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21 December 2023

**Case Document No. 1**

***Confederación Intersindical Galega (CIG) v. Spain***  
Complaint No. 231/2023

**COMPLAINT**

**Registered at the Secretariat on 3 October 2023**

## **Confederación Intersindical Galega (CIG)**

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## **Collective complaint by the CIG against Spain**

Breach of Article 4.1 of the European Social Charter (revised), on the grounds that the 2023 interprofessional minimum wage is not sufficient to guarantee a decent standard of living for workers and their families

Santiago de Compostela, 3 October 2023

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## 1. Legal framework of the collective complaint

### 1.1 Objective

1. By means of this document, the Confederación Intersindical Galega (CIG) applies to the European Committee of Social Rights (ECSR) through the collective complaints procedure governed by the Additional Protocol to the European Social Charter (ESC), done in Strasbourg on 9 November 1995, to complain that the Kingdom of Spain applies Article 4.1 of the Charter in an unsatisfactory manner. That Article recognises the right to fair remuneration and in particular:

*“... the right of workers to a remuneration such as will give them and their families a decent standard of living.”*

2. It is alleged specifically that Royal Decree 99/2023 of 14 February 2023, which set the national minimum wage for 2023 (published in BOE no. 39 of 15 February 2023<sup>1</sup>), is not in compliance with Article 4.1 of the Charter, since the amount of the national minimum wage is insufficient to guarantee a decent standard of living for workers and their families, according to the interpretation of the ECSR on the basis of Conclusions XIV-2 (1998, reference period 01/01/1992-31/12/1996), recently confirmed in Conclusions XXII-3 (2022, reference period 1/01/2017-31/12/2020).
3. In bringing this collective complaint, the CIG seeks a ruling from the ECSR to the effect that the national minimum wage for 2023, set by the above-mentioned Royal Decree at EUR 15 120 gross per annum (EUR 1 080 gross per month in fourteen payments), is not in conformity with Article 4.1 of the Charter, since it is clearly less than 60% of the national average wage. It is also less than the EUR 17 016.17 gross established by the European Union statistics office (Eurostat) for the year 2022, despite the fact that the preamble to the provision states that:

*“the objective for the national minimum wage to amount to 60% of the average wage in 2023 has been achieved, in full compliance with the requirements laid down by the European Committee of Social Rights in application of the European Social Charter, and fulfilling the undertaking given by the Government to reach equivalence by the end of the current legislature.”*

### 1.2. Applicability of the European Social Charter (revised) and the Additional Protocol of 1995 in Spain

4. On 23 October 2000, the Kingdom of Spain signed the European Social Charter (revised) – ESC(r) – done in Strasbourg on 3 May 1996.
5. The ratification instrument was issued on 29 April 2021, published in the BOE of 11 June 2021 and deposited on 17 May 2021, with all 98 paragraphs being accepted. By application of Article K3 of Part IV of the Charter, it came into force on 1 July 2021.
6. Spain also accepted the collective complaints procedure by means of a declaration made upon ratifying the revised Charter on 19 May 2021. The procedure also came into force with respect to Spain on 1 July 2021. The following paragraph is included in the instrument of ratification:

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<sup>1</sup> <https://www.boe.es/eli/es/rd/2023/02/14/99/con>

*“In relation to Article D, paragraph 2, of Part IV of the European Social Charter (revised), Spain declares that it accepts the supervision of its obligations under this Charter following the procedure provided for in the Additional Protocol to the European Social Charter providing for a system of collective complaints, done in Strasbourg on 9 November 1995.”*

7. The Protocol has therefore applied for Spain since 1 July 2021, the date of the entry into force of the ESC(r).
8. These considerations have already been assessed by the Committee in relation to Spain in the decision of admissibility of 14 September 2022 in relation to Collective Complaint No 207/2022, in which the following is stated:

*“3. The Committee observes that Spain accepted the collective complaints procedure by a declaration made at the time of ratification of the Revised Charter on 19 May 2021 and that this procedure entered into force in respect of Spain on 1 July 2021. In accordance with Article 4 of the Protocol, the complaint has been submitted in writing and concerns Article 24 of the Charter, a provision accepted by Spain when it ratified this treaty on 19 May 2021.*

*Spain has been bound by this provision since the entry into force of the treaty in its respect on 1 July 2021.”*

9. In accordance with Article 4 of the Protocol, the complaint is presented in writing and refers to Article 4 of the Charter, a provision accepted by Spain upon ratifying that Treaty on 19 May 2021.
10. Spain has been bound by that provision since 1 July 2021, the date of the entry into force of the Treaty, although the provision already existed in the initial version of the European Social Charter, done in Turin on 18 October 1961.
11. Article 4.1 ESC(r), with which this complaint is concerned, is mandatory in nature, since Spain accepted all its Articles with no reservations whatsoever. In that context, the substantive link between Article 4 and Article 1 must be highlighted, since the right to earn a living from work would not be possible without equitable, fair or sufficient remuneration, with the additional result that the decisions of the ECSR are applicable to any country.<sup>2</sup>

### I.3. Capacity of the CIG to submit the collective complaint and compliance with the Protocol

12. Article 1 of the Protocol recognises the right to formulate collective complaints in letter c) in respect to:

*“...representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint.”*

13. The CIG<sup>3</sup> trade union defines itself as follows in Article 1 of its Articles of Association:<sup>4</sup>

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<sup>2</sup> Reference in this regard is made to Jimena Quesada, L. (2018), *“El control de convencionalidad y los derechos sociales: nuevos desafíos en España y en el ámbito comparado europeo (Francia, Italia y Portugal)”*, Anuario Iberoamericano de Justicia Constitucional, 22, 2018. <https://doi.org/10.18042/cepc/aijc.22.02>

<sup>3</sup> Further information on the CIG can be found on the Internet at [www.cig.gal](http://www.cig.gal) (in Galician).

<sup>4</sup> [https://www.cig.gal/files/documentos/Doc\\_CIG/ProbaBaixa\\_Libro\\_VIII\\_Congreso\\_CIG.pdf](https://www.cig.gal/files/documentos/Doc_CIG/ProbaBaixa_Libro_VIII_Congreso_CIG.pdf) (in Galician).

