

# A paradigm shift towards Social Europe? The proposed Directive on adequate minimum wages in the European Union

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## Abstract

In autumn 2020, the European Commission published a proposal for a "Directive on adequate minimum wages in the European Union". For the first time in the history of the EU, draft legislation is on the table which explicitly aims not only to significantly increase the level and scope of minimum wages in Europe, but also to strengthen collective bargaining systems. The proposal thus represents a fundamental paradigm shift in European labour policy. Not so long ago, the Commission essentially viewed adequate minimum wages and strong collective bargaining systems as institutional barriers for the functioning of free markets and thereby as having a negative impact on the development of growth and employment. Indeed, in the wake of the last major economic crisis in 2008/2009, the EU exerted considerable influence in many countries towards freezing or even decreasing minimum wages and weakening collective bargaining systems. Now the European Commission's approach is the exact opposite: by upgrading minimum wages and extending collective bargaining, the main aim is to strengthen the bargaining position of workers. The adoption of the Directive would mark a significant step towards a more "Social Europe". However, the debate on the Directive is shaped by various political and legal fault lines so that its adoption is still anything but certain.

**Keywords:** Minimum Wage; Collective Bargaining; Adequate and Fair Wage Levels; Social Europe.

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## 1. Introduction.

At the EU Social Summit in Porto in May 2021, the presidents of the European Commission, the European Parliament and the Portuguese EU Presidency, together with the presidents of the major European employers' and business associations, trade unions and other social organisations, signed a strong "social commitment" to the implementation of the European Pillar of Social Rights, which among other things demands "decent working conditions and fair pay for all."<sup>1</sup> The Porto Social Commitment demonstrates that Social Europe is back on the EU agenda. After a long period of a largely neoliberal dominance in EU policy, which even became radicalised in the wake of the Euro crisis at the beginning of the last decade, the EU has now entered a period in which at least the political discourses are dominated by a strong commitment to a socially regulated capitalism.

The change of discourse is particularly evident when it comes to minimum wages and collective bargaining. Not so long ago, the dominant view among EU policy makers was that strong institutions of collective wage regulation hinder the functioning of free markets, limit employers' flexibility and therefore have a largely negative effect on growth and employment. But today, statutory minimum wages and collective bargaining are recognised as institutional preconditions for a more sustainable and inclusive economic development.

A clear expression of this new view is the proposed Directive on adequate minimum wages in the EU which was published in autumn 2020.<sup>2</sup> For the first time in the history of the EU, draft legislation is on the table which explicitly aims to not only significantly increase the level and scope of minimum wages in Europe, but also to strengthen collective bargaining systems. In the following we argue that against the background of the dominant mode of European integration, the proposed Directive marks a fundamental paradigm shift in European labour policy. Whether the Directive will actually be adopted, is anything but certain, because it faces considerable resistance rooted in various fault lines. However, there is also certainly a chance that the project will be successful and, in the end, may mark an important step towards a more social Europe.

## 2. The structural asymmetry of European integration.

It is one of the basic insights of critical European Studies that the development of the European Union follows a "structural asymmetry" between "negative" and "positive" integration.<sup>3</sup> A predominant mode of "negative" integration focuses on the creation of a common European market in which national economic and social systems are exposed to Europe-wide regime competition. If national regulations hinder the basic economic freedoms in the European Single Market they have to be adapted -- if not completely

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<sup>1</sup> Porto Social Summit, Porto Social Commitment, 7 May 2021,

<https://www.2021portugal.eu/media/icfksbgy/porto-social-commitment.pdf>

<sup>2</sup> European Commission, *Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union*, Brussels, 28 October 2020, COM(2020) 682 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0682&from=EN>

<sup>3</sup> Scharpf F. W., *The asymmetry of European integration, or why the EU cannot be a 'social market economy'*, in *Socio-Economic Review*, 8 (2), 2010, 211–250.

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dismantled. This applies also to regulations in the field of labour and social policy which - sanctioned by corresponding rulings of the European Court of Justice - are increasingly often declared not to be in conformity with EU law. In this sense, European integration has become a "great liberalisation machine".<sup>4</sup>

In contrast, the implementation of a "positive" mode of integration, which aims to anchor the integrated market through new Europe-wide regulations, is much more difficult considering the often extremely heterogeneous interests among the 27 EU Member States. This heterogeneity results both from the still very different levels of social and economic development and from the fundamental orientations and institutional structure of the various national economic and social models. The complex political decision-making structures within the EU make finding a compromise even more difficult by opening up numerous possibilities to block political initiatives and - especially when unanimous decisions are required - granting the Member States extensive veto powers.

The structural asymmetry between negative and positive integration is nowhere more evident than in the debate about "Social Europe". The implementation of a comprehensive labour and social order at EU level has thus far failed not only because of the resistance of European business and employers' associations and conservative-neoliberal governments, but also because of the difficulty of arriving at meaningful common regulations in view of the great differences between national social systems. Even minimum standards are seen in some EU countries as a threat to their own higher social standards, which explains, for example, the pronounced scepticism of the Scandinavian countries towards any form of binding European labour and social policy.

Even the European trade unions, which are traditionally among the greatest advocates of a social Europe, resist any intervention in national collective bargaining autonomy, despite all the declarations in favour of a Europe-wide coordination of wage policy. This gives rise to the paradox that the EU still has hardly any competences in the area of wage and collective bargaining policy, although economic integration has put national wage policies under enormous competitive pressure and thus significantly weakened the negotiating power of trade unions.<sup>5</sup>

Against this background, some observers conclude that the idea of Social Europe as a European regulatory framework for a Europe-wide integrated market is nothing more than a myth that should be abandoned once and for all.<sup>6</sup> Instead of focusing on deepening social integration, the main focus should be on defending national labour and social systems against the imperatives of a liberal market Europe, thereby consciously accepting the risk of political disintegration (such as the possible dissolution of the European Monetary Union).

However, considering the current state of advanced economic integration and the resulting interdependencies, a strategy that primarily relies on the defence of national labour and social systems seems hardly less illusory than the idea of a harmonised European welfare state. It is therefore not a question of more or less Europe, but one of strengthening labour and social policy regulations at all political levels against a neoliberalism that primarily relies

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<sup>4</sup> Streeck W., *Buying Time. The Delayed Crisis of Democratic Capitalism*, Verso Books, New York, 2014.

