

Working document on a Framework Directive on Minimum Income

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THE PROJECT

- An adequate minimum income for a dignified life is a fundamental right and a prerequisite for eradicating poverty and social exclusion.
- In contradiction with a Recommendation adopted by the Council in 1992, most of existing Minimum Income schemes do not ensure an adequate income for all. In some countries there is even no national minimum income scheme.
- EAPN believes that for making progress on Minimum Income, the Social Open Method of Coordination has to be complemented by an EU instrument that will bind Member States.
- EAPN thinks that adopting an EU Framework Directive on Minimum Income is not only needed, but also possible and feasible.
- This statement is developed in the present document that will be discussed during the conference entitled “Laying the foundation for a fairer Europe, Ensuring an Adequate Minimum Income for all” organized by EAPN and the Belgian Anti-Poverty Network on the 24th September.
- Taking into account the outcomes of the discussions, a final version of the present document will be published in the autumn.

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PART 1. JUSTIFICATION AND CONTEXT

1. WHY A FRAMEWORK DIRECTIVE ON ADEQUATE MINIMUM INCOME IN THE EU?

The **Council Recommendation 92/441/EEC** on common criteria concerning sufficient resources and social assistance in social protection systems was an important step forward in the recognition of all EU Member States of the basic right of a person to sufficient resources and social assistance to live a life in dignity and in setting out common principles and guidelines to achieve this right. But the Recommendation is far from being implemented throughout the EU.

Steps forward have been made on adequate minimum income with the endorsement by the **EPSCO Council in December 2008** of the **Commission Recommendation on active inclusion** of people excluded from the labour market, which includes the objective of the provision of an adequate level of income support on an equal footing with the objectives of providing a link to inclusive labour markets as well as allowing access to quality services and in particular social services.

The report Commissioned by the European Commission to the **European Network of National Independent Experts on Social Inclusion** on Minimum Income Schemes across EU Member States published in October 2009¹ shows that most Member States have some form of minimum income scheme, but that they vary widely in their coverage, comprehensiveness and effectiveness. Inadequacy of most Member States' level of payment is a key concern: the report clearly demonstrates that in most Member States, minimum income schemes falls short of lifting people out of poverty, that minimum income payments have not kept up with increases in wages or living standards and that non-take-up is a major problem. **The report makes important suggestions for action**, including at EU level. It recommends that the Commission and the Member States should agree on common criteria to meet the requirements of adequacy of minimum income and that consideration should be given to adopting an EU framework Directive on the adequacy of minimum income schemes which incorporate these agreed common criteria. They also give detailed recommendations, related both to action that should be taken by Member States and by the EU, on setting a timeframe within which the combined effect of minimum income schemes and other policy measures in Member States should be sufficient to lift all persons above the at-risk-of-poverty threshold of the country they live in (60% of the median national household equivalised income), on effective and timely uprating mechanisms, on take-up and coverage.

In May 2009 the **European Parliament**, in its resolution on active inclusion of people excluded from the labour market², requested that the Council agree an EU target for minimum income schemes and contributory replacement schemes of providing income

¹ Frazer H. and Marlier E. (2009) Minimum Income schemes across EU Member States, EU Network of National Independent Experts on Social Inclusion <http://www.peer-review-social-inclusion.eu/network-of-independent-experts>

² European Parliament resolution of 6 May 2009 on the active inclusion of people excluded from the labour market (2000/2335(INI))

support of at least 60% of national median equivalised income, to agree a timetable for achieving this target in all Member-States and to provide targeted additional benefits for disadvantaged groups which cover extra costs.

Despite some positive results of the Open Method of Coordination on Social Protection and Social Inclusion, evidence shows that **'soft law' has not proved to be enough to make significant progress in the fight against poverty and social exclusion**, in particular with regards to the right to an adequate minimum income. **Hard law** is a necessary complement to the OMC to guarantee the right to a dignified life.

WHY NOW?

2010 is the **European Year for Combating Poverty and Social Exclusion**. This year should present an opportunity, not just to show renewed political commitment, but also to achieve real progress in the fight against poverty and social exclusion. This year is also an important momentum to go up a gear in the **EAPN campaign** for a framework directive on adequate minimum income and to push for progress.

The current **institutional and political environment** presents opportunities for making progress. The new **Lisbon Treaty** has given binding value to the Charter of Fundamental Rights of the European Union. It also contains a new horizontal social clause that strengthens the social dimension of the Union. The European Council in June adopted the new **European Strategy on jobs and smart, sustainable and inclusive growth**, which now includes a commitment to promoting social inclusion, in particular through the reduction of poverty, by aiming to lift at least 20 million people out of the risk of poverty and exclusion, as an ambitious target in the Europe 2020 strategy³. The European Parliament will adopt its position on the Guidelines in the autumn. In its Communication on the Europe 2020 strategy, the Commission proposes a Flagship Initiative, "**European Platform against Poverty**", to ensure economic, social and territorial cohesion, building on the current European year for combating poverty and social exclusion so as to raise awareness and recognize the fundamental rights of people experiencing poverty and social exclusion, enabling them to live in dignity and take an active part in society. The Flagship should be adopted by the Commission at the end of 2010. In spring 2011, the Commission should also present a new **communication on active inclusion**, as a follow up of the 2008 Commission's Recommendation. The **Belgian Presidency of the Council** has shown political will to make progress on adequate minimum income, as one of their priorities in the fight against poverty during the presidency. Finally, the **European Parliament** will be voting its own report on 'the role of minimum income in the fight against poverty and the promotion of an inclusive society in Europe', later this year.

