

**Response to Department of Enterprise, Trade and Employment's request for views 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)**

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Introduction

The Irish Congress of Trade Union (ICTU) represents over 40 trade unions in Ireland, north and south, with a combined membership of over 700,000 workers.

This paper represents ICTU's response to the 19 January 2021 request from the Department of Enterprise, Trade and Employment (DETE) for views on the draft directive on adequate minimum wages (COM(2020) 682 final), proposed by the European Commission on 28 October 2020 and which is currently being considered by the European Parliament and the Council.

ICTU and the European Trade Union Confederation (ETUC) have campaigned for a number of years for the full implementation of the 2017 European Pillar of Social Rights (EPSR) and specifically for an EU initiative to promote collective bargaining. ICTU included commitments on these issues in our pre-election pledges for the 2019 European elections¹. We have worked closely with trade unions across Europe on this since then, particularly by taking part in the development of the ETUC's responses to the two consultations the European Commission held on this initiative in 2020.

We therefore welcome in principle the draft directive the European Commission presented in October 2020. **We do believe however that some of the provisions of the proposal do need to be clarified and that there are significant omissions from the text that need to be addressed before it is adopted.** We are currently working with trade unions across Europe to suggest amendments on these points. We would therefore like to make additional contributions on these over the coming weeks.

ICTU welcomes the fact that with specific regard to this draft directive 'the Government fully supports the objective that workers must be paid a fair and adequate wage for their work' (DETE, 8th December 2020).

This paper sets out our views as to why the Government supporting this draft directive with amendments (as indicated above) is the best way to achieve this objective. Furthermore, we believe that such a position fully accords with and logically follows on from the political priorities the European Council and the Council, i.e. with Ireland's endorsement, have set for the coming years as well as commitments in the 2020 Programme for Government.

Part 1 summarises some of the key reforms it would entail for Ireland's minimum wage-setting and collective bargaining framework. Part 2 sets out why the Government should support the directive. Part 3 outlines the principal benefits for Ireland. Part 4 identifies the main provisions that need to be clarified and omissions from the text that need to be addressed before it is adopted. Part 5 concludes.

1. Main reforms to Ireland's minimum wage-setting and collective bargaining frameworks

The draft directive proposes the establishment of an EU framework to ensure that member states' minimum wages are set at adequate level and that workers have access to minimum wage

¹ ICTU's pre-European elections pledges asked candidates to support 'the full implementation of the European Pillar of Social Rights' [and] 'the adoption of European legislation that strengthens social dialogue and the right of all workers to engage in collective bargaining'. These pledges were endorsed by MEPs from two of the three parties now in Government.

protection, either in the form of a statutory minimum wage (as with Ireland's National Minimum Wage and 20 other member states with statutory minimum wages) or of wages set by collective agreements (as in six member states).²

In considering adequacy, the draft directive refers to and recommends (but does not explicitly provide for) the use of indicators commonly used at international level which compare the minimum wage to the median wage or the average wage. It cites for example the Kaitz index which considers as adequate a minimum wage that amounts to at least 60% of the median wage or 50% of the average wage. This in effect is the same approach as taken by Ireland's National Minimum Wage Commission in 1998. This recommended the introduction of a national minimum wage in Ireland of 'around' two-thirds of median wages. A 2018 Department of Public Expenditure and Reform study of the national minimum wage stated that the rate introduced in 2000 - by the then Minister for Enterprise, Trade and Employment, Mary Harney TD - was 'based on an estimated value of two-thirds of median earnings for all employees' (Callaghan, 2018:4).

Using these adequacy indicators, the Commission finds that statutory minimum wages were in 2019 below 60% of the median wage and 50% of the average in 19 of the 21 countries with statutory minimum wages, and 'even below 45%' of the median wage in three countries – Estonia, Malta, and Ireland.

Crucially however it also finds (p.3) that '*countries with high collective bargaining coverage [i.e. at least 70%] 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.*'³

The draft directive therefore proposes (Article 4) that with the aim of increasing '*collective bargaining coverage*' all member states would take '*at least*' the following measures '*in consultation with the social partners*':

(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.*

Furthermore, member states where collective bargaining coverage is less than 70% (e.g. as in Ireland) 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.*'

It should be noted that the emphasis in Article 4 is on *promoting* collective bargaining, in consultation with or by agreement with the social partners.⁴

With regard to statutory minimum wages, Article 5 provides that the setting and updating of statutory minimum wages would be guided by criteria that '*promote adequacy with the aim to*

² Austria, Cyprus, Denmark, Finland, Italy and Sweden. Cyprus does have statutory minimum wages for some low-wage occupations.