<sup>5</sup> For a discussion see: Menegatti E., *Challenging the EU Downward Pressure on National Wage Policy*, in *International Journal of Comparative Labour Law and Industrial Relations*, 33 (2), 2017, 195-219

<sup>6</sup> Höpner M., *Social Europe is a myth*, in *Social Europe Column*, 5 November 2018, <https://socialeurope.eu/social-europe-is-a-myth>

on regulation through markets and competition. The defence of national labour and social systems through strengthening social rights on the one hand, and a reorientation of economic and social policy at the European level on the other are not opposites. They are both necessary parts of a contemporary "formula for a Social Europe."<sup>7</sup>

### 3. Minimum wages and collective bargaining as a core element of neoliberal crisis management.

Since the 1990s which were comparatively ambitious in terms of labour and social policy, social initiatives at the EU level have clearly receded into the background in the following two decades.<sup>8</sup> Nonetheless, labour policy issues in particular, such as the regulation of employment relationships, or wage and collective bargaining policy, have clearly gained in importance in the wake of the 2008/2009 euro crisis. With the new European economic governance that has emerged at EU level in response to the crisis and that has produced a number of new forms of economic policy coordination, European labour policy has also emerged as a "new strategic policy field" in its own right.<sup>9</sup>

The new strategic importance of labour policy results primarily from the dominance of a neoliberal crisis narrative, which centres on a lack of price competitiveness, the causes of which are seen primarily in excessively high labour costs and overregulated labour markets. Since within the European Monetary Union an improvement in price competitiveness can no longer be achieved by devaluing national currencies, according to the prevailing crisis narrative a strategy of "internal devaluation" was the only viable option. What is specifically meant by this can be read, for example, in the European Commission's now famous report on "Labour Market Developments in Europe 2012" and its list of so-called "employment-friendly reforms". This list comprises numerous labour and social policy measures, including the dismantling of labour protection rights, the flexibilisation and precarisation of employment relationships, the decentralisation of collective bargaining and the reduction of collective bargaining coverage, as well as literally the "overall reduction in the wage setting power of trade unions."<sup>10</sup> Even though the European Commission has subsequently denied that it intended to make specific recommendations for action with this list, it reads as a kind of blueprint for all the labour and social policy measures that were implemented in many European countries in response to the 2008/2009 crisis.

Wages and collective bargaining has emerged as one core area of the new European labour policy in which the European Commission has used the mechanisms of the new economic governance to influence national developments to a previously unknown extent.<sup>11</sup> This was

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<sup>7</sup> Seikel D., *The Formula for a Social Europe: Complementary social policy plus a socially compatible monetary union and internal market*. WSI Policy Brief No. 57, 2021, Düsseldorf.

<sup>8</sup> Graziano P., Hartlapp M., *The end of social Europe? Understanding EU social policy change*, in *Journal of European Public Policy*, 26 (10), 2019, 1484-1501.

<sup>9</sup> Syrovatka F., *Europäische Arbeitspolitik als strategisches Feld*, Dissertation at the Eberhard Karls University of Tübingen, 2021, unpublished manuscript.

<sup>10</sup> European Commission, *Labour Market Developments in Europe 2012*, European Economy, 2012, 5, p.103f., [https://ec.europa.eu/economy\\_finance/publications/european\\_economy/2012/pdf/ee-2012-5\\_en.pdf](https://ec.europa.eu/economy_finance/publications/european_economy/2012/pdf/ee-2012-5_en.pdf)

<sup>11</sup> Schulten T., Müller T., *European economic governance and its intervention in national wage development and collective bargaining*, in S. Lehdorff (ed.), *Divisive integration: The triumph of failed ideas in Europe – revisited*, ETUI, Brussels

most evident in countries such as Greece or Portugal, which received loans within the framework of the European Stability Mechanism and in return had to fulfil far-reaching political conditions, which were monitored by the Troika of the European Commission, the European Central Bank and the International Monetary Fund. In essence, the conditions all aimed at cutting or freezing (minimum) wages and weakening collective bargaining systems in favour of corporate decision-making prerogatives. It is true that the European Commission did not succeed in establishing interventionist possibilities in the European Semester similar to those of the Troika. However, in some countries, such as France, the soft pressure of the non-binding Semester recommendations was enough to influence major reforms of the collective bargaining system.<sup>12</sup>

#### 4. The return of Social Europe.

The results of the crisis management based on the new European labour policies have been dysfunctional for the EU in every respect. Socially, they have contributed to more in-work poverty and precariousness and to a further increase in social inequality in the EU as a whole. Economically, they have further weakened domestic growth potential in many countries and significantly increased economic dependence on the export sector. Finally, politically, they have promoted a more Euro-sceptic attitude among European citizens and undermined the acceptance and legitimacy of the political systems more generally both at national and EU level, which eventually contributed to the electoral successes of right-wing populist parties.

Against this backdrop, a clear change in discourse can be observed in the EU since the mid-2010s. The new narrative strongly emphasises the importance of functioning labour and social systems for economic development and political stability. Exemplary for this is the demand of former EU Commission President Jean-Claude Juncker that Europe should not only achieve an economic and financial but also a "social triple-A" rating. However, apart from the reform of the European Posting of Workers Directive, the upgrading of the social dimension remained essentially symbolic: the high point was the adoption of the "European Pillar of Social Rights" in 2017, which, contrary to the title, does not contain any enforceable "rights", but rather non-binding political principles.<sup>13</sup>

In contrast, the EU Commission under President Ursula von der Leyen, which has been in office since 2019, has set out to go beyond symbolic declarations by pursuing a series of legislative initiatives in the field of labour and social policy. This includes the Action Plan for the implementation of the European Pillar of Social Rights, adopted in March 2021, which contains several initiatives and concrete legislative projects.<sup>14</sup> However, the Commission's most far-reaching and important labour policy initiative so far is the proposal for a European

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2015, 331-363; Van Gyes G., Schulten T. (eds.), *Wage bargaining under the new European Economic Governance – Alternative strategies for inclusive growth*, ETUI, Brussels 2015.