(The European Parliament is to adopt in the Autumn a report on the crisis (rapporteur Pervenche Berès, France, S&D, vote on the 6th October as well as a report on the Guidelines for Europe 2020, rapporteur Csaba Öry MEP, Hungary, EPP.)

The adoption of an EU framework directive on Adequate Minimum Income would be a strong signal of hope for people facing poverty in the EU, as it could be the symbol of a

³ See Frazer H., Marlier E., Nicaise I. (2010) "A Social Inclusion roadmap for Europe 2020", Garant.

renewed political commitment to end poverty. The framework directive would represent a **new legal tool to complement the EU process of social policy coordination based on the European Platform against poverty and the Open Method of Coordination (OMC)** on Social Protection and Social Inclusion that should be strengthened and reenergized. A Framework Directive on Adequate Minimum Income therefore, is **needed**. But we will also have to demonstrate that it is **possible** and **feasible**.

2. THE QUESTION OF THE LEGAL BASE

Sceptics argue that the EU is not capable of delivering an EU framework directive on adequate minimum income. Not just because of **subsidiarity** requirements, which leave the responsibility for social policy in general, and specifically measures on income, social protection and social assistance, with the Member States, but also because, in their view, the Union does not have the **competence to legislate** on adequate minimum income. The question of the legal base thus becomes a crucial one, because, without a solid legal base, the political discussion on a framework directive on adequate minimum income cannot be started.

EU Member States are committed to **fundamental social rights**, set out in the European Social Charter and the Community Charter of Fundamental Social Rights of Workers. These fundamental social rights of the Charters are explicitly cited in the Treaty as objectives of the Union and the Member States (TFEU⁴ art 151), but this recognition does not imply any conferral of competence to the Union.

The Lisbon Treaty (TEU⁵ art 6§1) gives the same legal value to the **Charter of Fundamental Rights of the European Union** as the Treaties themselves. Article 1 of the Charter recognizes that human dignity is inviolable. In Article 34§3 the Union recognizes and respects the right to social and housing assistance to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices. However, there has to be an explicit conferral of competence to the Union to act at community level.

The same is true for the new 'horizontal social clause' that was added to the Lisbon Treaty (TFEU art 9), that says that 'in defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health'. Both the Charter and the horizontal social clause oblige the Union to respect these rights and clauses in all measures taken at the level of the Union and the Member States in transposing and implementing these measures, but in itself they do not add new competences for the European Union.

⁴ Treaty on the functioning of the European Union

⁵ Treaty of the European Union

The Lisbon Treaty makes it clear (TEU art 3§3) that the Union shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of children. These objectives show that the Union is committed to fight poverty and social exclusion, but again, they have to be connected with an explicit competence to take action, by means of a directive on minimum income.

The competences to legislate on minimum income have to be found in the Treaty Chapter on Social Policy. It is true that the Treaty foresees many restrictions on the measures that can be taken at EU level with regards to social security and to income out of employment ('pay').

Article TFEU 153, 5 strictly excludes any EU competence on pay, which is to be read as remuneration for work in the framework of a contractual relationship. Therefore, a framework directive on adequate minimum income cannot cover provisions on minimum wages.

It also becomes very difficult to legislate on minimum levels for contributory replacement schemes, although there is a legal base that permits the Union to support and complement the activities of the Member States in the field of social security and social protection of workers (TFEU art 153, 1, c). However, measures in the form of (framework) directives in this field can only be taken by the Council acting unanimously on a proposal from the Commission, after consulting the European Parliament. Provisions adopted pursuant this article must not affect the right of the Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof. Therefore, inclusion of minimum levels in social security systems in the framework directive on adequate minimum income becomes extremely difficult and would completely sideline the European Parliament as the most important supporter of such a framework directive.

A possible legal base would be TFEU article 153, 1, j that gives the Union competence to take measures in the field of combating social exclusion. But in this field the Union does not have the competence to adopt minimum requirements in the form of (framework) directives.

There is however another legal base, that allows the union to adopt legislation to support and complement the activities of the Member States in the field of the integration of persons excluded from the labour market (TFEU art 153, 1, h). There is no formal objection that can be found in the Treaty to legislate on financial support for the integration of people who are excluded from the labour market. Minimum income cannot be seen as 'pay'. Although the jurisdiction of the European Court of Justice through the years, has significantly extended the meaning of 'social security', minimum income schemes that are not contributory but are 'last resort' income guarantees do not fall under this definition. It is true that this Article has never been used as a legal base to adopt legislation and did not even serve as legal base for the Commission's recommendation on active inclusion of people excluded from the labour market. But this fact in itself does not mean that it cannot serve as a solid legal base for a framework directive on adequate minimum income

in the EU. Whether or not such a framework directive will be adopted only depends therefore on political will, not on the question of the legal base!

The limitation of taking article 153, 1, h TFEU as a legal base, is that the framework directive can deal neither with minimum levels in social security systems, nor with minimum wages. But in the context of the active inclusion strategy, it is obvious that progress in the situation of minimum income is likely to be a catalyst for progress in the field of social security and minimum wages.

A further limitation of taking article 153,1,h TFEU as a legal base is that the framework directive will deal only with people “excluded from the labour market”, that means people who are likely to work but do not have a job, but not people who cannot work for any reasons (age, caring responsibilities, health difficulties.....), and across the lifecycle. However, it can be expected that progress re Minimum Income for “people excluded from the labour market” will be the catalyst for progress regarding a Minimum Income for all.

