# Logo of the European Disability Forum

# Amendments to the Commission’s proposal for a Directive on adequate minimum wages in the European Union

**I. The prohibition of exceptions to the minimum wage frameworks based on disability (Article 6 on exceptions)**

Although it is understandable that national frameworks to guarantee a minimum wage must include certain types of exceptions, these cannot be justified exclusively on the basis of age, gender, ethnic origin (…) or disability.

**II. Application to sheltered employment (new recital 12a):**

To avoid situations of discrimination based on disability or the development of sheltered employment that does not guarantee a minimum wages, it must be ensured that sheltered employment facilities are governed by the agreements, standards or laws in force in the sector which they operate in.

**III. Participation in the social dialogue of organizations representing vulnerable groups with reduced capacity for collective bargaining (Article 4 on promoting collective bargaining)**

Where relevant, Member States should consult representative organizations of the most vulnerable social groups or those with little capacity for collective bargaining, such as persons with disabilities.

**IV. Prevention of unintended consequences on disability entitlements (Article 5 on adequacy)**

For some groups of workers, such as workers with disabilities, access to a minimum wage may not be sufficient to guarantee decent living and working conditions. Therefore, access to a minimum wage framework should not be at the expense of access to any type of state aid or support measure (ENTITLEMENT) that help meet the challenges faced by people with disabilities.

**V. Accessibility of information on employment status (Article 8)**

All information on the state of employment, the minimum wage frameworks applicable to each agreement and on collective bargaining must be accessible to people with disabilities.

Amendment 1

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| (17) This Directive should apply to workers who have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State, with consideration to the criteria established by the Court of Justice of the European Union for determining the status of a worker. Provided that they fulfil those criteria, domestic workers, on-demand workers, intermittent workers, voucher based-workers, bogus self-employed, platform workers, trainees and apprentices could fall within the scope of this Directive. Genuinely self-employed persons do not fall within the scope of this Directive since they do not fulfil those criteria. The abuse of the status of self-employed persons, as defined in national law, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work. Bogus self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations. Such persons should fall within the scope of this Directive. The determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of the work and not by the parties' description of the relationship. | (17) This Directive should apply to workers who have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State, with consideration to the criteria established by the Court of Justice of the European Union for determining the status of a worker. Provided that they fulfil those criteria, domestic workers, on-demand workers, intermittent workers, voucher based-workers, bogus self-employed, platform workers, ***workers in sheltered employment,*** trainees and apprentices could fall within the scope of this Directive. Genuinely self-employed persons do not fall within the scope of this Directive since they do not fulfil those criteria. The abuse of the status of self-employed persons, as defined in national law, either at national level or in cross-border situations, is a form of falsely declared work that is frequently associated with undeclared work. Bogus self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations. Such persons should fall within the scope of this Directive. The determination of the existence of an employment relationship should be guided by the facts relating to the actual performance of the work and not by the parties' description of the relationship. |
| The European Disability Strategy 2021-2030 recognises that *sheltered employment facilities* are diverse and not all ensure adequate working conditions or labour-related rights for persons with disabilities, nor pathways to the open labour market.  In order to ensure that these employment facilities guarantee adequate working conditions and do not result in furthering situation of discrimination, Member States should promote the application of statutory minimum salaries or collective agreements to all sheltered employment facilities.  Furthermore, sheltered workshops which do not constitute employment, as they are occupational centers focused on treatment, training and/or occupational therapy, fall outside the scope of this Directive and of the field of employment. | |

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| Article 4 Promotion of collective bargaining on wage setting  1. With the aim to increase the collective bargaining coverage Member States shall take, in consultation with the social partners, at least the following measures:  (a) promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage setting at sector or cross-industry level;  (b) encourage constructive, meaningful and informed negotiations on wages among social partners;  2. Member States where collective bargaining coverage is less than 70% of the workers defined within the meaning of Article 2 shall in addition provide for a framework of enabling conditions for collective bargaining, either by law after consultation of the social partners or by agreement with them, and shall establish an action plan to promote collective bargaining. The action plan shall be made public and shall be notified to the European Commission. | Article 4 Promotion of collective bargaining on wage setting  1. With the aim to increase the collective bargaining coverage Member States shall take, in consultation with the social partners, at least the following measures:  (a) promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage setting at sector or cross-industry level;  (b) encourage constructive, meaningful and informed negotiations on wages among social partners;  2. Member States where collective bargaining coverage is less than 70% of the workers defined within the meaning of Article 2 shall in addition provide for a framework of enabling conditions for collective bargaining, either by law after consultation of the social partners or by agreement with them, and shall establish an action plan to promote collective bargaining. The action plan shall be made public and shall be notified to the European Commission.  ***Where appropriate, Member States should consult organisations representing the rights of specific groups workers with limited bargaining power, such as workers with disabilities.*** |
| The participation of civil society organisations in the Social Dialogue has proven to be an enriching practice when it comes to representing workers or groups of workers that might not have strong negotiating power, or who do not enjoy of dedicated union representation.  The participation of these organisations in some stages of the Social Dialogue could also help address the specific needs of these workers or groups of workers. For example, workers with disabilities might represent specific needs in terms of adequacy of wages, or in terms of coexistence of minimum wage frameworks with other types of entitlements or public support. | |

