

# The Impact of the Directive on Adequate Minimum Wages in the European Union on Polish Labour Law

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## Abstract

The aim of the paper is to present potential legal consequences of the reception of the future directive on adequate minimum wages in Poland as well as the social, economic and political context of this process. The adoption and implementation of the future directive would require changes in Polish law. First of all, the mechanism of setting the statutory minimum wage, especially the reference criteria, would have to be amended. The necessary amendments include also the establishment of an advisory body. Finally, the directive can be seen as an impulse to revive social dialogue, which is undergoing a deep crisis. Due to the complexity of the regulations, it is difficult to clearly assess whether any modifications will be needed as regards the protection of minimum wages. Although the directive could be a chance to improve working and living conditions in Poland, there is no enthusiasm about the draft. The government raises doubts about the EU's treaty competences to issue the directive and is also very sceptical about the need and possibility to increase the scale of collective bargaining in Poland. Not surprisingly, the approach of the social partners is varied: rather negative in the case of employers and more positive as far as trade unions are concerned. Nonetheless, it would be unrealistic to expect widespread support for the proposed solutions.

**Keyword:** Minimum wages; Directive; Draft; Poland; Social dialogue; Government; Social partners.

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## 1. Opening remarks.

The Polish labour market is one of the largest but also one of the most specific in the European Union.<sup>1</sup> Despite undoubted successes (overall increase in the number of working people, very low unemployment rate), Poland faces problems that distinguish it from Western European countries. These problems are partly related to the legacy of the past,<sup>2</sup> and partly to the current economic, social and political situation. On the one hand, the Polish economy has responded quite well to successive crises in recent years. It managed to avoid recession during the 2008 crisis, and the current level of unemployment is one of the lowest in Europe (6.3% in April 2021). At the same time, there is a problem with the quality of employment related in particular to the level of wages and the effectiveness of collective mechanisms. The average salary in 2019 was PLN 5167.47 PLN (around EUR 1,150).<sup>3</sup> Moreover, Poland is characterised by abuse of atypical forms of employment on an enormous scale, especially civil law contracts and bogus self-employment<sup>4</sup> that deprive working people from protection arising from labour law. Then, due to the weakness of collective bargaining, wages are determined mainly by legislation and individual employment contracts. Only around 15% of employees are covered by collective agreements, which are usually concluded at the company level.<sup>5</sup> The lack of collective bargaining agreements other than at company level also contributes to a decrease in the pace of wage growth, which clearly does not follow the increasing productivity in Poland. This phenomenon may lead Poland into what in economics is referred to as the development trap of middle-income countries. Last but not least, one should not overlook the special political situation in which Poland has been over the recent years. The reforms carried out by the government in various areas as well as the efforts to strengthen the country's international position have led to numerous conflicts with European institutions. Not surprisingly, the adoption of the draft Directive on adequate minimum wages in the European Union<sup>6</sup> (hereinafter referred to as "Draft") – in some circles considered controversial – created new tension between Poland and the European Union. The Polish government<sup>7</sup> is deeply sceptical about the Draft. Trade unions

<sup>1</sup> The Polish labor market consists of more than 16,000,000 employed including about 13 million are employees. See: <https://www.statista.com/statistics/1114174/poland-number-of-employees-and-self-employed/>.

<sup>2</sup> See Seweryński M., *Polish Labour Law from Communism to Democracy*, Dom Wydawniczy ABC, Warsaw, 1999 and Florek L., *Labour Law*, in Frankowski S. (ed.), *Introduction to Polish Law*, Kluwer Law International, The Hague, 2005, 275-302.

<sup>3</sup> <https://stat.gov.pl/en/latest-statistical-news/communications-and-announcements/list-of-communicues-and-announcements/average-monthly-gross-wage-and-salary-in-national-economy-in-2020,283,8.html>.

<sup>4</sup> In theory, work performed in certain conditions (under the direction of the employer, at a place and time indicated by him, for pay) obliges the parties to establish an employment relationship (Art. 22 LC). However, there is no efficient legal mechanism to reclassify civil law relationships in the employment relationship. As a result, thousands of people work under civil law contracts or as self-employed despite the obvious employment relationship in place.