3. WHAT IS AN ADEQUATE MINIMUM INCOME?

The EU has adopted a general definition of adequacy of income in the 1992 Council Recommendation: “sufficient resources to lead a life that is compatible with human dignity”. The guidelines for implementation of the recommendation states that the right to sufficient resources and social assistance should be implemented by “fixing the amount of resources considered sufficient to cover essential needs with regard to respect for human dignity, taking account of living standards and price levels in the Member States concerned, for different types and sizes of households”. However, these definitions are too general to assess and compare national situations⁶. The 2008 Recommendation on active inclusion merely repeats these concepts. The OMC on Social Protection and Social inclusion only refers to the concept of adequacy in relation to pensions. Therefore, a framework directive on adequate minimum income has to have a clear definition of adequacy and clear common EU criteria on adequacy. To come to such a common EU approach, what is needed now is a methodology to establish such a definition over time.

The 2009 synthesis report on Minimum Income Schemes across the EU by the EU Network of Independent Experts on Social Inclusion underlines “the reality which is that most Member States do not emphasize the issue of adequacy and have not defined what, in their own national and regional contexts, an adequate minimum income would be if it is to ensure a person’s right to live in dignity”. They argue that, in absence of clear definitions of adequacy, looking at the levels of income against the poverty lines and in particular the EU definition of the national at-risk-of-poverty line (60% of the country’s national median equivalised household income) provides a basis for assessment of minimum income schemes. Judged against the at-risk-of-poverty threshold, the Independent Experts as well as the European Commission note that in most Member States and for most family types, social assistance alone is not enough to lift beneficiaries out of poverty and that in most

⁶ See EAPN explainer on adequate minimum income “Adequacy of Minimum Income in the EU”, EAPN 2010, go to www.eapn.eu/news then News & Publications/Publications/EAPN Books

countries minimum income schemes fall short of achieving this goal. In their recommendation the EU Network of Independent Experts suggests that, as an interim step to ensure the adequacy of all minimum income schemes, all Member States could consider setting the goal that within a timeframe, defined nationally, the combined effect of their minimum income provisions and other policy measures would be sufficient to lift all persons above the at-risk-of-poverty line in the country where they live.

The 60% median income line must remain a standard reference to measure poverty, because it is a valid, reliable and robust indicator that is generally accepted in the EU, as was shown in the June 2010 European Council. However, it is not always clear if guaranteeing a minimum income above this at-risk-of-poverty threshold of the country, really allows people to live in dignity. In order to address the lack of clarity as to what constitutes an adequate minimum income; a process must be launched to reach an agreement on common criteria to assist Member States in ensuring that their minimum income schemes meet the criteria of the 1992 Council Recommendation and the 2008 Commission Recommendation. These common criteria should be part of an EU common methodology on adequacy of minimum income schemes, which would also contain a common definition of minimum income, common indicators to improve comparability of minimum income schemes, common guidelines for transparent up-rating mechanisms, comprehensive coverage and improved take-up. The active participation of People Experiencing Poverty in the shaping and the implementation of Minimum Income Schemes and an improved system of comparison and monitoring based on an enhanced role of the Mutual Information System on Social Protection (MISSOC) should be ensured.

In order to identify the elements for such a common EU methodology on adequate minimum income schemes, the EPSCO Council at its meeting of December 2010 should give the Social Protection Committee the mandate to work with the Commission to develop this methodology. An agreement could possibly be reached by 2012. The elements of this common EU methodology could then be introduced as key elements in the framework directive. This means that the framework directive as it is presented now, is not a ready to sign document, but partially describes a work-in-progress that has to be initiated now, in order to make progress on definitions and criteria that can later be included in the framework directive.

One of the promising methods to determine adequacy of minimum income schemes can be found in budget standard methodologies. Only a few countries fix the amount of guaranteed income in reference to what they consider to be real needs of people or what is adequate to fully participate in society. Over the past years some Member States have engaged in a process of calculating adequacy on the basis of consensualized budget standards methodologies. These are based on a complete set of concrete goods and services, necessary for a life in dignity and participation in society, developed on basis of scientific views of professional experts with full participation of social workers, active in the field and of people experiencing poverty and other groups, in order to establish together an acceptable standard for a dignified life.

The use of budget standard methodologies could be an interesting way to fill in the recommendation of the EU Network of Independent Experts to agree on common criteria to assist Member States in ensuring that their minimum income schemes meet the requirements of the 1992 Council Recommendation and to build a national consensus on what level of minimum income is necessary in their country to enable people to live a life in dignity and to lift them out of poverty and social exclusion. Of course, baskets of goods and services needed to live a life in dignity and participate in society may vary considerably between countries. An essential condition to ensure that these budget standards methodologies devise realistic budgets that enable people to live a life in dignity and participate in society, is to establish common criteria for the quality of these budget standard methodologies at EU level. This process could be started through a peer review. The Belgian Presidency of the Council has introduced a request to the Social Protection Committee to agree to organise such a peer review in the autumn of 2010. The results of this peer review can later be translated into quality standards for the use of budget standard methodologies.