*“... a trade union organisation of male and female Galician workers established to ensure better protection of their interests from a class, feminist and non-patriarchal perspective, which aspires to a fully sovereign Galicia which is free of exploitation. CIG uses the Galician language, which it defends as the sole official language of Galicia, promotes its complete standardisation and undertakes to ensure its non-sexist use. The use of different forms of writing among its membership is respected.”*

14. According to Spanish law, the claimant CIG has the legal status of most representative trade union, in accordance with Article 7.1 of Organic Law 11/1985 of 2 August 1985 on trade union freedom (LOLS),<sup>5</sup> which recognises, in the Autonomous Community of Galicia, a special standing on obtaining more than 15% of staff and workers’ representatives on works councils and the corresponding public administration bodies, assuming a minimum of 1 500 representatives without being federated or confederated with State-wide trade union organisations.
15. Among other rights, the most representative trade unions have the right to institutional representation before the Public Administrations or other State-level bodies or organisations. For the most representative trade unions at State level, such entitlement derives from Article 6.3(a) LOLS, while for the most representative trade unions at Autonomous Community level it derives from Article 7.1 *in fine* of that same law. They all therefore participate as full members of the tripartite bodies created within the General State Administration and its autonomous bodies, such as the Economic and Social Council, the General Immigration Council, the General Councils of the INEM, INSALUD, INSS, ISM, IMSERSO, etc.
16. In relation specifically to the national minimum wage, Article 27 of Royal Legislative Decree 2/2015 of 23 October 2015, which approves the revised text of the Ley del Estatuto de los Trabajadores (ET - Law on the Workers’ Statute), recognises with respect to the most representative trade unions, including the CIG, the right to consultation before the amount is set by the Government.
17. The ECSR customarily accepts and takes into account the observations presented by the CIG in relation to the reporting system of the European Social Charter and its Protocols, and the trade union has been systematically submitting allegations concerning compliance with those instruments for many years.
18. It follows from the preceding paragraphs that, through the entry into force of the ESC(r), the CIG is authorised to lodge collective complaints concerning compliance with the Charter in the Kingdom of Spain.
19. The complaint is signed by the most senior representative of the CIG as Secretary General, Don Paulo Simón Carril Vázquez, by virtue of an agreement adopted by the Confederal Executive of the trade union, a body which jointly exercises the judicial, economic, financial and legal representation of the CIG (Articles 59 and 60 of the Articles of Association).
20. The complaint is also signed by the lawyer of the legal department of the CIG, D. Héctor López de Castro Ruíz, membership no. 1763 of the Ilustre Colexio de Avogados of Santiago de Compostela.
21. The complaint complies with Article 4 of the Protocol, since it is presented in writing, refers to a provision of the Charter accepted by Spain, i.e. Article 4, and specifies the extent to which that State Party has failed to ensure satisfactory application of that provision on the basis of the reasoning set out in this document in the grounds of claim.

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<sup>5</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-1985-16660#aseptimo>

22. As provided for in Article 5 of the Protocol, the complaint is addressed to the Secretary General.
23. It is in the interest of this party to be able to use the Spanish language, particularly in submitting written statements.
24. The following documents are attached:
  - **Document no 1:** certification of representativeness issued by the Xunta de Galicia attesting to the status of the CIG as the most representative trade union in Galicia;
  - **Document no. 2:** copy of the Articles of Association of the trade union;
  - **Document no. 3:** certification of the agreement of the Confederal Executive of the CIG concerning the submission of this complaint;
  - **Document no. 4:** copy of the power of attorney evidencing the power of representation of Paulo Simón Carril Vázquez as Secretary General of the CIG.

## 2. The national minimum wage and its regulation under Spanish law

### 2.1. Statutory determination of the national minimum wage

25. Wages, taken to be the amount paid by employers to workers for work carried out, are an essential aspect of the employment relationship and a vital aspect of labour law, which places limits on free will in setting their amount, given the material inequality of the positions between the parties that characterise the employment contract. Therefore, in terms of the regulation and setting of wages, free will as expressed in contracts of employment must respect the minima of *ius cogens* established during collective bargaining and in any case the national minimum wage, which is determined annually by the Government.
26. At constitutional level, Article 35 of the Spanish Constitution,<sup>6</sup> within the framework of the guiding principles of social and economic policy, establishes the right to sufficient remuneration to meet the needs of working people and their families.
27. The legal recognition of the right to sufficient remuneration is specified in Article 27 ET [the Workers' Statute],<sup>7</sup> concerning the national minimum wage, which requires the Government to set a minimum wage on an annual basis. Every year the Government therefore issues a Royal Decree establishing the national minimum wage applicable in that financial year.
28. Article 27 ET reads as follows:

*“Article 27. National minimum wage.*

*1. The Government shall set the national minimum wage on an annual basis, following consultation with the most representative trade union and business associations, bearing in mind:*

  - a) The Consumer Price Index.*
  - b) National average productivity.*
  - c) The increase in labour's share in national income.*

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<sup>6</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-1978-31229#a.35>

<sup>7</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2015-11430#a27>

d) *The general economic situation.*

*A six-monthly review shall also be carried out in the event that forecasts regarding the aforementioned price index are not met.*

*The revision of the national minimum wage shall not affect either the structure or the level of professional wages when the latter, as a whole and counted annually, are higher than the former.*

*2. The national minimum wage, in terms both of its annual and of its monthly amount, is inviolable. For the purposes of its determination, account shall be taken both of the reference period and of the method of calculation, whether or not including the apportionment of extraordinary payments, with immunity from seizure of the resulting amount in each case being guaranteed. In particular, if the monthly wage is accompanied by a bonus or extraordinary payment, the limit of immunity from seizure shall be twice the amount of the monthly national minimum wage, and in the event that the monthly wage earned includes the proportional share of extraordinary payments or bonuses, the limit of immunity from seizure shall be the amount of the national minimum wage calculated annually on a pro-rata basis over 12 months.”*

