to ensure the competitiveness of the Union's maritime shipping industry.

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 in the public as well as in the private sector.

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;
 - (c) prohibit and take measures to prevent all acts which undermine the right of workers to join a trade union or obstruct them from doing so, or which discriminate against workers and trade union representatives who participate or wish to participate in collective bargaining on wage setting, and ensure proper access for all workers to necessary information about their rights;
 - (d) prohibit all acts aiming to undermine collective bargaining or collective agreements on wage setting;
 - (e) ensure effective protection against discriminatory acts related to collective bargaining on wage setting;
 - (f) facilitate that employers, taking into account the size and capacity of the undertaking concerned, provide trade union representatives with appropriate information and facilities, in order to enable them to carry out their functions in respect of collective bargaining on wage setting promptly and efficiently;
 - (g) facilitate that trade unions have the right to access the workplace and the workers in an adequate and proportionate manner, including where work is carried out digitally, to meet and contact workers individually or collectively for the purpose of organising workers, negotiating wages on their behalf and representing them;
 - (h) support compliance with applicable collective agreements on wages, respect for the applicable collective agreements on wages along the subcontracting chains, and the provision of collective agreements on wages to employers and workers concerned by them.
 - (i) encourage the social partners to create specific measures to improve gender equality in collective bargaining

2. Member States where the overall collective bargaining coverage regulating remuneration is less than 60% of the workers even if the binding figure of 50% coverage is met, shall, in addition to the measures provided for in paragraph 1, ensure the enabling conditions to promote collective bargaining, in the form of an action plan, by law after consulting social partners or in agreement with social partners. The action plan shall set out a clear timeline and concrete measures to effectively ensure the right to collective bargaining to promote and progressively increase the coverage of such collective bargaining to at least 60% of the workers. The social partners must agree to the action plan in order for it to be implemented. The action plan shall be updated at least every two years, after consulting social partners or in agreement with social partners. The action plan shall be made public and notified to the Commission. The Commission shall monitor progress and inform the European Parliament and the Council annually in that regard.
3. Member States with a higher overall collective bargaining coverage are not allowed to deduct the national standards due to the minimum standards raised by this directive.

CHAPTER II

STATUTORY MINIMUM WAGES

Article 5

Adequacy and fairness

1. Member States with statutory minimum wages shall take the necessary measures to ensure that the setting and updating of statutory minimum wages, as a threshold of decency, contribute to preventing and combating poverty, in particular in-work poverty, promote social cohesion and reduce wage inequalities, and are guided by criteria set to ensure adequacy and fairness with the aim to achieve decent working and living conditions, the eradication of the gender pay gap, 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. Member States shall ensure that statutory minimum wages are adequate and fair and ensure a decent standard of living.
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) the poverty rate, in particular the rate of in-work poverty
 - (e) the gender pay gap, with the objective of eradicating it.

3. Member States shall assess and report on the adequacy of statutory minimum wages and should outline domestically set targets in these reports detailing the desired relationship between the minimum wage and the average gross income. Member States are encouraged to consult domestic social partners in the determination of this target figure, as outlined under Art. 7 of the directive. The setting of minimum wage remains a domestic competency of the Member States.
4. Member States shall take the necessary measures, to regularly update, at least on a biennial basis, statutory minimum wages in a transparent manner in order to ensure and preserve their adequacy and fairness.
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 neither directly nor indirectly 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.
3. Deductions because of gender cannot be justified.

Article 7

Involvement of social partners in statutory minimum wage setting and updating

Member States shall encourage and foster the effective involvement of social partners 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

Monitoring compliance and effective access of workers to statutory minimum wages

Member States shall, in cooperation with social partners, take *at least* the following measures to enhance the access of workers to statutory minimum wage protection and to monitor and

ensure compliance with this Directive:

- (1) strengthen the controls and the intensity and frequency of field inspections conducted by labour inspectorates or the bodies responsible for the enforcement of statutory minimum wages and ensure the availability of adequate resources in that regard, so that those controls and inspections are effective, dissuasive, 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 and justifications to them;
 - (iii) the existing deductions and justifications to them;
 - (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 [*1st 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 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. Member States may take into consideration the gross GDP and sectoral specificities. This shall not impact Member States' ability to set dispute resolution mechanisms.

CHAPTER IV

FINAL PROVISIONS

Article 13

Implementation

Member States may, *in accordance with Article 153(3) TFEU*, 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 in particular with regard to the lowering or abolition of minimum wages and shall not be construed as preventing Member States from increasing statutory 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.
3. This Directive is without prejudice to any rights conferred on workers by other legal acts of the Union.

Article 17

Transposition

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

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

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

Article 18

Entry into force

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

Article 19

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President