4. POSSIBLE OUTLOOK FOR A FRAMEWORK DIRECTIVE: SOME CLARIFICATION ON CONTENT AND LAY-OUT

A ready-to-use model for a framework directive on adequate minimum income is hard to be found, or even stronger, does not exist. Standardization in the field of the internal market on the contrary, does not set minimum standards, but establishes common standards. Since we do not want minimum income to become a maximum income, these rules cannot be used as an example. In the field of the environment, the Union usually legislates by setting minimum standards. But the content of environmental standards is difficult to be replaced by social standards. Moreover, the social policy field itself also has directives that set minimum standards, although most often on health and safety, working conditions, equal treatment, protection of workers or collective rights of workers. Still, these directives can partially serve as models for the shaping of a framework directive on adequate minimum income, especially with regards to the required procedures before the adoption of the directive (consultation with the social partners, opinion of the Economic and Social Committee and of the Committee of the Regions), as well as examples of non-regression clauses that do not allow Member States from using the framework directive as an argument to lower their own provisions and that allow them explicitly to provide a minimum income that exceeds the level imposed by a framework directive. Most of the directives in the social field also have provisions on the transposition of the EU requirements at national level, that allow sufficient room for manoeuvre to cover the different modalities, procedures and practices used in the Member States. Most of the content of a framework directive on adequate minimum income will have to be constructed in a 'sui generis' way, using the recommendations of the EU Network of National Independent Experts on Social Inclusion and the key messages of EAPN.

Although the name 'framework directive' is not mentioned in the Treaty as one of the measures the Union can take to support the activities of the Member States, it has already been used several times, in particular with regards to health and safety legislation and agreements between European Social Partners. In fact, all directives can be considered as

framework directives because they leave a lot of room to the Member States in transposing and implementing the requirements. This is particularly the case in the social field. Regarding minimum income, choosing to promote a framework directive is a way to stress the importance of the subsidiarity and to insist on the fact that this will not be a “one-fits-all” approach. Member States will be on the front-line to implement the common standards agreed, which will be adapted to national realities.

The first key element of a framework directive on adequate minimum income of course is the legal base, which comes as the first citation to clearly show which Treaty articles allow EU action to be taken. As argued above, the legal base for this framework directive would be TFEU article 153, 1, h, combined with 153, 2, b, with the European Parliament and the Council acting according to the ‘normal legislative procedure’: Qualified Majority Voting in Council and in co-decision with Parliament. Further on, the citations must also make reference to the obligatory procedures and opinions.

The recitals of this framework directive will be quite extensive, since this is the place where the arguments are put forward to justify the presentation of a framework directive on adequate minimum income and where the explanation has to be given on the content of such a framework directive.

Most directives establishing minimum standards start with referring to commitments in the Treaty and in international conventions. Reference should be made to the Charter of Fundamental Rights of the European Union, not because it constitutes a legal base, but because it imposes a moral obligation on the Union and the Member States. Similar reasons advise that reference must also be made to the European Social Charter and to the Community Charter of Fundamental Social rights of Workers. It seems useful that in both cases the articles relevant for adequate minimum income are cited explicitly. References to the Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights have been added to demonstrate the worldwide recognition of the right to an adequate living standard.

After this, the objectives and the policy competences of the EU that are relevant for the framework directive should be cited, to explain and justify the legal base used for the framework directive (see above: legal base).

It is important to point out the antecedents of the framework directive that have already been adopted. As argued above, this would clearly require a reference to the provisions of Council Recommendation 1992, to the OMC on Social Protection and Social Inclusion and to the Commission Recommendation 2008 on Active Inclusion. For all these documents, the relevant commitments will have to be explicitly quoted.

Next considerations to be included would be the arguments and commitments made by the different EU institutions on the need to ensure the right to an adequate minimum income. Here we can refer to the statement of the European Council in the context of the Europe 2020 strategy and the integrated guidelines, the decision of the European Parliament and the Council on the European Year for Combating Poverty and Social Exclusion, the adoption of the Joint Report on Social Protection and Social Inclusion by the

EPSCO Council, the 2009 report of the European Parliament on Active Inclusion and the forthcoming report of the European Parliament on the role of minimum income in the fight against poverty and the promotion of inclusive societies in Europe.

The arguments in favour of a framework directive can further be strengthened by using the 2009 report of the EU Network of National Independent Experts on Social Inclusion, that contains not only arguments that show that the actual EU instruments did not produce the desired outcomes, but also makes recommendations on the way forward and on the possible content of a framework directive on adequate minimum income.

The framework directive has to respect the principles of subsidiarity and proportionality of the Treaty. Therefore, the framework directive must be clear about its purpose and scope. It is clear that, for the European institutions, the determination of the fundamental principles, the choices concerning organisation and financing of social security systems should remain within the competence of the Member States. The Treaty also explicitly excludes Community action on pay and thus minimum wages. The Commission has also stated that Member States are responsible for defining the level of income support and for establishing the appropriate policy mix in the light of the different situations and needs at local, regional and national level. However, setting out minimum requirements for adequate minimum income schemes and establishing a common procedure to set common standards for adequacy of minimum income does not violate these principles. In limiting the scope of the framework directive to non-contributory income schemes only, the framework directive does not interfere with Member States social security schemes nor does it interfere with setting minimum wages. However, when Member States define the level of their minimum income schemes, it is clear that this will have consequences for the definition of the minimum protection level in their contributory social security schemes. Therefore, a consideration and an article are added on the need to coordinate minimum income schemes with social protection systems.

The framework directive should have two different main chapters. The first chapter obliges every Member State, to introduce by 31st March 2020 at the latest, a minimum income scheme that guarantees the right to an adequate minimum income for all, in line with the 1992 Council Recommendation on common criteria concerning sufficient resources and social assistance in social protection systems and the 2008 Commission's Recommendation on active inclusion of people excluded from the labour market.

It leaves to the Member States the possibility of providing financial assistance only, or a combination of financial assistance and support for specific costs such as food, clothing, housing etc. It leaves to the Member States to set a timeline for reaching gradually the amount of minimum income necessary for a decent living.

