

**Submission to the Oireachtas Joint Committee on Enterprise, Trade and Employment
on the proposal for a directive of the European Parliament and of the Council on adequate
minimum wages in the European Union (COM(2020) 682 final).**

11 December 2020

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1. Executive Summary

This submission outlines how the proposal for a directive on adequate minimum wages put forward by the European Commission on 28 October 2020 complies in full with the subsidiarity principle, as set down in the EU treaties.

It sets out how the proposal is consistent with the EU's aims, competences and political priorities; how it identifies the problem of inadequate minimum wages and gaps in the coverage of minimum wage legislation in different member states which results not only in even less adequate wages for workers affected but also gives rise to major discrepancies in the European single market and unfair competition; how member states have not taken sufficient action to address this problem over recent years; and how the problem can better be addressed at European level, thereby complying with the subsidiarity principle.

2. Introduction

The Irish Congress of Trade Unions is the largest civil society organisation in Ireland, representing over 700,000 workers, north and south.

We welcome the invitation to make a submission on the draft directive on adequate minimum wages in the European Union, proposed by the European Commission on 28 October 2020.

In light of the views expressed at and the decision of the Joint Committee on Enterprise, Trade and Employment regarding this proposal at its 2 December 2020 meeting, this submission focuses primarily on the proposal's compliance with the principle of subsidiarity as set down in Article 5(3) of the Treaty on European Union, and Protocol (No.2) to the Treaty on the Functioning of the European Union.¹

We would be interested in engaging further with the Joint Committee and the Oireachtas on the content of the proposal and particularly on the amendments needed to clarify and improve it as it moves towards adoption at European level and thereafter towards transposition and implementation in all member states.

3. Proposal is consistent with EU's aims

The proposal is consistent with EU aims as set down in the EU treaties negotiated by all member states and endorsed by the Irish people by referendum.

Article 3(1) of the Treaty on European Union (TEU) states that the EU's aim is 'to promote peace, its values and the well-being of its peoples'. Article 3(3) provides that the EU shall 'establish' an

¹ Article 5(3) (first paragraph): '*Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.*'

internal market but shall ‘work for’ the sustainable development of Europe based on a ‘highly competitive social market economy, aiming at full employment and social progress.... It shall combat social exclusion and discrimination, [and] shall promote social justice and protection, equality between women and men, solidarity between generations....

In other words, the internal market is not an end in itself but a *means* to an end.

Article 151 of the Treaty on the Functioning of the European Union (TFEU) in turn commits the EU and its member states ‘having in mind fundamental social rights’ such as those set out in the Council of Europe’s European Social Charter signed in 1961 [which Ireland ratified in 1964]² and in the 1989 Community Charter of the Fundamental Social Rights of Workers to ‘promoting improved living and working conditions.’

The purpose of this proposal as set down in Article 1(1), namely to improve working and living conditions, is consistent with all of these aims.

4. Proposal is consistent with EU’s competences

The proposal is consistent with the competences or powers conferred by all member states on the EU by the treaties.

The legal basis for the proposal is Articles 153(1)(b) and Article 153(2).

Article 153(1)(b) authorises the EU to ‘support and complement the activities of the Member States’ in the field of working conditions.

Article 153(2) in turn authorises it to adopt directives in the field of working conditions that set ‘minimum requirements for gradual implementation’ and that avoids imposing administrative, financial and legal constraints in a way which would hold back the creation and development’ of SMEs.

This legal basis has been used for other recent EU legislation that Ireland supported. These include the 2019 directives on work-life balance for parents and carers (Directive 2019/1158) and on transparent and predictable working conditions (Directive 2019/1152). Ireland has committed to transposing both of these into Irish law by August 2022 at the latest.³

As the proposal does not contain any measures that directly affect the level of pay, it respects the limits on EU action set by Article 153(5). The accompanying Impact Assessment to the proposal points out that the Court of Justice (CJEU) has previously ruled that the limits set by Article 153(5) cannot extend ‘to any question involving any sort of link with pay; otherwise some of the areas referred to in Article 153(1) TFEU would be deprived of much of their substance’. It also points out that this was the basis that the EU adopted the directives on work-life balance for parents and carers and on transparent and predictable working conditions, both of which regard remuneration as part of working conditions and deal indirectly with different aspects of pay. Similarly, other EU legislation in effect in Ireland also deals indirectly with pay, including the directives on fixed-term

² Ireland ratified the revised 1996 European Social Charter in 2000.

