

Practices and institutional aspects of minimum wage setting and adjustment in European countries

A comparative study¹

2015

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Introductory remarks

This comparative study was commissioned by the ILO in response to the interest expressed by the Bulgarian Ministry of Labour and Social Policy in deepening the knowledge base on the international experience, to contribute to establishing minimum wage adjustment criteria and a broader income policy.

The Government of Bulgaria has set out to improve income and wage policies to better respond to the economic challenges and to establish a new minimum wage fixing mechanism based on tripartite consensus. The present report forms part of the ILO's response to the Government's request for technical assistance to that end. It endeavours to provide an overview of the manner in which minimum wages are determined in the 28 member States of the European Union (EU) by identifying and reviewing minimum wage fixing mechanisms in place.

The study presents a comparative perspective on institutional aspects of minimum wage setting and adjusting mechanisms in EU countries, identifying good practices in light of the prescriptions of relevant ILO instruments, i.e. Convention No. 131 and Recommendation No. 135 on minimum wage fixing, 1970.

Based on the reports submitted by the Governments in view of the preparation of the 2014 General Survey on minimum wages² and on secondary sources, e.g. national legislation, the study³ focuses on a selection of EU countries providing valuable examples.

Comprising five parts, the study firstly seeks to provide an overview of general trends in minimum wages fixing in EU countries (Part I). In Part II, the objectives assigned to minimum wages are identified and the definitions of the minimum wage reviewed. The study also covers the scope of national minimum wage legislations and it examines the possible exemptions provided and the differentiated minimum wages applicable to specific categories of workers (Part III). It then reviews the criteria applied to fix and adjust the minimum wage rates (Part IV). Finally, the study analyses the minimum wage fixing mechanisms in force in EU countries (Part V).

It should be stressed that the comparative analysis is provided without prejudice to any comments that may be made by the ILO bodies responsible for supervising compliance with international labour standards.

This study served as a basis for discussions during the tripartite training workshop on “Setting and Adjusting the Minimum Wage in Bulgaria” organised by the ILO and the Bulgarian Centre for Human Resource Development and Regional Initiatives in May 2015.

² Hereinafter the General Survey.

³ The study was concluded in 2014 and does not encompass changes occurred in legislation since then.

1. Overview of minimum wages in EU countries

Broadly speaking, minimum wages in the EU are either fixed statutorily or by collective agreements. Collectively agreed minimum wage rates are traditionally found in Scandinavian countries, such as Denmark, Finland and Sweden, but also in Austria, Belgium, Germany and Italy. These countries rely on collective bargaining, usually at the sectorial and/or national level to set the minimum wage rates applicable. However, there are marked differences between these countries. For example, in Denmark, State intervention in the regulation of collective bargaining is kept to a minimum, whereas in Belgium, the legislation provides a framework to collective bargaining and representatives of the social partners negotiate within joint commissions. Furthermore, in several of these countries, such as Finland and Germany, the legislation provides for extension procedures.

In a significant number of EU countries, the legislation provides for the fixing of a statutory minimum wage, usually applicable at the national level. This is the case in France, Ireland, Luxembourg, Netherlands, Portugal, Spain, and the United Kingdom and in most Eastern European countries, e.g. Czech Republic, Latvia, Poland and Romania. Generally, the national minimum wage is fixed by the Government or the competent authority after consultation of the social partners gathered within an institutionalized body. Some Governments have adopted a different method and provide for the consultation of the social partners within the framework of the legislative process. This is the case in Luxembourg where the social partners' views on the minimum wage draft bill are taken into consideration before the minimum social wage is fixed by law.

Nevertheless, this general classification should not hide a more nuanced reality. Firstly, in countries where minimum wage rates are almost exclusively determined through collective bargaining, the question of the coverage of these minimum wages is crucial.

A closer look at coverage rates reveals great differences between countries. In some countries, the set of collective agreements covers a large part of the workers of both the public and private sectors. For example, according to the Swedish Government's estimates, there are some 650 collective agreements covering wages and conditions of employment. Although the legislation does not provide for an extension procedure, the coverage rate of collective agreements is 87 per cent of the employees in the private sector and 100 per cent in the public sector. Similarly, in Austria and Belgium, more than 90 per cent of wage earners are covered by a collective agreement. Furthermore, in Austria, the social partners have concluded an agreement in 2008 under which all collective agreements shall provide for a minimum wage of no less than 1000 euros, setting *de facto* a minimum wage level of general application.

The situation is rather different in Germany. Despite the provision of extension procedures in the legislation, the coverage rate of wage earners is only of 60 per cent.⁴ A large portion of the workers is therefore excluded from the scope of the minimum wage. The implementation of a

⁴ In Switzerland, a non-EU country where minimum wages are also principally fixed by collective agreement, the coverage rate is lower than 50 per cent. The popular initiative calling for the introduction of a minimum wage fixed at 4000 Swiss francs has been put to vote and rejected by more than 76 per cent of the Swiss people.

statutory minimum wage in 2015 should provide a safety net to workers not yet covered by a collective agreement and more broadly, to all workers.⁵

Moreover, in countries where a statutory minimum wage is in force, higher minimum wage rates are often fixed by means of inter-occupational or sectorial collective agreements. This is the case in Romania and in France where in addition to the inter-occupational minimum growth wage (SMIC), wage scales are determined by sectorial collective agreement. The legislation also provides that the employee is entitled to be paid the SMIC where the minimum wage set by collective agreement is lower than the SMIC. This provision guarantees that the minimum wage also works as a safety net where appropriate.

With regard to the scope of application of minimum wages, very few countries where minimum wages are fixed statutorily provide for exclusions and the categories of workers excluded are often civil servants and to a lesser extent, domestic workers and workers in family businesses. For example, the minimum wage legislation of Ireland and the United Kingdom does not apply to family businesses.

As mentioned above, in countries where minimum wages are fixed by collective agreements, great differences exist in the coverage rate and therefore some sectors or categories of workers may be excluded from the scope of minimum wages. This situation may occur in sectors or occupations in which employees are characterized by weak bargaining power.

In addition, a number of countries provide for differentiated minimum wage rates for young workers and/or apprentices or trainees. For example, the legislation provides for lower minimum wage rates for both categories in Austria, Belgium, France, Ireland, Luxembourg and the United Kingdom. Conversely, in several Eastern EU countries, the legislation provides for equal remuneration for young workers and/or apprentices and prohibits discrimination based on age. This is the case for example in Czech Republic, Hungary, Latvia and Romania.

Furthermore, EU countries where there is a statutory minimum wage apply a multiplicity of social and economic criteria in fixing and adjusting minimum wages. As regards social factors, reference is usually made to the evolution of prices in the country, by means of various factors (consumer price index, inflation rate or cost of living) and to the link between mean wage and minimum wage. In addition, EU countries generally consider economic factors, notably the economic situation of the country and level of employment.

In countries where collective bargaining is the primary minimum wage fixing method, the identification of adjustment criteria is rather difficult as most collective agreements reviewed for this study do not contain provisions in this regard.

Lastly, it appears that, in a significant number of EU countries, minimum wage adjustments occur annually.

⁵ The minimum wage should be fixed at 8.50 euros per hour. The bill provides that workers under 18 years of age, interns, and trainees are excluded from its scope as are long-term unemployed workers during the first six months of their employment contract.