The second chapter is work-in-progress: it sets out what should be the EU process leading to the agreement of common methodology setting out common principles for the design of Adequate Minimum Income Schemes including common standards of adequacy of minimum income schemes. This common methodology should comprise a common definition of minimum income, common criteria concerning adequacy, common guidelines for transparent up-rating mechanisms, comprehensive coverage, improved take-up, as

well as active participation of People Experiencing Poverty in the shaping and the implementation of Minimum Income Scheme and an improved system of comparison and monitoring based on an enhanced role of the Mutual Information System on Social Protection (MISSOC). In establishing the common criteria concerning adequacy, Member States should build on the at-risk-of-poverty threshold as a well recognized existing indicator at EU level. Concretely, the amount set for a national minimum income allowing a decent life for all should not be below the national poverty threshold. Member States should recognize the at-risk-of-poverty threshold as a landmark and an intermediate step on the way to raising the amount of the minimum income schemes to a level allowing a dignified life.

To come to a common understanding of what adequacy of minimum income constitutes, the EPSCO Council in December 2010 should mandate the Social Protection Committee to work with the European Commission to identify by 2012 a common European methodology on adequate minimum income schemes. This common framework should be translated into the framework directive. One of the promising methods to determine adequacy of minimum income, is the use of consensualized standard budget methodologies. To devise realistic budgets that enable people to live a life in dignity, the consensualized budget standard methodology should define a comprehensive basket of concrete goods and services, necessary to be able to participate in society. It should be established through a participatory approach which consensualizes the budget standard, including people experiencing poverty, NGOs who represent them and other stakeholders. In order to guarantee that the budget standard methodologies in the Member States correspond to quality standards, a peer review should be organised with those Member States that already established such budget methodologies, in order to define a common approach. To support the development of adequate minimum income schemes in the Member States along the lines of the common European methodology, it is foreseen that Member States can receive funding from the PROGRESS programme.

The main corps of the framework directive should also contain a chapter setting out the purpose and scope of the framework directive, in line with the principles of subsidiarity and proportionality and the definitions of the different concepts used. People should be able to enforce their right to an adequate minimum income. Consideration should be given to the introduction of a chapter on remedies and enforcement, that guarantees the defense of rights to all persons that consider themselves wronged by failure to have access to an adequate minimum income and that allows organisations who have a legitimate interest in the fight against poverty to help these persons in judicial and administrative procedures, as is the case in all equality and non-discrimination directives. Finally, it should also include a chapter with final provisions, including non-regression clauses, provisions on implementation and a clause on monitoring and evaluation.

PART 2. WORKING PAPER ON A DRAFT FOR A FRAMEWORK DIRECTIVE ON ADEQUATE MINIMUM INCOME

This working paper sets out a proposal for a draft directive on adequate minimum income. The contents would be completed by the EU process that is laid out in this draft contents.

The European Parliament and the Council of the European Union,

Citations

- *Having regard to the Treaty on Functioning of the European Union, and in particular Article (153, 1, h and) 153, 2, b thereof,*
- *Having regard to the proposal from the Commission,*
- *Having regard to the Opinion of the European Economic and Social Committee,*
- *Having regard to the Opinion Committee of the regions,*
- *Acting in accordance with the procedure laid down in Article 294 of TFEU,*

Whereas

Reference to the Charter of Fundamental Rights of the EU, especially articles 1 and art 34 §3:

(1) In accordance with art 6 §1 TEU, the Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adopted in Strasbourg on 12 December 2007, which shall have the same legal value as the Treaties.

(2) Article 1 of the Charter states that human dignity is inviolable and must be protected and respected.

(3) Article 34§3 of the Charter states that, in order to combat social exclusion and poverty, the Union recognizes and respects the right to social and housing assistance so as to ensure a decent existence for all

those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

Reference to European Social Charter and Community Charter of the Fundamental Social Rights of Workers, Universal Declaration on Human Rights:

(4) In accordance with art 151 TFEU, the Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the Community Charter of the Fundamental Social Rights of Workers signed in 1989, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonization while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

(5) Articles 10 and 25 of the Community Charter of the Fundamental Social Rights of Workers states that persons who have been unable to enter or re-enter the labour market and have no means of subsistence, must be able to receive sufficient resources and social assistance, and that any person who has reached retirement age but who is not entitled to a pension or does not have other means of subsistence, must be

entitled to sufficient resources and to medical and social assistance.

(6) Article 13 of the European Social Charter states that anyone without adequate resources has the right to social and medical assistance and that all Parties undertake to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition.

(7) Article 30 of the European Social Charter also states that everyone has the right to protection against poverty and social exclusion and that Parties undertake to take measures within the framework of an overall and coordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, education, culture and social and medical assistance.

(8) The Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights state that everyone has the right to a standard of living adequate for the health and wellbeing of himself and his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or lack of livelihood in circumstances beyond his control.

Reference to EU objectives

(9) In accordance with art.3 §3 TEU, the EU shall combat social exclusion and discrimination and shall promote social justice and protection, equality between women and men, solidarity between

generations and the protection of the rights of the child.

(10) In accordance with art.9 TFEU, the Union, in defining and implementing its policies and activities, shall take into account requirements linked among others to the guarantee of adequate social protection and the fight against social exclusion.

Reference to the legal basis.

(11) The Treaty of Amsterdam added a new provision on the integration of people excluded from the labour market to the existing fields of activity covered by the social provisions of the Treaty, that are now integrated in the TFEU, in particular Art 153, h that provides a legal framework and basis for new policy commitments in this area.

