# Position Paper
## on the European Commission's Proposal for a Directive on adequate Minimum Wages in the EU

*Brussels, 18 January 2021*

**The Confederation of European Security Services (CoESS) welcomes the opportunity of commenting on the European Commission's Proposal for a Directive on adequate Minimum Wages in the EU. As European Sectoral Social Partner for Private Security Services, CoESS has participated in the two previous Social Partner Consultations and objected, like all European employer groups, to any legally binding action on minimum wages at EU-level.**

**CoESS represents a labour-intensive sector, which is actively engaged in Collective Bargaining on minimum wages at national level, and is highly concerned about multiple aspects of the European Commission's proposal due to its binding nature and content:**

- **Article 4 could lead to state intervention in Collective Bargaining coverage and Social Partner autonomy.**
- **Article 5 affects the level of pay and is highly problematic in the light of Article 153 (5) TFEU. It also does not seem to consider the impact of changes in Statutory Minimum Wages on Collective Bargaining.**
- **The Impact Assessment ignores the economic impact of the proposal on labour-intensive sectors such as Private Security Services, especially in times of a historical crisis.**

**CoESS is not only worried about the future autonomy and attractiveness of Collective Bargaining in Europe, but for the private security sector's competitiveness, employment and sustainability, and we hope that European co-legislators will acknowledge these serious concerns.**

## Strong concerns on the chosen legal instrument

**CoESS agrees with the European Commission's objective to support workers' access to adequate minimum wages, and is convinced that Collective Bargaining, anchored in Social Partner autonomy, is the most efficient instrument to achieve this objective. CoESS however believes**

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**that, by definition, a European Directive undermines Collective Bargaining and interferes in Social Partner autonomy.**

Collective Bargaining on wages values the work of employees, enhances attractiveness of our sector, respects the economic and sectoral situation, and reflects possible impacts of minimum wages on employment and economic viability. Most CoESS members are involved in Collective Bargaining at national level[1]. In many countries, wages agreed on by our members are substantially higher than Statutory Minimum Wages and enhance the attractiveness of our sector[2].

In the Social Partner Consultations, the European Commission presented many different policy options that would strengthen Social Partners, improve adequacy of minimum wages, and support enforcement at national level. However, CoESS, like all European employer groups, raised serious concerns and objected to any legally binding action on minimum wages at EU-level. These concerns have materialised in the Commission's proposal: instead of strengthening the role of Social Partners in minimum wage setting, CoESS believes that it could weaken Collective Bargaining.

Its binding nature and content contradict the spirit and essence of Collective Bargaining and create legal uncertainty - namely due to the requirements in Articles 4 and 5, which do not only challenge important provisions set in Article 1, but are highly problematic in the light of Article 153 (5) TFEU.

## Coverage of Collective Bargaining (Article 4)

**Strengthening Collective Bargaining and, with it, Social Partner representativeness, is important, but always under full respect of Social Partner autonomy. CoESS is concerned that Article 4 fails to do that in its current form.**

Article 4.1 requests Member States to take measures that increase Collective Bargaining coverage only in consultation with Social Partners. Article 4.2 further requires that, if coverage of Collective Bargaining is lower than 70% of workers, concerned Member States have to set up a respective regulatory framework ("*either by law after consulting social partners or in agreement with them*").

[1] Eurofound (2019): Representativeness of the European Social Partner Organisations: Private Security Sector. https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef19014en.pdf

[2] For example in Ireland, Germany and Spain, where, according to the European Commission's Impact Assessment, the recommendations in Recital 21 would lead to a substantial increase of Statutory Minimum Wages, which could lead to a reduced attractiveness of Collective Bargaining.

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Both provisions disregard the principle of Social Partner autonomy, which can have severe consequences. For instance, to reach the 70%-mark, Article 4 could, in its current form, encourage Member States to legally extend Collective Agreements on wages to workers and companies that are not enrolled in trade unions or employer groups. Such action would severely impact the attractiveness to engage in Social Dialogue and threaten the representativeness of Social Partners.

CoESS adds that Article 4 could be interpreted in a way that would legitimise a legal intervention in Collective Bargaining also in those Member States where wages are set only by Social Partners, if they would cover less than 70% of workers.

Such inconsistencies with Article 1 create, at least, legal uncertainty and must be corrected: capacity-building should always be done in full agreement with Social Partners and not in a "top-down" approach. In its current form, Article 4 inhibits a natural, sustainable development and organic evolution of the Social Dialogue, and shows why the binding nature of the proposal is problematic. CoESS hopes that European co-legislators will acknowledge these serious concerns.

## Criteria to assess adequacy of Statutory Minimum Wages (Article 5.2)

**Article 5.2 obliges Member States to use a set of pre-defined criteria to assess the adequacy of Statutory Minimum Wages. These criteria do not sufficiently consider important aspects, such as the impact of the level of minimum wages on "employment" and "competitiveness". Due to their binding nature, CoESS also believes that mandatory criteria are an intervention in the area of pay and highly problematic in the light of Article 153 (5) TFEU.**

CoESS therefore reiterates its recommendations provided in the Social Partner Consultations:

1. In the light of Article 153 (5) TFEU, criteria set at EU-level must remain non-binding and non-prescriptive.
2. Criteria must reflect important aspects such as "employment", "competitiveness" and negative outputs like a potential rise of undeclared work and unfair competition[3].