Conclusion

General comments may be drawn from the review of minimum wage legislation in EU countries. Firstly, all EU countries apply one or more minimum wage rates. Secondly, two vastly different approaches prevail in Europe: one based on collective bargaining and the other based on a statutory process. However, these categories are not entirely watertight and some countries use a combination of several methods. In some countries, collectively agreed minimum wages may be fixed at higher rates than the statutory minimum wage, while in other countries, the competent body may supplement the activity of the social partners and set minimum wage rates for certain categories of workers regarded as vulnerable. In this regard the Committee of Experts emphasized in the General Survey that countries are free to implement the method or methods of their choice, provided they respect the other requirements of Convention No. 131, and particularly the obligation to consult fully with the social partners on the establishment and application of minimum wage fixing machinery and, where appropriate, allow them to participate directly in the application of this machinery.⁶

With regard to the criteria applied in fixing and adjusting minimum wages, most EU countries take account of the prescriptions of Convention No. 131 and apply a combination of social and economic criteria. The weighting of these criteria greatly varies between countries, some indexing the minimum wage rate to a specific factor and others leaving leeway to the competent body to decide.

These general remarks will be expanded upon in the next parts of this study.

⁶ See paragraph 139 of the General Survey.

2. Minimum wage definition and objectives

| | Definition of minimum wages | Components included | Components excluded |
|----------|--|---|---|
| Belgium | In its report, the Government indicates that the general monthly guaranteed minimum wage (RMMMMG) is an income and as such has a broader scope than the term 'wage': money wage, benefits in kind, tips, wage supplements paid by the employer. (9) s. 5 | The RMMMMG includes all components of the remuneration received by the worker in exchange for work: money wage, benefits in kind, tips, wage supplements paid by the employer. (9) s. 5 | Overtime pay, social security benefits for periods during which the worker was absent, non-recurrent profit-related benefits. (9) s. 5 |
| Bulgaria | There is no legal definition of the minimum wage. | The Government indicates that only the basic wage is taken into account. | Additional payments are excluded. |
| Cyprus | Under the Minimum Wage Act, the term "minimum wage" is "the minimum rate of wages fixed as hereinafter provided in respect of the particular occupation followed by the person concerned and applicable to that person." | | |
| Denmark | | There is no legal definition of the minimum wage. | |
| Finland | | There is no legal definition of the minimum wage. | |
| France | The hourly wage to be taken into consideration to ensure that it is at least equal to the SMIC is that corresponding to an hour of actual work, taking into account the various additional sums that are actually wage supplements, except for any sums paid as reimbursement of expenses and the transport allowances. (1) s. D.3231-6 | Wage supplements, including tips (but when the amount of the tips does not ensure the minimum wage, the employer is required to make up the difference) and benefits in kind. ((1) s. D.3231-6) | Any sums paid as reimbursement of expenses and the transport allowances. |
| Hungary | | Only the basic wage. (1) s. 136(1) | |
| Ireland | The national minimum hourly rate of pay means "the rate of pay declared by order of the Minister under section 11 of the National Minimum Wage Act 2000". (1) s. 2 | The national minimum wage rate may include an allowance for board with lodgings, board only or lodgings only at such rates as the Minister may specify in the order. (1) s 11(b) | |
| Italy | | there is no legal definition of the minimum wage | |
| Latvia | The legislation refers to the fixing of a minimum monthly wage for normal hours of work (in addition to a | | |

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| | minimum hourly wage). (2) s. 61(2) | | |
| Lithuania | The term 'wage' is defined as the "remuneration perceived for the work performed by an employee under a contract of employment. | A wage shall comprise the basic salary and all additional payments directly paid by the employer to the employee for the work performed. (2) s. 186 | |
| Luxembourg | The term 'wage' means cash money received for the work performed as well as any other wage supplement such as allowances, tips and benefits in kind. (1) s. L.221-1 The minimum social wage is defined as the wage that an employee physically and mentally fit for work receives, regardless of sex. (1) s. L. 222-1 | Wage supplement such as allowances, tips and benefits in kind are included. (1)s. L.221-1 | |
| Malta | | | The law provides that the employer is to provide an employee with food, housing and other benefits in kind in addition to the minimum wage. (2) s. 18 |
| Netherlands | The term 'wages' in the Minimum Wage and Minimum Leave Allowance means any cash income received under an employment contract, subject to certain exceptions, including: overtime pay, leave allowances, payments under profit-sharing schemes, payments made on special occasions, payments intended to settle one or more recoverable claims after a certain period of time or subject to a particular condition, allowances to the extent that they can be considered to cover the expenses incurred by a worker arising out of the contract of employment and special allowances for "breadwinners" and "head of household". (1) s. 6(1) | Minimum wage includes cash income received under an employment contract, subject to certain exceptions. (1) s. 6(1) | These sums are excluded from the minimum wage: overtime pay, leave allowances, payments under profit-sharing schemes, payments made on special occasions, payments intended to settle one or more recoverable claims after a certain period of time or subject to a particular condition, allowances to the extent that they can be considered to cover the expenses incurred by a worker arising out of the contract of employment and special allowances for "breadwinners" and "head of household". (1) s. 6(1) |
| Portugal | | The minimum wage includes sales commissions and production bonuses, allowances due under the contract or other provisions, and those which, because of their importance and their regular and permanent nature, are to be considered an integral part of remuneration on accordance with practice. It also includes benefits in kind to which employees are entitled arising out of their work, within certain limits set by law. (2) ss 260(3)(a) and 274 | |

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|----------------|--|---|--|
| Romania | The national minimum wage corresponds to normal working hours. (2) s. 164(2) | Only the money wage is included in the minimum wage. (2)s. 165 | |
| Slovakia | | | Overtime pay, wage supplements for working on a public holiday or at night and allowances for difficult working conditions are excluded from the minimum wage. (2) s. 120(2) |
| Slovenia | The minimum wage includes all components of the wage as indicated by the Employment Relationships Act. | The minimum wage includes all components of the wage as indicated by the Employment Relationships Act: basic wage and wage supplements for which he/she is eligible. (1) | Overtime pay, reimbursement of travel costs related to work, such as daily allowances, off-site allowances, reimbursement of travel costs to and from work, reimbursement of expenses for meals during work, annual leave allowance, severance pay, jubilee award are excluded. (1) |
| Spain | | Only the basic wage. (2) s. 26(1) | |
| Sweden | | There is no legal definition of the minimum wage. | |
| United Kingdom | | The elements taken into account include payments in cash and the value ascribed to the provision of housing to the extent determined by the applicable rules. (2) ss 30-37 | Payments to be deducted include payments made by the employer to the worker for periods during which the worker was absent from work or involved in a collective labour dispute, allowances other than allowances attributable to the performance of the worker in carrying out his work. payments made by the employer representing the amounts paid by customers in the form of tips or other gratuities, the reimbursement of expenses incurred by workers in connection with their employment and amounts withheld by the employer for his/her sole benefit, except those connected with the worker's conduct or as reimbursement of a wage advance. (2) ss 30-37 Tips are excluded as employers are required, since a legislative reform enacted in 2009, to pay their employees the national minimum wage in addition to the tips they receive. (2) s. 31(1)(e) |

2.1. Objectives of the minimum wage

The objectives of Convention No. 131 and Recommendation No. 135 are two-fold. Under the Preamble of Convention No. 131, the main objective of minimum wage fixing is to provide protection for wage earners against unduly low wages. Paragraph 2 of Recommendation No. 135 also provides that the “fundamental purpose [is] to give wage earners necessary social protection as regards minimum permissible levels of wages”. In this regard, minimum wage fixing should be conceived as an element of a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families.

