



# GMS Flash Alert

## Employment Law

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# European Union - Proposal for a Directive on Adequate Minimum Wage

On 28 October 2020, the European Commission made a proposal for an adoption of a [European Union directive for adequate minimum wages](#).

The actual level of wages is a national competency of each EU member state, but the directive proposes, among other things, elements that national wage levels must contain in order to be “adequate.”

The proposal for an EU directive on adequate minimum wages has been widely criticised because the level of wages and how wages are otherwise set in a country is viewed as an exclusively national competence.

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## WHY THIS MATTERS

Action at the EU level is expected to address large differences in the scope and adequacy of minimum wages in light of underlying economic conditions in a way that is more efficient than any initiative on a national level. The objective of this initiative is for all workers to have a fair minimum wage wherever they work and that this allows for a decent standard of living.

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## Background

In 2017, the EU Parliament, the EU Council, and the EU Commission proclaimed the [European Pillar of Social Rights](#), where Principle 6 of the Pillar on ‘Wages’ calls for adequate minimum wages and for transparent and predictable wage setting. [The Political Guidelines for the EU Commission 2019-2024](#) announced a plan to fully implement the Pillar.

The explanatory memorandum of the proposal for this directive states that low wages have not kept up with other wages in many EU member states. This has resulted in more in-work poverty and wage inequality. Furthermore, in

countries that rely exclusively on collective bargaining, there are still workers who do not have [minimum wage protection](#) (10-20 percent in four countries and 55 percent in one country)<sup>1</sup>.

## Highlights of the Proposed Directive

### Scope

The scope of the directive includes all workers who have an employment contract or an employment relationship as defined by the law, including a collective agreement or practice in each EU member state. The directive applies also to workers in non-standard forms of employment, including domestic workers, on-demand workers, intermittent workers, voucher-based workers, so-called bogus self-employed, platform workers, trainees, and apprentices.

### Collective Bargaining

The proposal supports collective bargaining agreements and the EU member states are required to take necessary steps to engage social partners in collective bargaining on wage setting.

The EU member states that rely on collective bargaining agreements for wage setting must provide a framework for collective bargaining and establish an action plan to promote collective bargaining if at least 70 percent of workers are not covered by collective agreements.

### Statutory Minimum Wages

The EU member states with minimum wages set by law must at least take the following elements into account when setting a statutory minimum wage under the terms of the directive:

- The purchasing power of statutory minimum wages, taking into account the cost of living and the contributions of taxes and social benefits;
- The general level of gross wages and their distribution;
- The growth rate of gross wages;
- Labour productivity developments.

The statutory minimum wages must be protected from unjust deductions. For example, deductions related to equipment necessary to perform a job, deductions of allowances in-kind, such as accommodations, may be unjust.

Furthermore, the EU member states with statutory minimum wages shall establish consultative bodies to advise the competent authorities on issues related to statutory minimum wages.

### Other Highlights

The EU member states shall lay down the rules on penalties applicable to infringements of national provisions. The EU member states shall also report annually with detailed data on minimum wages and the protection of minimum wages in order for the EU to closely monitor the implementation of this directive.

## Next Steps

### Context

The EU Parliament sees the proposal for this directive as important in tackling the negative economic effects of the pandemic in Europe. Access to employment opportunities and adequate minimum wages are essential to supporting a sustainable and inclusive economic recovery.

Adopting an EU directive for adequate minimum wages will also mean that the European Court of Justice would gain jurisdiction to interpret the directive and possibly set a new precedent for national wage levels and how such levels are set.

### In Process

The proposed directive<sup>2</sup> is now with the national governments in the EU member states and the EU Parliament, so it is too early to assert that this directive will receive enough support to be adopted. It is reasonable to assume that the national governments will seek to avoid the adoption of the directive while the EU Parliament is likely to be much more supportive of this proposal.

If and when adopted, the directive will have to be transposed in the national legislation in each EU member state within two years.

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## KPMG NOTE

The proposed directive clearly recommends (and prefers) a promotion of collective bargaining agreements, as the countries that rely on collective agreements tend to have a higher minimum wage and better wage protections.

However, there seems to be a general concern that the directive will open up the possibility that the European Court of Justice can step in to interpret the directive's provisions in respect of minimum wages that can then impact the level of minimum wages in the member states, and that other elements such as the right of association and the right to strike could follow and become therefore subject to EU regulation.

It is too early to state anything definitive about the outcome of the upcoming negotiations on the adoption of this directive, but it is difficult to imagine that the movement towards better working conditions and better minimum wages across Europe will be stymied, even if this directive is not adopted.

It is reasonable to assume that companies that operate outside collective bargaining agreements can expect this to change with time and companies that operate in countries with statutory minimum wages can expect the level of wages to increase.

The EU initiative to set conditions for adequate wage setting so that a more decent standard of living across Europe is the outcome should also be seen in the context of the promotion of equal pay for men and women. The topics of reasonable wages and closing the gender pay gap is expected to continue for a long time at the EU level.

## FOOTNOTES:

1 See page 2 of: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0682&from=EN> .

2 This proposed directive should be seen from a broader perspective and as a part of several initiatives from the EU to share and increase prosperity in Europe in the field of employment. Among those, we can mention the [EU directive on transparent and predictable working conditions](#); see GMS [Flash Alert 2019-111](#) (3 July 2019).

And the [EU directive on posting of workers](#): see GMS [Flash Alert 2020-329](#) (27 July 2020).

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Please join us on 5 November (2:00 p.m. – 3:00 p.m. (EST; UTC -5) for a webcast entitled “Payroll Challenges in the Current Environment: Planning for 2020 Year End Reporting and 2021 Considerations.” Our U.S. Employment Tax professionals will discuss some key aspects of the year-end payroll process – including the specific challenges related to reporting compensation due to legislative changes in 2020, payroll tax credits, and more. You can register for the webcast from the [webcast landing page](#).

## Contact us

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