<sup>5</sup> This is due to a number of factors: weakness of trade unions (low level of trade union density) or low representativeness of employers' organisations (their level of organising is amongst the lowest in the EU). A significant factor is also the detailed labour law legislation with the Labour Code as the central element of the system: the Act of 26 June 1974 – Labour Code, Journal of Laws 2020, item 1320, hereinafter referred to as "KP".

<sup>6</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020PC0682>.

<sup>7</sup> The so-called United Right consisting of the Law and Justice party (Prawo i Sprawiedliwość, PiS), whose leader is Jarosław Kaczyński, and two much smaller parties: the Agreement party ("Porozumienie") led by

and employers' organisations are completely divided in their reception of the proposition:<sup>8</sup> the trade unions perceive the Draft positively, and the employers' organizations – very critically.

The aim of this paper is to present potential legal consequences of the reception of the future directive in Poland, but also the social, economic and political context of this process.

## 2. Setting Statutory Minimum Wage.

According to Art. 65 of the Polish Constitution, a minimum level of remuneration for work or the manner of setting its levels shall be specified by law (an act of Parliament).<sup>9</sup> The Minimum Wage Act was enacted in 2002. It does not set the rate of minimum wage but specifies the manner of setting it. The level of minimum wage is negotiated annually in the Social Dialogue Council, hereinafter referred to as “Council”,<sup>10</sup> which includes representatives of the government as well as representative trade unions and employers' organisations.<sup>11</sup> The negotiations concern both: the statutory minimum wage for employees, hereinafter referred to as “SMW” (defined as a monthly wage), and the minimum hourly rate for non-employees.

The SMW applies to all employees (employed under an employment relationship).<sup>12</sup> There is one rate for all sectors and regions (however, recently some employers' circles have suggested a need to diversify the SMW according to regional criterion). Part-time employees benefit from guarantees proportionally to their working hours. If in a given month, due to the dates of payment of certain remuneration components or work time schedule, the remuneration of an employee is lower than the minimum wage, it is supplemented to reach this amount in the form of a compensation. The most specific element in the Polish regulation is the fact that under current legislation, minimum remuneration is guaranteed not only to employees (persons performing subordinated work and employed under employment relationship), but also to persons who perform work that is not characterized by subordination: workers engaged under civil law contracts as well as self-employed persons.<sup>13</sup>

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Jarosław Gowin, deputy prime minister, and the Solidary Poland party (“Solidarna Polska”), whose leader is Zbigniew Ziobro, minister of justice and prosecutor general).

<sup>8</sup> The Draft was consulted with social partners in the manner provided for in the Act on Trade Unions and the Act on Employers' Organisations. However, there has been no in-depth discussion on this subject, either in the bilateral or in the tripartite dimension in the Social Dialogue Council. *See* the draft of Poland's response: [https://www.uzp.gov.pl/\\_\\_data/assets/pdf\\_file/0021/28047/Stanowisko20RP\\_projekt20dyrektywy20sektorowej.pdf](https://www.uzp.gov.pl/__data/assets/pdf_file/0021/28047/Stanowisko20RP_projekt20dyrektywy20sektorowej.pdf).

<sup>9</sup> <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

<sup>10</sup> The Act of 24 July 2015 on the Social Dialogue Council, Journal of Laws 2018, item 2232, as amended.

<sup>11</sup> *See* Wujczyk M., *Outline of Polish Labour Law System*, in Baran K. (ed.), *Outline of Polish Labour Law System*, Wolters Kluwer, Warsaw, 2016, 417-418.

<sup>12</sup> Their legal status is regulated by the Act of 26 June 1974 – Labour Code, Journal of Laws 2020, item 1320, hereinafter referred to as “KP”.

<sup>13</sup> Also, some other principles previously applicable only to employees were extended to workers: e.g., prohibition on waiving remuneration, monetary form of its payment and frequency of payment (at least once a month in the case of a mandate contract exceeding one month). More about the idea to extend the protection to non-employees: Hajn Z., *Poland*, in Blanpain R. (ed.), *International Encyclopaedia of Laws: Labour Law and Industrial Relations*, Wolters Kluwer, Alphen aan den Rijn, 2016, 44.