³ And some provisions by later dates.

work (Directive 1999/70/EC), part-time work (Directive 97/81/EC) and temporary agency work (Directive 2008/104/EC).

5. Proposal responds to EU's political priorities endorsed by Ireland

The proposal responds to the political priorities set by the European Council, the Council of Ministers, the European Parliament and the European Commission. These political priorities have been approved by the Irish Government and by Irish MEPs over the recent past.

The proposal is in line with the **European Pillar of Social Rights** (EPSR) proclaimed by the EU institutions in November 2017. In June 2018, the (then) Taoiseach described the EPSR as 'a political compass that will help guide our collective actions in the years ahead.'⁴

Principle 6 (wages) of the EPSR states:

'Workers have the right to fair wages that provide for a decent standard of living. Adequate minimum wages shall be ensured, in a way that provide 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. In-work poverty shall be prevented. All wages shall be set in a transparent and predictable way according to national practices and respecting the autonomy of the social partners.'

Principle 8 (Social dialogue and involvement of workers):

'The social partners shall be consulted on the design and implementation of economic, employment and social policies according to national practices. They shall be encouraged to negotiate and conclude collective agreements in matters relevant to them, while respecting their autonomy and the right to collective action. Where appropriate, agreements concluded between the social partners shall be implemented at the level of the Union and its Member States. Workers or their representatives have the right to be informed and consulted in good time on matters relevant to them, in particular on the transfer, restructuring and merger of undertakings and on collective redundancies. Support for increased capacity of social partners to promote social dialogue shall be encouraged.'

Principle 2 (Gender equality):

'Equality of treatment and opportunities between women and men must be ensured and fostered in all areas, including regarding participation in the labour market, terms and conditions of employment and career progression. Women and men have the right to equal pay for work of equal value.'⁵

⁴ Dail debates, 21 June 2018

⁵ Principle 2 is of particular relevance given that 60% of minimum wage workers are women, including in Ireland. The proposal points out (recital 2) that addressing the inadequacy of the minimum wage 'contributes to gender equality, closing the gender pay and pension gap as well as elevating women out of poverty' and to the 'effective implementation of the policy objectives' of the 2006 directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Directive

The proposal acts on commitments given by **European Commission** President Ursula von der Leyen before her nomination by the European Council and her election by the European Parliament in 2019. Her political guidelines for the 2019-2024 Commission stated:

‘The dignity of work is sacred. Within the first 100 days of my mandate, I will propose a legal instrument to ensure that every worker in our Union has a fair minimum wage. This should allow for a decent living wherever they work. Minimum wages should be set according to national traditions, through collective agreements or legal provisions. I am a firm believer in the value of social dialogue between employers and unions, the people who know their sector and their region the best... [and by 2024] ...every worker should have a fair minimum wage.’

The Commission began to fulfil this commitment by opening consultations of European-level employers and trade unions on this initiative in January 2020, as required by the EU treaties (Article 155).⁶

The proposal responds to the call made by the **European Council** in its *Strategic Agenda for 2019-2024* (June 2019) for the European Pillar of Social Rights to be implemented at EU and member state level. Ireland was represented at this summit by the (then) Taoiseach Leo Varadkar TD.

The proposal responds to the **Council’s** recommendation on the *economic policy of the euro area*, approved in February 2020, which called on euro area Member States to take action, individually and collectively, to ‘enhance the effectiveness of social dialogue and promote collective bargaining’. Ireland was represented at this Council meeting by the Minister for Finance and Public Expenditure and Reform, Pascal Donohoe TD. Similarly, Council Decision (EU) 2020/1512/EU adopted on 13 October 2020 on *guidelines for the employment policies of the Member States* calls on Member States to promote social dialogue and collective bargaining on wage setting.

The proposal responds to recent **European Parliament** calls such as contained in its resolution on *employment and social policies in the euro area*, adopted in October 2019. This had called on the Commission to ‘put forward a legal instrument to ensure that every worker in the Union has a fair minimum wage, which can be set according to national traditions, or through collective agreements or legal provisions’. MEPs from the three parties now in government supported this resolution.

2006/54/EU). This particular directive consolidates into a single piece of legislation a number of EU equality directives dating back to the 1970s including the 1975 equal pay and the 1976 equal treatment directives.

⁶ Article 155 TFEU requires the Commission before issuing social proposals to open a two-stage consultation process with employers and trade unions to see if they are willing to negotiate an agreement that could be transformed into EU legislation, as has been done in the past such as on part-time work. The ETUC stated it was willing to enter into talks to deliver an ambitious agreement but employers’ representatives declined to do so. The current proposal represents the Commission’s response to these consultations.

