

## **Opening Statement to Joint Oireachtas Committee on Enterprise Trade and Employment regarding the regulatory and legislative changes required for transposition of the Adequate Minimum Wages Directive**

Ibec welcomes the invite by the Joint Oireachtas Committee to discuss the regulatory and legislative changes required for transposition of the Adequate Minimum Wage Directive (the “Directive”). The Directive must be transposed into Irish law by 15 November 2024.

In summary, it is Ibec’s view that there is little, if any, legislative changes required for the transposition of the Directive.

There are three main aspects of the Directive:

- a. Provisions around promoting collective bargaining on wage-setting
- b. Provisions around the setting of minimum wage to ensure its adequacy
- c. Provisions around enforcement and monitoring of minimum wage to ensure effective access

We will address each of these aspects in turn.

However, it is first important to note that the Directive is without prejudice both to the full autonomy of the social partners and to the competence of Member States in setting the level of minimum wages. Therefore, the Directive does not set or guide Member States towards any particular rate of minimum wage.

### **Promoting collective bargaining on wage-setting (Article 4)**

Article 4(1) provides that Member States must promote collective bargaining by strengthening the capacity of the social partners, encouraging meaningful negotiations on wages, protecting the right to collectively bargain and

protecting trade unions and employer organisations against interference by each other.

Ibec is satisfied that no legislative changes are required to transpose Article 4(1) due to the comprehensive suite of industrial relations legislation which already exists in Irish law.

However, Ibec is of the view that non-legislative action could be taken to further build and promote the strengthening of the capacity of the social partners to engage in collective bargaining. In this regard, we note that the LEEF High Level Working Group on Collective Bargaining recommended that funds be made available from the National Training Fund to both employers and trade unions for training/upskilling in collective bargaining.

In addition, at Article 4(2), the Directive provides that each Member State in which the collective bargaining coverage rate is less than 80% shall provide for a framework of enabling conditions for collective bargaining and establish an action plan to promote collective bargaining.

It is crucial to note that Article 4 does not set a target for collective bargaining coverage in Ireland. This is clear from Recital 25 which confirms that *“the threshold of 80% of collective bargaining coverage should only be construed as an indicator triggering the obligation to establish an action plan”*. The Final Report of the European Commission Expert Group on the Transposition of the Directive (the “Commission Report”) further confirmed that the 80% threshold is not a mandatory target to be reached. The Directive, therefore, imposes an obligation of effort, not of result.

While it is clear that Ireland will be obliged to provide for a framework and establish an action plan to promote collective bargaining, legislative change is not required for this aspect of the Directive to be transposed into Irish law.

In the first instance, transposition of the Directive does not require the action plan to be established by November 2024. In this regard, the Commission Report noted that the Directive does not set a specific deadline for the adoption of the action plan but indicated that Member States would be expected to establish them by end 2025 at the latest.

The Commission Report confirms that the design of the framework is entirely up to Member States. It further clarified that the action plan may be adopted by way of consulting with social partners, reaching an agreement with them or between the social partners following their joint request.

It is Ibec's view that it would be more appropriate, and likely more effective, for such framework and action plan to be established by way of agreement with the social partners or between the social partners themselves. While the action plan itself may result in legislative changes to our industrial relations legislation, in our view, neither the framework nor the action plan in of themselves need to have their basis in legislation.

Ibec believes that Ireland is in a strong position with respect to preparation of the framework and action plan having done a significant amount of work already by way of the LEEEF High Level Working Group on Collective Bargaining. Ibec notes that work is ongoing at LEEF to consider the recommendations made by this group and we believe that this work will be central to the development of Ireland's action plan to promote collective bargaining.

**a. Setting of minimum wage to ensure its adequacy with the aim of achieving decent living and working conditions (Articles 5-7)**

The Directive requires Member States with statutory minimum wages, like Ireland, to put in place clear and stable criteria for minimum wage setting.

