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ETUC Webinar “Necessary legal provisions in the Directive for fair Minimum Wages and  
Collective Bargaining: Measures to protect and strengthen collective bargaining”  
15 October 2020

# WHY A FRAMEWORK DIRECTIVE?

# A Framework Directive to guarantee the full involvement of social partners and:

1. end the practice of unjust, low statutory minimum wages by providing that Member States cannot set their statutory minimum wages below a threshold that is both 60% of the median AND 50% of the average wage (based on national full-time gross wages);
2. end unfair practices such as employer deductions from the statutory minimum wage, the payment of sub minimum rates or clauses that exclude categories of workers from protection;
3. end union busting practices, and require member states to agree with Social Partners an action plan to promote collective bargaining, including a guarantee for trade unions to access the workplace backed up with recognition and representation rights and protection from victimisation;
4. end state promotion of unfair competition on wages by amending public procurement rules so that companies that refuse to bargain or implement the collective agreement are prevented from state contracts, CAP payments, grants and other financial supports;
5. end negative court rulings by providing a social progress clause to protect collective bargaining and collective agreements, the autonomy of social partners and
6. end the threat to Member States that deliver fair wages through collective bargaining systems by guaranteeing that they will never be obliged directly or indirectly by the EU to introduce a statutory minimum wage or other minimum wage floors that interfere in collective agreements.

# Most Member States have Minimum Wages

**Member States often have a combination of different minimum wages**

- Statutory National Minimum Wage
- Sectoral Minimum Wages (basic pay plus) sometimes established by legal extension
- Collective agreements that are enforceable in law
- Collective agreements that are enforceable by collective action

## **First 3 drafting rules**

- **Must not treat collective agreements like they are statutory minimum wages**
- **Must not treat statutory minimum wages as an alternative to collective bargaining**
- **Must recognise the diversity of systems**

Exchange with social partners via tripartite fora

- Hungary, Latvia, Spain Portugal, Romania.

Rule-based mechanisms and/or expert-committee led processes to make a proposal for government

- Netherlands, France, Luxembourg, Malta
- Germany, Greece Croatia, Ireland, United Kingdom

Unilateral government decision, without (substantial) social partner consultation

- Slovenia

Bipartite negotiations at peak level

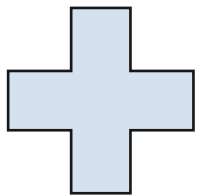
- Belgium
- Estonia

No Statutory Minimum Wage

- Austria, Cyprus, Italy Denmark, Finland, Sweden and Norway

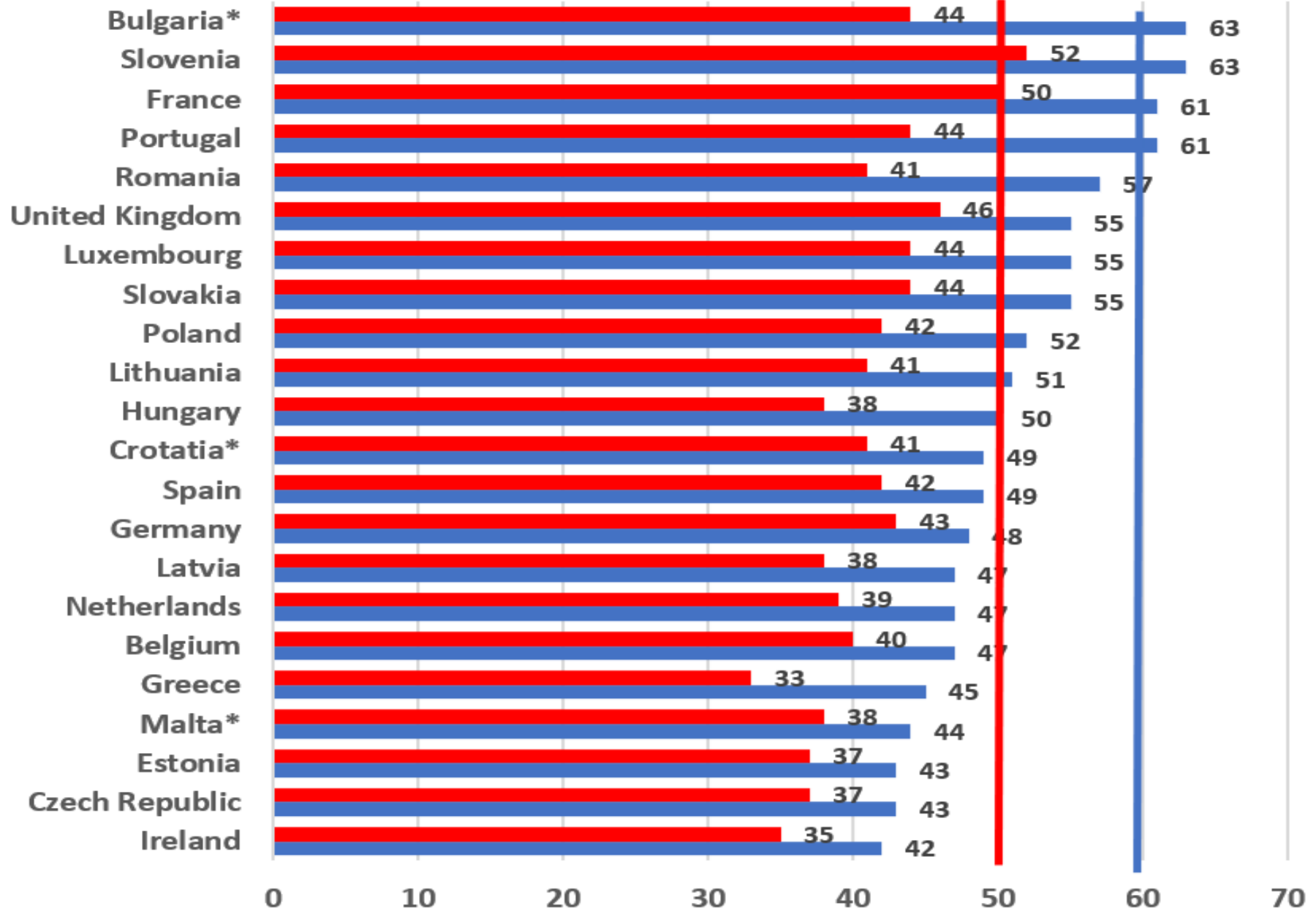
## FRAMEWORK DIRECTIVE: TWO KEY CONCEPTS