(12) Under the Article 153(2) of the TFEU the European Parliament and the Council may adopt, by means of directives, minimum requirements, including in the field of integration of people excluded from the labour market, in accordance with the ordinary legislative procedure, after consulting the Economic and Social Committee and the Committee of the Regions.

Antecedents in EU policy

(13) The Council Recommendation 92/441 of 24 June 1992 on common criteria concerning sufficient resources and social assistance in social protection schemes invites Member States to recognize the basic right of a person to sufficient resources and social assistance to live in a manner compatible with human dignity as part of a comprehensive and consistent drive to combat social exclusion, and to adapt their social protection systems as necessary, according to the principles and guidelines set out in the recommendation.

(14) *The Recommendation states that the implementation of this right should follow practical guidelines, including fixing the amount of resources considered as sufficient to cover essential needs with regards to human dignity, taking account of living standards and price levels in the Member State concerned, for different types and sizes of households, adjusting or supplementing amounts to meet specific needs.*

(15) *The OMC on Social Protection and Social inclusion has been an important tool for supporting the political commitment made in Lisbon to take steps to make a decisive impact on the eradication of poverty, by helping to deepen mutual learning and increasing awareness of the multidimensional nature of social exclusion and poverty, but the OMC has not succeeded in delivering the desired outcome of guaranteeing an adequate minimum income, necessary to live a life in dignity for all.*

(16) *In December 2008 the EU Employment and Social Affairs Ministers endorsed the Commission Recommendation of 3 October 2008 on active inclusion of people excluded from the labour market, which states that the 1992 Recommendation remains a reference instrument for Community policy in relation to poverty and social exclusion and has lost none of its relevance, although more needs to be done to implement it fully.*

(17) *In 2008 the Commission recommended an integrated comprehensive strategy for the active inclusion of people excluded from the labour market combining adequate income support, inclusive labour markets and access to quality services.*

Recent policy developments at EU level

(18) *In their decision N° 1098/2008/EC on the European Year for Combating Poverty and Social Exclusion (2010) the European*

Parliament and the Council conclude that despite the achievements reached in the framework of the Open Method of Coordination on Social Protection and Social Inclusion, significant parts of the population are still suffering from deprivation or limited and unequal access to services, or are excluded from society.

(19) *The European Parliament adopted in May 2009 a resolution on active inclusion of people excluded from the labour market, calling on the Member States to implement adequate income support so as to fight poverty and social exclusion; pointing to the need for an adequate income support level based on Recommendations 92/441/EEC and 2008/867/EC which must be adequate, transparent, accessible to all, and sustainable over time. This underlines its request to the Council to agree an EU target for minimum income schemes and contributory replacement income schemes of providing income support of at least 60% of national median equivalised income and, furthermore, to agree a timetable for achieving this target in all Member States. They also demand that Member States should provide targeted additional benefits for disadvantaged groups, which cover extra costs.*

(20) *At its 17th June 2010 session, the European Council adopted a new European Strategy to promote smart, sustainable and inclusive growth, comprising 5 EU headline targets. The EU is committed to promoting social inclusion, in particular through the reduction of poverty, by aiming to lift at least 20 million people out of the risk of poverty and exclusion.*

(21) *[In the Council Decision on guidelines for the employment policies of the Member States - Part II of the Europe 2020 integrated guidelines, guideline 10 states that: "The EU headline target, on the basis of which Member States will set their targets, is to lift over 20 million people out of poverty" (to be amended by European*

parliament)] The reality today is that most Minimum Income schemes do not even lift people above the poverty line.

(22) In the context of Europe 2020 a European Platform against Poverty will be established as one of the 7 Flagship initiatives, to catalyze progress on the poverty target and to ensure delivery on the agreed poverty target. [To be amended after final adoption of the Platform.]

(23) The Council (EPSCO) in its session of 8th March 2010 has adopted the Joint Report on Social Protection and Social Inclusion 2010, that states that renewed attention should be paid to old and new forms of poverty and exclusion, in ageing and rapidly changing societies, opened to globalization and population flows and that preventing and tackling poverty, child poverty in particular, is crucial to prepare Europe for the future. The joint report further concludes that the coverage and adequacy of minimum income provisions vary greatly across the EU. In most countries, social assistance alone is not sufficient to lift people out of poverty, but in general it reduces its intensity. Recent efforts to modernize social assistance have focused on financial incentives to work but the lack of clear mechanisms to up-rate minimum incomes has in some instances led to deterioration in benefit adequacy over time. Complex rules, lack of information, discretionary assessment, administrative errors and fear of stigma are some of the multiple reasons that explain non-take up. They conclude that there is therefore room for increasing the effectiveness and efficiency of minimum income schemes.

Findings of academic researchers

(24) In the framework of the Open Method of Coordination on Social Protection and Social Inclusion, the Commission commissioned a study to the EU Network of

National Independent Experts on Social Inclusion on minimum income schemes across EU Member States. The report published in 2009 acknowledges that in almost all Member States minimum income schemes are insufficient to lift people above the at-risk-of-poverty line (60% of the median national household equivalised income), that in some Member States, there are still many target groups on very low income who do not have access to such schemes and that there are still a few countries which do not have minimum income schemes yet.

(25) They suggest that, in order to address the lack of clarity as to what constitutes an adequate minimum income to live with dignity, it would be very helpful if common criteria could be agreed upon which could assist Member States in ensuring that their minimum income schemes meet the requirements of the 1992 EU Council recommendation on common criteria concerning sufficient resources and social assistance in social protection schemes. These common criteria could then provide the basis for reporting and monitoring Member States' conformity with these Recommendations.