29. Although it is not relevant for the purposes of this collective complaint, it should be noted that the current wording of section 2 was introduced by final provision 8.1 of Law 3/2023 of 28 February 2023 and has been in force since 2 March 2023. Prior to that date Article 27.2 ET read as follows:

*“The national minimum wage, in its amount, is inviolable.”*

30. With respect to the legal nature of the Government act which establishes the amount of the national minimum wage on an annual basis by application of Article 27.1 ET, the Sala de lo Contencioso-Administrativo [Administrative Division] of the Supreme Court held in its judgment of 7 October 2020 (rec. 67/2019)<sup>8</sup> that the act referred to has decision-making content which is not of a legislative nature, since setting an amount is not equivalent to regulating or laying down rules on legal status. Therefore, and with regard to setting the new amount of the national minimum wage, the Royal Decree is an act of government of a political nature, without prejudice to the fact that the same instrument may regulate aspects connected to the scope of its setting, as is in fact the case.
31. Since Royal Decree-Law 3/2004 of 25 June 2004 on the rationalisation of the regulation of the national minimum wage and on increasing the respective amount,<sup>9</sup> the national minimum wage has played a strictly labour-related role of serving as a minimum wage guarantee for working people, it being disassociated from other purposes which it had been serving until that date, such as determining the amount of public benefits. In order to replace the national minimum wage in that role, the aforesaid Royal Decree-Law creates a new income indicator, the ‘indicador público de renta de efectos múltiples’ (IPREM) [Multi-Purpose Public Income Index].
32. Reference must also be made to Article 100 of Royal Decree-Law 20/2022 of 27 December 2022<sup>10</sup> on response measures to the economic and social consequences of the war in Ukraine and support for the reconstruction of the island of La Palma and other situations of vulnerability. This

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<sup>8</sup> <https://www.poderjudicial.es/search/AN/openDocument/04578900017d2736/20201013>

<sup>9</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2004-12010>

<sup>10</sup> <https://www.boe.es/buscar/act.php?id=BOE-A-2022-22685#a1-12>



extended the validity of Royal Decree 152/2022 of 22 February 2022, setting the national minimum wage for 2022, until the approval of the Royal Decree setting the national minimum wage for 2023 in the framework of social dialogue, in the terms established therein, and in accordance with Article 27 ET, thus guaranteeing legal certainty and the continuity of the function of the national minimum wage as a minimum wage floor or guarantee for workers.

## 2.2. Statutory setting of the national minimum wage for 2023

### 2.2.1. Background and preparatory work

33. On 31 January 2023, the President of the Spanish Government, Pedro Sánchez Pérez-Castejón, appeared before the Senate to report on the measures taken by the Government in response to the economic and social consequences of the war in Ukraine and the role of the authorities. In his oral statement, as set out in the minutes of the sessions,<sup>11</sup> he said the following:

*“I can inform you that we will approve a new rise in the national minimum wage of 8%, to reach €1 080, as agreed with the trade unions. (Strong standing ovation from members of the Socialist Parliamentary Group). This, ladies and gentlemen, represents a legislative commitment which I believe was furthermore a democratic duty for the workers of our country, both male and female, which, as provided for in the European Social Charter, sets the minimum wage at 60% of the average Spanish wage.”*

34. As can be seen from the press notes published by the UGT<sup>12</sup> and CCOO<sup>13</sup> on 31 January 2023, the agreement with the trade unions referred to by the President of the Government before the Plenum of the Senate two days previously makes reference to the CCOO and UGT trade unions, which are involved in the “social dialogue panel” with the Government and the CEOE and CEPYME employers’ organisations. The CIG trade union, although it is the most representative body, has not been invited and does not have the opportunity to participate in that tripartite social dialogue panel, of whose meetings and agreements there do not appear to be any written minutes. It is in this agreement that it was decided to set the amount of €1 080 per month.
35. On 1 February 2023, the Government (the Directorate General of Labour, under the Ministry of Labour and Social Economy) presented the most representative employers’ and trade union organisations, including the CIG, with the draft Royal Decree setting the national minimum wage for 2023 at €1 080 gross per month, with effect from 1 January 2023, as had been agreed with the two trade unions referred to above. With this reference to the draft Royal Decree, the Government seeks to fulfil the formalities of the consultation procedure set out in Article 27.1 ET.<sup>14</sup>
36. On 8 February 2023, the CIG sent the Government its observations (**document no. 5**) on the draft Royal Decree, stating, among other things, that it believes that Article 4 of the European Social Charter has been infringed, since the amount set of €1 080 gross per month is less than 60% of the average wage after deduction of contributions and taxes, according to the report on wages which is also attached (**document no. 6**).

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<sup>11</sup> [https://www.senado.es/legis14/publicaciones/pdf/sendo/ds/DS\\_P\\_14\\_118.PDF#page=5](https://www.senado.es/legis14/publicaciones/pdf/sendo/ds/DS_P_14_118.PDF#page=5) (page 5).

<sup>12</sup> <https://ugt.es/index.php/la-insistencia-sindical-consigue-aumentar-el-smi-hasta-los-1080-euros>

<sup>13</sup> <https://www.ccoo.es/noticia:654246-->

Firmado\_un\_acuerdo\_historico\_que\_va\_a\_cubrir\_los\_gastos\_basicos\_de\_muchas\_familias&opc\_id=

<sup>14</sup> In our view, this procedure is devoid of content, since the amount of the minimum wage for 2023 had already been agreed with the UGT and CCOO trade unions within the informal framework of the social dialogue panel, which lacks specific legal authority, and was made public by the head of Government in the Senate.