³ Eurostat defines a low-wage as a wage lower than two thirds of the national median wage.

⁴ As understood here in the EU sense as consisting of employers' representatives and trade unions.

achieve decent working and living conditions, social cohesion and upward convergence,’ using ‘indicative reference values...such as those commonly used at international level.’

DETE’s opening statement to the Oireachtas Joint Committee on Enterprise, Trade and Employment meeting of 8 December 2020 said that its *‘initial analysis of the proposal suggests that our current minimum wage setting framework, namely the Low Pay Commission, is largely already in compliance with the provisions of the draft directive’*. DETE did acknowledge however that the *‘proposed use of indicators and reference values to guide the assessment of the adequacy of statutory minimum wages’ is not currently included as a criterion in Ireland.*⁵

Given that the legal basis for the directive (Article 153(2) (b)) refers to ‘gradual implementation’ and that the directive refers to the ‘setting and updating’ of statutory minimum wages, it is realistic to assume that the objective of achieving adequacy would be achieved over a number of years.

The draft directive (Article 7) also seeks to enhance the involvement of the social partners in setting and updating statutory minimum wages. On this point, DETE’s opening statement to the 8 December 2020 meeting states that the *‘Social partners are already involved in minimum wage setting through the Low Pay Commission, which is “the consultative body which advises national authorities on statutory minimum wages”*. However, the Commission’s impact assessment finds (p.15) that: *‘In some Member States, social partners often play only an advisory role in systems where the minimum wage setting is led by expert bodies. This is the case for Greece and Ireland, where the issued non-binding recommendations do not help to achieve adequate minimum wage levels, as the adequacy of minimum wages in both countries remains low.’*

Article 16 provides that this directive shall not constitute valid grounds for regressing on existing protections for workers nor shall it prevent member states from introducing more favourable provisions for workers.

Finally, Article 17 provides that once adopted, member states would have a further two years to adopt measures necessary to comply with its provisions, i.e. to ‘transpose’ it.

The Commission has spoken of its expectation to see the directive adopted in 2022. If so, the deadline for adopting such measures would be 2024.

This timeframe is broadly in line with the Commission’s Political Guidelines for 2019-2024 which refer to *every worker [having] a fair minimum wage’* by 2024.

This timeframe is also incidentally broadly in line with the timeframe in the commitment in the 2020 Programme for Government for introducing a living wage.

⁵ Article 5(3) provides that *‘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’*.

2. Why the Government should support the draft directive

It seeks to achieve the aims of the EU

The draft directive is fully in line with the EU's aims as set down in the EU treaties negotiated by member states' governments, i.e. including Ireland's, and approved by the Irish people by referendum.

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

Article 3(3) commits the EU to inter alia '*...work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress [and] to combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection...*'

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 1961⁶ and in the 1989 Community Charter of the Fundamental Social Rights of Workers, to '*promoting improved living and working conditions*'.

The aim of the proposal directive - to improve '*working and living conditions*' (Article 1(1) - is fully in line with these aims.

Reflects the competences Ireland has conferred on the EU

The proposal respects the competences or powers conferred on the EU by Ireland and all member states.

Article 4 of the TFEU firstly make social policy '*for the aspects defined in this treaty*' a '*shared competence*' between the EU and the member states.

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

Article 153(1) (b) authorises the EU to '*support and complement the activities of the Member States*' in a number of fields including '*working conditions*'.

Article 153(2) (b) in turn authorises the EU to adopt directives in the field of working conditions that set '*minimum requirements for gradual implementation*'.

This is the legal basis that has been used for recent EU directives that the Government has supported in Council. 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). These directives are to be transposed by August 2022.

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). This provides that the provisions of Article 153 shall not

⁶ Ireland ratified the European Social Charter in 1964 and the revised (1996) European Social Charter in 2000.

apply to pay.⁷ The Commission's impact assessment points out (pages 21-22) that the Court of Justice of the European Union (CJEU) has previously ruled that the limits set by Article 153(5) '...cannot, however, be extended to any question involving any sort of link with pay; otherwise some of the areas⁸ referred to in Article 153(1) TFEU would be deprived of much of their substance'.⁹ The impact assessment adds out that it was on this basis that the EU has adopted recent directives such as the 2019 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, and that other directives that also deal indirectly with pay include those on *fixed-term work* (Directive 1999/70/EC), on *part-time work* (Directive 97/81/EC) and on *temporary agency work* (Directive 2008/104/EC).¹⁰

Respects the principle of subsidiarity

The issue of compliance with the principle of subsidiarity¹¹ was considered by the Oireachtas and all national parliaments from 28 October 2020 to early February 2021. A view was expressed at the 2 December 2020 meeting of the Oireachtas Joint Committee on Enterprise, Trade and Employment that there were subsidiarity concerns with this proposal. The Joint Committee therefore decided to request a briefing from the Department of Enterprise, Trade and Employment and to seek opinions on the matter.