6. Proposal identifies the problem of inadequate national minimum wages

Having access to a minimum wages that guarantees a decent standard of living is a key part of adequate working conditions. The proposal points out (pages 2 & 13) that adequacy indicators commonly used at international level compare the minimum wage to the median wage⁷ or to the average wage. For example, the Council of Europe's European Social Charter (ESC) establishes the right of all workers to 'fair remuneration sufficient for a decent standard of living for themselves and their families.'" The Council's monitoring committee (the European Committee of Social Rights) has proposed that wages should be at least 60% of national average net earnings, with a secondary target of 50%. Similarly, the 1998 report of the Ireland's National Minimum Wage Commission recommended the introduction of a national minimum wage of 'around two-thirds' of median earnings.⁸

The proposal therefore states (recital 21) that '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.'

However, as the Impact Assessment points out (p.4):

'In 2019...the statutory minimum wage was below 50% of the median wage in nine EU countries (Estonia, Malta, *Ireland*, Czechia, Latvia, Germany, the Netherlands, Croatia and Greece). In three of these countries (Estonia, Malta and *Ireland*), it was even below 45%. Moreover, seven countries (Estonia, Malta, *Ireland*, Czechia, Latvia, Hungary and Romania) had minimum wages below 40% of the average wage.'

And with regard to the Council of Europe's recommendation of at least 60% of national average net earnings, the Impact Assessment notes (pages 144-145):

'The take-home pay of single workers earning the minimum wage is below 50% of the net average wage in Hungary, Greece, Malta, Bulgaria, Germany, Estonia, Czechia, Romania, Latvia and Poland and below 60% (but not below 50%) in Croatia, *Ireland*, Slovakia, Lithuania, Luxembourg, Portugal, Spain, the Netherlands and, to a small degree, Slovenia'

The Impact Assessment also points out (pages 147-148) that the proportion of minimum wage workers who say that they find it difficult to 'make ends meet' each month ranges from 6% in Denmark to 85% in Greece.⁹

⁷ 'The median wage is the wage earned by the person in the middle of the wage distribution. Exactly one half of people earn less than this person. The median wage is usually estimated based on earnings (or income) surveys, on the distribution of monthly earnings of full-time workers' - European Commission first stage consultation document, 14.1.2020, *C(2020) 83 final*, p.4

⁸ <https://www.eurofound.europa.eu/publications/article/1998/ireland-set-to-introduce-a-national-minimum-wage-in-2000>

⁹ No data for Ireland.

The proposal therefore concludes (p.2) that in a majority of the member states with national statutory minimum wages, minimum wages are ‘too low vis-à-vis other wages or to provide a decent living’.

It also points out that 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, and makes the crucial point that during economic downturns, such as the Covid-19 crisis, the role of minimum wages in protecting low-wage workers becomes increasingly important (recital 8), thus ‘reinforc[ing] the case for EU intervention at the present point in time’ (Impact Assessment, p.21).

7. Proposal identifies gaps in the coverage of statutory national minimum wages

In the 21 member states with a statutory national minimum wage, the Commission has identified substantial gaps in coverage arising from provisions in national legislation that exempt or introduce ‘variations’ (i.e. lower minima) for specific categories of workers.

For example, with regard to exemptions the Commission identifies exemptions for workers in education or training, apprentices, home workers, tele-workers, self-employed workers with no employees, workers employed for less than one month (e.g. seasonal workers in agriculture and horticulture), workers with disabilities employed in dedicated workshops, and workers providing care services amongst others. Similarly, with regard to variations it identifies lower rates for workers based on age, education or experience, for workers in ‘flexi-jobs’ in catering, accommodation and retail, for live-in domestic workers, between ‘skilled’ and ‘unskilled’ workers, for temporary and seasonal workers’, for workers with disabilities on ‘low-performance contracts’, and for workers on ‘public works schemes’, amongst others (Impact Assessment, Annex A9.4 and Table A9.3).

Not only do these exemptions and variations result in even less adequate wages for the workers concerned, the Commission warns that such gaps ‘may contribute to unfair competition in the labour market’, which it points out was highlighted as a ‘key concern for SMEs’ by the business lobby SMEUnited, which represents over 70 national SME representative organisations, including ISME in Ireland.