<sup>12</sup> Syrovatka F., *Labour market policy under the new European economic governance: France in the focus of the new European labour market policy*, in *Capital & Class*, 2020. Online First. DOI: <https://doi.org/10.1177/0309816820943177>

<sup>13</sup> Barnard C., *Are social 'Rights' rights?*, in *European Labour Law Journal*, 2020, 11 (2), 351-361

<sup>14</sup> European Commission, *The European Pillar of Social Rights Action Plan*, Luxembourg 2021.

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legal framework on adequate minimum wages, which it has been pursuing with high priority since the beginning of its term of office.

## 5. The proposal for a Directive on adequate minimum wages in the EU.

The debate on a European minimum wage policy dates back to the early 1990s, after the EU had adopted the (non-binding) Community Charter of the Fundamental Social Rights of Workers, according to which “workers shall be assured of an equitable wage, i.e. a wage sufficient to enable them to have a decent standard of living.”<sup>15</sup> In order to implement the Community Charter, the European Commission published an “Opinion on an equitable wage” in 1993 asking the EU Member States to “take appropriate measures to ensure that the right to an equitable wage is protected, in particular by ... further legislation (or) ... mechanisms for the establishment of negotiated minima and the strengthening of collective bargaining arrangements.”<sup>16</sup> In practice, however, this initiative had hardly any impact on minimum wages or collective bargaining at national level.

Since the 1990s, the debate about common European standards for adequate minimum wages has come up from time to time, but without leading to any concrete results.<sup>17</sup> There were some discussions before the adoption of the EU Charter of Fundamental Rights in 2000, which finally does not include an explicit reference to an adequate wage but only refers more generally to “fair and just working conditions” (Article 31). However, there is now a common understanding that “working conditions” also include “wages”, so that the Charter is understood to also cover the right to fair wages.<sup>18</sup> Finally, the “right to fair wages” has again been explicitly recognised in principle 6 of the European Pillar of Social Rights, which states that “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.”<sup>19</sup>

The proposal for a Directive on adequate minimum wages which was presented in autumn 2020 is explicitly understood as the implementation of principle 6 of the European Pillar of Social Rights.<sup>20</sup> For the first time, the European Commission has presented a concrete legal proposal for a Europe-wide coordination of national minimum wage policies which aims to significantly increase the level and scope of minimum wages and collective bargaining in Europe. The narrative used for the justification of the draft Directive reads like a complete

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<sup>15</sup> EU Council, *Community Charter of the Fundamental Social Rights of Workers*, Strasbourg, 8 December 1989, [www.eesc.europa.eu/resources/docs/community-charter--en.pdf](http://www.eesc.europa.eu/resources/docs/community-charter--en.pdf), For an historical overview on the debate see also: Schulten T., *Towards a European Minimum Wage Policy? Fair Wages and Social Europe*, in *European Journal of Industrial Relations*, 2008, 14 (4), 421-439.

<sup>16</sup> European Commission, Commission opinion on an equitable wage, COM (93) 388 final. *Official Journal of the European Communities* No. C 248, 11 September 1993, 7-9.

<sup>17</sup> For an historical overview on these debates see: Schulten T., *Towards a European Minimum Wage Policy? Fair Wages and Social Europe*, in *European Journal of Industrial Relations*, 14 (4), 2008, 421-439.

<sup>18</sup> Zimmer R., Living wages in international and European law, *Transfer: European Review of Labour and Research*, 25(3), 2019, 285-299.

<sup>19</sup> European Commission, *The European Pillar of Social Rights in 20 principles*, 2017, [https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights-20-principles\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights-20-principles_en)

<sup>20</sup> European Commission, nt. (1)

counterprogram to what has been argued in the previous crisis. Adequate minimum wages and comprehensive collective bargaining are no longer seen as an obstacle to competitiveness and economic growth but are recognised as an important institutional precondition for a sustainable and inclusive economic development. According to the European Commission, a minimum wage set at adequate levels “ensures a decent living for workers, helps sustain domestic demand, strengthens incentives to work, and reduces in-work poverty and inequality at the lower end of the wage distribution.” Furthermore, “minimum wage protection also supports gender equality, since more women than men earn wages at or around the minimum wage.”<sup>21</sup>

This new perspective on adequate minimum wages and comprehensive collective bargaining has become even more pronounced during the Covid-19 crisis when it became clear that many of the so-called core or essential workers only receive a rather poor salary.<sup>22</sup> All in all, the adoption of the proposed Directive would mark a fundamental paradigm shift in European labour policy.<sup>23</sup>

To implement its objectives, the draft Directive primarily follows two approaches: First, it aims to oblige Member States with statutory minimum wages to define clear criteria for the adequacy of minimum wage levels. Secondly, it seeks to promote the scope of collective bargaining so that in all EU countries a majority of workers should be covered by collective agreements.

## 6. Criteria for adequate minimum wage levels and its possible impact.

The Commission's proposal is based on the fundamental assumption that “in the majority of Member States with national statutory minimum wages, minimum wages are too low vis-à-vis other wages or to provide a decent living.”<sup>24</sup> Hereby the Commission reflects the two basic approaches on how to determine adequate minimum wages.<sup>25</sup> The first is the so-called ‘living wage approach’ which determines adequate minimum wages by calculating the costs for a certain basket of goods and services which is necessary for a decent living and participation in social life. However, there is no universally accepted calculation for a living

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<sup>21</sup> *Ibid.*, 2.

<sup>22</sup> For a first assessment see: Aumayr-Pintar C., Vacas-Soriano C., *Minimum wages in 2021: Annual review*, Eurofound, Publications Office of the European Union, Luxembourg 2021.