37. The preamble to the Royal Decree – both in the draft and in the version approved by the Council of Ministers – refers to the report submitted in June 2021<sup>15</sup> by the Advisory Committee on the Analysis of the Interprofessional Minimum Wage, to assert that with the increase of 8% with respect to the amounts provided for in Royal Decree 152/2022 of 22 February 2022, which set the national minimum wage for 2022:

*"..., on the one hand, the right to a fair and sufficient remuneration that provides working people and their families with a decent standard of living is effectively met; and, on the other, the objective that the national minimum wage should amount to 60% of the average wage in 2023 is achieved, in full compliance with the requirements laid down by the European Committee of Social Rights in application of the European Social Charter, and fulfilling the Government's undertaking to achieve equivalence by the end of the current legislature."*

38. Although it had taken part in the agreement with the Government to set the national minimum wage for 2023 at €1 080 gross per month, in a press release<sup>16</sup> published on 6 September 2023, the UGT trade union made the following statement:

*"Wages are another essential element to focus on in the new legislature."*

*"Wages must be increased. This summer in tourism we witnessed the double standards that exist in Spain. The management of the sector have been ungenerous in not raising wages while tariffs in the hotel trade have risen by around 25%. Profits must be shared among workers as well. This sector must accommodate the working patterns and working hours set out in the collective agreement, which is the norm, and with good living conditions."*

*And the national minimum wage (NMW), too. "It must reach 60% of the average real wage in our country. The sum of €1 080 is not 60% of the average wage. The group of experts has not been able to quantify it exactly, they have not allowed us to establish a specific methodology for setting it, and therefore there is an absolutely reliable structure, the Tax Authority, which makes it higher than the €1 080 figure, at around €1 200."*

*An NMW which, according to Pepe Álvarez, "should be automatically adjusted every year by law, in line with 60% of the average wage each year, thus enhancing wages in our country. And it must have a single value at national level, rather than being set separately in each Autonomous Community, since that approach will help us to grow together."*

#### 2.2.2. Content of Royal Decree 99/2023 of 14 February 2023

39. In compliance with the mandate of Article 27.1 ET, the Government approved Royal Decree 99/2023 of 14 February 2023, which set the national minimum wage for 2023, published in BOE No 39 of 15 February 2023 and in force from the day following its publication, though according to its Final Provision Three, it took effect during the period between 1 January and 31 December 2023, consequently ensuring payment with effect from 1 January 2023 of the minimum wage set.
40. With respect to the amount of the minimum wage, Article 1 of the Royal Decree states that:

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<sup>15</sup> [https://s03.s3c.es/imag/doc/2021-06-18/Informe\\_comision\\_asesora\\_smi.pdf](https://s03.s3c.es/imag/doc/2021-06-18/Informe_comision_asesora_smi.pdf)

<sup>16</sup> <https://egt.es/pepe-alvarez-es-momento-de-reducir-la-jornada-laboral-en-este-pais-las-35-horas-semanales>

*“The minimum wage for any activities in agriculture, industry and services, without distinction as to the gender or age of workers, shall be set at EUR 36/day or EUR 1 080/month, depending on whether wages are set by days or months.*

*The minimum wage only takes into consideration earnings in money, and remuneration in kind may in no case give rise to a reduction in the full monetary amount of the minimum wage.*

*That wage should be understood to apply to the legal working day in each activity, not including, in the case of the daily wage, the proportional part of Sundays and public holidays. If a shorter day is worked, pay shall be pro rata.*

*For application of the minimum wage on an annual basis, account shall be taken of the rules on compensation which are set out in the following Articles.”*

41. This minimum monthly wage of €1 080/month corresponds to an annual minimum wage of €15 120/year, equivalent to 14 monthly payments (12 ordinary and two extraordinary, as is customary in Spain), as set out in Article 3:

*“To that end, the minimum wage on an annual basis to be used as a comparator shall be the result of adding to the minimum wage set in Article 1 of this Royal Decree the amounts referred to in Article 2, and in no circumstances may an annual amount of less than €15 120 be considered.”*

42. The setting of the national minimum wage for 2023 forms part of the resolution content of the Royal Decree. In addition, the text contains other provisions of a strictly regulatory nature which reproduce the wording of preceding decrees and are not relevant for the purposes of this collective complaint.
43. What is relevant is the preamble or explanatory memorandum in the Royal Decree, which, though lacking legal value, is an element to be taken into consideration in interpreting the rule (Constitutional Court Judgment 36/1981 of 12 November 1981<sup>17</sup>). This states, as has already been shown in paragraph 3 of this document, that the national minimum wage of €15 120 gross per annum in 2023 is entirely consistent with the requirements laid down by the European Committee of Social Rights, in application of the European Social Charter. We respectfully disagree with that statement.

### 3. The right to sufficient remuneration in the ESC(r)

#### 3.1. Regulation in the Treaty

44. Article 4 of the ESC(r) reads as follows:

*“Article 4. The right to fair remuneration.*

*With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:*

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<sup>17</sup> <http://hj.tribunalconstitucional.es/es-ES/Resolucion/Show/36>

1. *to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;*
2. *to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;*
3. *to recognise the right of men and women workers to equal pay for work of equal value;*
4. *to recognise the right of all workers to a reasonable period of notice for termination of employment;*
5. *to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.*

*The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-setting machinery, or by other means appropriate to national conditions.”*

45. The wording of Article 4 of the 1996 revised Charter is the same as that of the 1961 Charter, and it is therefore our understanding that the conclusions of the ECSR in relation to the compliance of Spain with that provision, specifically paragraph 1, are directly applicable.

### 3.2. Interpretation of the ECSR

#### 3.2.1 General interpretation

46. Article 4.1 of the Charter recognises the right to fair remuneration that ensures a decent standard of living. This applies to all workers, including civil servants and contractual staff of the State,<sup>18</sup> regional and local public sectors, sectors or jobs not covered by collective agreements, assisted employment<sup>19</sup> and special schemes (e.g. migrant workers).<sup>20</sup>
47. The concept of “decent standard of living” goes beyond merely material basic needs, such as food, clothing and housing, and includes the resources necessary for taking part in cultural, educational and social activities.<sup>21</sup>
48. “Remuneration” refers to the compensation – monetary or in kind – paid by a company to a worker for time worked or work carried out. This includes, where applicable, gratuities or special bonuses. By contrast, social transfers (e.g. social security allowances or benefits) are taken into account only when directly related to wages.
49. To be considered fair within the meaning of section 4.1 of the Charter, the minimum wage paid in the labour market must not be less than 60% of the national average net wage.<sup>22</sup> The assessment is based on net amounts, i.e. after deduction of taxes and social security contributions.<sup>23</sup> For this purpose, taxes are all taxes on earned income.<sup>24</sup> Indirect taxes are