8. Proposal identifies problem of insufficient national action over recent years

The proposal states (pages 6-7) that over recent years

...national action has not been enough to address the problem of insufficient adequacy and/or coverage of minimum wage protection. Without policy action at 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

This is also the case with regard to Ireland. When Ireland’s National Minimum Wage was introduced in 2000, it amounted to 60% of the median wage. However, by 2019, it amounted to less than 45% of the median wage, one of just three member states with such a low level. The 2016 Programme for government did commit (p.135) to increase the minimum wage to

€10.50/hour by 2021. However, the 2020 national minimum wage is €10.10/hour and is due to rise by just 10c in January 2021.¹⁰ The inadequacy of Ireland's minimum wage is *de facto* acknowledged by the commitment in the 2020 Programme for Government to provide each citizen with a '*living wage...over the lifetime of the government.*'

9. Proposal acknowledges that collective bargaining is central to adequate minimum wages
The proposal acknowledges that member states with high collective bargaining coverage¹¹ 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. The Impact Assessment points out (p.12) that all member states with a collective bargaining coverage rate above 70% have a share of low-wage earners¹² below 10%; Ireland's share of low-wage earners is above 20%.

The proposal consequently proposes (Article 4) to 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, to encourage constructive, meaningful and informed negotiations on wages among social partners; and, in member states where coverage is less than 70% to '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.'

This would begin to give effect to the EPSR and represent a positive response to the recent calls from the European Council, the Council and the European Parliament, to promote social dialogue and collective bargaining.

The recognition in the 2020 Programme for Government of the 'importance of regular and open engagement with all sectors of society', which stated that this is 'particularly important as we steer our way out of the pandemic, rebuild our economy, and support communities that have been severely impacted by COVID-19' and which specifically committed to 'create new models of *sectoral* engagement,' leads logically to supporting the provisions of the proposal that promote collective bargaining, particularly sectoral collective bargaining.

10. Conclusion

This submission has outlined how the proposal for a directive on adequate minimum wages is consistent with the EU's aims, competences and political priorities; how it identifies the problem of inadequate minimum wages and gaps in the coverage of minimum wage legislation in different member states, which create discrepancies in the single market and give rise to unfair

¹⁰ Congress withdrew from the Low Pay Commission in September 2020 when it became clear that other members were not prepared to propose an increase for the lowest-paid workers in Ireland in excess of 2%, i.e. similar to workers in other sectors.

¹¹ The proposal defines coverage as the share of workers at national level to whom a collective agreement applies and understands high coverage as a coverage rate of at least 70%.

¹² Defined as those employees (excluding apprentices) who earn two-thirds or less of the national median gross hourly earnings.

competition; how it seeks to address this problem including by promoting collective bargaining; how member states have not taken sufficient action to address this problem over recent years, and how this problem can be better addressed at EU level rather than at national level. As such, it is our view that it complies in full with the subsidiarity principle.

Article 5(3) (2nd paragraph) of the Treaty on European Union provides that national parliaments [shall] ensure compliance with the principle of subsidiarity in accordance with the procedure set out in [Protocol (No.2) on the application of the principle of subsidiarity and proportionality.] Article 6 of this Protocol in turn provides that a national parliament expressing concerns about subsidiarity within the eight weeks from the date of transmission of the proposal shall state '*why* it considers that the draft in question does not comply with the principle of subsidiarity. In other words, any concerns expressed must be justified.

In this regard, at the Joint Committee's meeting of 2nd December, the view was expressed that there may be subsidiarity issues with this proposal, and the Joint Committee agreed to ask the Department of Enterprise, Trade and Employment for a briefing. However, it should be noted that the subsequent opening statement presented by Department of Enterprise, Trade and Employment officials at the Joint Committee's 8 December meeting (i.e. six weeks after the proposal was issued) merely states that the Department 'is also examining *whether* there are any subsidiarity issues with the proposal'.¹³

ICTU would be willing to engage further with the Joint Committee on this particular aspect of this initiative. We would look forward to further discussions with the Joint Committee and the Oireachtas on this important initiative as it makes its way towards adoption at EU level and thereafter towards transposition and implementation in all member states.

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¹³ The opening statement did say that the Commission argues 'that action at national level on minimum wage issues has proven insufficient [but] It is not felt that there is enough evidence to support this assertion in Ireland's case.' It should be noted that no part of the Commission's documentation critiques Ireland or *any* individual member state in this regard. Section 8 of this submission does deal with this aspect in relation to Ireland.