Furthermore, although not explicitly stated, combating unfair competition is another objective of the 1970 instruments. As indicated in the General Survey, Convention No. 131 is also based on the idea that it is necessary to protect wages, which are generally the only means of subsistence of workers, from the effects of market competition, and to prevent a race to the bottom. By the same token, its implementation helps to ensure conditions of fair competition between employers.⁷

Very few countries have provided replies as regards the set objectives of the minimum wage(s) but, in some cases, these objectives can be inferred from the criteria applied in fixing and adjusting the minimum wage or from the mandate of the minimum wage fixing body. For example, as indicated in the Government’s report, the aim of the Low Pay Commission established in the United Kingdom is to have a minimum wage that helps as many low-paid workers as possible without any significant adverse impact on employment or the economy. In France⁸, the legislation provides that the minimum inter-occupational growth wage (SMIC) shall guarantee purchasing power to workers who are among the worst paid and ensure their participation to the economic development of the nation. In Spain⁹, the Constitution guarantees to workers the right to a fair remuneration sufficient to meet their needs and those of their families. The Government indicates in its report that this constitutional right is implemented by the Workers’ Charter which provides for the introduction of a minimum wage. Lastly, the Government of Slovenia indicated in its report that the national minimum wage should first and foremost fulfil the primary purpose of providing social protection to workers.

2.2. Definition and components of the minimum wage

It should be noted that while the concepts of “wages” and “remuneration” are determined under Conventions Nos. 95¹⁰ and 100¹¹, no ILO instrument defines the term “minimum wage”. In its General Survey, the Committee of Experts (CEACR) defines the concept of minimum wage as the minimum amount of remuneration that an employer is required to pay wage earners for the

⁷ See General Survey, paragraphs 62-64.

⁸ (1) s. L.3231-2.

⁹ (1) s. 35 and (2) s. 27.

¹⁰ Under article 1 of Convention No. 95, “the term wages mean remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered.”

¹¹ Under article 1(a) of Convention No. 100, “the term remuneration includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment.”

work performed during a period, which cannot be reduced by collective agreement or an individual contract.¹²

A few countries have indicated in their report that the national legislation does not establish a definition of the minimum wage. This is the case for example in Denmark and Finland where minimum wage rates are principally set by means of collective agreements. Conversely, under the legislation of some countries, the components of the minimum wage are thoroughly detailed, as is the case in the United Kingdom¹³ and in the Netherlands¹⁴. Other countries use a different approach by which the legislation contains a relatively brief definition of the minimum wage. In France¹⁵ for example, such approach has given rise to abundant case law, particularly on the link between hours worked and remuneration.

The question of whether or not to include wage supplements in the calculation of the minimum wage is addressed differently by EU countries, with the exception of overtime pay which is excluded from the minimum wage legislation of all EU countries.

While in Bulgaria¹⁶, Hungary¹⁷ and Spain¹⁸, all wage supplements are excluded, the legislation of a significant number of countries takes them into account. In Lithuania¹⁹, the minimum wage comprises the basic salary and all additional payments directly paid by the employer to the employee for the work performed. In Luxembourg²⁰, all wage supplements such as allowances and tips are included. The same applies in Belgium²¹ and in France²². In Slovenia²³, the minimum wage is composed of the basic wage, part of the wage for job performance and extra payments. The Government of Poland indicated in its report that some bonuses are included in the minimum wage, e.g. bonuses for seniority, bonuses in link with the special nature of the work performed or with specific qualifications, while other bonuses are not taken into account, such as year-end bonuses or profits distribution. In Portugal,²⁴ the minimum guaranteed monthly wage includes sales commissions and production bonuses, allowances due under the contract or other provisions, and those which, because of their importance and their regular and permanent nature, are to be considered an integral part of remuneration in accordance with

¹² See General Survey, paragraph 68. The Committee of Experts also recalls its 1992 General Survey on minimum wages which defined the term ‘minimum wage’ as “the minimum sum payable to a worker for work performed or services rendered, within a given period, whether calculated on the basis of time or output, which may not be reduced either by individual or collective agreement, which is guaranteed by law and which may be fixed in such a way as to cover the minimum needs of the worker and his or her family, in the light of national economic and social conditions”. See General Survey, paragraphs 35-36.

¹³ (2) ss. 30-37. See also paragraph 46 of the General Survey.

¹⁴ (1) s. 6(1). See also paragraph 46 of the General Survey.

¹⁵ (1) s. D.3231-6. This article provides that “the hourly wage to be taken into consideration to ensure that it is at least equal to the inter-occupational minimum growth wage shall be that corresponding to an hour of actual work, taking into account the various benefits in kind and additional emoluments that are in practice wage supplements.” See also paragraph 46 of the General Survey.

¹⁶ The Government indicated in its report that only the basic wage is taken into account.

¹⁷ (1) s. 136(1).

¹⁸ (2) s. 26(1).

¹⁹ (2) s. 186.

²⁰ (1) s. L221-1.

²¹ (9) s. 5.

²² (1) s. D.3231-6.

²³ (1) s. 126(2) and (2) s. 2.

²⁴ (2) ss. 260(3) (a) and 274.

practice. Finally, on the basis of the collective agreements reviewed for the purpose of this study, it appears that some collective agreements provide for the inclusion of certain wage supplements in the calculation of the minimum wage. For example in Italy,²⁵ under the provisions of the national collective agreement in the construction sector, the minimum wage comprises the basic wage as well as a sector-based allowance.

With regard to the inclusion of benefits in kind for the purpose of the minimum wage, some EU countries exclude them from the calculation of the minimum wage, only taking into account the money wage. This is the case, for example, in Malta²⁶ where the employer is to provide an employee with food, housing and other benefits in kind in addition to the minimum wage. Similar provisions apply in Romania²⁷ and in the Netherlands²⁸ where the term “minimum wage” includes only cash wages.

However, a number of countries explicitly include benefits in kind in the minimum wage. This is the case in France²⁹ where the legislation sets no limits to their inclusion. In Portugal³⁰, benefits in kind are taken into account in the calculation of the minimum guaranteed monthly wage but only up to certain limits: 35 per cent of their value for food and 12 per cent of their value for accommodation, and the total value of benefits in kind included in the calculation may not exceed 50 per cent. In the United Kingdom³¹, the legislation excludes any benefits in kind other than living accommodation. The amount to be taken into account is either the amount resulting from multiplying the hours of work done in the pay reference period by 50p, and reducing that product by the proportion which the number of days (if any) in the pay reference period for which living accommodation was not provided bears to the total number of days in the pay reference period; or the amount resulting from multiplying the number of days in the pay reference period for which living accommodation was provided by £2.85. Benefits in kind are also taken into account for the purpose of the minimum wage in Belgium,³² and Luxembourg³³. In Ireland³⁴, the national minimum wage rate may include an allowance for board with lodgings, board only or lodgings only at such rates as the Minister may specify in the order.

Conclusion

The review of the legislation of EU countries shows broad disparities regarding the definition of the minimum wage and its components. In a number of countries, the legislation does not indicate the elements of remuneration included. This is mostly the case in countries where collective bargaining is the primary minimum wage fixing method, e.g. Austria, Finland,

²⁵ National collective agreement in the construction sector, s. 14.