It should be noted that despite the views expressed at the 2 December 2020 meeting, the Department of Enterprise, Trade and Employment's opening statement to the Joint Committee's 8 December 2020 meeting, i.e. six weeks after the proposal was issued, merely said that the Department 'is also examining whether there are any subsidiarity issues with the proposal'.

The opening statement also said that the Commission argued that action at national level on minimum wage issues has proven insufficient but it is 'not felt [i.e. by the Department] that there is enough evidence to support this assertion in Ireland's case.' It should be noted however that no part of the Commission's documentation critiqued Ireland's or any individual member state's record in this regard, but did highlight the inadequacy of statutory minimum wages in nearly all countries.

⁷ IBEC's December 2020 submission to the Oireachtas Joint Committee on Enterprise Trade and Employment acknowledges that: 'The draft Directive does not directly regulate the level of wages.' (IBEC, 2020)

⁸ For example, working conditions; the protection of workers where their employment contract is terminated, information and consultation of workers; the conditions of employment of legally-resident third country nationals; the integration of persons excluded from the labour market; and equality between men and women with regard to labour market opportunities and treatment at work.

⁹ Case C-268/06, Impact, point 124-125; Case C-307/05, Del Cerro Alonso, point 41.

¹⁰ It is worth noting that the Council adopted the fixed-term work directive and the part-time work directive to give legal effect to agreements negotiated by European-level employers' representatives and unions under Article 155 TFEU. Employers' representatives indicated they would not enter into negotiations on a directive when consulted by the Commission in 2020. The Commission's proposal reflects its response to all responses received.

¹¹ Article 5(3) TEU: '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.'

Five of the six expert legal opinions subsequently received by the Joint Committee concluded that the proposal respected the subsidiarity principle. And the sixth merely stated that it was ‘doubtful’ whether Article 5 (which deals with the adequacy of statutory minimum wages) complied.

By early February, just three national parliaments - from Sweden, Denmark and Malta – had adopted reasoned opinions claiming that the proposal did not comply with the principle of subsidiarity. This number was insufficient to trigger a subsidiarity review of the proposal by the Commission, i.e. at least one-third of the votes allocated to national parliaments.

Implements the ‘political compass’ of the European Pillar of Social Rights

The proposal responds to the European Pillar of Social Rights (EPSR) signed by the presidents of the European Council, the European Parliament and the European Commission at the Social Summit for Fair Growth and Jobs held under the Swedish Presidency in November 2017.

The Government was represented at this event by the (then) Taoiseach, Leo Varadkar TD, the Minister for Employment Affairs and Social Protection, Regina Doherty TD and the Minister of State for European Affairs, Helen McEntee TD.

Of particular relevance to the draft directive are principles 6 (wages); 8 (social dialogue and the involvement of workers); and 2 (gender equality) particularly given that 60% of all minimum wages workers across the EU are women.

Principle 6 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 states:

‘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 states:

'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.'

It is worth recalling that in June 2018, the Taoiseach Leo Varadkar TD described the European Pillar of Social Rights as *'a political compass that will help guide our collective actions in the years ahead. At both national and EU levels, the social Pillar will help us chart the best course in dealing with the challenges that come with globalisation in the 21st century. Best of all, it will enable all our citizens to participate effectively in a world of such rapid change.'*¹²

EU leaders have since called for the EPSR to be implemented. Significantly, the European Council's *Strategic Agenda 2019-24* (June 2019) agreed by EU leaders, including the Taoiseach Leo Varadkar TD, called for the implementation of the European Pillar of Social Rights.¹³

In her *Political Guidelines for the 2019-2024 European Commission* (July 2019), Ursula von der Leyen committed to coming forward with an action plan to *'fully implement the European Pillar of Social Rights'*¹⁴ and explicitly committed to issuing a proposal on minimum wages and collective bargaining: *'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.'*

This commitment formed part of the programme on which the European Parliament elected von der Leyen as European Commission President in July 2019.

The Commission President began to fulfil these commitments by opening consultations of European-level employers' and trade unions on this initiative in January 2020.¹⁵

In her 'State of the Union' address on 16 September 2020, President von der Leyen said 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*

¹² Dáil debates, 21 June 2018. FG's manifesto for the 2019 European elections also committed to implementation of the EPSR (Fine Gael 2019:6)

<https://www.kildarestreet.com/debates/?id=2018-06-21a.5&s=%22Pillar+of+social+rights%22#g13>

¹³ Stating that *'The European Pillar of Social Rights should be implemented at EU and Member State level, with due regard for respective competences.'*

¹⁴ The Commission's Action Plan is expected in March 2021.