THRESHOLD OF DECENCY (60%  
MEDIAN AND 50% AVERAGE GROSS  
WAGE)

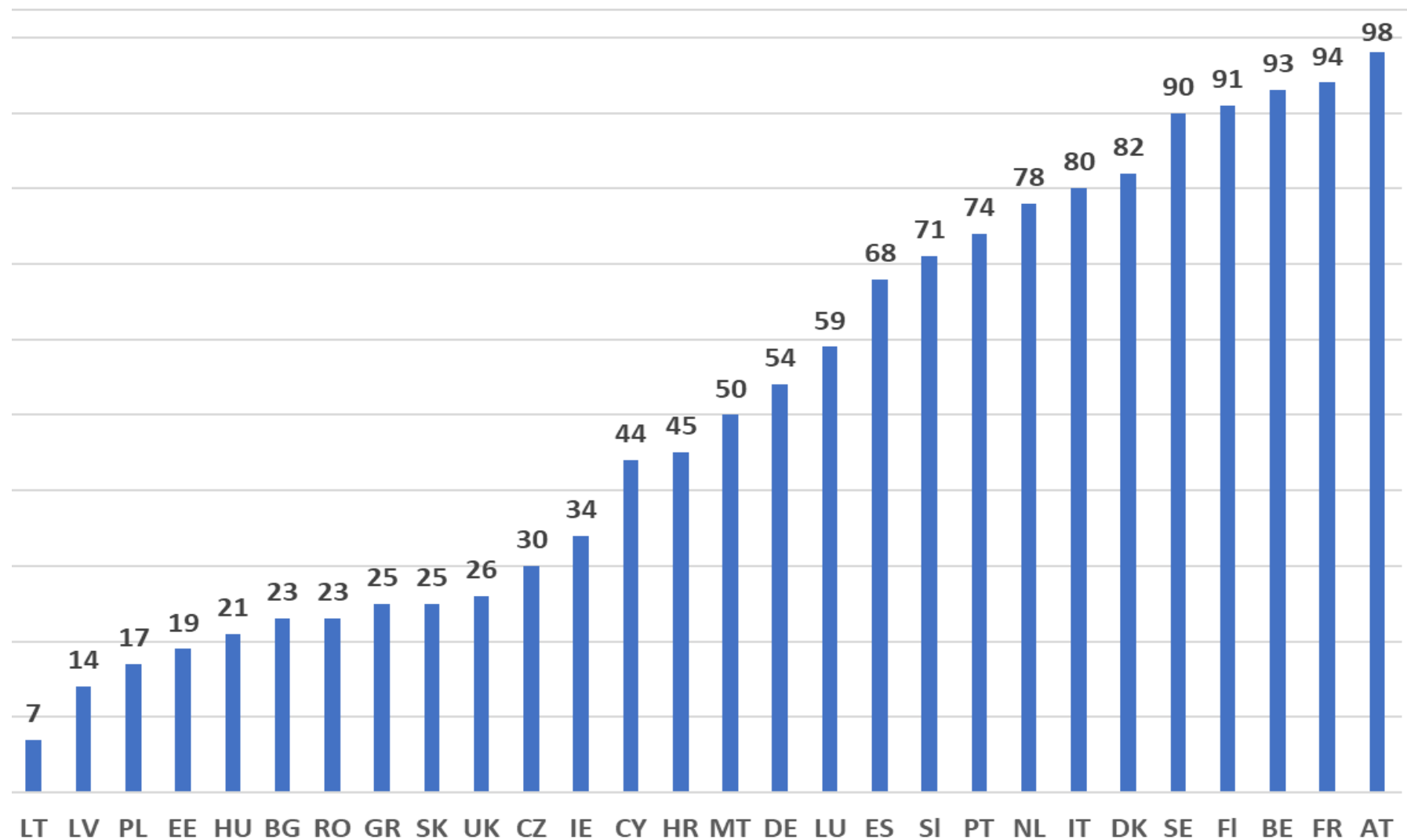


COVERAGE BY COLLECTIVE  
AGREEMENTS (EU AVERAGE  
70%) UPWARD CONVERGENCE

# Minimum Wage as % of average and median wage, 2019



# COLLECTIVE AGREEMENT COVERAGE



## FIRST USE THE RIGHT LEGAL BASE : ARTICLE 153(B)

With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields

### **(b) working conditions;**

4. The provisions adopted pursuant to this Article:

- shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Treaties.

5. The provisions of this Article **shall not apply to pay**, the right of association, the right to strike or the right to impose lock-outs.



# REQUIRING MEMBER STATES TO ESTABLISH A THRESHOLD OF DECENCY IS NOT THE SAME AS SETTING PAY

The Court of Justice of the European Union (CJEU), has consistently held in its case law that the limitation under Article 153(5) TFEU stands for ‘the establishment of the level of all or some of the constituent parts of pay and/or the level of pay in the member States, or the setting of a minimum guaranteed wage’ (C-395/08 - Bruno and Others, EU:C:2010:329, §37; C-268/06 – Impact, EU:C:2008:223, §125).

BUT ...

**CJEU case law (C-307/50 – Del Cerro Alonso, C-286/06 – ‘Impact’ and C-395-396/08 – ‘Bruno’) also confirms that the exclusion in Article 153(5) TFEU must be interpreted restrictively and cannot be read as a full exclusion of competence for the EU to act on the issue of wages/pay;**

# NATIONAL ACTION PLANS

No one size fits all – to be determined with Social Partners

Must be required to comply with Standards such as relevant ILO Conventions, Charter, ECHR, COE etc

Must be credible and progressively increase coverage over time

Active measures must be included e.g using public procurement rules, including a guarantee for trade unions to access the workplace backed up with recognition and representation rights and protection from victimisation;