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The protection of non-employees (in force since 2018) was justified by the high scale of bogus self-employment and abuse of civil law employment<sup>14</sup> and the need to counteract the extremely low wages paid outside the employment relationship (especially under civil law contracts).<sup>15</sup>

The principle of adequacy expressed in the Draft should be confronted with the mechanism of determining the SMW (regulated, as a rule, in the Act of 10 October 2002 on the Minimum Wage,<sup>16</sup> hereinafter referred to as “MWA”).<sup>17</sup> Each year a proposal of the minimum wage (minimum hourly rate) for the next year is submitted by the government by 15 June. When making the minimum wage proposal, the government presents information concerning basic economic and labour indexes. Trade unions and employers’ organisations in the Social Dialogue Council may agree on the amount of the minimum wage within 30 days of receiving the proposal and the information. If the social partners in the Social Dialogue Council do not reach an agreement, the amount of the minimum wage is set by the government (by 15 September).<sup>18</sup> If the expected price increase for the next year is: 1) at least 105% – the SMW should be increased twice a year: from 1 January and from 1 July; 2) less than 105% – the SMW is to be amended once: from 1 January. It means that the SMW is updated regularly in order to maintain its adequacy. However, under the influence of the future directive, it will be necessary to reconstruct the system of references. Currently, none of the four elements indicated in the Draft (the purchasing power of the SMW with regard to the cost of living and the contribution of taxes and social benefits; the general level of gross wages and their distribution; the growth rate of gross wages; and labour productivity developments) is included in the SMW setting mechanism. The MWA refers only to the forecast and actual levels of inflation and to the forecast of real GDP growth. According to Art. 5(4) MWA, if in the year in which the negotiations take place, the amount of the minimum wage is lower than half of the average wage, the government, when presenting its proposal for the SMW, must increase it by 2/3 of the forecast real GDP growth rate. In other words, the act has a built-in mechanism that should lead to the minimum wage reaching 50% of the average.

Finally, it can be interesting to compare the statutory mechanism with the practice of collective relations. Over the recent years, the social partners have never reached a compromise over the SMW. As a result, it has been determined by the government. It means that the trade unions and employers’ organisations have not fully exploited their statutory competences. This phenomenon can be explained by the fact that the proposals submitted by the government have been more favourable for employees than provided for by the MWA (the proposed growth rate has exceeded inflation and 3/4 of the forecast GDP growth). The

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<sup>14</sup> Compare:

[https://www.uzp.gov.pl/\\_\\_data/assets/pdf\\_file/0021/28047/Stanowisko20RP\\_projekt20dyrektywy20sektorowej.pdf](https://www.uzp.gov.pl/__data/assets/pdf_file/0021/28047/Stanowisko20RP_projekt20dyrektywy20sektorowej.pdf).

<sup>15</sup> Moreover, the legislature was willing to limit the scale of application of civil law employment and self-employment. On the basis of current (2021) indicators, this goal has been achieved to a small extent.

<sup>16</sup> Journal of Laws 2020, item 2207.

<sup>17</sup> Compare Hajn Z., *Poland*, in Blanpain R. (ed.), *International Encyclopaedia of Laws: Labour Law and Industrial Relations*, Wolters Kluwer, Alphen aan den Rijn, 2016, 44 and 127.

<sup>18</sup> See also Hajn Z., *Poland*, in Blanpain R. (ed.), *International Encyclopaedia of Laws: Labour Law and Industrial Relations*, Wolters Kluwer, Alphen aan den Rijn, 2016, 44.

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employers' organisations have opted for the lowest growth permitted by the law, while the trade unions support the government, opting for the highest possible increase. Consequently, there has been no room for compromise, while the increase in the SMW was higher than required by law. This leads to questions (that cannot be answered in this article) about the inadequacy of the current mechanism to determine the SMW and the political role of increasing the minimum wage. It should be noted that this is one of few areas where the government may directly influence the structure of remuneration in the private sphere (due to the lack of effective mechanisms extending the application of multi-company collective agreements).