²⁶ (2) s. 18.

²⁷ (2) s. 165.

²⁸ (1) s. 6(1).

²⁹ (1) s. D.3231-6.

³⁰ (2) s. 274.

³¹ (2) ss. 9, 30-31, 36-37.

³² (9) s. 5.

³³ (1) s. L221-1.

³⁴ (1) s. 11(b). No order has been identified.

Denmark and Sweden. However, in most EU countries, a definition of the minimum wage, albeit succinct, is provided.

Another general trend among EU countries is the inclusion of wage supplements in the components of the minimum wage, the extent of which differs from country to country. In this regard, the Committee of Experts recalled in its General Survey that minimum wages played an important role in combating poverty and preserving the purchasing power of workers. It therefore urged the member States to review the composition of the minimum wage in light of this objective and to limit the items included to what appears to them strictly necessary in view of the situation in the country.³⁵

With regard to the inclusion of benefits in kind in the calculation of the minimum wage, vast differences exist among EU countries: some countries excludes benefits in kind from the composition of the remuneration, others include them within certain limits while other countries take them fully into account. The Committee of Experts considers this question to be of crucial importance, especially for certain categories of workers who are especially vulnerable to the risk of abuse, including domestic workers.³⁶ The Committee therefore suggested that “consideration could be given to reviewing national provisions which include all or part of allowances in kind in the minimum wage, given the difficulty of defining the cash value of such allowances, with a view to ensuring that the minimum wage retains its full meaning and really allows workers to meet their need and those of their families, and are free to dispose of their wages”.³⁷

³⁵ See General Survey, paragraph 50.

³⁶ In this regard, the Committee of Experts recalled that under Paragraph 14(d) of the Domestic Workers Recommendation, 2011 (No. 201), when a domestic worker is required to live in an accommodation provided by the household, no deduction from the remuneration should be made with respect to that accommodation. See General Survey, paragraph 49.

³⁷ See General Survey, paragraph 49.

3. Scope and coverage of the minimum wage

3.1. Coverage of the minimum wage

| | Minimum wage of general application | Minimum wage by sector | Minimum wage by region | Minimum wage by occupational category |
|-----------------|---|--|---|---|
| Austria | | <p>Minimum wage rates are essentially determined by sectorial collective agreements.</p> <p>In 2007, the social partners concluded a framework agreement under the terms of which sectorial collective agreements should provide a minimum wage of 1000 euros per month for a full-time worker.</p> <p>See General Survey, para. 135</p> | | |
| Belgium | <p>General monthly guaranteed minimum wage. (RMMMG) (9)</p> | <p>Sectorial minimum wages are also fixed by collective agreements. (2) ss 5-7; (9)</p> | <p>According to the Government, the joint committees that set minimum wages for the sector(s) they cover may also identify regions or areas to which different minimum wage rates apply.</p> <p>See General Survey, para. 151</p> | <p>According to the Government's report, almost all sectors have a specific minimum wage scale (4 per cent of them do not)</p> <p>See General Survey, para. 155 and 156</p> |
| Bulgaria | <p>National minimum wage. (2) s. 244</p> | <p>A minimum insurance income has been introduced in 2003 whereby employers must pay insurance contributions for workers and employees on a sum which cannot be lower than the minimum monthly amount of the insurance income set</p> | | |

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|-----------------------|---|--|--|--|
| | | for each major economic activities and occupational groups. The amount of the insurance income is fixed annually by the State Social Security Budget Act. In practice, the minimum insurance thresholds play the role of minimum wages for various branches and occupations in the country. According to the Government, the main objective is, inter alia, to fight against employment in the informal economy. | | |
| Croatia | National minimum wage. (2) s. 2 | | | |
| Cyprus | Minimum wage orders issued for an occupation may be of general application or apply to a geographical area. | Minimum wage orders issued for an occupation may be of general application or apply to a geographical area. | | The Minimum Wage Order is applicable only for certain occupations in order to protect vulnerable groups of employees mainly characterized by their weak bargaining power and thus are not covered by collective agreements. Specific minimum wages have been set by order for occupational groups such as shop assistants, childcare workers and security guards. See General Survey, para. 162 the minimum wage in sectors covered by an order is fixed, under certain conditions, at a higher rate after six months' service in an enterprise. (3) s. 3 |
| Czech Republic | There is a national minimum wage corresponding to the first level on the wage scale (see MW by occupational | | | Minimum wage rate have been fixed according to a scale comprising eight occupational categories based on |

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|----------------|--|---|--|---|
| | category). (2) s. 111; (4) ss 2-3 | | | the complexity of the work and the corresponding responsibilities. (4) s. 3 |
| Denmark | | Minimum wage fixing is based on sectorial collective agreements. See General Survey, para. 155 | | |
| Estonia | National minimum wage. (1) s. 29(5) | | | |
| Finland | | Minimum wages are essentially determined by sectorial collective agreements. A commission is responsible for declaring the general applicability of national collective agreements which are representative of the sector that they cover. When no collective agreement is applicable workers have the right to normal and reasonable remuneration. (1) Chapter 2, ss 7 and 10; (2) ss 2 and 4; (3) s. 1 According to the Government, a collective agreement is considered to be representative if it covers at least 50 per cent of workers in the sector concerned. | | While no general collective agreement covering domestic workers is in force, the Government may fix wages and other terms and conditions of employment for these workers if it considers it necessary in order to provide them with equitable and reasonable means of subsistence. (4) s. 12 |
| France | minimum inter-occupational growth wage (SMIC) (1) s. L.3231-2 | The social partners can also fix wage scales, and the corresponding minimum wage rates, in occupational branches. If the minimum wage set is lower than the SMIC, the employee is entitled to be paid the SMIC. (1) ss. L. 2232-5 and L.2241-1 | | |

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|----------------|--|---|--|---|
| Germany | <p>A national minimum wage has been fixed to enter into force in January 2015.</p> <p>Workers under 18 years of age, interns, and trainees are excluded from its scope as are long-term unemployed workers during the first six months of their employment contract.</p> | <p>Minimum wages, where they exist, are almost exclusively set by collective agreement, generally by sector.</p> <p>(2) s. 1(1)</p> | | |
| Greece | <p>National minimum wage.</p> <p>In March 2012, the Government undertook to reduce by 22 per cent the minimum wage set by the national collective agreement and to freeze its amount until the end of the economic adjustment programme that is on 1 January 2017 at the earliest.</p> | | | |
| Hungary | <p>There are two minimum wages: the lowest mandatory wage and the guaranteed minimum salary (see also MW by occupational category).</p> | | | <p>An increased minimum wage applies to workers in jobs for which a secondary education or vocational training diploma is required. (Guaranteed minimum salary). (7) s. 2</p> |
| Ireland | <p>National minimum wage. (1)</p> | <p>The Industrial Relations Act 1946, as last amended in 2012, provides also for the establishment of sectorial minimum wages.</p> <p>(2) ss 27, 42, 42A, 42B and 42C</p> | | |
| Italy | | <p>Minimum wage rates are principally set by national sectorial collective agreements.</p> <p>(2) ss. 2067-2080; (4); (5) See General Survey, para. 131 and 155</p> | | <p>In addition, collective agreements also contain wage scales differentiated by occupational category. See General Survey, para. 155</p> |