¹⁵ Article 154 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 and on fixed-term work, both of which dealt indirectly with pay. 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.

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.”

The Commission President fulfilled this commitment by coming forward with the draft directive on 28 October 2020.

Responds to Government calls, through the Council, to promote collective bargaining

The proposal responds to the calls from the Council and from the EP. For example, the Council’s Recommendation on the economic policy of the euro area, approved in February 2020, calls on euro area Member States to take action, individually and collectively within the Eurogroup to: ‘Enhance the effectiveness of social dialogue and promote collective bargaining.’

Furthermore, the 13 October 2020 Council Decision 2020/1512/EU on guidelines for the employment policies of the Member States states that ‘*Member States should foster social dialogue and collective bargaining. The social partners should be encouraged to negotiate and conclude collective agreements in matters relevant to them, fully respecting their autonomy and the right to collective action. (from guideline 7) [and] ‘Respecting national practices and the autonomy of the social partners, Member States and social partners should ensure that all workers have adequate and fair wages by benefitting, directly or indirectly, from collective agreements or adequate statutory minimum wages, taking into account their impact on competitiveness, job creation and in-work poverty. (from guideline 5)*

Responds to EP calls for an EU legal instrument on fair minimum wages

The European Parliament’s 10 October 2019 resolution on employment and social policies in the euro area 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 in government voted for this resolution.

The EU has committed to the adoption of a European framework for adequate minimum wages

The EU’s first ever joint *legislative objectives 2020-2024*, agreed in December 2020 by the European Commission, the European Parliament and the Council, explicitly commit to adopting a European ‘*framework for adequate minimum wages*’.

These legislative objectives were approved by the Council beforehand.

Is in line with commitments in the 2020 Programme for Government

Finally, the draft directive is in line with commitments in the 2020 *Programme for Government – Our Shared Future*.

The opening sentence of the explanatory memorandum - that ensuring that all workers ‘*earn adequate wages is essential to guarantee adequate working and living conditions, and to build fair and resilient economies and societies, in line with the UN 2030 Agenda for Sustainable*

Development and its Sustainable Development Goals’ is in line with the commitment in the 2020 Programme (p.113) to ‘*work towards the UN’s 17 Sustainable Development Goals, aimed at ending poverty, reducing inequality, and tackling climate change.*’

The 2020 Programme’s commitment (p.74) to ‘*progress to a living wage over the lifetime of the government*’ is a *de facto* acknowledgment of the inadequacy of the NMW, i.e. €10.10 an hour in 2020.¹⁶

The emphasis in the draft directive on promoting collective bargaining also reflects the commitment in the 2020 Programme (p.89) to support the establishment of a Joint Labour Committee in the childcare sector and the drawing up of an Employment Regulation Order to determine minimum rates of pay for childcare workers as well as terms and conditions of employment. Similarly, the acknowledgement in the 2020 Programme of the importance of social dialogue and the commitment (p.122) to create ‘*new models of sectoral engagement*’ echoes the emphasis in the proposal on enhancing the role of the social partners in setting and updating statutory minimum wages.

A recommendation would not achieve the aim of ensuring a ‘fair and adequate wage’

As discussed above, the proposal seeks to establish a framework for setting adequate levels of minimum wages and ensuring access of workers to minimum wage protection, either set by collective agreements or by statutory minimum wages where they exist. DETE’s opening statement to the Oireachtas Joint Committee on Enterprise, Trade and Employment meeting of 8 December 2020 stated that the ‘*Government fully supports the objective that workers must be paid a fair and adequate wage for their work.*’

The Minister for Enterprise, Trade and Employment Leo Varadhar TD was one of the nine ministers¹⁷ who signed a letter which expressed the view that a recommendation rather than a directive would provide the ‘*the flexibility for Member States to achieve the objectives of the proposal.*’

The impact assessment considered at length whether a non-binding Council recommendation or a directive of the European Parliament and of the Council would be the better approach. It is worth quoting the Commission’s conclusion regarding a recommendation (pages 75-76):

[A Recommendation] ‘*...would not deliver the same level of protection for workers as a Directive, due to its non-binding nature. Moreover, the key added value of having more specific and non-binding guidance would fade, if it led to more selective implementation and diverse results in the Member States, making a Recommendation a less effective tool to promote collective bargaining and to achieve adequate and regularly updated minimum*

¹⁶ Ireland’s 2020 NMW of €10.20 an hour is €2.20 below the current recommended Living Wage of €12.30 an hour, as estimated by the Living Wage Technical Group. This is made up of representatives of trade unions and NERI (which is funded by but independent of ICTU), of civil society and of religious groups and academics.

