



THE EU DIRECTIVE ON FAIR MINIMUM WAGES: 'WHAT IS NOT BROKEN, WILL NOT BE FIXED'



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(5 November 2020)

In Commentaries (https://www.egmontinstitute.be/publication_parent/commentaries/)

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viewed with reluctance by hardliners, for whom the EU must safeguard the sacrosanct principle of social subsidiarity. Despite the Union’s limited legal competences on pay, recent political and economic developments have prompted the Commission to move forward with a directive that promotes fair minimum wages.

Read the full text below.

(Photo credit: European Commission)

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In January 2020, the Commission kicked off the compulsory two-stage consultation procedure (<https://ec.europa.eu/social/main.jsp?catId=522&langId=en&moreDocuments=yes>) with EU social partners. EU action in the field of minimum wages has been widely approved by employees’ representatives, but the debate has reflected a more mixed picture from the employers’ side. While SMEs regard this initiative as a way of avoiding unfair competition in the single market, BusinessEurope members have warned about the risks of a measure that would go beyond a soft and flexible instrument.

On 28 October, the Commission published its proposal for an EU Directive on adequate minimum wages (https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1968). Its goals are twofold:

i) Promoting secondary economic goals related to the sound functioning of the single market by ensuring a more level playing-field and upward convergence;

ii) A primary social goal that aims to improve working and living conditions. The added value of fair minimum wages would contribute to the fight against poverty and the eradication of poverty.

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EU legal competences and the lack of room to manoeuvre in wage legislation

Maintaining independence on wages is perceived as a crucial protection among countries with collective self-regulatory labour-market systems (e.g. Nordic countries) and often seen as a precondition of their EU membership. It has been enshrined in Article 153(5) of the treaties, which forbids the EU to act directly on wages or on the autonomy of social partners and Member States in this field. Nevertheless, any social subsidiarity on wage-setting systems constitutes a relative exclusion because the EU has legislated on pay for decades through its competences on non-discrimination and paid equality.

More recently, the Union has repeatedly mainstreamed wage policy through intergovernmental policymaking in the framework of the new European economic governance. In a context of economic and monetary crises, the Commission's recommendations have largely aimed at wage moderation by cutting or freezing national minimum wages or limiting their growth – with relative success. What is, however, not permitted, according to the ECJ (https://www.cep.eu/fileadmin/user_upload/cep.eu/Studien/ceplnput_Europaeischer_Mindestlohn/ceplnput_European_Minimum_Wage.pdf), is any direct interference in the field of pay.

The question of the EU competences has for a long time brought uncertainty concerning the instrument that would be adopted to ensure fair minimum wages. Although the Commission eventually opted for a directive, the use of Article 153(1) (i.e. supporting activity in the field of working conditions) reaffirms that the EU will not oblige Member States to set minimum wages by law. In other terms, Article 153(1) might not be the innovative legal pathway some were expecting, but it translates the complicated compromise that needed to be struck with national social partners.

No harmonisation, but promoting a 'gold standard' for all Member States

The Commission initially announced to guide best practices on minimum wages, but the proposal ultimately remains loose on some of them.

A) On ensuring an adequate level of minimum wages in light of national economic and social conditions

The basic idea behind an adequate minimum wage is that an individual earner living alone can secure an income above the poverty line. This is not the case in the majority of Member States as the minimum wage level is below the threshold of being at risk of poverty, which is determined as 60% of median pay (<https://www.eurofound.europa.eu/publications/report-2019/condition-and-practice-of-a-living-wage>). Despite its commitment to reducing wage inequality and in-work poverty, the proposed directive will not require Member States to increase their minimum wages to reach 60% of the gross median wage or any other threshold.

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However, under the new proposal, Member States must consider median and average wages as guiding indicators in their assessment of minimum wage adequacy.

B) On effectively protecting workers in the EU

The Commission has decided to promote collective bargaining coverage, as the level of wages in Europe is closely linked to whether employees benefit from a wage level negotiated by trade unions. The directive requires that in countries with a coverage rate of less than 70% of workers, an action plan must be put in place to promote collective bargaining. This will particularly affect Central and Eastern EU countries, whose coverage rates rarely exceed 30% of workers and have fallen sharply since the 2000s.

In the proposed directive, variations for specific groups of workers need to be 'non-discriminatory, proportionate and justified'. Overall, 7.2% of the EU workforce earns less than the statutory minimum wage, but the text does not seriously tackle the exemptions regimes which prevail in several Member States for certain statuses such as apprentices, public sector employees or young people.

C) Involving social partners in the adjustment of minimum wages and encouraging the conclusion of collective agreements

The Commission has stressed that the autonomy of social partners would be fully respected, hence acknowledging that an effective social dialogue is the best way to guarantee decent minimum wages. With this directive, Member States shall establish consultative bodies to advise the competent authorities on issues related to statutory minimum wages. Currently, ten Member States are not involving social partners in the setting of minimum wages, while their consultation is non-binding in nine out of the remaining 17.

D) Ensuring that statutory minimum-wage setting is guided by clear and stable criteria with reasonably frequent and regular updates

The Commission strives to set clear and stable criteria in order to avoid discretionary decisions on minimum wage-setting that are often based on governmental orientations in countries with statutory minimum wages. These criteria will be regularly updated, and Members States shall inform the Commission annually on developments.

'What is not broken will not be fixed'

The proposed measure will not lead to structural reforms in countries with minimum wages exclusively provided by collective agreements or in those with a long history of social dialogue and institutionalised tripartite structures. Belgium's wage setting mechanism will therefore remain largely spared, notably since its labour-market has one of the lowest in-work poverty and low-wage earners rates (<https://www.eurofound.europa.eu/publications/report>

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/2020/minimum-wages-in-2020-annual-review) in Europe.

Regarding the extension of the statutory minimum wage to all workers, Belgian collective bargaining coverage is, with Swedish, among the highest in Europe, with 96% of employees directly affected by agreements. The Commission's modest efforts to regulate exceptions to the minimum wage regime will certainly not alter the Belgian system either, as the country revised its sub-minimum rates for young workers in recent years. Finally, social consultation is an institutional set-up that is deeply rooted in Belgian practices. The obligation to establish and involve consultative bodies in statutory minimum wage and updating would leave Belgian social partners unscathed.

The proposed directive specifically addresses the role of Member States in promoting collective bargaining on wage-setting. It reflects the commitment to create a level playing-field by avoiding distortions of fair competition in the internal market. The text also sets a new milestone in the realisation of the European Pillar of Social Rights by transforming social rights into concrete policy.

This piece of legislation does not introduce anything new to countries with deeply rooted industrial relations traditions. Nevertheless, the Commission is sending a positive message on wage policy and the safeguarding of social partners' autonomy. Member States should praise a European initiative that is not oriented towards the kind of wage moderation and decentralisation of collective bargaining that Belgium and other states have experienced during the first cycles of the European Semester. It is a cautious move that takes into account Member States' competences but leaves room for upward convergence, particularly in Central and Eastern Europe.

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