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| Latvia | National minimum wage. (2) s. 61 | | | |
| Lithuania | A minimum hourly wage and a minimum monthly wage are fixed. (2) s. 187(1) | The Government may also, on the recommendation of the Tripartite Committee, fix differentiated minimum wage rates, including by sector. It has not, however, taken up this option. | The Government may also, on the recommendation of the Tripartite Committee, fix differentiated minimum wage rates, including by geographical area. It has not, however, taken up this option. | The Government may also, on the recommendation of the Tripartite Committee, fix differentiated minimum wage rates, including by occupational category. It has not, however, taken up this option. |
| Luxembourg | The minimum social wage applies nationally to all economic sectors (1) s. L.222-9 | | | The level of the social minimum wage is increased by 20 per cent for employees with occupational qualifications. A skilled employee is an employee who works in a profession that requires an occupational qualification, usually obtained through education or training and recognized by official certification. (1) s. L.222-4 |
| Malta | There is a national minimum wage. (2) and (3) | Different minimum wage rates can also be fixed for certain branches of activity. At present there are 31 Wage Regulation Orders applicable to different economic sectors. (2) ss 3-4 | | Collective agreements may also establish minimum rates of pay for categories of employees. These rates may not be lower than those established in the National Standard Order. |
| Netherlands | National minimum wage. (1) s. 8 | | | |
| Poland | National minimum wage. (3) | | | |
| Portugal | Minimum guaranteed monthly wage. (2) s. 273(1) | The Government also specifies that the majority of sectors are covered by collective agreements that establish salary scales. See CEACR, Convention No. 131, direct request, 2014 | | The Government also specifies that the majority of sectors are covered by collective agreements that establish salary scales. See CEACR, Convention No. 131, direct request, 2014 |

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| Romania | National minimum wage. (2) s. 164 | Sectorial minimum wages are also fixed by collective agreements. (2) s. 162(1) | | Collective agreements may also establish wage scales. (3) s. 128 |
| Slovakia | National minimum wage. | | | While remuneration is not set by collective agreement, employers have to pay workers remuneration at least equal to the minimum wage corresponding to the complexity of the job. For this purpose, employers have to classify posts according to a scale of complexity, applying the criteria set out in the Labour Code (2) s. 120(1) and (3) and Annex 1 |
| Slovenia | There is a national minimum wage. (2) ss 4 and 6 | | | |
| Spain | There is an inter-occupational minimum wage (SMI). (2) s. 27 | | | A royal decree regulating the employment relationship for domestic workers adopted in 2011 provides that domestic workers are entitled to the inter-occupational minimum wage. Moreover, as the inter-occupational minimum wage is set both as a monthly and a daily rate, a specific minimum wage applies to domestic workers employed by the hour. (4) s. 8; (6) s. 4(2) |
| Sweden | | Minimum wage fixing based on sectorial collective bargaining. According to the Government, there are 650 collective agreements covering wages and conditions of employment. The coverage rate of collective agreements is 87 per cent in the private sector and 100 per cent in the public sector, although | | Sectorial collective agreements also contain wage scales differentiated by occupational category. See General Survey, para. 156 |

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| | | <p>there is no legal procedure for extension. The Government indicates that collective agreements apply to all employees in the establishments covered, whether or not they are unionized.</p> <p>See General Survey, para. 130 and 155</p> | | |
| <p>United Kingdom</p> | <p>There is a national minimum wage applicable to all sectors since April 2013. Previously, there was a specific minimum wage rate in the agricultural sector. (see minimum wage fixing on a tripartite basis)</p> <p>(1) and (2)</p> | | | |

As emphasized in Part I, EU countries may roughly be classified in two groups: countries where minimum wages are traditionally set by collective agreements and countries where the minimum wage is fixed statutorily.

In the first category of countries, which includes such countries as Austria, Belgium, Denmark, Finland, Germany, Italy and Sweden, minimum wages are usually determined at the inter-occupational and/or the sectorial level and collective agreements also provide for wage scales differentiated by occupational categories. For example in Italy, the national collective agreement for the metal industry provides for eight occupational categories and their corresponding minimum wage rates, as does the national collective agreement in the garment industry.

Nevertheless, as underlined in Part I of this study, the situation prevailing in all these countries varies greatly, especially as regards the coverage rate of the set of collective agreements. While in some countries, virtually all workers are covered by a collective agreement (e.g. Sweden or Austria), in others the protection offered to workers is less encompassing in that collective agreements have been concluded only in a limited number of sectors. This is the case for example in Germany where only 12 occupational branches are covered by a collective agreement (that is approximately 4 million workers). As indicated in Part I, the introduction in January 2015 of a national minimum wage fixed statutorily should remedy this situation and provide protection to all workers.

In the second category of countries identified, the coverage of the minimum wage legislation is often multi-layered as it involves the application of a national minimum wage fixed statutorily combined with an array of minimum wages set at a higher level and applying at the sectorial or occupational level. These minimum wages can be fixed by collective agreements, as is the case, for example in Portugal³⁸ where the legislation provides for a minimum guaranteed monthly wage, and according to the Government, the majority of sectors are covered by collective agreements establishing salary scales.³⁹ Similar provisions apply in Ireland⁴⁰ where the legislation provides for a national minimum wage and the establishment of sectorial minimum wages. Conversely, in Malta 31 higher minimum wage rates have been fixed for certain branches of activity by Wage Regulation Orders.⁴¹

As emphasized in Part I, the application of a minimum wage of general application supplementing minimum wage rates that are less broad in scope guarantees to all workers a minimum protection floor as regards wage levels. Indeed in practice, it may occur that collective agreements provide for minimum wage rates lower than the statutory minimum wage. This is the case in France where according to the Government, this situation may result from the structural loosening of wage bargaining in the branch concerned, or the fact that the bottom of the scale has been overtaken by the latest adjustments of the minimum inter-occupational growth wage (SMIC). In its report, the Government indicated various measures taken to address this problem. In particular, the Labour Code establishes an obligation to engage wage

³⁸ (2) s. 273(1).

³⁹ See CEACR, Convention No. 131, direct request, 2014.

⁴⁰ (2) ss 27, 42, 42A, 42B and 42C

⁴¹ (2) ss 3-4 and (3).

bargaining at the occupational branch level within three months when at least one of the coefficients of minimum wage scales set by collective agreement falls below the SMIC.⁴² A branch wage bargaining monitoring committee, comprising representatives of the social partners, is responsible for following up and reviewing adjustments of wage scales.⁴³ Furthermore, according to the Government, the number of employees paid the SMIC fell from 16,3 per cent in 2005 to 11,1 per cent in 2011 (1,7 million employees, excluding apprentices, trainees and casual workers).

In several countries, the legislation provides for the application of an increased statutory minimum wage based on the complexity of the work performed or on the level of education required. For example in Luxembourg,⁴⁴ the level of the social minimum wage is increased by 20 per cent for employees with occupational qualifications. Under these provisions, a skilled employee is an employee who works in a profession that requires an occupational qualification, usually obtained through education or training and recognized by official certification. In Hungary,⁴⁵ an increased minimum wage applies to workers in jobs for which a secondary education or vocational training diploma is required (guaranteed minimum salary).