¹⁷ It should be noted that some of the other ministers who signed, such as Sweden’s, come from countries where minimum wages are set entirely by collective bargaining, with collective bargaining coverage well above 70%, and do not have statutory minimum wages. These minister who have argued that a directive would require them to introduce a statutory minimum wage possibly posing a risk to their well-functioning systems of collective bargaining. The vast majority (85%) of trade union confederations across the EU believe these fears are unfounded but are working to ensure that such an outcome would not happen.

wages. More specific rules would also entail deeper interference with national frameworks. Therefore, a Council Recommendation would not effectively address the issue of inadequate minimum wages due to non-compliance with the already existing frameworks, leaving those affected by non-compliant behaviour without remedies and compensation against infringements.

With regard to the issue of non-compliance, the impact assessment points out that the draft directive is ‘coherent with and supports other actions implemented in this field over the last years’ specifically the Commission’s own (non-binding) Recommendation of 3 October 2008 on the active inclusion of people excluded from the labour market.¹⁸ This had recommended that member states ‘promote quality jobs, including pay and benefits, working conditions, health and safety, access to lifelong learning and career prospects, in particular with a view to preventing in-work poverty.’ It should be noted that an assessment of the implementation of this communication in Ireland found that: ‘Efforts to...ensure quality jobs...are under-developed in Ireland as a response to the crisis. Issues of quantity rather than quality predominate...’ (Daly, 2013:21). In preparing this response, ICTU was able to identify just one occasion in the 13 years since this recommendation was adopted in which it was referred to in the Oireachtas.¹⁹ It is also worth noting that the impact assessment points out (pages 240-241) that Poland and Hungary, both of whose ministers also signed the letter, received country specific recommendations through the European Semester process in 2019 to strengthen social dialogue and that in May 2020, the Commission proposed recommendations to the same countries to address the deterioration in social dialogue in Hungary and Poland in the context of measures taken during the Covid-19 pandemic.

It should also be noted that the sole legal opinion submitted to the Oireachtas Joint Committee in December that took the view that it was ‘doubtful’ whether Article 5 of the draft directive complied with the subsidiarity principle, did take the view that there was ‘little doubt that a Directive would be the appropriate choice of instrument to achieve the ends pursued by the proposal’.

Finally, contrary to the implication of the letter signed by the nine ministers that a directive would be ‘inflexible’, as discussed above, Article 153 (2) provides for the adoption of a directive that set ‘minimum requirements for gradual implementation’. As the impact assessment points out (p.74), a directive would therefore ‘leave room for Member States to decide on the way to implement them, and would not take away the freedom of Member States and social partners to set the level of minimum wages.’

3. Principal benefits for Ireland

At least 400,000 low-paid workers would be better off

The impact assessment estimates that achieving a minimum wage of 60% of median wages would benefit 22 million workers in the 19 countries with statutory minimum wages that are currently below this level.

¹⁸ 2008/867/EC

¹⁹ And then in the context of a Ministerial answer in 2014 to a Dáil PQ on drugs treatment programme policy.

This estimate is not broken down by member state but it would seem reasonable to assume that at least 400,000 and possibly up to 500,000 low-paid workers in Ireland would benefit given that the impact assessment estimates (Graph A8.1, p.142) that roughly 20% of workers in Ireland were low-wage earners in 2014 when approximately 2.1 million were at work.²⁰

Again it is important to be aware that the draft directive is based on a legal basis that refers to gradual implementation and that the draft itself refers to the setting and updating of statutory minimum wages, implying that achieving adequacy would be done over a period of time. Achieving this moreover should not be a major burden on employers – the impact assessment also estimates (Graph A12.4, p.189) that if Ireland’s NMW were to reach 60% of median wages, Ireland’s *total* wage bill would increase by just over 2%.

Gains for low-paid workers would greatly outweigh any possible negative employment effects
The draft directive points out that (p.10) that *the benefits of an improved minimum wage protection for the concerned workers would greatly outweigh the possible negative employment impact on these workers.*’ The impact assessment estimates (Graph A12.9, p.197) that an NMW of 60% of median wages, compared to a baseline of 2019, could have negative employment effects that reach 1% of total employment in Ireland (and in Greece and Estonia). This particular estimate was highlighted by IBEC in its submission to the Oireachtas Joint Committee on Enterprise, Trade and Employment in December 2020 to suggest that the proposal ‘could lead to a reduction of around 20,000 jobs in Ireland’.