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| Article 5 Adequacy  1. Member States with statutory minimum wages shall take the necessary measures 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. Member States shall define those criteria in accordance with their national practices, either in relevant national legislation, in decisions of the competent bodies or in tripartite agreements. The criteria shall be defined in a stable and clear way.  2. The national criteria referred to in paragraph 1 shall include at least the following elements:  (a) the purchasing power of statutory minimum wages, taking into account the cost of living and the contribution of taxes and social benefits;  (b) the general level of gross wages and their distribution;  (c) the growth rate of gross wages;  (d) labour productivity developments.  3. 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.  4. Member States shall take the necessary measures to ensure the regular and timely updates of statutory minimum wages in order to preserve their adequacy.  5. Member States shall establish consultative bodies to advise the competent authorities on issues related to statutory minimum wages. | Article 5 Adequacy  1. Member States with statutory minimum wages shall take the necessary measures 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. Member States shall define those criteria in accordance with their national practices, either in relevant national legislation, in decisions of the competent bodies or in tripartite agreements. The criteria shall be defined in a stable and clear way.  2. The national criteria referred to in paragraph 1 shall include at least the following elements:  (a) the purchasing power of statutory minimum wages, taking into account the cost of living and the contribution of taxes and social benefits;  (b) the general level of gross wages and their distribution;  (c) the growth rate of gross wages;  (d) labour productivity developments.  3. 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.  4. Member States shall take the necessary measures to ensure the regular and timely updates of statutory minimum wages in order to preserve their adequacy.  ***4 bis. Updates of statutory minimum wages must be without prejudice to any other***  ***income support mechanisms, such as State Aid for disadvantaged workers and for workers with disabilities as defined in Regulation No 651/2014 or disability entitlements***  5. Member States shall establish consultative bodies to advise the competent authorities on issues related to statutory minimum wages. |
| Minimum wage refers to the minimum amount of remuneration that an employer is required to pay an employee in relation to the work they do. Minimum income, on the other hand, refers to the minimum amount of money a person should be receiving to live, regardless of whether or not this comes from paid work or from social protection schemes.  However, any EU measures establishing common standard on minimum wage and income need to make a very clear distinction between what is adequate for persons without a disability, and what it means to be adequate for persons with disabilities. Numerous studies have shown that the cost of living for persons with disabilities, just to make ends meet, is far higher than for persons without disabilities (See page 23 of [EDF 4th Human Rights Report (pdf)](https://mcusercontent.com/865a5bbea1086c57a41cc876d/files/ad60807b-a923-4a7e-ac84-559c4a5212a8/EDF_HR_Report_final_tagged_interactive_v2_accessible.pdf)). The additional costs of living in an inaccessible society is one of the reasons why an estimated 30 million persons with disabilities live in poverty in the EU. In fact, Eurostat figures suggest that persons with disabilities are around 10 percentage points more likely to be poor than persons without disabilities (EU SILC, 2018).  EU figures also show that persons with disabilities who are employed are more likely than persons without disabilities to face in-work poverty. In the EU 11% of persons with disabilities in employment are still living below the poverty line (EU SILC, 2018). Managing to get by on a typical work salary while covering so many disability-related costs is simply not feasible for many.  Furthermore, the EU acquis also acknowledges the additional costs that the employment of persons with disabilities might entail and sets mechanisms to make sure that these costs do not pose a threat to the inclusion of persons with disabilities in the labour market. As an example, State Aid for wage subsidies or for compensating the additional costs of employing workers with disabilities is recognized as being fully compatible with the functioning of the internal market by Regulation No 651/2014 (the General Block Exemption Regulation).  This point is further supported by Principle 17 of the European Pillar of Social Rights, which streses that “*people with disabilities have the right to income support that ensures living in dignity, services that enable them to participate in the labour market and in society, and a work environment adapted to their needs”.*  In order to ensure that minimum wage frameworks contribute to improving the working and living conditions of all citizens in the union, minimum wage frameworks must be fully compatible and cannot come at the detriment of other support schemes aimed at addressing the specific needs of persons with disabilities, such as State Aid or other entitlements. | |