Similarly in Czech Republic,⁴⁶ minimum wage rates have been fixed according to a scale comprising eight occupational categories based on the complexity of the work and the corresponding responsibilities. The national minimum wage corresponds to the first level on this scale. Lastly in Slovakia,⁴⁷ where remuneration is not set by collective agreement, employers have to pay workers remuneration at least equal to the minimum wage corresponding to the complexity of the job. For this purpose, employers have to classify posts according to a scale of complexity, applying the criteria set out in the Labour Code which provides a description of each level in the scale.

Furthermore, information available indicates that in some countries there is only one national minimum wage of general application. It appears to be the case in the following countries: Croatia,⁴⁸ Estonia,⁴⁹ Hungary,⁵⁰ Latvia,⁵¹ Luxembourg,⁵² Netherlands,⁵³ Poland,⁵⁴ Slovenia,⁵⁵ and the United Kingdom since April 2013.⁵⁶

⁴² (1) s. L.2241-2-1.

⁴³ According to the Government, the situation of 175 branches with over 5000 employees in the general sector (excluding agriculture, metalworking and construction) has been analyzed and it has emerged that 31 branches where the lowest steps on the scale had been overtaken by the SMIC, as adjusted in July 2012, increased their minimum rate to a level higher than the SMIC; as of October 2012, 91 branches still had at least one step lower than the SMIC, and 70 per cent of them had begun or planned bargaining to update the wage scales.

⁴⁴ (1) L.222-4.

⁴⁵ (7) s. 2.

⁴⁶ (4) s. 3.

⁴⁷ (2) s. 120(1) and (3) and Annex 1.

⁴⁸ (2) s. 2.

⁴⁹ (1) s. 29(5).

⁵⁰ (7) s. 2.

⁵¹ (2) s. 61.

⁵² (1) L.222-9.

⁵³ (1) s. 8.

⁵⁴ (3).

⁵⁵ (2) ss 4 and 6.

⁵⁶ (1) and (2).

Finally, only three countries indicated in their reports that minimum wage rates can also be fixed by geographical area. According to the Government's report, in Belgium sectorial collective agreements may provide for minimum wages covering specific regions or areas. Moreover, the Government of Lithuania indicated in its report that when determining the national minimum wage, the Government may also, on the recommendation of the Tripartite Committee, fix differentiated minimum wage rates, including by geographical area. The Government however indicated that it had not taken up this option. The Government of Cyprus explained in its report that minimum wage orders issued for an occupation may specify a geographical area. However it appears that all minimum wage orders currently in force are of general application.

Conclusion

Generally speaking, the review of national legislations shows that minimum wage systems in place allow for a certain degree of flexibility as many countries provide for different wage rates by sector or occupation. In some countries, workers are exclusively covered by sectorial and occupational minimum wage rates, as is the case in countries where collective bargaining is the primary minimum wage fixing method. As indicated above, coverage rates vary greatly between countries and it may occur that a large part of the workers is excluded from the scope of minimum wage rates.

Moreover, in a significant number of countries, workers are covered by a statutory minimum wage of general application which is supplemented by sectorial and/or occupational minimum wages set at higher rates. This machinery provides for flexibility and takes into account differences between branches of activity and occupations while ensuring the protection of all workers. In this case, the capacity of the social partners to agree on and to maintain higher minimum wage rates is of paramount importance so as to avoid that such rates fall below the statutory minimum wage which would void the system of all relevance.

Referring to the General Survey, it is recalled that the 1970 instruments do not require member States to either establish a single minimum wage at the national level or to introduce a system based on sectorial minimum wages. It is for the tripartite constituents to determine, in each State, the minimum wage system which best suits the national context. In accordance with Paragraph 5 of Recommendation No. 135 which allows for the possibility of fixing different minimum wage rates in different regions or zones, account may therefore be taken of productivity differentials between sectors, potentially significant differences in the cost of living between rural and urban areas, and in the light of objectives such as reducing income inequality, combating poverty and preserving fair competition. It should however be borne in mind that while a system based on a single minimum wage may have the disadvantage of not reflecting the payment capacities of all employers across the country, it has the advantage of simplicity, which makes it easier for employers and workers to know the minimum wage rate applicable and for the labour inspection services to enforce the relevant provisions.⁵⁷

⁵⁷ See General Survey, paragraphs 141 and 197-198.

3.2. Exclusions from the scope of the minimum wage

| | domestic workers | public service | small enterprises | family businesses | other excluded categories |
|----------------|--|--|-------------------|--|--|
| Austria | | Excluded - Salary Reform Act of 1994. | | | |
| Belgium | | Excluded from the scope of the RMMMG. A specific scheme applies to them (11). | | Persons working in family businesses that usually employing only relatives, relations by marriage or wards, under the exclusive authority of their father, mother or guardian are excluded from the scope of the RMMMG. (9) s. 2; (10) s. 2 | The minimum wage does not apply to workers who are normally engaged for periods of less than one month. (9) s. 2; (10) s. 2 |
| Croatia | | Excluded - Act on basic wage in public services. | | | |
| France | Exclusion in first report in which the Government indicated that the SMIG did not apply to caretakers and domestic workers for whom it has proved to be impossible, because of the very special conditions in which they worked, to establish a direct link between presence and hours actually worked and, consequently, to determine the number of hours to be taken into account in calculating wages. The Government nevertheless referred to the existence of regional and local collective | Excluded - The General Statute of Civil Service is contained in a set of laws: Law No. 83-634; Law No. 84-16. Law No. 84-53; and Law No.86-33. | | | |

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| | agreements setting minimum wages that were usually higher than the SMIG. See General Survey, para. 78 | | | | |
| Ireland | | | | Close relatives of the employer such as a spouse, father, mother, son, daughter, brother and sister are excluded from the scope of the minimum wage legislation. | |
| Lithuania | | Excluded. The legislation provides that the State and other municipal and state institutions may regulate employment relations in their respective areas of competence but may not place the workers concerned in a less favourable situation than that established by the Labour Code and other labour laws. (2) s. 4(2). | | | |
| Netherlands | | | | | Flexi workers such as homeworkers are entitled to the minimum wage only under certain circumstances: to be covered, they must work a minimum of four hours per week on average and be employed for a period of not less than three months. See General Survey, para. 92 |

| | | | | | |
|-----------------------|--|---|--|--|---|
| Poland | | | | | |
| Portugal | | Excluded - Law No. 12-A/2008. | Exclusion of undertakings employing up to five workers in the first Government's report. See General Survey, para. 78 | | |
| Slovenia | | Excluded- Act on the system of wages in the public sector. (2) s. 4(2) | | | |
| Spain | | Excluded. 2 s. 1(3)a) | | | |
| United Kingdom | Minimum wage legislation does not apply to workers who live in the home of the employer and are not family members but are treated as such, in particular as regards the provision of accommodation, meals and leisure. Domestic workers have been denied national minimum wage coverage on the basis of this provision. (2) s. 2(2) a) See also the judicial rulings referenced in the General Survey, para. 90 | | | Members of the employer's family residing in the family home of the employer and participating in the running of the family business do not receive the minimum wage. (2) s. 2(3)-(4) | Workers younger than school leaving age Students who are doing a work experience placement of not more than a year as part of higher and further education course. |

The legislation of a number of Eastern European countries provides that minimum wages apply to all workers without exception. This is the case in Czech Republic where the national minimum wage applies to all workers since the adoption of Government Regulation No.246/2012 Coll. Similar provisions apply in Slovakia⁵⁸ and Slovenia⁵⁹ and according to the report submitted by their respective Governments, in Estonia and Hungary.