<sup>23</sup> At a hearing in the European Parliament, the EU Social Affairs Commissioner responsible for the initiative, Nicolas Schmit, also adopted the view of a paradigm shift. In response to a commentary on the draft Directive, he said verbatim: “I just want to confirm and also to express my agreement with what has been said on the paradigm shift. There is a paradigm shift obviously, because we are talking now about adequate pattern for minimum wages in Europe. We are talking about strengthening collective bargaining in Europe. This is a change from what happened not so long ago”, cited from European Parliament, Discussion in the Committee on Employment and Social Affairs (EMPL) on the proposal for a directive in adequate minimum wages, 4th March 2021, 16:45-18:45, [https://multimedia.europarl.europa.eu/en/committee-on-employment-and-social-affairs\\_20210304-1645-COMMITTEE-EMPL\\_vd?fbclid=IwAR2O9tp8xOPqfBdyVnGRZxojEh1RTWORbgCQDRnFwVMMsBQWovNIgV74-uo](https://multimedia.europarl.europa.eu/en/committee-on-employment-and-social-affairs_20210304-1645-COMMITTEE-EMPL_vd?fbclid=IwAR2O9tp8xOPqfBdyVnGRZxojEh1RTWORbgCQDRnFwVMMsBQWovNIgV74-uo)

<sup>24</sup> European Commission, nt. (1), 2.

<sup>25</sup> For the following: Schulten T., Müller T., *What's in a name? From minimum wages to living wages in Europe*, in *Transfer: European Review of Labour and Research*, 25(3), 2019, 267-284.

wage, neither regarding the concrete composition of the baskets nor regarding the types of household which need to be considered.

A second, more pragmatic way to determine adequate wages levels follows a ‘distribution-oriented approach’ which considers the relative position of the minimum wage in the national wage structure. The indicator used here is the so-called Kaitz index, which measures the value of the minimum wage in relation to the median or the average wage. As the Commission pointed out in recital No. 21 of the proposed Directive, there are “indicators commonly used at international level, such as 60% of the gross median wage and 50% of the gross average wage, (which) can help guide the assessment of minimum wage adequacy in relation to the gross level of wages.”<sup>26</sup> While the Kaitz index might work as a rough indicator for adequacy in most EU Member States, it might not be sufficient in countries with rather low median or average wage levels and therefore needs to be combined with a living wage perspective.

Considering the different national contexts, the Commission’s proposal does not provide a single definition of an adequate minimum wage but instead directs the Member States “to ensure that the setting and updating of statutory minimum wages are guided by criteria set to promote adequacy with the aim to achieve decent working and living conditions, social cohesion and upward convergence.” While the Member States are almost free to include whatever criteria they find appropriate, the draft Directive calls them to take into account at least the four following aspects:

- (a) “the purchasing power of statutory minimum wages, taking into account the cost of living and the contribution of taxes and social benefits;
- (b) the general level of gross wages and their distribution;
- (c) the growth rate of gross wages;
- (d) labour productivity developments.”<sup>27</sup>

There are, however, no precise definitions of these criteria, so they remain rather vague and need still to be specified at national level. This holds true for the “purchasing power” criterion which stands for the idea of a living wage. With its reference to “taxes and social benefits”, however, it becomes unclear whether adequacy is calculated on a gross or a net basis, so that the responsibility for an adequate minimum wage level is blurred between the state and companies. Even more problematic is the criterion “labour productivity developments”. First of all, it is absolutely unclear what kind of productivity (national, sector, company or even individual) should be taken into consideration. Moreover, there is a clear danger that reference to productivity would undermine the concept of adequacy, which is necessarily defined by the needs for a decent living.

While the orientation to the “growth rate of gross wages” is a reasonable criterion for the regular adjustment of minimum wages, it is “the general level of gross wages and their distribution” which is possibly the most important criterion. In a separate paragraph, the proposed Directive explicitly demands 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.”<sup>28</sup> As

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<sup>26</sup> European Commission, nt. (1), Recital No. 21.

<sup>27</sup> *Ibid*, art. 3 (2).

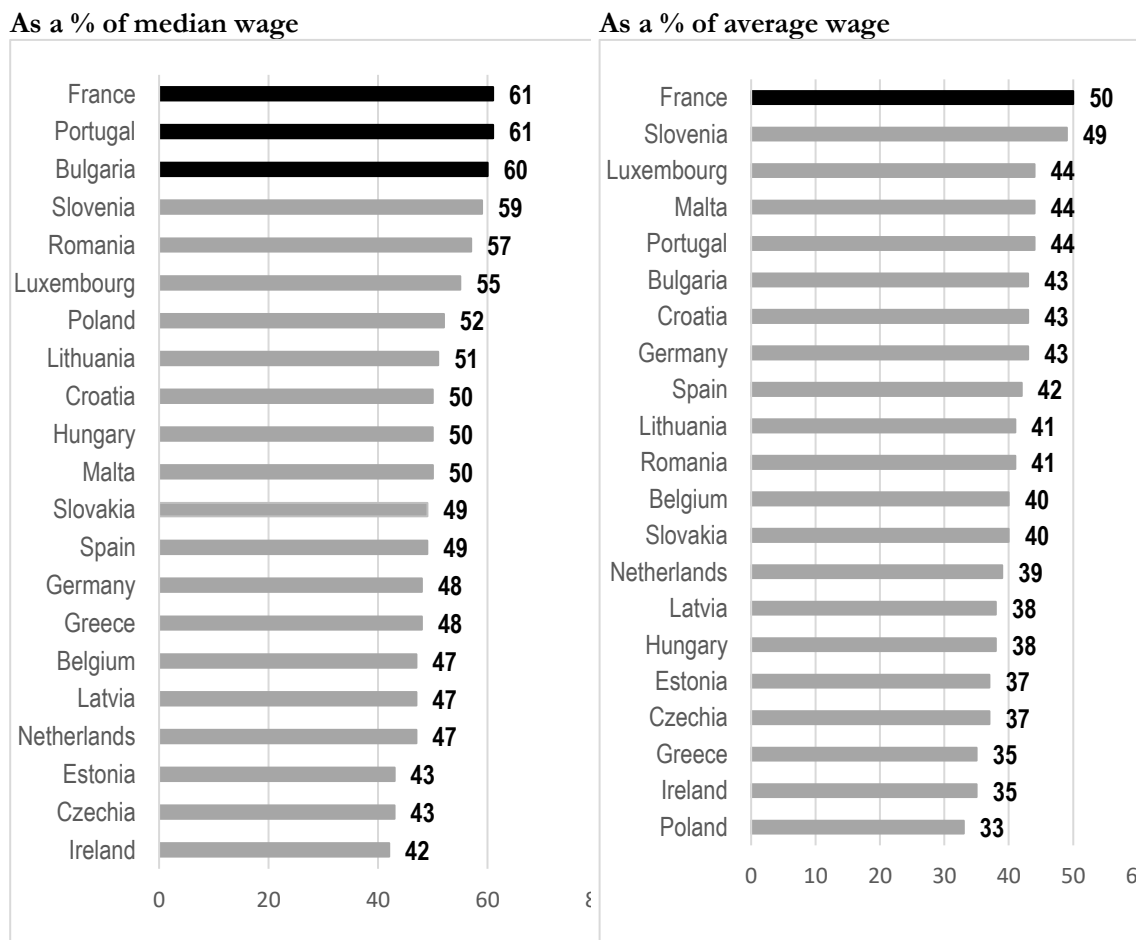
<sup>28</sup> *Ibid*, art. 3 (3).