Nonetheless, there has been a significant and dynamic increase in minimum wage over the recent years: from PLN 1,750 in 2015 to PLN 2,250 in 2019 (an increase by 28%, which is much greater than in previous years), PLN 2,600 in 2020 and PLN 2,800 in 2021 (however, it is still just around EUR 620). The share of minimum wage earners in the total number of persons employed under an employment contract is about 13%.

A problem may be the existence of a consultative body (to advise the competent authorities on issues related to SMW), whose establishment is required by Art. 5(5) of the Draft. It could be argued that this requirement is met by the structure of the Social Dialogue Council, which is composed of representatives of the largest trade unions and employers' organisations. However, the Council itself is a body deciding about the SMW and its increase. Thus, it cannot be a consultative body at the same time (such an approach has been confirmed by the EC, which does not recognize the Council as an advisory structure in the meaning of the Draft). A consultative body should be therefore created. However, the government replies that it will lead to a duplication of procedures with the involvement of social partners. The requirement to involve social partners in various aspects of minimum wage determination (Art. 7 of the Draft) is, at least to a certain extent, guaranteed by the participation of the largest trade unions and employer organisations in the Social Dialogue Council (where the minimum wage is negotiated). In addition, the largest trade unions and employers' organisations are consulted by national and local authorities with regard to legal acts in the field of labour law. However, it may be necessary to amend the rules on data collection and research in order to inform the authorities responsible for setting statutory minimum wages.

### **3. Variations, Deductions and Effective Access of Workers to SMW.**

The future directive should not affect the Polish law as regards the differentiation of the SMW (Art. 6 of the Draft). Initially, the MWA allowed for the application of a lower SMW rate for employees in the first and second years of work (later in the first year of work).<sup>19</sup> It was supposed to be an incentive to engage employees who start their professional career. However, this solution (due to profound criticism) was abandoned. In the past, regional differentiation was also discussed. Finally, the legislature did not decide to apply this model.

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<sup>19</sup> See, e.g. Hajn Z., *Poland*, in Blanpain R. (ed.), *International Encyclopaedia of Laws: Labour Law and Industrial Relations*, Wolters Kluwer, Alphen aan den Rijn, 2016, 127.

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As a result, the MWA provides for a uniform SMW for all employees. The only exception is the differentiation based on the *pro rata temporis* principle (proportionate to working time), which is consistent with (or even required by) Art. 4.2. of the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC.<sup>20</sup>

Polish law specifies amounts that can be deducted without the employee's consent, a deductible part of the remuneration (depending on the obligation type) as well as the part of remuneration free from any deductions (Art. 87-88 KP). Other deductions are allowed with the consent of the employee (Art. 91 KP). The amount free from any deductions is related to the minimum net salary: 100% of the SMW in the case of payments confirmed by court judgments; 90% in the case of cash penalties that can be imposed by employers, and 75% in the case of amounts paid in advance to the employee. The amount free from deductions is not provided for payments confirmed by court judgments and concerning maintenance obligations towards other persons. The amount free from deductions made with the consent of the employee is: 100% of the SMW when deducting for the benefit of the employer and 80% of the SMW when deducting for the benefit of other persons or entities.<sup>21</sup> As a rule, the system is consistent with the requirements arising from the Draft. The deductions limiting the SMW payment are justified by either the interest of third parties (e.g. children of the employee) or previous payments by the employer. The possibility to limit the minimum wage by deducting cash penalties imposed by the employer seems to be the most controversial.

Polish law develops a wide range of instruments safeguarding the payment of remuneration including the minimum wage (Art. 8 of the Draft). Court proceedings in matters relating to labour law are structured in a special way to protect the employee as the weaker party to the employment relationship. This applies, inter alia, to preferential treatment of employees in terms of court fees or to procedural preferences. The employee may be represented by a trade union official. The correct and timely payment of wages is subject to supervision by the State Labour Inspectorate. The labour inspector may, inter alia, order the payment of remuneration (if it is not in dispute). The activities of inspectors are coordinated: there is a possibility of issuing guidelines by higher-level authorities.<sup>22</sup> Violation of the employer's obligations may also constitute an offence, and in special cases even a crime (although this instrument is used relatively rarely in practice).<sup>23</sup> However, the system of informing employees about their rights may require extension (Art. 8(3)).