However, most EU countries provide for specific exclusions from the scope of application of minimum wages. As reflected in the General Survey, a number of categories of workers are often excluded from the scope of the minimum wage.

Traditionally, civil servants are excluded from the minimum wage legislation because other legal provisions apply to them. Usually these provisions guarantee a similar level of protection to public servants. This is the case, for example, in Austria,⁶⁰ Belgium,⁶¹ Croatia,⁶² France,⁶³ Lithuania,⁶⁴ Portugal,⁶⁵ Slovenia,⁶⁶ and in the United Kingdom.

To a lesser extent, the legislation of some EU countries excludes domestic workers from the scope of application of the minimum wage. For example, the Government of France excluded domestic workers in its first report. At the time, it had indicated that the minimum inter-occupational growth wage (SMIG) did not apply to caretakers and domestic workers for whom it have proved to be impossible, because of the very special conditions in which they worked, to establish a direct link between presence and hours actually worked and, consequently, to determine the number of hours to be taken into account in calculating wages. The Government nevertheless referred to the existence of regional and local collective agreements setting minimum wages which were usually higher than the SMIG.

In the United Kingdom,⁶⁷ the minimum wage legislation does not apply to “workers who live in the home of the employer and are not family members but are treated as such, in particular as regards the provision of accommodation, meals and leisure”. On the basis of this provision, domestic workers have been denied national minimum wage coverage by the courts.⁶⁸ In this regard, the 2011 report of the Low Pay Commission emphasized the difficulties encountered by migrant workers hired as domestic workers who were refused the minimum wage under those provisions and their interpretation.

Finally, the legislation of some EU countries provides for the exclusion of very specific categories of workers. For example in Belgium,⁶⁹ workers who are normally engaged for

⁵⁸ (3).

⁵⁹ (2).

⁶⁰ Salary Reform Act of 1994.

⁶¹ (11).

⁶² Act on basic wage in public services.

⁶³ The General Statute of Civil Service is contained in a set of laws: Law No. 83-634; Law No. 84-16. Law No. 84-53; and Law No.86-33.

⁶⁴ (2) s. 4(2).

⁶⁵ Law No. 12-A/2008.

⁶⁶ Act on the system of wages in the public sector.

⁶⁷ (2) s. 2(2)a).

⁶⁸ See the rulings of the Employment Appeal Tribunal of 8-10 November 2011, *Julio & Others v. Jose & Others*, UKEAT/0553/10/DM, UKEAT/0596/10/DM, UKEAT/0597/10/DM, UKEAT/0070/11/DM and UKEAT/0071/11/DM.

⁶⁹ (9) s. 2; (10) s. 2.

periods of less than one month are excluded from the national collective labour agreement setting the general monthly guaranteed minimum (RMMM). In the Netherlands,⁷⁰ flexi workers, such as homeworkers, are entitled to the minimum wage only under certain circumstances. In particular, they must work a minimum of four hours per week on average and be employed for a period of not less than three months. Finally according to the Government's report, in the United Kingdom, workers younger than the school leaving age and students do not receive the national minimum wage.

In some countries, exclusions are made in reference to the type of businesses. In some EU countries, the national legislation does not apply to family businesses. This is the case in Belgium⁷¹ and in Ireland.⁷² In the United Kingdom,⁷³ members of the employer's family residing in the family home of the employer and participating in the running of the family business do not receive the minimum wage. Furthermore, exclusions may also concern small enterprises. This is the case in Portugal where the Government has indicated in its first report that undertakings employing up to five workers were excluded from the benefit of the national minimum wage.

Finally, in countries where minimum wages are traditionally fixed by the social partners by means of sectorial collective agreements, workers not covered by such agreements may find themselves excluded from any form of protection. This question was raised by the Committee of Experts in its General Survey. The Committee considered that the minimum wage cannot play its full role as a safety net and recommended that the global coverage rate of collective agreements fixing minimum wages be used to assess whether the number of groups of wage earners who are not covered are kept to a minimum, as prescribed by Paragraph 4 of Recommendation No. 135.⁷⁴

Conclusion

Overall, exclusions from the application of minimum wages in the EU are rather limited in scope and concern principally the public sector. In this regard, the Committee of Experts has emphasized that the issue arising in their respect is not their exclusion from the minimum wage legislation, in that they are often governed by administrative law providing for pay scales, but the possible absence of consultation with the social partners in this matter which is an essential condition of the proper functioning of minimum wage fixing mechanisms.⁷⁵

As regards domestic workers who are traditionally excluded from the benefit of the minimum wage in a number of countries around the world, only two EU countries provide that they are not included in the scope of application of the minimum wage legislation. Other categories of workers excluded comprise workers in family businesses, workers in small enterprises and casual workers.

⁷⁰ (1) s. 2.

⁷¹ (9) s. 2; (10) s. 2.

⁷² (1) s. 5(b).

⁷³ (2) s. 2(3)-(4).

⁷⁴ See General Survey, paragraph 94.

⁷⁵ See General Survey, paragraph 85.

In comparison with previous instruments, Convention No. 131 aims at extending the scope of application of minimum wages and at covering the greatest possible number of workers. In this regard, the Committee of Experts has underlined in its General Survey that “reflection at the national level on the scope of minimum wages should take due account of their importance in efforts to extend social protection and combat poverty, and as a means of contributing to the establishment of a level playing field for all employers”.⁷⁶

3.3. Application of differentiated minimum wages to specific categories of workers

As a general remark, it should be recalled that the 1970 instruments make no provision for minimum wages to be fixed differently on the basis of criteria such as age or any disability of a worker. Nevertheless, in many EU countries, lower minimum wages rates are applied to young workers, apprentices and trainees and workers with disabilities.

⁷⁶ See General Survey, paragraph 95.

3.3.1. Lower minimum wage rates applying to young workers

In the EU, a significant number of countries apply reduced minimum wage rates to young workers.

| | Lower minimum wage rates for young workers |
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| Austria | Provisions in collective agreements fixing lower minimum wages for young workers have been repealed or at least lowered in scope. For example, in April 2007, the Vienna Provincial High Court held that there was discrimination on the grounds of age under the collective agreement for the meat industry as it provided for different wage rates for shop assistants above 18 years old in their first two years of work and for trainees in the same job under the age of 18. See General Survey, para. 175 |
| Belgium | Since April 2013, the reduction in the RMMMGS are as follows: - 16 years and under: 30 per cent - 17 years old: 24 per cent - 18 years old: 12 per cent - 19 years old: 8 per cent - 20 years old: 4 per cent Three inter-occupational collective agreements were concluded in March 2013 with a view to the progressive abolition, by 1 January 2015, of lower rates of the RMMMGS for workers aged 18-20 who are covered by a contract of employment, with the exception of student contracts. (9) and (10) According to the Government, although collective agreements establish a wage scale that varies with age for certain sectors, the social partners have progressively replaced the criterion of age with that of professional experience since 2008. See General Survey, para. 175 |
| Czech Republic | Differentiated minimum wage rates for young workers were abolished in 2013. (4) As amended by Regulation No. 246/2012 Additionally, the bill banning discrimination is intended to cover both direct and indirect discrimination based, among other grounds, on age. See General Survey, para. 175 |
| France | Workers are entitled to the full minimum wage from the age of 18. Between the ages of 17 and 18, the reduction in the SMIC is 10 per cent. Under 17 years old, the reduction is 20 per cent. The reduction for young worker does not apply to workers with 6 months' professional experience in their branch of activity. (1) s. D.3231-3 |
| Greece | The minimum wage is reduced by 10 per cent for workers under 25 years old. (2) s. 1, para. IA. 11 point 3 |
| Hungary | Following the amendment of the Labour Code in 2005, the provision that authorized the Minister of Labour to fix minimum wages at a level lower than the compulsory minimum wage, particularly for young workers, on the interest of promoting employment, was repealed. See General Survey, para. 175 |