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| Article 6  Variations and deductions  1. Member States may allow different rates of statutory minimum wage for specific groups of workers. Member States shall keep these variations to a minimum, and ensure that any variation is non-discriminatory, proportionate, limited in time if relevant, and objectively and reasonably justified by a legitimate aim.  2. Member States may allow deductions by law that reduce the remuneration paid to workers to a level below that of the statutory minimum wage. Member States shall ensure that these deductions from statutory minimum wages are necessary, objectively justified and proportionate. | Article 6  Variations and deductions  1. Member States may allow different rates of statutory minimum wage for specific groups of workers. Member States shall keep these variations to a minimum, and ensure that any variation is non-discriminatory, proportionate, limited in time if relevant, and objectively and reasonably justified by a legitimate aim.  2. Member States may allow deductions by law that reduce the remuneration paid to workers to a level below that of the statutory minimum wage. Member States shall ensure that these deductions from statutory minimum wages are necessary, objectively justified and proportionate.  ***3. Member States shall not allow different rates of statutory minimum wages or deductions by law reducing remuneration paid to workers to a level below that of the statutory minimum wage solely on the basis of sex, racial or ethnic origin, religion or belief, disability or sexual orientation.***  ***Sheltered employment, as defined in Regulation No 651/2014, should be subject to statutory minimum wages or sectoral collective agreements, where available.*** |
| European legislation strictly prohibits any discrimination on the grounds of religion or belief, disability, age, or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment (Article 1 of 2000/78/EC).  While sufficient flexibility should be granted to Member States when setting differentiated rates or allowing for deductions reducing remuneration to a level below statutory minimums, these exemptions should be justified and should not lead to the worsening of any risks of discrimination. It is in this vein that EU Anti-discrimination legislation already foresees some grounds for differentiated treatments, as it is the case for the differences of treatment at work on grounds of age in duly justified cases (Article 6 of the Anti-discrimination Directive).  In the case of workers with disabilities, the UN Convention on the Right of Persons with Disabilities (to which the EU and all its Member States are signatories) recognises the right of persons with disabilities to work, on an equal basis with others, prohibiting discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions.  At the same time, the European Disability Strategy 2021-2030 recognises that *sheltered employment* are diverse and not all ensure adequate working conditions or labour-related rights for persons with disabilities, nor pathways to the open labour market. In order to ensure that these employment facilities guarantee adequate working conditions and do not result in furthering situation of discrimination, Member States should promote the application of statutory minimum salaries or collective agreements to all sheltered employment facilities. | |

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| Article 8 Effective access of workers to statutory minimum wages  Member States shall, in cooperation with social partners, take the following measures to enhance the access of workers to statutory minimum wage protection as appropriate:  (1) strengthen the controls and field inspections conducted by labour inspectorates or the bodies responsible for the enforcement of statutory minimum wages. The controls and inspections shall be proportionate and non-discriminatory;  (2) develop guidance for enforcement authorities to proactively target and pursue non-compliant businesses;  (3) ensure that information on statutory minimum wages is made publicly available in a clear, comprehensive and easily accessible way. | Article 8 Effective access of workers to statutory minimum wages  Member States shall, in cooperation with social partners, take the following measures to enhance the access of workers to statutory minimum wage protection as appropriate:  (1) strengthen the controls and field inspections conducted by labour inspectorates or the bodies responsible for the enforcement of statutory minimum wages. The controls and inspections shall be proportionate and non-discriminatory;  (2) develop guidance for enforcement authorities to proactively target and pursue non-compliant businesses;  (3) ensure that information on statutory minimum wages is made publicly available in a clear, comprehensive and easily accessible, including ***accessibility for workers with disabilities***. |
| In order to fully benefit from the frameworks in place, all workers need to have a guaranteed and full access to all the relevant information. | |