Objective is upward convergence

# END UNFAIR TERMS AND EXCLUSIONS FROM PROTECTION

Exploitative low pay

Deductions that create exploitative low pay

End exclusions from protection  
e.g. Domestic Workers, Young  
Workers ...

# SAFEGUARDS

A Framework Directive – obligations on the Member State

Right legal base

Specific clear articles – e.g no Member State is required to introduce a Statutory Minimum Wage

Guarantee involvement of social partners in particular in the implementation of the Directive (there are numerous examples of EU secondary legislation which set minimum requirements in relation to working conditions and at the same time confer an important role to the social partners in the Member States to implement these requirements, or to reach the objectives defined in the legislation via collective bargaining/agreements)

Include “non-regression clause” and “more favourable provision clause”

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## **ENSURE THE CORRECT INTERPRETATION - INCLUDE A SOCIAL PROGRESS CLAUSE**

This Social Progress clause should clarify and give direction to the Court of Justice that in all cases, when interpreting this Directive, neither economic freedoms nor competition rules have priority over and/or can infringe upon trade union and workers' rights (in particular the freedom of association, the right to organize, the right to bargain collectively and take collective actions and the right to fair remuneration) as they are recognized in the relevant ILO Conventions, the Council of Europe European Convention of Human Rights and European Social Charter, the Community Charter of Fundamental Social Rights of Workers and the EU Charter of Fundamental Rights.

# IN CONCLUSION



ETUC supports a Framework Directive but only one that will achieve the right outcomes



Thank You for Listening