It is Ibec's view that Ireland's current minimum wage setting framework is already largely in compliance with the provisions of the Directive.

Member States are given discretion as to how to define the criteria used to set minimum wages but they must include at least the following elements:

1. The purchasing power of statutory minimum wages taking into account the cost of living
2. The general level of wages and their distribution
3. The growth rate of wages
4. Long-term national productivity levels and developments

Ireland's statutory minimum wage is governed by the National Minimum Wage Act 2000, as amended (the "2000 Act"). The Low Pay Commission (the "LPC") is the consultative body tasked with making recommendations to the Minister regarding a national minimum hourly rate of pay that:

1. Is designed to assist as many low paid workers as is reasonably practicable
2. Is set at a rate that is both fair and sustainable
3. Where adjustment is appropriate, is adjusted incrementally
4. Over time, is progressively increased

In carrying out its functions, the LPC, each year, examines the national minimum hourly rate of pay and makes a recommendation to the Minister. This recommendation must have regard to various factors including changes in

earnings, income distribution, the level of unemployment and productivity, the need for job creation and the likely effect that any proposed order will have on levels of employment, the cost of living and national competitiveness. Every such recommendation is accompanied by a detailed report.

Ibec submits that this framework is in line with the Directive in providing clear and stable criteria for minimum wage setting. The criteria used by the LPC is set by law and although not using the exact language of the Directive, takes into account the factors referenced.

The Directive provides that Member States must use indicative values to guide their assessment of adequacy of statutory minimum wages. It further enables, but does not compel, Member States to use indicative values such as 60% of the gross median wage and/or 50% of the gross average wage. The Commission Report confirms that there is no obligation to reach indicative reference values, but that Member States should undertake efforts to do so.

This proposed use of indicators and reference values is not currently specifically provided for under the 2000 Act. However, Ibec notes the Government decision in November 2022 that the minimum wage is to move to a living wage to be set at 60% of hourly median wages by January 2026. Since this decision, the LPC has considered indicators and reference values in making its recommendations.

Ibec, therefore, submits that even this provision within the Directive, albeit not provided for in the 2000 Act is, in fact, a relevant feature of the LPC's assessment of the adequacy of the statutory minimum wage.

The Directive provides that Member States shall take the necessary measures to involve the social partners in the setting and updating of statutory minimum wages.

Recital 26 indicates that social partners should be permitted to provide opinions, and to receive a reasoned response before any decisions are taken on wage-setting.

The social partners are not provided with automatic nomination to the LPC, although there are representatives of employers and employees on the LPC. However, we are provided with opportunities to ensure that our views are considered by the LPC by way of regular submissions to the LPC during their decision-making process.

The 2000 Act provides that when preparing a report on the updating of the NMW, the LPC shall consult with such persons, including representatives of employers and employees, as it thinks appropriate. The Minister might consider strengthening this provision to remove the LPC's discretion in this regard and to ensure that the LPC must consult with, have regard to and respond to the views of the social partners when making a report to the Minister.

Alternatively, as Article 7 does not require social partner involvement to be provided for in statute, the Terms of Reference for the LPC could formalise its existing practice by explicitly providing that it must consult with the social partners when making a report to the Minister in the manner envisaged in Recital 26.

**b. Provisions around enforcement and monitoring of minimum wage to ensure effective access**

Article 8 requires that Member States must provide for effective, proportionate and non-discriminatory inspections, and develop the capability of enforcement authorities to ensure effective access of workers to statutory minimum wage protection.

The WRC Inspectorate has extensive powers to inspect employers' compliance with national minimum wage legislation.

The 2000 Act and the Workplace Relations Act 2015 also provide effective and dissuasive sanctions including criminal prosecution, in addition to providing employees recourse through the WRC. It is Ibec's view that our national legislation meets the requirements of the Directive and that no further legislation will be required to transpose Article 8.

## **Conclusion**

In conclusion, Ibec's view is that little, if any, legislative change will be required to transpose the Directive by November 2024.