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<sup>20</sup> Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC.

<sup>21</sup> See Walczak K., *Outline of Polish Labour Law System*, in Baran K. (ed.), *Outline of Polish Labour Law System*, Wolters Kluwer, Warsaw, 2016, 290-291, and Hajn Z., *Poland*, in Blanpain R. (ed.), *International Encyclopaedia of Laws: Labour Law and Industrial Relations*, Wolters Kluwer, Alphen aan den Rijn, 2016, 129.

<sup>22</sup> See Włodarczyk M., *Outline of Polish Labour Law System*, in Baran K. (ed.), *Outline of Polish Labour Law System*, Wolters Kluwer, Warsaw, 2016, 459-ff., and Hajn Z., *Poland*, in Blanpain R. (ed.), *International Encyclopaedia of Laws: Labour Law and Industrial Relations*, Wolters Kluwer, Alphen aan den Rijn, 2016, 46.

<sup>23</sup> Compare Hajn Z., *Poland*, in Blanpain R. (ed.), *International Encyclopaedia of Laws: Labour Law and Industrial Relations*, Wolters Kluwer, Alphen aan den Rijn, 2016, 178.

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#### 4. Statutory Minimum Wage and Collective Bargaining.

Article 4 of the Draft is intended to increase the coverage of collective bargaining. To this end, Member States are required to take measures to promote the capacity of social partners to engage in collective bargaining on wage setting and to encourage constructive, substantive and informed negotiations on pay. In addition, Member States in which collective bargaining coverage (as defined in Article 3) does not extend to at least 70% of employees are required to establish a framework for collective bargaining and develop an action plan to promote collective bargaining. It should be noted that the scale of collective bargaining coverage in Poland is one of the lowest in the EU and at the same time, which in the opinion of the author is very important, is not increasing despite economic growth and periods of evident improvement on the labour market. It is therefore necessary to reflect upon the main reasons underlying this phenomenon.

First, let us turn our attention to the model of the trade union movement in Poland, whose basic feature is the dominant role of company trade unions. At this point we are referring not only to the legal conditions (resulting from the Trade Union Act, which grants specific rights to company trade union organisations), but also to the practice of the trade union movement (for example, the distribution of member fees between company and supra-company structures: sectoral or regional). Such a strong domination of company trade union organisations would not be a problem in itself (although, of course, it makes it difficult to conclude collective agreements other than company ones), if Polish trade union centres had a coordinated, internal policy of collective bargaining. However, this is not the case. Therefore, all the time this direct legacy of the communist period, in which trade unions obviously did not play the role of an entity negotiating wages and working conditions, but of an entity engaged at the company level in maintaining socialist labour discipline and transferring social benefits to employees, has been present. This observation is meant to suggest that raising the ratio of workers covered by agreements would require not only changes in the law (for example, in the context of employee representation or the possibility of concluding agreements with actual employers in the public sphere), but also an internal reform of the trade union movement.

The Polish government is not taking any action to promote collective bargaining – during the works in the Council, an expectation was expressed to remove Article 4.2 from the Draft. This is the paragraph referring to the action plan drawn up in the Member State if the scope of bargaining is lower than 70%. It is difficult to point out examples of any actions that would be initiated by public authorities (including governments previously in power) that would be aimed at supporting the development of collective bargaining – yet such an obligation is already incumbent on public authorities due to the ILO conventions ratified by Poland and the ratified provisions of the European Social Charter. An attentive reader might ask at this point whether the extension of the right to coalition, i.e. the amendments to the Trade Union Act which directly enabled the association of persons who are not employees within the meaning of the Labour Code, could not be regarded as such an action. However, the mere adjustment of the legal status to a state of compliance with a binding ILO convention can hardly be regarded as promotion.

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## 5. Access to Data and Statistical Information.