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<sup>18</sup> Conclusions XX-3 (2014), Greece

<sup>19</sup> Conclusions 2014, France

<sup>20</sup> Conclusions 2014, Andorra

<sup>21</sup> Conclusions 2010, Statement of interpretation of Article 4.1

<sup>22</sup> Conclusions XIV-2 (1998), Statement of interpretation of Article 4.1

<sup>23</sup> Conclusions XIV-2 (1998), Statement of interpretation of Article 4.1

<sup>24</sup> Conclusions XIV-2 (1998), Statement of interpretation of Article 4.1

therefore not taken into account. Where net figures are difficult to establish, it is for the State Party concerned to provide estimates of that amount.<sup>25</sup>

50. When a statutory national minimum wage exists, its net amount for a full-time worker is used as a basis for comparison with the net average full-time wage (if possible calculated across all sectors for the whole economy, but otherwise for a representative sector such as a manufacturing industry or for several sectors).<sup>26</sup> Otherwise regard is had to the lowest wage determined by collective agreement or the lowest wage actually paid.<sup>27</sup> This may be the lowest wage in a representative sector, such as manufacturing industry<sup>28</sup> for example.
51. Where the net minimum wage is between 50% and 60% of the net average wage, it is for the State Party to establish that that wage allows a decent standard of living.<sup>29</sup> Where the minimum wage is low, the Committee may, when assessing compliance with Article 4.1, take into consideration other elements, such as whether workers are exempt from co-payment in respect of health care, or are entitled to increased family allowances.<sup>30</sup>
52. A wage is not in compliance with the requirements of the Charter, irrespective of the percentage, if it does not guarantee a decent standard of living in real terms for a working person, i.e., it must be well above the poverty threshold of a particular country.<sup>31</sup>
53. In extreme cases, such as when the lowest wage is less than half of the average wage, the situation will be deemed to be in breach of the Charter, irrespective of such evidence.<sup>32</sup>

### 3.2.2. Specific interpretation for Spain

54. The ECSR has urged Spain on many occasions to raise its national minimum wage to 60% of the annual average wage, as a necessary precondition for complying with the Charter. In that light, reference may be made to the following ECSR conclusions in relation to Spain and Article 4.1:
  - Conclusions XIV-2 (1998)
  - Conclusions XVI-2 (2004)
  - Conclusions XVIII-2 (2007)
  - Conclusions XIX-3 (2010)
  - Conclusions XX-3 (2014)
  - Conclusions XXI-3 (2019)
  - Conclusions XXII-3 (2022)
55. In summary, the Committee has determined that the situation in Spain is not in compliance with the Charter, in that it cannot be stated that the minimum wage in the public and private sectors can ensure a decent standard of living, since Spain is unwilling or unable to provide information

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<sup>25</sup> Conclusions XIV-2 (2003), Denmark.

<sup>26</sup> Conclusions XIV-2 (1998), Statement of interpretation of Article 4.1

<sup>27</sup> Conclusions XIV-2 (2003), Denmark.

<sup>28</sup> Conclusions XIV-2 (1998), Statement of interpretation of Article 4.1

<sup>29</sup> Conclusions XXI-3 (2019), Denmark.

<sup>30</sup> Conclusions XVI-2 (2004), Portugal.

<sup>31</sup> Conclusions XIV-2 (1998), Statement of interpretation of Article 4.1.

<sup>32</sup> Conclusions XIV-2 (1998), Statement of interpretation of article 4.1.

on the average net wage, which, as has been seen, is the general criterion used by the ECSR to determine compliance or otherwise with the Charter on this point.

56. Therefore, in accordance with recent Conclusions XXII-3 (2022):

*“Fair remuneration*

*The Committee observes that the report provides information about the evolution of the minimum wage. It notes that in 2020 the minimum wage in the private sector was set at €950 per month, which represents a 31% increase since 2019. The Committee notes that this wage is paid 14 times a year and therefore it amounted to €1 108 per month, calculated over 12 months. According to Eurostat [ ] the gross average earnings in 2020 amounted to €26 028 and to €20 632 net. According to Eurostat the minimum wage amounted to €1 108 in 2020.*

*The Committee notes that the report does not provide information about the net minimum wage. It observes that the gross minimum wage stood at 51% of the gross average earnings.*

*However, in the absence of information concerning the net minimum wage, the Committee considers that it has not been established that the minimum wage in the private sector can ensure a decent standard of living.*

*The Committee further notes that the report does not provide any information concerning the public sector. The Committee takes note of [the] Royal Decree-Law 2/2020 of January 21, 2020, approving urgent measures regarding remuneration in the public sector. The Committee notes that this Royal Decree establishes different levels of the minimum wage for the different categories of public workers. It notes that the lowest minimum wage is established for workers in category C2, who receive 12 times €650 euros for 12 months and [an] additional €644.40 for two months (€757 calculated for 12 months). The Committee also notes that in Category E the lowest minimum wage was set at €694 per month.*

*However, in the absence of information concerning the gross and net minimum wages paid in the public sector, the Committee considers that it has not been established that the minimum wage in the public sector can ensure a decent standard of living. It asks the next report to provide full information concerning minimum gross and net wages paid in the public sector, by category.*

*The Committee notes from the Comments by the Confederación Sindical de Comisiones Obreras (CCOO) and Unión general de trabajadores de España (UGT) as well as the Confederación Intersindical Galega (CIG) on the national report of Spain that [the] Royal Decree 152/2022, of February 22 has taken into account the conclusions of the Committee and provides that the increase in the minimum wage aims at ensuring a decent standard of living for workers and their families, which is set at 60% of the average wage by the Committee.*

*However, the CCOO, UGT and CIG consider that this threshold has not yet been attained. In reply, the Government also indicates that when establishing the levels of minimum interprofessional wage in [the] Royal Decree 817/2021 account was taken of the need to guarantee a fair remuneration as interpreted by the Committee.*

*(...)*

## Conclusion

The Committee concludes that the situation in Spain is not in conformity with Article 4§1 of the 1961 Charter on the grounds that:

- it has not been established that the minimum wage in the private sector can ensure a decent standard of living;
- it has not been established that the minimum wage in the public sector can ensure a decent standard of living.”

