Anness

(għall-finijiet tal-paragrafu (VI) tal-Iskeda III tal-Kapitolu 512 tal-Liġijiet ta 'Malta)

Noti ta' traspożizzjoni għat-traspożizzjoni tad-Direttiva (UE) 2022/2041 tal-Parlament Ewropew u tal-Kunsill tad-19 ta' Ottubru 2022 dwar pagi minimi adegwati fl-Unjoni Ewropea

Direttiva Artikolu Numru/I	**Regolamenti ta' traspożizzjoni**
Id-Direttiva 2022/2041/EU	**Ir-Regolamenti tal-2024 dwar paga minima u negozjar kollettiv**
Artikolu 2 Artikolu 1 (5)	Regolament 2 (2) Proviso għar-Regolament 2 (2)
Artikolu 3	Regolament 3
Artikolu 4 (1) (2)	Regolament 4 Regolament 5
Artikolu 10	Regolament 6
Artikolu 8	Regolament 7
Artikolu 12	Regolament 8 Regolament 9
Artikolu 13	Regolament 7 (3)

Is-6 ta' Diċembru, 2024

No. 1730

OFFICE OF THE PRIME MINISTER (EUROPEAN FUNDS, EQUALITY, REFORMS AND SOCIAL DIALOGUE)

Explanatory Notes

1. Introduction

Title of Regulations	The Minimum Wage and Collective Bargaining Regulations, 2024
Activity to be regulated	Collective bargaining and wage setting
Responsible entity	Department for Industrial and Employment Relations

2. Summary and background

Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union (hereinafter referred to as the "Minimum Wage Directive") addresses rising concerns about income inequality and social disparities within the EU, aiming to ensure fair and adequate minimum wages for all workers. This initiative acknowledges the crucial role of collective bargaining in achieving these goals.

The Minimum Wage and Collective Bargaining Regulations (hereinafter referred to as the "regulations") transpose Articles 4 to 8 of the Minimum Wage Directive. These regulations establish a framework to:

a) promote the practice of collective bargaining for setting wages; and
b) enhance workers' access to minimum wage protection rights, as provided by national law and, or collective agreements.

These regulations apply to all workers with an employment contract or employment relationship within Malta, as defined by Maltese law, collective agreements, or practice in force, taking into account relevant case law, including that of the Court of Justice of the European Union.

2.1 Public Consultation

Consultations were held with the Employment Relations Board. The Employment Relations Board is a tripartite Board which comprises also trade unions and employers' associations representatives as stipulated in the Employment and Industrial Relations Act (Chapter 452 of the Laws of Malta), hereinafter referred to as the "Act".

3. Overview of the structure of the instrument

The regulations are made up of nine (9) regulations as follows:

Regulation 1 – Citation.
Regulation 2 – Scope and Applicability.
Regulation 3 – Interpretation.
Regulation 4 – Promotion of collective bargaining.
Regulation 5 – Demand for negotiation.
Regulation 6 – Monitoring and data collection.
Regulation 7 – The powers of the Director.
Regulation 8 – Protection from adverse treatment or consequences.
Regulation 9 – Protection from dismissal and burden of proof.

4. Commentary

Regulation 3 provides for the definition of terms such as "collective agreement", "collective bargaining", "minimum wage" and "statutory minimum wage".

Regulation 4 provides for collective bargaining coverage and upholds the right to engage in wage-setting negotiations. For this purpose the Minister will collaborate with social partners in line with national laws and practices. Additionally, measures will be implemented to prevent interference in the establishment and management of trade unions and employers' organizations engaged in collective bargaining.

Regulation 5 specifies that a recognized trade union shall have the right to request negotiations with an employer or employers' association to establish or modify a collective agreement.

Regulation 6 provides that the Director shall always take appropriate measures to gather the necessary data to determine the rate of collective bargaining coverage. In accordance with articles 56 to 59 of the Act, every union and employers' association must maintain up-to-date records of the following:

a) number of members of the trade union or employers' association;
b) copies of collective agreements;
c) information on the industries or sectors covered by these collective agreements;
d) the duration and expiration dates of the agreements;
e) the percentage of workers represented by the union or employers' association in each sector; and
f) records of any disputes related to collective bargaining.

If a union or employers' association refuses or neglects to perform the duties required by regulation 6(2), they will be guilty of an offence and liable to a fine (multa) not exceeding €1,164.69.

In accordance with regulation 7, the Director, any inspector appointed in accordance with the Act, and any officer authorized by the Director, are empowered to examine books and records, including itemized payslips, at any time. They can also request any information they reasonably deem necessary to ensure compliance with these regulations and the Act. Without prejudice to articles 45 to 47A of the Act, a worker who has been paid less than the applicable rate according to the National Minimum Wage Standing Order and Wage Regulation Orders in force has the right to submit a complaint to the Director. The Director will investigate the matter and order the employer to pay the worker wages in accordance with the National Minimum Wage Standing Order and Wage Regulation Orders in force. Consequently, an employer found in breach of the worker's right to be paid the applicable wage, will be liable to the punishments stipulated in article 45 of the Act.

Regulation 8 provides that it shall be unlawful to victimise or to subject any worker, or any workers' representative to any adverse treatment or for any worker or any workers' representative to suffer any adverse consequences resulting from a complaint lodged with the employer or resulting from any proceedings initiated with the aim of enforcing compliance with the rights provided for in these regulations.

Regulation 9 specifies instances where a worker will be considered to have been unfairly dismissed. Workers who believe they have been dismissed or subjected to measures with similar effects due to exercising their rights under these regulations can request the employer to provide the reasons for the dismissal or measures in writing. If a worker presents facts before the Tribunal that suggest they were dismissed or subjected to equivalent measures, the employer must prove that the dismissal was based on different grounds. In such cases, a worker may file a complaint with the Tribunal established in accordance with the Act.

5. Concluding Section

These regulations will enter into force on their publication in the Gazette.

N.B. These Explanatory Note are not intended to be an exhaustive description of the instrument nor a substitute thereof or a legislative supplement to it. These Note do not purport to be an authoritative ruling on the interpretation of the legislation.

Contact information

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Annex

(for the purpose of paragraph (vi) of Schedule III of Chapter 512 of the Laws of Malta)

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

Directive article number/s	**Transposing regulations**
Directive 2022/2041/EU	**The Minimum Wage and Collective Bargaining Regulations, 2024**
Article 2 Article 1(5)	Regulation 2(2) Proviso to Regulation 2(2)
Article 3	Regulation 3
Article 4 (1)(2)	Regulation 4 Regulation 5
Article 10	Regulation 6
Article 8	Regulation 7
Article 12	Regulation 8 Regulation 9
Article 13	Regulation 7 (3)

6th December, 2024