mentioned above, a more concrete definition of “reference values commonly used at international level” is given in Recital 21, which defines a kind of decency threshold for minimum wages at the level of 60% of the median and/or 50% of the average wage. This does not oblige Member States to comply with these criteria, but it will create a strong normative European frame of reference against which national minimum wage policies will have to be measured in the future.

**Figure 1: Minimum wages in the European Union 2019**

As a percentage of national median and average wages of full-time employees



Source: Source: OECD Earnings Database, supplemented by Eurostat and European Commission for Bulgaria and Croatia.

In fact, current minimum wage levels are well below the decency thresholds in most EU countries (Figure 1). Implementing the double threshold of 60% of the median wage and 50% of the average wage in all EU Member States with statutory minimum wages would lead to an increase in minimum wages for more than 25 million workers – or 18.7% of all employees in EU countries which have a statutory minimum wage (Table 1).<sup>29</sup> Over half of

<sup>29</sup> The figures are calculated by Lübker M., Schulten T., *WSI Minimum Wage Report 2021: Is Europe en route to adequate minimum wages?* WSI-Report No. 63e, 2021, Düsseldorf, [https://www.boeckler.de/de/faust-detail.htm?sync\\_id=9200](https://www.boeckler.de/de/faust-detail.htm?sync_id=9200) on the basis of: European Commission, Impact Assessment accompanying the

this number is accounted for by three populous Member States alone whose minimum wages are currently well below the double decency threshold: Germany (6.8 million employees), Spain (4.1 million) and Poland (4.0 million). The number of directly affected workers is significantly lower in countries which are already close to the reference values, such as France (2.2 million). Measured as a share of the total number of persons employed, the number of workers who would benefit from a corresponding minimum wage increase ranges from less than 10% in countries such as Belgium, Slovenia and France to more than 30% in countries such as Greece and Romania (Table 1).

**Table 1: Number of employees who would benefit from an increase in the statutory minimum wage to 60% of the median wage and 50% of the average wage\***

	<b>in 1,000</b>	<b>as a percentage of all employees</b>
Germany	6,835	18.2
Spain	4,120	24.9
Poland	3,998	30.9
Romania	2,354	35.9
France	2,202	9.3
Greece	907	34.4
Hungary	804	20.2
Netherlands	658	9.0
Bulgaria	649	23.1
Portugal	508	12.7
Czechia	492	11.4
Ireland	487	25.0
Slovakia	409	18.9
Croatia	250	17.1
Latvia	144	18.7
Estonia	116	20.6
Lithuania	116	9.9
Belgium	114	2.8
Slovenia	62	7.3
Luxembourg	58	21.9
Malta	24	11.6
<b>Total EU</b>	<b>25,306</b>	<b>18.6</b>

\* the highest value in each case

Source: Own calculation based on European Commission data based on estimates using the EUROMOD microsimulation model and based on the 2019 employment figures (Eurostat Labour Force Survey).

Finally, it is important to note that the European Commission's proposal has not been made in a vacuum, but draws upon on numerous initiatives for higher minimum wages at

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document Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union, *Commission Staff Working Document*, SWD(2020) 245 final, Brussels, 28.10.2020, <https://ec.europa.eu/transparency/regdoc/rep/10102/2020/EN/SWD-2020-245-F1-EN-MAIN-PART-1.PDF>

national level.<sup>30</sup> These mainly trade union-driven initiatives have been launched in all parts of Europe. In Western Europe, for example, the unions FNV in the Netherlands and ABVV/FGTB in Belgium are campaigning for a minimum wage of €14. In Germany, where the minimum wage was only introduced five years ago, the trade unions advocate a much faster increase and demand that the minimum wage be raised to €12, which roughly corresponds to 60% of the median wage. Minimum wage initiatives also exist in other Western European countries such as France, Ireland, Malta, Portugal, Spain and the UK. In most Central and Eastern European countries, trade unions anticipated the double threshold in the proposed Directive by demanding an increase of the minimum wage to at least 50% of the average wage (which in most CEE countries is the more favorable of the two thresholds). In Croatia and Lithuania, unions explicitly refer to the double decency threshold of 50% of the average and 60% of the median wage. In Slovakia, in October 2019 the parliament adopted an amendment to the Minimum Wage Act, which stipulates that from 1 January 2021, in the event that trade unions and employers do not reach an agreement, the minimum wage will be set by the government to at least 60% of the average gross monthly wage of the two previous years.