57. In a recent paper, Professor Carril<sup>33</sup> explains the sources of statistical data used by the ECSR to justify its decisions, indicating the possibility of resorting to the gross national average wage when States only provide information on the gross amount of the minimum wage, without providing figures on the respective net amount:

*“The ECSR has also held that the fair remuneration alluded to in Article 4.1 is remuneration that ensures a decent standard of living, which assumes that it will do more than ensure merely material basic needs (food, clothing and housing) and also make it possible to enjoy the means necessary to take part in cultural, educational and social activities. Specifically, remuneration is fair when the minimum wage is not less than 60% of the net national average wage, basing the assessment on net amounts (i.e., when tax and social security contributions have been deducted), notwithstanding that use is made of the national gross average wage when States only report the gross amount of the minimum wage, without providing figures on the respective net amount. The economic data used by the ECSR to justify its decisions are taken from the European Union statistics office (Eurostat) and can be obtained from its website, under ‘Annual net earnings’, in the ‘Earnings structure’ section, where ‘gross earning’ and ‘net earning’ can be selected by State, followed by the ‘earnings case’ section, in particular ‘Single person without children earning 100% of the average earning’ [may be consulted [HERE](#)].”*

58. Without looking too far back in time, the application of these rules has given rise to the results set out in the table below, starting in the year 2000:

Year	Average annual gross wages in euros (Eurostat)	60% of average annual gross wages in euros (Eurostat)	Annual gross minimum wage NMW	Percentage of annual gross wages (Eurostat) reached by the annual gross NMW
2000	17 319.06	60% (10 391.436)	5 947.13	34.33%
2001	17 919.30	60% (10 751.58)	6 068.30	36.86%
2002	18 600.78	60% (11 160.468)	6 190.80	33.28%
2003	19 384.71	60% (10 630.826)	6 316.80	32.58%

<sup>33</sup> Carril Vázquez, X.M. (2023). “En 1000 palabras, el (in)cumplimiento español en materia salarial de la Carta Social Europea (Nihil novum sub sole)”. Briefs AEDTSS, número 43, Asociación Española de Derecho del Trabajo y de la Seguridad Social. <https://www.aedtss.com/en-1000-palabras-el-incumplimiento-espanol-en-materia-salarial-de-la-carta-social-europea-nihil-novum-sub-sole/>

2004	20 045.37	60% (12 027.222)	6 477-6 871.20	32.31%-34.27%
2005	20 616.30	60% (12 369.78)	7 182	34.83%
2006	21 167.82	60% (12 700.692)	7 572.60	35.77%
2007	21 989.28	60% (13 193.568)	7 988.40	36.32%
2008	23 251.89	60% (13 951.134)	8 400	36.12%
2009	24 164.16	60% (14 498.496)	8 736	36.15%
2010	24 785.88	60% (14 871.528)	8 866.20	35.77%
2011	25 515.33	60% (15 309.198)	8 979.60	35.19%
2012	25 894.23	60% (15 536.538)	8 979.60	34.67%
2013	26 026.68	60% (15 616.008)	9 034.20	34.71%
2014	26 190.78	60% (15 714.468)	9 034.20	34.49%
2015	26 475.30	60% (15 885.18)	9 080.40	34.29%
2016	26 448.81	60% (15 869.286)	9 172.80	34.68%
2017	26 549.79	60% (15 929.874)	9 907.80	37.31%
2018	26 921.76	60% (16 153.056)	10 302.6	38.26%
2019	27 292.47	60% (16 375.482)	12 600	46.16%
2020	26 028.06	60% (15 616.836)	13 300 [2020- 2021 (31/08)]	51.09%
2021	27 570.48	60% (16 542.288)	13 510 [2021 (01/09)]	49%
2022	28 360.29	60% (17 016.174)	14 000	49.36%
2023	-	-	15 120	-

#### 4. Grounds of claim

##### 4.1. The national minimum wage still fails to reach 60% of the average wage

59. The complainant trade union respectfully disagrees with the assertion by the Spanish Government in the preamble to Royal Decree 99/2023 of 14 February 2023 that in 2023 the objective for the national minimum wage to reach 60% of the average wage was achieved, in compliance the requirements laid down by the ECSR in application of the Charter.



60. This is in fact a situation similar to what has occurred on other occasions, which one of the authors cited illustrates with the Latin expression “*nihil novum sub sole*”<sup>34</sup> [nothing new under the sun]. While there is no doubt that the increase in the national minimum wage has been significant in recent years – the Spanish Consejo Economico y Social [Economic and Social Council] (ESC) puts the increase at a nominal figure of 65% between 2016 and 2023<sup>35</sup> – the NMW still fails to meet minimum standards to ensure a decent life for working people and their families.
61. The following steps will be taken to verify compliance with the above-mentioned standards, and once again the Royal Decree establishing the national minimum wage is expressed in gross amounts:
- a) We go to the Eurostat data viewer on annual net earnings.<sup>36</sup>
  - b) In the earnings structure tab, we ought to select net earnings, though in light of the repeated self-serving lack of information from the Spanish Government on the amount of such net earnings, we have to select gross earnings.
  - c) In the currency unit tab, we select “euro”, while under “earnings case”, we select “single person without children earning 100% of average earnings”.
  - d) In the list of Geopolitical entities, we select “Spain”.
  - e) Having selected the source, we go on to check the data, where it is found that there are no data for 2023, which means that we must therefore take the 2022 data as reference minima.
  - f) According to Eurostat data, the gross average wage in 2022 was €28 360.29, and therefore 60% of that figure, which the ECSR takes as a reference, amounts to €17 019.17.
  - g) The annual gross minimum national wage for 2023 is €15 120, which is therefore lower than the reference figure of €17 019.17 using 2022 data (with 2023 data the difference will be even greater).
  - h) The national minimum wage therefore still fails to reach the level of 60% of the average wage required by the ECSR, since it falls below the annual gross figure of €17 019.17 (or €1 215.65 gross per month in 14 payments), which should be taken as the minimum.
62. The 2022 Spanish ESC<sup>37</sup> memorandum comes to a similar conclusion, contradicting the Government’s assertion that the objective for the national minimum wage to reach 60% of the average wage has now been achieved:

*“In 2022 the NMW in Spain reached €1 000 per month in 14 payments (in 2023 it rose to €1 080), giving a nominal increase of 65% between 2016 and 2023. This means that in 2023 it*

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<sup>34</sup> Carril Vázquez, X.M. (2023), *op. cit.*

<sup>35</sup> Economic and Social Council (2023). “Memoria sobre la situación socioeconómica y laboral de España 2022”, Colección Memorias, núm. 30. p.178. <https://www.ces.es/documents/10180/5312314/Memoria-Socioeconomica-CES-2022.pdf/a03c8265-ee92-7803-b252-d44860e0e34c>

<sup>36</sup>

[https://ec.europa.eu/eurostat/databrowser/view/EARN\\_NT\\_NET\\_NET\\_custom\\_5951963/default/table?lang=en](https://ec.europa.eu/eurostat/databrowser/view/EARN_NT_NET_NET_custom_5951963/default/table?lang=en)

<sup>37</sup> Economic and Social Council (2023), *op. cit.*

*stands at around 50% of the average wage, 15 points closer to the objective than it was in 2015.”*

63. In our view, this statement by the Spanish ESC is particularly relevant since it is an advisory public-law body set up under Article 131.2 of the Constitution to advise the government, which focuses on socio-economic and labour matters, and is made up of trade union and employers’ organisations and other representative bodies (farming and fishing sectors, consumers, users and the social economy sector, as well as experts in areas falling within the competence of the Council).<sup>38</sup> It is particularly relevant because the Economic and Social Council itself recognises that the amount of the 2023 national minimum wage is less than 60% of the average wage.

#### 4.2. Brief critique of the Advisory Committee report on the Analysis of the Interprofessional Minimum Wage.

64. In the preamble to Royal Decree 99/2023 of 14 February 2023, reference is made, without further detail, to the report submitted in June 2021 by the Advisory Committee on the Analysis of the Interprofessional Minimum Wage. This states, on the one hand, that the right to fair and sufficient remuneration that gives working people and their families a decent standard of living is met, and, on the other, that the objective of the national minimum wage reaching 60% of the average wage in 2023 is achieved, thus complying with the requirements laid down by the European Committee of Social Rights, in application of the European Social Charter and fulfilling the Government’s commitment to achieve equivalence by the end of the current legislature.
65. The Advisory Committee on the Analysis of the National Minimum Wage is a group of experts brought together in 2021 by the Ministry of Labour with a dual mission: firstly, to make an estimate of what constitutes 60% of the average wage in Spain, and secondly, to determine the formula for achieving the latter during the 2019-2023 legislature.<sup>39</sup>
66. Although Royal Decree 99/2023 of 14 February 2023 does not specifically explain how the Advisory Committee report provides evidence to demonstrate that the minimum wage of €15 120 in 2023 equates to 60% of the average wage, critical reference must nevertheless be made to that document – there are in fact at least two reports, the aforementioned one of 18 June 2021,<sup>40</sup> and a second report of 7 December 2022.<sup>41</sup> In the latter (p. 16), four different estimates of the national minimum wage for 2023 are presented, with sums amounting to €1 065.30, €1 081.80, €1 066.00 and €1 054.40 per month, respectively, in 14 payments:

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<sup>38</sup> <https://ces.es./composicion>

<sup>39</sup> The Committee originally consisted of the following 14 people: Antón Costas, Professor in the Department of Economic Policy at the University of Barcelona; Olga Cantó, head of the Department of Economics at the University of Alcalá de Henares; Gemma Galdón, researcher in the Department of Sociology of the University of Barcelona; José Ignacio Pérez, former Professor of Economics at Universidad Carlos III; Rafael Muñoz de Bustillo, Professor of Applied Economics at the University of Salamanca; Inmaculada Cebrián, Professor of Economics at the University of Alcalá de Henares; Sara de la Rica, Professor of Economics at the University of the Basque Country; María Jesús Cedrún, General Secretary of the UGT in Cantabria; Carlos Martín, Director of the Economic Office of the CCOO; Edita Pereira, Secretary of the Economic and Financial Policy Committee of the CEOE; Luis Aribayos, Director of Economics and Digital Transformation, Cepyme; Manuel Lago, economist and consultant in the Office of the Minister for Labour; César Veloso, consultant in the Office of the Ministry for the Treasury; Carlos Cuerpo, Director-General of Macroeconomic Analysis of the Ministry of Economic Affairs. Subsequently the number of members fell to 12, without Antón Costas, Edita Pereira and Luis Aribayos, and including Alba Catalán Piera as technical adviser to the Committee.

<sup>40</sup> [https://s03.s3c.es/imag/doc/2021-06-18/Informe\\_comision\\_asesora\\_smi.pdf](https://s03.s3c.es/imag/doc/2021-06-18/Informe_comision_asesora_smi.pdf)

<sup>41</sup> <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/trabajo14/Documents/2022/191222-Informe-SMI-2023.pdf>

Table 1.a. NMW [national minimum wage] simulations for 2023 corresponding to 60% of the average wage in 2022

- With the IRPF rate [personal income tax] applicable in 2023 (minimum exempt €15 000)

			60% NMW			Gross MW	
	2021	2022	CCSS	IRPF		12 p.ments	14 p.ments
Net wage full-time employee in 2020 = 1 856 starting point*							
<b>Simulation 1:</b> NNCC for 2021 and 2022 to October 2022	1 887.9 (1.72%)	1 937.8 (2.64%)	1 162.7	80.2	0	1 242.8	1 065.3
<b>Simulation 2a:</b> NNCC for 2021 and ETXCL for 2022, Ordinary salary cost 1st H 2022/1st H 2021	1 887.9 (1.72%)	1 961.0 81.4	1,176.6 4.0	81.4 0	4.0 1 242.8	1 262.1	1 081.8
<b>Simulation 2b:</b> NNCC for 2021 and ETCL for 2022, ordinary wage cost 1st H 2022 /av. 2021	1 887.9 (1.72%)	1 939.0 (2.71%)	1 163.4	80.2	0	1 243.6	1 066.0
<b>Simulation 3:</b> SMeTC EES2019 updated with ETCL ordinary wage cost 1st H 2022/1st H 2019		1 918.0 (5.05%)	1 150.8	79.3	0	1 230.2	1 054.4

(\*) Except simulation 3 SMeTC EES2019= €1 825.9

Source: Own estimation from the Encuesta de Estructura Salarial (ESS) 2020, Collective Bargaining Survey (NNCC), Quarterly Labour Cost Survey (ETCL) and IRPF deductions of the AEAT.