A number of points should be made in response. First, even if this were to happen, at least 19 out of 20 low-wage earners, i.e. 380,000 of at least 400,000, would still be better off, as would any low-wage earner who loses their job but finds another on the NMW. Second, past experience suggests it is unlikely to happen. The impact assessment cites (p.204) a study by ESRI and Maynooth university researchers that the introduction of Ireland’s NMW in 2000 at around two-thirds of median wages had had ‘*little to no effect on employment*’; it quotes from the study that “*employment growth among firms with low-wage workers prior to the legislation was no different from that of firms not affected by the legislation*”. Furthermore, recently published ESRI research did ‘*not find any evidence of a reduction in the number of employees among high intensity minimum wage firms following the 2016 minimum wage increase*’ (Redmond and McGuinness, 2021:38).²¹ Third, the impact assessment’s estimates do not appear to take account of the fact that the legal basis for the proposal provides for ‘gradual implementation’ while the draft directive refers to the ‘setting and updating’ of statutory minimum wages – the impact assessment is apparently based on a counterfactual of a statutory minimum wage of 60% of median wages in 2019, not one introduced gradually. Fourth, the draft directive would enhance the involvement of the social partners in setting and updating statutory minimum wages and seeks to enhance the capacity of the social partners to engage in collective bargaining on wage setting at sector or cross-industry and to

²⁰ December 2020 Eurostat data, i.e. released after the issuing of the draft directive, puts the share of low-wage earners in Ireland in 2018 at 20%, when nearly 2.3 million were at work. Ireland’s share of low-wage earners in 2018 was the eight highest of the EU-28 and five percentage points above the EU average of 15%.

²¹ See also McDonnell, T (29 April 2015) *Fact Gathering on the Minimum Wage: What do the meta-studies show?* <https://www.nerinstitute.net/blog/fact-gathering-minimum-wage-what-do-meta-studies-show>

encourage ‘*constructive, meaningful and informed negotiations on wages among social partners*’. Finally, even *The Economist* has lately pointed out that in an overview of research conducted for the UK Government in 2019, Arindrajit Dube of the University of Massachusetts at Amherst concluded that minimum wages of up to 60% of the median wage, or 80% of the median in low-wage regions, have negligible employment effects, saying that ‘*Firms have more scope to absorb the cost than economists once supposed [and that] Higher pay comes out of companies’ profits with little associated employment cost.*’ (*The Economist*, 30th January 2021 edition).

Supports domestic demand

Any potential negative impact on firms, particularly smaller firms, would be mitigated by increases in the consumption of low-wage earners, who have a higher propensity to consume, which would support domestic demand. The impact assessment cites (p.221) US research of the impact of minimum wage increases on the US fast-food industry which ‘*suggests that, in most cases, enterprises in this sector may benefit from minimum wage increases.*’ As SMEUnited which represents SMEs representative bodies across Europe included ISME in Ireland said in their response to the Commission’s first stage consultation on the initiative in 2020: ‘*A well-adapted minimum wage level contributes to strengthen internal demand and economic growth. It also reduces poverty and social exclusion as well as prevents unfair competition and social dumping on the labour market, a key concern for SMEs.*’

An estimated 20% reduction in in-work poverty

Once social transfers are taken into account, Ireland does have one of the lowest levels of in-work poverty - around 5% - in the EU.²² This reduction however comes at a considerable cost to the Exchequer. The Working Family Payment which is paid to low-paid workers with children cost an estimated €2 billion between 2015 and 2019 (DEASP, 2020:60).

As pointed out above, the Commission found that countries ‘*with a 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*’. The impact assessment states that while a minimum wage is ‘*a relatively blunt tool to reduce poverty, it is still effective to protect the wages of low-skilled workers. It has been shown that 17 per cent of minimum wage employees belong to a household that is at risk of poverty, compared to 3.3 per cent of non-minimum wage employees*’, citing (p.204) 2017 ESRI research on minimum wage employment in Ireland in support.

The impact assessment estimates (Graph A12.6, p.193) that Ireland’s in-work poverty rate could fall by over 20% if the NMW wage were raised to 60% of median earnings. This would be achieved in line with the gradual implementation of the directive.

²² The in-work poverty indicator measures the share of persons aged 18 or over who are employed and have an equivalised disposable income below the at-risk-of-poverty threshold, which is set at 60% of the national median equivalised disposable income (after social transfers). Impact Assessment, p.190.

An estimated 10% reduction in wage inequality

Ireland currently has the highest levels of market income inequality across the OECD (OECD, 2020:95), though this is reduced to around the OECD average after taxes and social transfers are considered.