In its position paper, the Polish government points out that the collection of data in the layout indicated in the Draft Directive in order to monitor the scope and adequacy of minimum wages may require action in terms of statutory changes concerning the scope of official statistics. Poland does not possess most of the data referred to in the Draft Directive. Consequently, if the information obligations are assigned to the national statistical authority, it should be taken into account that the adoption of this Draft will necessitate work on the implementation of a new annual data collection system ensuring the acquisition of a wide range of detailed information broken down by sex, age, disability of persons employed and characteristics of their workplace, including the size of units and sector. This will increase both the burden on reporting units and their operating costs.

In Poland, surveys on the structure of wages are conducted every two years and, most importantly, do not cover employers with up to nine employees. This is the “Remuneration in the national economy” survey. Statistics Poland estimates the average salary and the median salary. As indicated by representatives of Statistics Poland, there are no plans (due to the costs of the process) to conduct the survey every year and to cover employers with up to nine employees. The survey provides an incomplete answer in relation to the requirements indicated in Article 10 (for example, it does not take into account the disability factor). Employees are divided into only nine categories depending on the occupational group: representatives of public authorities, senior officials and managers; specialists; technicians and associate professionals; office workers; service and sales workers; agricultural, horticultural, forestry and fishing workers; industrial and craft workers; industrial and craft workers – machine and plant operators and assemblers; employees carrying out simple jobs. As can be seen, the limited scope of data means that it is not possible to assign data to a specific sector of the economy. Of course, apart from these regular surveys, Statistics Poland undertakes *ad hoc* research in the area of wages. These studies are also to some extent complemented by studies carried out by private companies.

In conclusion, it can be stressed that the introduction of the reporting obligations referred to in the Draft Directive would require a significant improvement in the quality and scope of services provided by official statistics. It would undoubtedly contribute to greater transparency and improve the quality of the debate on wages in Poland. At present, a very often expressed view is that the data (on average salary and median salary) do not correspond to the “perception” of many participants of the labour market. The numbers seem to be too high in relation to popular feeling, in particular in smaller towns. The explanation for this phenomenon is precisely sought in the lack of analysis of wages in companies employing up to nine workers. A second challenge from the Polish perspective is the lack of any regular research on the extent of collective bargaining.

## 6. Draft Reception in Poland.

The position of the Polish government on the Draft is deeply sceptical. The government raises both doubts regarding the EU’s competence under the Treaty to issue the proposed



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directive and concerns about a possible violation of the principle of subsidiarity. It is also very sceptical about the need and possibility to increase the scale of collective bargaining in Poland. Referring to the question of the subsidiarity principle, it points out: “In light of the principle of subsidiarity, it is not justified to define economic indicators to serve as a basis for determining minimum wages in each country.” In practice, this leads to a limitation of the autonomy of national legislatures, which may be forced to set minimum wages according to a top-down template, not adapted to local economic conditions, the specificity of the legal systems of individual countries and their wage formation systems. At the same time, this means a violation of the democratic principle of making decisions as close as possible to EU citizens, as national legislatures will be deprived of the opportunity to fully choose minimum wage indices adapted to the national market and wage system. Moreover, the government stresses that the EC does not sufficiently demonstrate that there are no better tools at the European level to achieve the intended social goals, including more flexible solutions that would allow countries to possibly deviate from the adopted rules in the situation of a downturn in the economy or competitiveness of Member States. During the work in the Council, the Polish party expressed its expectation concerning the elimination of the second sentence of Article 5(1), indicating that the criteria ensuring the adequacy of the minimum wage should be defined in accordance with national practices in relevant legislation, decisions of the authorities or tripartite agreements. During the work in the Council, the expectations were voiced that Article 6 on the differentiation of rates and deductions should be deleted in its entirety. In the government’s view, Article 10 of the Draft (monitoring) has no value and only constitutes an unnecessary bureaucratic burden. Already at this stage of work, it suggests that the period for implementation of the directive should be longer than two years. As can be seen, the list of objections to the Draft is very long.