(26) They further suggest that, in order to reinforce the importance of the minimum income schemes within the active inclusion agenda, consideration might be given to adopting an EU framework directive on the adequacy of minimum income schemes which would incorporate the agreed common criteria.

(27) They also conclude that, as an interim step to ensure the adequacy of all minimum income schemes, all Member States could consider setting the goal that within a given timeframe (to be defined nationally) the combined effect of their minimum income provisions and other policy measures would be sufficient to lift all persons above the at-risk-of-poverty line in the country where they live (i.e. 60% of

the median national household equivalised income).

(28) The experts also suggest that all countries should have a transparent and effective mechanism for up rating the value of their minimum income schemes, to ensure that minimum income schemes keep in line with inflation and rises in standards of living. They add that all countries should put in place arrangements to monitor levels of non-take-up and the reasons for this and that they monitor the effectiveness of strategies to reduce non-take-up.

(29) They suggest that in the context of the Open Method of Coordination on Social Protection and Social Inclusion and the 2008 Recommendation on Active Inclusion, the Social Protection Committee should consider establishing a transparent system for regularly monitoring and reporting on the role played by minimum income schemes in ensuring that all citizens have the means and services necessary to live a life in dignity

(30) Experts insist that in the light of the economic and financial crisis, minimum income schemes play a key role as both a means of protecting the most vulnerable and an important economic stabilizer during the crisis.

Explanations of choices in framework directive

(31) Subsidiarity and proportionality: In keeping with the principle of subsidiarity and the principle of proportionality as set out in Article 5(1), (3) and (4) of the Treaty, the objective of this framework directive cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community. This framework directive is confined to the minimum required to achieve these objectives and does not go beyond what is necessary to achieve that purpose.

(32) The 2008 Commission Recommendation on Active Inclusion of people excluded from the labour market states that the principle of subsidiarity implies that Member States are responsible for defining the level of income support and for establishing the appropriate policy mix in the light of the different situations and needs at local, regional and national level. The determination of a minimum level of minimum income support and the establishment of a common procedure for the determination of standards of adequacy, however, does not violate this principle.

(33) This framework directive only deals with minimum income schemes that are non-contributory income support of last resort established by Member States; it does not deal with minimum levels of social security schemes nor with minimum wages.

(34) In order to contribute to an effective implementation of the active inclusion strategy, Member States will carefully coordinate their minimum income schemes with benefits under their social protection schemes and with minimum wage levels.

(35) Adequacy must be based on a common definition and on common criteria, taking into consideration the different economic situations in Member States.

(36) Consensual budget standards, based on a complete basket of concrete goods and services, determined on the basis of scientific research in a methodology that involves stakeholders and different household groups, including people experiencing poverty and NGOs representing them, are being developed in some Member States. They constitute a reliable instrument for calculating the adequacy of resources needed for a decent life, for different types of households throughout the lifecycle in the context of each Member State.

(37) In line with the 2008 Commission Recommendation on the active inclusion of

people excluded from the labour market, the setting up of adequate minimum income schemes will be combined with efforts to ensure inclusive labour markets and to guarantee access to quality services.

Non-regression clauses explained

(38) This framework directive lays down minimum requirements, thus giving Member States the option of maintaining or adopting more favorable provisions for the integration of people excluded from the labour market, in particular on the level of the minimum income guarantees. The implementation of this framework directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.

Means of legal protection

(39) Persons who have been denied the right to an adequate minimum income should have adequate means of legal protection. To provide a more effective level of protection, associations, and other legal entities should be empowered to engage in proceedings, including on behalf or in support of these persons.

Have adopted this framework directive

Articles

Chapter 1. General provisions

Article 1. Purpose and scope

The purpose of this framework directive is to set out minimum requirements and provisions for establishing the right of every person, residing within the territory of the Member States, to an adequate income, with a view of putting into effect the objective of integrating people excluded from the labour market. This framework

directive refers back to Member States for the establishment of the conditions of access and detailed rules of application in order to take account of the situation in each Member State.

Article 2. Definitions

1. *Minimum income schemes: last resort schemes which are intended to ensure minimum standards of living for individuals and their dependants when they have no other means of financial support; income support schemes which provide a safety net for those not eligible for social insurance payments or those for which these have expired. In some Member States minimum income payments are complemented with in kind benefits.*

2. *Specific allowances: benefits for special groups with specific needs, such as lone-parents allowances, child benefits, assistance to cover costs for school, housing, energy.*

3. *At-risk-of-poverty threshold: 60% median national equivalised income.*

4. *Equivalised median income: a household's total disposable income divided by its equivalent size, to take account of the size and composition of the household and attributed to each household member.*

5. *Adequacy of minimum income: minimum income support at a level that is sufficient to live in a manner compatible with human dignity as a part of a comprehensive and consistent drive to combat social exclusion and to fulfill the basic needs of people to physical health and autonomy, necessary to be able to participate in society. This level should be established in a participatory way, including people experiencing poverty. To be regarded as adequate, minimum income schemes should be rights-based, have a relation to the living standards in the country, be comprehensive in coverage and without time limitation.*

Chapter 2. Setting up of Adequate Minimum income schemes

Article 3.