Furthermore, the example of Austria shows that minimum wage campaigns organised by trade unions need not be limited to countries with statutory minimum wages. For a long time, the Austrian trade unions have regularly determined a certain minimum wage target (currently 1,700 Euros per month) and have taken this as a guideline in the negotiation of collective agreements.<sup>31</sup>

According to the proposed Directive, however, the criteria for adequate minimum wages should only apply to countries with *statutory* minimum wages, because there should be no interference in collective agreements. This means that the respective part of the Directive will not apply to EU Member States such as the Nordic countries Denmark, Sweden and Finland or Austria and Italy where minimum wages are exclusively determined by collective agreements. In reaction to fears, particularly from Denmark and Sweden, the proposed Directive also explicitly stipulates that Member States without a statutory minimum wage will not be required to introduce statutory minimum wages.<sup>32</sup>

In general, countries with minimum wage regimes exclusively based on collective agreements tend to have particularly high levels of collective bargaining coverage.<sup>33</sup> (Figure 2). Moreover, collectively agreed minimum wages are usually set at a higher level than statutory minimum wages.<sup>34</sup> Therefore, in Austria and the three Nordic countries Denmark, Finland and Sweden the introduction of a general statutory minimum wage is rejected not only by employers but also by trade unions. The fact that minimum wages are set by collective agreements, however, does not necessarily mean that they are always set at an adequate level in the sense of a living wage or the decency threshold. This is the reason why, for example,

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<sup>30</sup> Schulten T., Müller T., *Between poverty wages and living wages: minimum wage regimes in the European Union*, The Left in the European Parliament (GUE/NGL), European Studies for Social and Labour Market Policy, No. 1/2020, Brussels, <https://oezlem-alev-demirel.de/wp-content/uploads/2020/06/mindestlohn-englisch-web.pdf>

<sup>31</sup> *Ibid*, 22.

<sup>32</sup> European Commission, nt. (1), Art 1 (3).

<sup>33</sup> See Figure 3 below.

<sup>34</sup> Aumayr-Pintar C., Vacas-Soriano C., nt. (22).

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in Italy the introduction of a statutory minimum wage has been under discussion for several years.<sup>35</sup>

## 7. Strengthening collective bargaining.

Apart from establishing a joint framework for criteria of adequate (statutory) minimum wages, the second main objective of the proposed Directive is the strengthening of autonomous collective bargaining. It is a generally acknowledged fact that there is a strong correlation between collective bargaining coverage, the degree of wage dispersion and the size of the low wage sector.<sup>36</sup> Countries with higher bargaining coverage tend to have a much lower wage dispersion and a smaller low wage sector. All in all, a high bargaining coverage seems to be an important institutional precondition for the promotion of adequate minimum wages. Moreover, in countries with statutory minimum wages, there are often different interactions with collectively agreed (minimum) wages.<sup>37</sup> In Germany, for instance, the introduction of the statutory minimum wage in 2015 has also strengthened collective bargaining in many low-wage sectors.<sup>38</sup> Conversely, an adequate wage level cannot be achieved solely by means of statutory minimum wages, but also requires a comprehensive collective bargaining system with a high level of bargaining coverage. In many countries there is a considerable collective bargaining wage premium which means that workers whose wages are set by a collective agreement earn considerably more than workers who are not covered by collective agreement under otherwise comparable conditions.

Against this background, another objective of the draft Directive is to strengthen national collective bargaining systems by obliging all Member States whose collective bargaining coverage is below 70% to enter into a national dialogue with employers' associations and trade unions to promote sectoral and cross-sectoral collective bargaining and to develop a concrete action plan to promote collective bargaining.<sup>39</sup> The proposed Directive explicitly emphasises the important role of public procurement in this respect by ensuring that economic operators comply with the wages set by collective agreements.<sup>40</sup>

Currently, collective bargaining coverage is below the 70% threshold in 17 out of 27 EU countries (Figure 2). The European Commission's initiative thus draws attention to the role of collective agreements as a guarantor of better working conditions and the ability of political actors to increase collective bargaining coverage by setting more favourable and supportive framework conditions. The need for action is particularly high in Ireland and Greece, where the coverage is 34% and 26% respectively, as well as in Central and Eastern

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<sup>35</sup> Menegatti E., *Wage-Setting in Italy: The central role played by case law*, in *Italian Labour Law e-Journal*, 2019, 12(2), 53-65.

<sup>36</sup> OECD, *Negotiating Our Way Up. Collective Bargaining in a Changing World of Work*, Paris 2019.

<sup>37</sup> Dingeldey I., Grimshaw D., Schulten T. (eds.), *Minimum Wage Regimes. Statutory Regulation, Collective Bargaining and Adequate Level*, Routledge, London, 2021.

<sup>38</sup> Bispinck R. et al., *Entwicklung des Tarifgeschehens vor und nach Einführung des gesetzlichen Mindestlohns*, Study on behalf the German Ministry of Labour (BMAS), BMAS Forschungsbericht Nr. 562, 2020, Berlin <https://www.bmas.de/DE/Service/Publikationen/Forschungsberichte/fb-562-entwicklung-tarifgeschehen-vor-und-nach-einfuehrung-des-mindestlohns>