The 2020 Programme for Government states (p.74) that Ireland needs a '*new national social contract between citizens and the State*' and that this new contract '*will be founded on the principle of equality and ensuring that every citizen can achieve their full potential.*'

As pointed out above, the Commission found that countries with high collective bargaining coverage, i.e. over 70%, tend to display *lower wage inequality*. Its impact assessment cites (p.204) 2020 ESRI research to conclude that: '*Analyses of the impact of the Irish minimum wage on wage inequality and poverty found that the minimum wage reduces wage inequality at the bottom of the wage distribution, including by so-called "spill-over effects", whereby workers earning above the minimum wage also experienced a wage rise.*'

More recent ESRI research also found that the increase in the NMW from €8.65 per hour in 2015 to €9.15 per hour in 2016 '*was effective at reducing wage inequality in Ireland*', particularly for younger workers.

The impact assessment estimates (p.190) that if Ireland's NMW were to reach 60% of median earnings, wage inequality (as measured by the D5/D1 ratio) could decline by 10%. This would be achieved in line with the gradual implementation of the directive.

An estimated 10% reduction in the gender pay gap

The 2020 Programme for Government commits (p.77) to develop and implement a new National Strategy for Women and Girls and to respond to each recommendation of the Citizens' Assembly on Gender Equality, and (p.113) to '*work towards the UN's 17 Sustainable Development Goals, aimed at ending poverty, reducing inequality, and tackling climate change.*'

SDG 5 aims to achieve gender equality and to empower all women and girls while target 8.5 of SDG 8 specifically commits to achieve '*full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value.*'

The most recent Eurostat (provisional) data indicates that Ireland's (unadjusted) gender pay gap rose from 13.9% in 2014 to 14.4% in 2017.

The Commission's impact assessment points out (p.18) that women are almost twice as likely to be a minimum wage earner than men (14% v 8%, in 2017) and that 60% of all those earning the minimum wage are women, including in Ireland, and up to 70% in some countries.²³ It cites (p.65) research by the US National Bureau of Economic Research which found that adequate wages and

²³ The European Parliament's 21 January 2021 resolution on the gender perspective in the Covid-19-crisis and the post-crisis period (drafted by Frances Fitzgerald MEP) acknowledges (recital H) that wages in many essential and significantly female-dominated sectors can be low, with 'often only the minimum wage being paid', and stresses (paragraph 31) that equal pay for equal work or work of equal value between women and men must be a guiding principle for the EU and all member states when designing response measures to the COVID-19 crisis.

strengthened collective bargaining help to reduce the gender pay gap and (p.18) research by the ESRI into minimum wages and gender gap in pay in the UK and Ireland which found that: ‘A significant reduction of the gender gap at low wages is observed after the introduction of the minimum wage in Ireland.’²⁴

The draft directive therefore 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 says that addressing these issues also ‘indirectly contributes to the effective implementation of the policy objectives’ of Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.²⁵

The impact assessment estimates (Graph, A12.7, p.194) that Ireland’s gender pay gap could decline by almost 10% if Ireland’s NMW were to reach 60% of median wages.

The emphasis in the draft directive on promoting social dialogue and collective bargaining is also in line with the Government’s 2017 National Strategy for Women and Girls, which had committed to tackling the gender pay gap ‘including by initiating dialogue between union and employer stakeholders to address the gender pay gap...’.

Finally, we wish to point out that ICTU worked with the National Women’s Council (NWC) on this specific section of our response and the NWC endorses the views set out in this section.

An estimated 0.25% improvement in the public budget

As discussed above, the Working Family Payment paid to low-earning workers with children cost an estimated €2 billion between 2015 and 2019 (DEASP, 2020:60).

The impact assessment states (p.207) that in some counties, ‘increased wages may imply a reduced expenditure on benefits aiming to support working families (e.g. in-work benefits, for instance in Ireland), and estimates (Graph A12.12, p.208) that achieving an NMW of 60% of median wages could result in a positive improvement in Ireland’s public budget of approximately 0.25% of GDP.

Enhanced productivity

The Minister’s foreword to *Future Jobs Ireland*, launched in 2019, warns that there is an ‘increasing divergence in productivity performance between a small number of high-performing firms and the wider economy’.

Collective bargaining and social dialogue can improve productivity. The impact assessment cites (p.57) a 2016 study found that the UK’s national minimum wage had increased productivity in the low-paid sector, and a 2018 ECB survey of firms in central and eastern Europe which found that most executives would react to minimum wage increases by improving productivity, reducing non-

²⁴ The 2018 ESRI research found that ‘almost no decrease in the gender wage gap was observed’ for low waged workers in the UK ‘due to different patterns of compliance’, i.e. non-compliance in the UK.