1. *By 31st March 2020 at latest, every Member State shall introduce a minimum income scheme, that guarantees the right to an adequate minimum income to all people living on their territory, in line with Council Recommendation 92/441/EEC on common criteria concerning sufficient resources and social assistance in social protection systems and Commission Recommendation 2008/867/EC on active inclusion of people excluded from the labour market. Member States may decide whether the minimum income schemes provide financial assistance only or also in kind support. Member States may also decide to complement financial assistance with the provision of affordable services. Member States will define a national timeframe, indicating the gradual increase of their actual minimum income schemes to reach a level likely to allow for a dignified life.*

2. *The minimum income scheme can be complemented by specific allowances, related to specific needs for vulnerable groups.*

3. *Minimum income schemes will be yearly updated through a transparent mechanism linked to standard of living indexes.*

Article 4. Common EU Methodology on Adequate Minimum Income schemes

Note: For progress concerning Minimum Income to be fostered at EU level, a common approach is needed EU level.

Such a common approach should be translated into a detailed methodology (including a common definition of Minimum Income, common criteria,

common indicators and common guidelines).

This agreed common EU methodology should be a key element of the content of the framework Directive to be adopted.

The needed EU process for establishing such a common methodology could be the following:

At its session in December 2010, the EPSCO Council should mandate the Social Protection Committee to work with the Commission to elaborate by 2012 a common EU methodology that comprises:

- *A common definition of minimum income,*
- ***Common criteria concerning adequacy,***
- *Improved system of comparison and monitoring based on an enhanced role of the Mutual Information System on Social Protection (MISSOC),*
- *Common guidelines for transparent up-rating mechanisms, comprehensive coverage, improved take-up, as well as active participation of People Experiencing Poverty in the shaping and the implementation of Minimum Income Schemes.*

Such process should be backed up by intense mutual exchange on Minimum Income schemes, with particular focus on good practices in relation to establishing adequate amounts, addressing non take-up, and implementing the participation of people experiencing poverty.

Such process should be supported by the PROGRESS programme (2007-2013).

One of the promising methods to determine adequacy of minimum income schemes can be found in the consensual budget standard methodology. This methodology implies budget standards that define a comprehensive basket of concrete goods and services, necessary to be able to participate in society. These baskets of

goods and services are established through a participatory approach, including People Experiencing Poverty, NGOs who represent them as well as other stakeholders and household groups who together consensualize an acceptable budget standard. They should be regularly updated to adequately reflect changes in living costs.

A peer review process, organised by the Belgian Presidency in autumn 2010 on budget standards used in some of the Member States, should identify common criteria on the quality requirements for the budget standard methodology, to devise realistic budgets that enable people to live a life in dignity.

When establishing such a common methodology, the at-risk-of-poverty threshold should also be used as a relevant landmark.

Ensuring that the combined effect of their minimum income provisions and other policy measures are sufficient for lifting all persons above the poverty threshold (60% of the national median income) would be a relevant intermediate objective in Member States' roadmaps towards adequate minimum income schemes for a dignified life.

Article 5.

EU transnational activities regarding Adequate Minimum Income Schemes including mutual exchange, comparison and monitoring in the frame of the common methodology may be supported through the PROGRESS programme (2007-2013).

Article 6.

Member States shall carefully coordinate their minimum income schemes with universal social security schemes to ensure

universal coverage and income support, throughout the life-cycle and with regards to social risks. They will also coordinate their minimum income schemes with the provisions relating to minimum wages.

Article 7. Link with active inclusion

Member States will put in place a systematic, integrated approach to implementing active inclusion, targeting active labour market measures at recipients of minimum income schemes and giving them the right to participate in activation measures and developing more personalized and comprehensive systems of support, whilst guaranteeing adequate income. They will ensure affordable access to quality services, particularly social services of general interest.

Article 8. Minimum requirements

1. Member States may introduce or maintain provisions which are more favourable for the integration of people excluded from the labour market and thus introduce and maintain a level of guaranteed minimum income higher than the requirements laid down in this framework directive.

2. The implementation of this framework directive shall under no circumstances constitute grounds for a reduction in the level of protection against poverty and social exclusion already afforded by Member States in the fields covered by this framework directive.

Chapter 3. Remedies and enforcement

Article 9. Defense of rights

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the

enforcement of obligations under this framework directive are available to all persons who consider themselves wronged by failure to access the right to an adequate minimum income.

2. Member States shall ensure that associations, organisations or other legal entities, which have a legitimate interest in ensuring that the provisions of this framework directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this framework directive.

Chapter 4. Final provisions

Article 10. Implementation

Member States shall adopt laws, regulations and administrative provisions necessary to comply with this framework directive by 31st March 2020 at the latest or may entrust the social partners at their joint request, with the implementation of this framework directive as regards provisions concerning collective agreements. In such cases Member States shall ensure that, no later than 31st March 2020, the social partners introduce the necessary measures by agreement, the Member States concerned being required to take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this

framework directive. They shall forthwith inform the Commission thereof. [standard provision for implementation of social directives.]

Article 11. Monitoring and evaluation

Evaluation of progress made towards setting up adequate minimum income schemes till the 2020 deadline in line with the provisions of this framework directive will be regularly monitored and evaluated in the framework of the Open Method of Coordination on Social Protection and Social Inclusion, in the context of the European Platform against Poverty and in the framework of the Europe 2020 strategy, under Part II of the integrated guidelines, with particular reference to Guideline 10. An EU Participative Stakeholder Forum, including expert representatives of national, regional and local authorities, academics, social partners, People experiencing poverty and NGOs supporting them, will be key partners in this monitoring process.

Article 12. Entry into force

This framework directive shall enter into force 20 days following publication in the Official Journal of the European Union.

Article 13. *This framework directive is addressed to the Member States.*

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