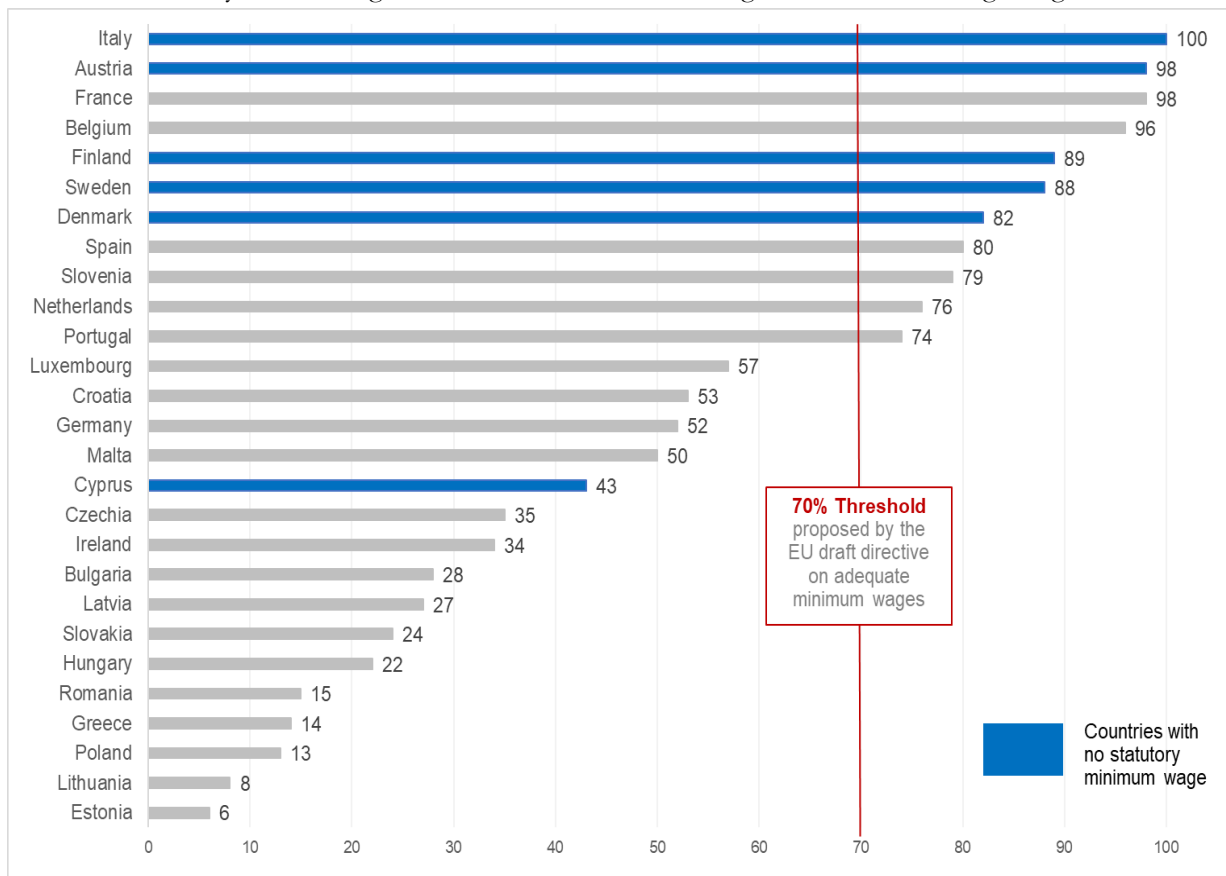
<sup>39</sup> European Commission, nt. (1), Art 4.

<sup>40</sup> *Ibid*, art. 9.

Europe; in seven Central and Eastern European EU Member States, less than a quarter of the workforce is covered by a collective agreement.

**Figure 2: Collective bargaining coverage in EU countries, 2019\***

Workers covered by collective agreements in % to all workers eligible to collective bargaining



\* 2019 or most recent value available.

Source: OECD/AIAS ICTWSS Database (<https://www.oecd.org/employment/ictwss-database.htm>).

## 8. Four fault lines in the conflict about the proposed Directive.

The proposed Directive for adequate minimum wages in the EU currently is one, if not the core political project that aims to strengthen the social dimension of European integration by means of a fundamental reorientation of European labor policy. It is therefore not surprising that it is highly contested and has met with particularly strong political resistance, so that at the time of writing in June 2021 its adoption can by no means be taken for granted. There are at least four fault lines in the conflict about the proposed Directive.

The first fault line is the classic conflict between capital and labour. During the last decades, the dominant mode of European integration driven by marketisation and liberalisation has contributed to a significant shift in power relations in favour of capital. The proposed Directive represents a political project which aims to somewhat rebalance power

relations in favour of labour. It is therefore not at all surprising that the vast majority of European trade unions --despite numerous criticisms in the detail -- overwhelmingly supports the draft Directive,<sup>41</sup> while most European employers' associations, which naturally have little interest in substantially strengthening the employee side, reject the entire initiative outright.<sup>42</sup> In both camps, however, there are also different, or at least nuanced, views: The trade unions from Denmark, Sweden and Norway, for instance, strongly reject the proposed Directive<sup>43</sup>, while the peak employers' association in France has expressed its cautious support for a European framework regulation on minimum wages.<sup>44</sup>

The divergent positions within European trade unions and employers' associations' point to a second fault line between representatives of different national wage-setting regimes. The harshest critique comes from Denmark and Sweden, where almost all social actors from the government to employers, trade unions and all major political parties from the right to the left reject the Directive as a threat to the "Nordic model" in which minimum wages are exclusively set by collective agreements. In contrast, there are also countries, such as Finland or Italy, in which there is no statutory minimum wage in place, but whose governments and the trade unions endorse the Directive. The majority of EU Member States with statutory minimum wages seem to see at least no systematic problem with the Directive related to their own wage-setting regimes. Some of them, such as France, even strongly support the Directive, since the proposed framework might be interpreted as a European prolongation of their own national wage-setting regime which links a relatively high statutory minimum wage with high collective bargaining coverage.

A third fault line reflects the political and socio-economic orientations of the actors involved. More leftist governments, for instance in Spain and Portugal, have shown strong support for the Directive. In the case of Denmark and Sweden, however, the principal political orientation is overlaid by the institutional logic of the particular wage-setting regimes, so that even social-democratic-led governments have rejected the proposed Directive. In contrast, more neo-liberal governments, such as in Austria and the Netherlands, as well as the more right-wing populist governments in Poland or Hungary have so far expressed their resistance to the Directive. There are also many governments which have not yet taken a clear position (among them the German government), so that it remains an open question whether the Directive will in the end find a sufficient majority within the EU Council.

These three fault lines also characterize the debates within the European Parliament. The draft report of the European Parliament, which was jointly written by two representatives of the largest political groups – the European People's Party (EPP) and the Progressive Alliance of Socialists & Democrats (S&D), not only shows a strong endorsement for the

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<sup>41</sup> European Trade Union Confederation, *Crucial wages directive needs improvement*, press release of 28 October 2020, <https://www.etuc.org/en/pressrelease/crucial-wages-directive-needs-improvement>

<sup>42</sup> Business Europe, *Proposal for an EU directive on fair minimum wages - a Business Europe position paper*, Brussels, 4 December 2020, [https://www.buinessurope.eu/sites/buseur/files/media/position\\_papers/social/2020-12-04\\_pp\\_minimum\\_wages.pdf](https://www.buinessurope.eu/sites/buseur/files/media/position_papers/social/2020-12-04_pp_minimum_wages.pdf)

<sup>43</sup> Risgaard L. et al., *EU wage minimum undercuts Scandinavian model*, in Euroobserver, 23 November 2020 <https://euobserver.com/opinion/150145>

<sup>44</sup> De Comarmond L., *Salaire minimum: les syndicats et le patronat français appuient la directive européenne*, in *Les Echos* 29 April 2021.