[3] CoESS recommends, for example, criteria that are used by the Irish Low Pay Commission, which is set up under legislation and considers for the setting of Statutory Minimum Wages criteria such as (1) the increase in employment/unemployment during a reference period; (2) the need for job creation; (3) the likely effect that any proposed order will have on (i) levels of employment and unemployment, (ii) the cost of living, and (iii) national competitiveness. Also, CoESS recommends that the impact of a raise in Statutory Minimum Wages on outsourcing and sub-contracting jobs to other jurisdictions that are subject to exemptions and variations from Statutory Minimum Wages, as well as on a potential rise in undeclared work, should be considered.

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## The level of Statutory Minimum Wages (Recital 21 & Article 5.3)

**Although the European Commission claims that its proposal does not introduce an EU level of pay, Article 5.3 requests that Member States shall use indicative reference values that are "*commonly used at international level*" to assess the adequacy of Statutory Minimum Wages. Recital 21 includes a recommendation to Member States on which indicators to use, namely "*60% of the gross median wage and 50% of the gross average wage*". CoESS is concerned about Recital 21 and Article 5.3, as they include a recommendation for an EU level of pay, which is highly problematic in light of TFEU Article 153 (5), and do not consider the impact of Statutory Minimum Wages on Collective Bargaining. CoESS therefore calls for a deletion of any recommendation on the level of minimum wages.**

The European Commission's Impact Assessment shows that the reference values recommended in Recital 21 would lead to a substantial raise of Statutory Minimum Wages in almost all EU Member States – including in countries where wages are already generally high, which could increase the absolute difference of pay among Member States. The Commission thereby does not consider that this will also close the gap between Statutory Minimum Wages and wages agreed on in Collective Bargaining, which could lead to pressure to also raise the latter and reduce the attractiveness of the Social Dialogue.

As a consequence, wage bargaining may not only become more confrontational. Especially in the midst of an unprecedented economic crisis which, in most EU countries, will continue to have very severe consequences for businesses in the upcoming years, employers often do not have room to raise wages. CoESS fears two different scenarios, which would both have severe consequences in labour-intensive sectors like Private Security Services with low profit margins and chronic labour shortage:

1. If Social Partners agree on a raise in wages that is proportionate to the raise in Statutory Minimum Wages as it is recommended in Recital 21 and Article 3, they may put the economic sustainability of the industry at risk and slow down recruitment.
2. If they don't, they may diminish the attractiveness of the sector and Collective Bargaining.

This exercise shows that, when put in practice, the provisions in Recital 21 and Article 5.3 are an inappropriate interference in Collective Bargaining and are not coherent with Article 1. Furthermore, they constitute an EU intervention on pay levels as per TFEU Article 153 (5), raising additional, legitimate, concerns about the legal instrument chosen.

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## Consequences of the Proposal for the European Private Security Services

**CoESS fears that the Commission's proposal may damage the sustainability of the private security sector, which constitutes an essential pillar in the security framework of Member States and was recognised during the pandemic as a critical occupation[4]. In the long term, it could undermine important reforms, which have been recommended by Social Partners in an EU-funded study on "Anticipating Employment Change in the Private Security Sector"[5] - such as strengthening Collective Bargaining, enhancing attractiveness of the sector, and investing in up- and re-skilling.**

The European Commission's Impact Assessment hardens this concern as it hardly considers consequences of the proposal in labour-intensive sectors like Private Security Services - underlining that the "one-size-fits-all" approach and legal instrument chosen by the European Commission are unsuitable. The document admits that, "*by contributing to higher minimum wages, the economic effects of all packages include increased labour costs for firms, increased prices and, to a lesser extent, lower profits*". CoESS strongly disagrees with the further analysis that "*about ¾ of the economic cost of higher minimum wages is borne by consumers, while about ¼ is borne by firms*".

This assessment is by no means applicable to the economic realities in the private security sector, where increased labour costs will have to be largely borne by companies. Since years, the Sectoral Social Partners experience that buyers focus on the lowest price when procuring security services. This comes at the detriment of working conditions, public security, and the sustainability of a sector where profit margins are low and competitiveness high. In this economic environment, companies will not be able to simply pass on increased labour costs to the buyer as suggested by the Impact Assessment. CoESS expects the opposite: to avoid rising costs, buyers may opt for undeclared work or sub-contracting to suppliers that undergo social standards. At the same time, it is possible that many companies may not be able to invest in the much needed up- and re-skilling of workers due to reduced profit margins. The sector may lose attractiveness, although it chronically suffers from labour shortage. This outlook is ever more frightening in the context of the current, unprecedented economic crisis, which threatens the existence of many private security companies - especially SMEs[6].

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[4] Communication from the European Commission: Guidelines concerning the exercise of the free movement of workers during COVID-19 outbreak (2020/C 102 I/03).

[5] Baker P., Broughton A. (2018): Anticipating, Preparing and Managing Employment Change in the Private Security Industry. Available at www.coess.org

[6] CoESS (2020): The New Normal 2.0: Private Security and COVID-19 in Europe. Available at www.coess.org

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## About CoESS

CoESS acts as the voice of the private security industry, covering 23 countries in Europe and representing 2 million guards as well as over 45,000 companies. The Private Security Services provide a wide range of services, both for private and public clients, ranging from Critical Infrastructure facilities to public spaces, supply chains and government facilities. Representing a labour-intensive sector, CoESS is actively involved in European Social Dialogue and multiple EU Expert Groups.

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