

Directive – 2022/2041

Information Note from the Department

1. Directive Title

Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union

2. Transposition Deadline

15/11/2024

3. Anticipated Transposition date

15/11/2024

4. COM number of original Commission proposal

COM/2020/682

5. Department with primary responsibility

Department of Enterprise, Trade and Employment

6. Other Departments involved

None.

7. Background to, short summary and aim of the directive

The EU Directive on Adequate Minimum Wages seeks to reduce working poverty and inequality by improving the adequacy of statutory minimum wages, promoting collective bargaining and improving the enforcement and monitoring of the minimum wage protection established in each Member State.

8. Legal basis of the Directive

The proposed Directive is based on Article 153(1) (b) of Treaty on the Functioning of the European Union (TFEU), which prescribes the Union to support and complement the activities of Member States in the field of working conditions, within the boundaries of the principles of subsidiarity and proportionality (Article 5(3) and 5(4) TEU). Since it does not contain measures directly affecting the level of pay, it fully respects the limits imposed to Union action by Article 153(5) TFEU.

Article 153(2) TFEU allows setting minimum requirements by the means of directives, while avoiding imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

9. Category of Directive

New Directive of some significance.

10. Implications for Ireland (including details of regulatory impact assessments carried out in Ireland, if required)

The Directive comprises two main elements, minimum wage setting and collective bargaining.

Minimum Wage setting: To ensure minimum wages are set at adequate levels, the

Directive requires countries with statutory minimum wages to put in place clear and stable criteria for minimum wage setting, indicative reference values to guide the assessment of adequacy and regular and timely updates of minimum wages. Analysis of the directive suggests that our current minimum wage setting framework, namely the Low Pay Commission, is largely already in compliance with the provisions of the Directive.

Collective bargaining requirements: in order to increase collective bargaining coverage, the Directive requires Member States to 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.

11. Impact on the public

Transposition of the Directive would result in the creation of an action plan setting out how the collective bargaining coverage rate can be increased. Ireland's current wage setting frameworks are largely in line with the minimum wage aspects of the Directive, with the Directive's requirement to use indicative reference values when considering the adequacy of minimum wages already being considered in the context of the recent Government decision to move to a living wage set at a percentage of median wages.

12. Estimated cost to the Exchequer

There is no anticipated cost to the Exchequer.

13. Consequences and possible costs, arising from non-transposition

The non-transposition of this Directive by the deadline of 15 November 2024 may result in financial sanctions which will be calculated according to the formula outlines in the information from the Commission in the Official Journal of the European Commission - Modification of the calculation method for lump sum payments and daily penalty payments proposed by the Commission in infringements proceedings before the Court of Justice of the European Union (2019/C 70/01).

14. Have consultations taken place with stakeholders or are there any plans to do so?

The Department of Enterprise, Trade and Employment ran a public consultation on the proposal for an EU Directive on Adequate Minimum Wages in March 2021.

This consultation received 11 submissions from a range of unions and representative groups, as well as one individual submission.

The Directive is regularly discussed with stakeholders at meetings of the Labour and Employer Economic Forum (LEEF) Subgroup on Employment and Enterprise.

15. Are there areas of the Directive where Member States have discretion on implementation?

This Directive imposes an obligation of effort, not of result, on Member States where collective bargaining coverage rate is below 80% to create a framework and develop an action plan for how the collective bargaining coverage rate can be increased. The framework itself can differ according to each Member States own requirement and what is likely to result in the most effective plan for each Member State as long as it is consistent with the aims of the Directive.

The Directive requires the use of indicative reference values to guide the assessment of adequacy of minimum wages. This requirement is being considered in the context of the recent Government decision to move to a living wage, set a % of median wages.

16. Does Ireland intend to seek any derogations from the provisions of the Directive?

No.

17. Offences or penalties (if any) to be created by the transposition of the Directive

This Directive sets out that Member States shall lay down the rules on penalties applicable to infringements of national provisions. The penalties provided for shall be effective, proportionate and dissuasive.

18. Competent authorities or market surveillance authorities (if any) to be designated by the transposition of the Directive

None.

19. Consequences for national legislation?

Ireland is represented at an expert group on the transposition of the Directive, established by the European Commission. The group will conclude its work with a final report in November 2023. This report will guide the Department on how to correctly implement the provisions of the Directive in an Irish context.

Ireland is already largely in compliance with the minimum wage requirements of this Directive, with advice on legislative changes necessitated by the requirement for the use of indicative reference values to guide the assessment of adequacy of minimum wages currently being considered.

20. Are there any parts of the Directive which are planned to be transposed by primary legislation, and if so, which parts?

It is not currently anticipated that primary legislation will be required to transpose the directive. Legal advice, and the report of the aforementioned expert group on the transposition of the Directive, will further guide the Department's consideration of transposition options.

21. When is it anticipated that the draft statutory instrument(s) transposing this Directive will be available?

Currently there is no anticipated date available.

22. Contact name, telephone number and e-mail address of official in Department with primary responsibility

Date September 2023