Commissions' proposal, but encourages even more far-reaching and binding regulations.<sup>45</sup> The European Parliament's draft report, for instance, proposed to move the decency threshold of 60% of the median wage and 50% of the average wage from the recitals to the actual legal text of the Directive, which would give them a more binding character.<sup>46</sup> The final position of the European Parliament, however, is still very uncertain, as it is currently addressing more than 800 amendments to the draft report proposed by Members of Parliament from all political groups.<sup>47</sup>

Finally, there is a fourth legal fault line. Critics of the Directive have argued that the European Union has no regulatory powers at all in matters of wage policy. They justify their view with reference to Article 153(5) of the Treaty on the Functioning of the EU (TFEU), which explicitly excludes the determination of pay from the EU's regulatory competences in the field of social policy. Accordingly, the proposed Directive is seen as contradicting this article.<sup>48</sup>

The European Commission, by contrast, views its proposal as fully covered by Article 153(1b), which gives it regulatory competences in the field of 'working conditions'. Since the proposed Directive does not require Member States to set statutory minimum wage at a specified level nor to introduce a specific system for setting minimum wages, the exclusion of competences in Article 153(5) TFEU does not apply in this case. European regulations, which only indirectly affect wage developments, are permitted under European law and are also covered by the case law of the European Court of Justice.<sup>49</sup>

In the meantime, this view has also been confirmed by the Legal Service of the Council of the EU.<sup>50</sup> However, the legal basis for the Directive remains contested and its justification moves on a fine line. For the proponents of the proposal this creates a fundamental dilemma: in order to ensure the highest possible effectiveness and efficiency, the provisions of the Directive should be as precise and binding as possible. Above all, the double decency threshold of 60% of the median wage and 50% of the average wage should be a binding criterion for adequate minimum wages. The more binding the requirements for adequate minimum wages are formulated, however, the greater the legal burden of proof that the rules are still covered by EU law.

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<sup>45</sup> European Parliament, *Draft Report on the proposal for a directive of the European Parliament and of the Council on the adequate minimum wages in the European Union*, Committee on Employment and Social Affairs, PE689.873v02-00, 6 April 2021, [https://www.europarl.europa.eu/doceo/document/EMPL-PR-689873\\_EN.html](https://www.europarl.europa.eu/doceo/document/EMPL-PR-689873_EN.html)

<sup>46</sup> *Ibid.*, 30.

<sup>47</sup> European Parliament, Amendments 80 – 918 on the draft report by Dennis Radtke and Agnes Jongerius on the proposed directive on adequate minimum wages in the European Union, Committee on Employment and Social Affairs, PE692.765v02-00, 18 May 2021

<sup>48</sup> See for example: Franzen M., *Der Vorschlag der EU-Kommission für eine Richtlinie über angemessene Mindestlöhne in der Europäischen Union vom 28.10.2020 – kompetenzrechtliche und anwendungsbezogene Fragen*, in *Zeitschrift für Arbeitsrecht (ZfA)*, 52 (2), 2021, 157-176; Thüsing G., Hütter-Brung G., *Soziale Gerechtigkeit ultra vires – Kritische Anmerkungen zum Entwurf einer Mindestlohnrichtlinie*, in *Neue Zeitschrift für Arbeitsrecht (NZA)*, 38 (2), 2021, 170-175.

<sup>49</sup> Di Federico G., *The Minimum Wages Directive Proposal and External Limits to Article 153 TFEU*, in *Italian Labour Law E-Journal*, 13 (2), 2020, 107-111; Eichenhofer E., *Entwurf einer EU-Richtlinie über angemessene Mindestlöhne*, in *Arbeit und Recht*, 66 (4), 2021, 148-155.

<sup>50</sup> Legal Service of the Council of the EU, *Opinion on the Commission proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union - Legal basis*, Brussels, 9 March 2021 (OR. en) 6817/21.

## 9. Outlook.

Considering the dominant path of EU economic and social policy in the last decades, the proposed Directive on adequate minimum wages represents a paradigm shift towards a more social Europe. Its adoption would demonstrate that the structural asymmetry of European integration is not a natural development path fixed for all time, but that it can be overcome in certain situations by the hegemony of social forces aiming at a social re-embedding of liberalised markets. The significant loss of legitimacy of the European integration project, which manifests itself in the strengthening of right-wing populist forces with a clearly nationalist and anti-European attitude, has created a political momentum for a more social orientation of EU policy. The Covid-19 pandemic has even reinforced this momentum by fostering a kind of "emergency pragmatism" in the EU, which has facilitated many political measures, especially in the area of economic policy, which were considered unthinkable only a short time ago.<sup>51</sup>

There is, of course, also no automatism that a more social Europe will materialise. There are still strong social forces and significant fault lines which eventually might block social progress. This might also be true for the proposed Directive on adequate minimum wages. However, there is still a window of opportunity for it to finally be adopted in the first half of 2022 under the French EU presidency.<sup>52</sup> France is not only one of the strongest supporters of the Directive, but will also have its next presidential elections during that time, whose outcome will be greatly influenced by the European question.

If the Directive would finally be adopted, there is also no automatism that everywhere in the EU minimum wages would be increased to adequate levels. This holds even more true for collective bargaining, since a significant increase of the bargaining coverage is not at all easy to achieve. The EU Directive will only create a certain framework, while the final decisions and implementation will remain at national level. However, an EU Directive would significantly frame the national debates and support those social forces which fight for adequate minimum wages and strong collective bargaining.

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<sup>51</sup> Urban H.-J., *Corona und der Blick auf ein anderes Europa: Die EU steht vor einer ungewissen Zukunft*, in *AK Wien Infobrief EU & International*, No. 3, 2020, 2-8.

<sup>52</sup> Neves A.N. et al, *France ready to pick up the baton on EU minimum wage proposal*, in *Euroactive*, 10 May 2021.



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