²⁵ This directive consolidates into a single directive a number of equality directives dating back to the 1970s, including the 1975 equal pay directive and the 1976 equal treatment directive.

labour costs, increasing product prices, and 2018 research that collective bargaining leading to better wage conditions can promote productivity.

Research by the Department of Finance also provides possible evidence of the counter situation, i.e. that the absence of collective bargaining *retards* productivity. The Department of Finance's 2018 review of the impact of the 9% VAT rate, introduced in 2011, states: '*Since profits are rising in this sector...declining productivity suggests that firms in the majority of 9% sectors may not be utilizing higher profits to invest in productivity improvements.*' (Department of Finance, 2018:12). It should be noted that employers in the sectors that benefited from this subsidy, which the Revenue Commissioners estimate cost the Exchequer €3.2 billion between July 2011 and the end of 2018, have consistently refused to engage with the state's industrial relations institutions envisaged by the Industrial Relations (Amendment) Act 2012.

Help achieve the Government's greenhouse gas reduction targets

Though not addressed by the Commission, promoting collective bargaining would also have other indirect positive impacts in Ireland. To take just one example, with regard to the 2020 Programme for Government commitments (p.31) to achieve more than a 50% reduction in overall greenhouse gas emissions by 2030 and to achieve net zero emissions by 2050, a 2019 US study of 34 OECD countries (including Ireland) over the period 1970 and 2014 found that higher membership of trade unions is positively associated with lower national carbon dioxide emissions per capita, and *visa versa* (Alvarez, C. H. *et al*, 2019).

4. Clarifying and addressing omissions in the draft and ensuring the directive achieves its aims

ICTU welcomed in principle the draft directive but does believe that it contains a number of provisions that do need to be clarified and that there are a number of significant omissions from the text that need to be addressed before it is adopted in order to protect against unintended consequences and to ensure that it can achieve its aims. These include: Article 2 to ensure all workers are covered, including non-standard and self-employed workers; Article 3 concerning the definition of collective bargaining; Article 4 to include measures protecting against anti-union activity (i.e. union-busting); Article 5 to ensure that increasing adequacy is not dependent on increases in productivity²⁶, to ensure a threshold of decency for statutory minimum wages, i.e. at least 60% of median wages and 50% of average wages, and to end exclusions from statutory minimum wages and deductions; Article 8 to strengthen labour inspectorates; Article 9 to ensure that public procurement contracts and the award of public funds respect collective bargaining; and Article 10 to ensure that the social partners are involved in the monitoring mechanism, which must ensure respect for the aims of the directive, i.e. adequate minimum wages and the promotion of collective bargaining.

We are currently working with trade unions across Europe on these issues and would therefore like to make additional contributions to Government in the coming weeks.

²⁶ The impact assessment correctly points out (p.149) that the statutory minimum wage in Ireland has 'significantly lagged' labour productivity in Ireland between 2008 and 2018; the Commission says this is 'partly' due to statistical reasons, i.e. the 'upward revision of GDP in 2015'.

5. Conclusion

ICTU sees this proposal as one of the most important pieces of draft EU legislation concerning working and living conditions that the European Commission has issued in many years.

We regret the fact that employers' representatives declined to enter into negotiations towards reaching an agreement that could have been transformed into a Council directive when consulted on this initiative in 2020, as has been done on other occasions in the past resulting in directives that indirectly affected pay, such as the part-time work and the fixed time work directives.

We also regret the fact that the Minister for Enterprise, Trade and Employment, Leo Varadkar TD, was one of the ministers to sign the letter that expressed a preference for a recommendation rather than a directive. We believe this action is not in the interests of the hundreds of thousands of low-paid workers in Ireland who stand to gain from this directive but also undermines commitments and priorities that the Government has agreed over recent years, particularly through the European Pillar of Social Rights, European Council and Council conclusions, as well as the 2020 Programme for Government.

We do see this proposal as representing a considerable sea-change in the Commission's stance on wages and collective bargaining compared to the stance it took after 2008 when it advocated cuts to the minimum wage and the undermining of collective bargaining in many countries, including in Ireland. We believe that the Commission has learnt some political lessons from the consequences of its actions at that time.

No one however can foresee the consequences of trying to undermine or block a directive setting 'minimum requirements for gradual implementation' that seeks to improve the working and living conditions for hundreds of thousands of low-paid workers in Ireland and millions across Europe.

That said, we are willing to engage with the Government and other interested stakeholders to address any issues around the draft directive to ensure that it is adopted as soon as possible and implemented correctly over the coming years.

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