The position of the Polish government regarding the European minimum wage is a visible example of a broader phenomenon of scepticism towards EU social policy as such. The ruling camp strongly emphasises that social issues should remain the dominant responsibility of Member States. This can be seen in both political statements and actions (for example, delaying the implementation of directives which encompass a social aspect or persistent emphasis on the non-binding character of the European Pillar of Social Rights). For instance, the government had objections to Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, pointing out that its regulations violate the right of Member States to pursue independent social policy. As stressed by the Ministry of Foreign Affairs, the compromise text of the aforementioned directive was discussed at the COREPER I meeting on 6 February 2019. During the meeting, Poland abstained from voting. The Polish representative informed about doubts concerning the proposed solutions, in particular with regard to parental and care leave, pointing to excessive interference with the existing systems of Member States. He also recalled that the Polish Sejm had questioned the compliance of the proposed solutions with the principle of subsidiarity, issuing a reasoned opinion in this regard. Another example that can be mentioned here concerned the proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation. Poland maintains its position adopted on 8 July 2016 by the Committee for European Affairs with regard to the draft Directive.

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According to the adopted position, the government of Poland does not support the European Commission's proposal of 4 July 2008 for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation. The position of the government on the draft Directive raised, *inter alia*, doubts as to whether the draft Directive complies with the principle of subsidiarity. It was also argued that the draft Directive may lead to excessive interference with enterprise operations and restriction of the principle of freedom to conduct business activity and the principle of freedom of contract, and thus breach the constitutional principle of equality before the law (Article 32(1) of the Polish Constitution).

Referring to more recent examples, the resolution of the European Parliament on housing policy could be mentioned. In January 2021, the European Parliament called on EU states to take action to solve the housing crisis in order to ensure universal access to decent and affordable housing. It is worth examining the statement of the MEP representing Law and Justice (N.B. former minister for labour). "Universal access to housing is undoubtedly a priority," Beata Szydło said during the discussion on the resolution. She admitted that she agreed with almost all its points and added: "however, I do not agree with the part of the report where it tries to impose further standards, further regulations and encroach on the competences of Member States. We should support Member States in financing good projects, but not impose further regulations." The most recent adoption of the National Recovery Plan (NRP) itself involved a split in the movement, as MPs of the Solidary Poland party do not accept the idea to tie the access to EU funds to any supervision with regard to the rule of law in Poland. Eventually, the NRP was adopted in the Sejm (first chamber of the Polish parliament) with the help of votes from the Left, among others. From the point of view of this paper, it should be emphasised that the basic macroeconomic reforms were presented by the government separately from the NRP as part of the so-called Polish Deal (Polski Ład) in order to symbolically emphasise its independence from the European Commission.

The position of the Polish authorities can be also perceived as an element of a political and PR strategy. The government wants to be perceived as the primary and almost exclusive actor in the creation of social policy. Its flagship projects (e.g. 500+, i.e. a benefit of PLN 500 for each child regardless of the income criterion, and the so-called 13<sup>th</sup> pension, i.e. a benefit equal to the minimum pension received by every pensioner) are often assessed, due to their universal character, as political projects – addressed to the general public – rather than social projects addressed to, for example, more vulnerable social groups. The government clearly wishes to retain its agency: it should be strongly emphasised that in recent years, it has proposed to the Social Dialogue Council an increase in the minimum wage that is higher than the statutory requirements. The government evidently does not want the increase of the minimum wage to be perceived as resulting from some binding obligations for Poland. At the same time, it very often omits in its rhetorical message the role of social partners in influencing the process of setting the minimum wage (for example, when presenting the plans for minimum wage levels in the coming years in the election campaign).

More complex is the question of the lack of support for the idea to develop collective bargaining. If any other political force which has governed in Poland since 1989 was in power today, the reaction would probably be similar. This seems to be due to the fact that Poland

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managed to achieve a certain economic progress after 1989 despite increasing chaos on the labour market (e.g. enormous scale of abuse in the use of civil-law contracts instead of employment relationship) and collective relations (the lack of multi-company collective agreements, decreasing coverage by collective agreements). The functioning of the labour market has been based on the belief that low costs of employment are crucial for the country's comparative advantage. Presumably, there is no political force that would perceive collective bargaining as a factor improving the functioning of the labour market and fostering economic growth. Collective bargaining is rather perceived as a mechanism for realising the very particular interests of relatively narrow groups of workers (for example, miners).