II Report of the Comisión Asesora for analysis of the NMW

67. Our basic point of disagreement with the Advisory Committee is that, when determining 60% of the average wage, the starting point is based on its own estimate of the gross reference wage, which is lower than that provided by Eurostat. The following is set out in the report of 7 December 2022 (page 13):

*“Although in its 2021 report the Committee repeatedly and insistently pointed to the need to improve the statistical sources available to be able to monitor wage progression in real-time, or at least with a shorter time lag. The fact remains that a year later, the Committee faces the same problems of insufficient wage information to estimate the average net wage for 2022. The advantage on this occasion is that, having carried out a review of the wage sources available and the respective advantages and disadvantages in the 2021 report, the Committee may now rely on findings and on a methodology to be applied to calculation of the net average wage for 2022. As in the previous financial year, therefore, calculation of the target minimum wage will be based on wage information provided by the EES in 2020, the most recent available, estimating wage increases in 2021 and 2022 on the basis of two different sources: the ETCL and collective labour agreement statistics.”*

68. This means that the four estimates used by the Advisory Committee are based on a net average wage which derives not from Eurostat data but from an amount obtained with its own methodology, which uses as a basis the Wage Structure Survey 2020, the Collective Bargaining Survey and the Quarterly Labour Costs Survey, plus the Tax Authority’s withholding income tax calculator. As can be seen, the Advisory Committee does not take the criterion used by the ECSR into account to determine whether the amount of the minimum wage is or is not sufficient for a decent life, something that should not be overlooked in light of reiterated findings of non-conformity issued by the ECSR itself.
69. In our view, this methodological decision raises two serious problems:
- a) The estimate made by the Advisory Committee is based on sampling statistics, which involve a specific number of research units for the sample, from which a result is then estimated. However, Eurostat data are based on census statistics, where all research units are considered to be a sample, taking as a basis the quantitative information provided by the Tax Authority and the Social Security Agency.
  - b) The data obtained by means of the Advisory Committee’s methodology are based on a technical criterion of no official nature specific to the group of experts, while Eurostat data correspond to a harmonised methodology for the European Union as a whole, based on data compiled by the authorities of each member state.
70. The difference between starting with one set of data or another is highly relevant, since with Eurostat data, the national minimum wage would in no event reach 60% of the average wage, either in gross terms, as explained in section 4.1, or in net terms, as will be shown below, using 2022 data.
71. To make the calculation in net terms, the starting point must be the amount of €17 016.17, which is 60% of €28 360.29, corresponding to the average gross wage in Spain in 2022, the latest data published by Eurostat.<sup>42</sup> Thereafter, the Social Security contributions for the worker (6.45%) are deducted, plus the amount withheld for personal income tax for persons without children, or any additional amount withheld:

60% of the average annual gross wage	17 016.17
• Worker’s SS contribution (6.45%):	1 097.53

<sup>42</sup> In methodological terms, the Eurostat net average wage figure cannot be taken directly, since the deductions to be applied are lower when the wage is lower.

• IRPF withholding tax (4.47%) <sup>43</sup>	760.85
<u>60% of the average net annual wage</u>	<u>15 157.85</u>

72. Meanwhile, if the corresponding deductions for Social Security and IRPF personal income tax are applied to the gross minimum wage of €15 120 per annum in 2023, the following amount is obtained:

Gross national minimum wage:	15 120.00
• Worker's SS contribution (6.45%):	975.65
• IRPF withholding tax (0.25%) <sup>44</sup>	37.80
<u>Net minimum national wage</u>	<u>14 106.55</u>

73. It follows, also in net terms, that the national minimum wage in Spain (€14 106.55) is less than 60% of the net average wage (€15 157.85), and therefore Article 4.1 CSE(r) will not be complied with here either.

## 5. Conclusions and claim

74. It can be concluded from the above that the amount of the national minimum wage for 2023, set at €15 120 gross per annum (€1 080 gross per month in 14 payments), is not in conformity with Article 4.1 of the Charter, since it is clearly lower than 60% of the average wage, and also lower than the amount of €17 016.17 gross as per the European Union statistics office (Eurostat) for 2022, despite the fact that it is asserted in the preamble to the provision that that objective has been achieved in the current year of 2023.

75. Therefore, CIG asks the Committee to:

- a) declare admissible its collective complaint for the purposes of its appraisal in accordance with the procedure established in the 1995 Protocol.
- c) declare that the national minimum wage for 2023, set at €15 120 gross per annum (€1 080 gross per month in 14 payments) by means of Royal Decree 99/2023 of 14 February 2023, which determines the national minimum wage for 2023, is not in conformity with Article 4.1 of the Charter since it does not constitute sufficient remuneration to provide workers and their families with a decent standard of living.

Santiago de Compostela, for Strasbourg, on 3 October 2023.

32819866Q Signed digitally by	NAME	Signed digitally by
PAULO 32819866Q	LOPEZ DE	NOMBRE LOPEZ
SIMON PAULO SIMON	CASTRO RUIZ	DE CASTRO RUIZ
CARRIL (R: CARRIL (R:	HECTOR – NIF	HECTOR – NIF
G36706927) Date: 10.03.2023	77595228j	77595228j

<sup>43</sup> The amount withheld for IRPF is calculated by the Tax Authority on its webpage: <https://www2.agenciatributaria.gob.es/wpl/PRET-R200/R231/index.zul>

<sup>44</sup> The amount withheld for IRPF is calculated by the Tax Authority on its webpage: <https://www2.agenciatributaria.gob.es/wpl/PRET-R200/R231/index.zul>

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