The issue of the scepticism of the Polish government towards the active work of the European Commission in the area of social policy is raised in the Polish media debate. Nevertheless, it is undoubtedly overshadowed by the discussion on the dispute between the Polish government and the European Commission (and, to a certain extent, the Council of Europe) in the area of the rule of law and the independence of the courts and tribunals.<sup>24</sup>

The social partners were consulted on the Draft Directive (in accordance with Polish regulations contained in the Trade Union Act and the Employers' Organisations Act). The opinion of employers' organisations is negative, while all representative trade unions welcomed the project with enthusiasm. Previously, they actively participated in the debate within the ETUC regarding the response to the proposal prepared by the Commission.<sup>25</sup> NSZZ "Solidarność" considers the Draft as an important step towards the implementation of the principles of the European Pillar of Social Rights relating to fair working conditions, including the introduction of a fair minimum wage and the promotion of effective collective bargaining.

Unfortunately, there has been no in-depth discussion on this issue. Neither was the matter thoroughly debated in the Social Dialogue Council. A very problematic issue for trade unions is the lack of any feedback from the government on the views and expectations they present to the Social Dialogue Council. It seems that this Draft, due to its importance, has revealed the problem of poor communication flow between the government and social partners in terms of the activities undertaken in the Council, which was already visible before (for example during the works on changes to the social insurance coordination process or works related to the modifications of regulations concerning posted workers or in the scope of the Mobility Package). The government does not respond to requests indicating the need for this information. The social partners are left only with informal leaks from the Council meetings.

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<sup>24</sup> Poland is not the only country sceptical about the Draft. Several other countries are also strongly sceptical (and their motivations vary). Undoubtedly, apart from Poland, the group of strongly sceptical countries includes Hungary, Austria, Sweden and Malta. For example, Poland, Hungary, Denmark, Malta and Estonia expect a second legal expertise: the first one would concern EU competences, the second one would assess the Draft in the light of the subsidiarity and proportionality principles. It is also important to be mindful of the wider context of the resistance of the Scandinavian trade unions (with the exception of Finland) and, of course, the very strong opposition of EU employers' organisations.

<sup>25</sup> The differences in views between trade unions from various countries and the strong opposition of the Nordic unions have been already discussed in the literature; hence, it can be omitted here. Adamczyk S., *Inside the trade union family: the "two words" within the European Trade Union Confederation*, in *European Journal of Industrial Relations*, 24, 2, 2018, 179-192; Seeliger M., *Why do (Some) European Trade Unions Reject Minimum Wage Regulation*, in *Culture, Practice & Europeanization*, 3, 1, 2018, 37-46; Furåker B., Larsson B., *Trade Union Cooperation in Europe. Patterns, Conditions, Issues*, Palgrave Macmillan, London, 2020.

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## 7. Conclusions.

The adoption and implementation of the future directive would require changes in Polish law. First of all, the mechanism of setting the SMW, especially the reference criteria, would have to be amended. The unification of these criteria across the European Union could become one of the factors contributing also to the unification of wages. From the Polish perspective, the directive can also be seen as an impulse to revive social dialogue, which is undergoing a deep crisis. However, taking into account the current condition of social partners, the attitude of the authorities and other political forces, one should not expect too much. The necessary amendments include, inter alia, the establishment of an advisory body. Due to the complexity of the regulations, it is difficult to clearly assess whether any modifications will be needed as regards the protection of minimum wages (e.g., deductions from the SMW and its enforcement). Although the directive could be a chance to improve working and living conditions in Poland, there is no enthusiasm about the Draft. The approach of the Polish government towards the project is sceptical. The government raises doubts about the EU's treaty competences to issue the directive and accuses it of a breach of the subsidiarity principle. Paradoxically, the government is also very sceptical about the need and possibility to increase the scale of collective bargaining in Poland. The position of the Polish government regarding the European minimum wage can be seen in a broader perspective of deep scepticism about the need to take action in the sphere of broadly understood social policy at the EU level. It is also difficult to change the paradigm of labour relations that has been built up over the past 30 years. Not surprisingly, the approach of the social partners is varied: rather negative in the case of employers and positive as far as trade unions are concerned. Nonetheless, it would be unrealistic to expect widespread support for the proposed solutions.

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