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| Ireland | <p>The minimum wage applicable to workers under 18 years old is reduced by 30 per cent. Workers employed before the age of 18 and still in employment after reaching this age receive during their 1st year of employment after reaching 18 years old a minimum wage reduced by 20 per cent and a minimum wage reduced by 10 per cent during their 2nd year of employment after reaching the age of 18.</p> <p>Workers employed for the first time after reaching 18 are applied the same regime.</p> <p>(1) s. 14(b)</p> |
| Latvia | <p>The Labour Law provides that the monthly wage for adolescents employed in accordance with the working time prescribed for those under 18 shall not be less than the minimum monthly salary applicable to normal working time.</p> <p>(2) s. 63(1)</p> <p>The hourly minimum wage for workers under 18 is even set at a higher level than the applicable rate for adult workers.</p> <p>(7) ss 2-3</p> |
| Luxembourg | <p>From 15 to 17 years old, workers receive 75 per cent of the minimum social wage, while workers between 17 and 18 receive 80 per cent of the minimum social wage.</p> <p>(1) s. L.222-5</p> |
| Malta | <p>Under 17 years old, the reduction applicable is around 6 per cent of the national minimum wage and from 17 to 18 years old, the reduction is around 4 per cent.</p> <p>(3) Schedule</p> |
| Netherlands | <p>Lower minimum wage rates have been introduced for young workers between 15 and 22 years old. The extent of the reductions vary on the basis of the age:</p> <p>15 years old = 70 per cent 16 years old = 65.5 per cent 17 years old= 60.5 per cent 18 years old= 54.5 per cent 19 years old= 47.5 per cent 20 years old= 38.5 per cent 21 years old= 27.5 per cent 22 years old= 15 per cent</p> <p>The Government indicates that such measures strikes a balance between 2 objectives of government policy: ensuring that young people remain in education as long as possible and do not drop out of school without the necessary qualifications and preserving and promoting employment for young persons who enter the labour market. According to the Government, if the MW were higher for young workers, their wage costs would no longer correspond to their productivity and consequently the number of jobs available to them would be significantly reduced. (1) s. 7; (3) s. 2.</p> <p>See General Survey, para. 171-173</p> |
| Romania | <p>The legislation recognizes the principle of equal remuneration for work of equal value regardless of age.</p> <p>(2) s. 159(3)</p> |

| | |
|-----------------------|---|
| Slovakia | Lower minimum wage rates for young workers have been abolished. According to the government, this reform was adopted under the legislation on equality of treatment and the protection against discrimination. See General Survey, para. 175 |
| Spain | Young workers have received the same minimum wage as other workers since 1998. See General Survey, para. 175 |
| Sweden | The minimum wage rate applicable to young workers varies depending on collective agreements, e.g. national agreement for the hotels and restaurants sector: under 17 years old = 35 per cent reduction; 17 years old = 27%; 18 years old =24%; 19 years old =16% |
| United Kingdom | <p>The Equality Act prohibits discrimination on grounds of age while providing that there is no discrimination if the difference in treatment on grounds of age serves as a proportionate means of achieving a legitimate aim and specifically stating that it is not prohibited to pay a young worker at a rate lower than paid to an older worker if the hourly minimum wage for the younger worker is lower than the hourly minimum wage for the other worker. The age at which the minimum wage adult workers applies was changed from 22 to 21 years in 2010 on the recommendation of the Low Pay Commission. According to the Government, this decision was taken because studies had shown that the impact of such measure on the employment of those aged 21 would be minimal, as the vast majority of them already received remuneration equal to, or greater than, the adult minimum wage rate. See General Survey, para. 172</p> <p>According to the government, the introduction of different minimum wages is intended both to ensure that the relevant minimum wages do not encourage young people to interrupt their studies or training, thereby protecting their long-term interests, and to avoid restricting the opportunities available to young people wishing to enter the labour market. See General Survey, para. 171</p> <p>The minimum wage reduction for young workers between 16 and 17 years old is around 41 per cent while the reduction is around 20 per cent for workers between 18 and 20 years old. (2) s. 13(1)</p> |

Reviewing countries where minimum wage rates are primarily fixed through collective bargaining, it appears that it is not unusual for collective agreements to provide for differentiated minimum wage rates for young workers. For example, under the national agreement for the hotels and restaurants sector in Sweden, the reduction of the sectorial minimum wage rate varies between 16 per cent for 19-year-old workers to 35 per cent for workers under 17 years of age. Similar provisions have been identified in various collective agreements in Denmark (e.g. collective agreement for the metal industry) and in Finland (e.g. collective agreement for wage earners between Teknikarbetsgivarna and IF Metall).

In France,⁷⁷ workers between the ages of 17 and 18 receive a remuneration that is 10 per cent lower than the minimum inter-occupational growth wage (SMIC). Under 17 years old, the reduction amounts to 20 per cent of the SMIC. However, the Labour Code provides that the reduction for young worker does not apply to workers with six months' professional experience in their branch of activity. In Malta, workers under 17 years of age are applied a minimum wage rate which is around 6 per cent lower than the national minimum wage. Between 17 and 18 years old, the reduction is around 4 per cent. Similarly in Ireland,⁷⁸ the national minimum wage is reduced by 30 per cent for workers under 18 years old. Moreover, workers employed before the age of 18 and still in employment after reaching this age receive during their first year of employment a minimum wage reduced by 20 per cent and during their second year of employment after reaching the age of 18, the reduction is 10 per cent.⁷⁹

In the United Kingdom,⁸⁰ the Equality Act prohibits discrimination on grounds of age while providing that there is no discrimination if the difference in treatment on grounds of age serves as a proportionate means of achieving a legitimate aim and specifically stating that it is not prohibited to pay a young worker at a rate lower than paid to an older worker. According to the government, the introduction of different minimum wages is intended both to ensure that the relevant minimum wages do not encourage young people to interrupt their studies or training, thereby protecting their long-term interests, and to avoid restricting the opportunities available to young people wishing to enter the labour market.

Thus, young workers between 16 and 17 years old receive a minimum wage that is around 41 per cent lower than the adult minimum wage, while the reduction is around 20 per cent for workers between 18 and 20 years old. It should be further noted that the age at which the minimum wage for adult workers applies was changed from 22 to 21 years in 2010 on the recommendation of the Low Pay Commission. According to the Government, this decision was taken because studies had shown that the impact of such measure on the employment of those aged 21 would be minimal, as the vast majority of them already received remuneration equal to, or greater than, the adult minimum wage rate.

However, it is in the Netherlands⁸¹ that the extent of the reduction is the most significant. Lower minimum wage rates have been introduced for young workers between 15 and 22 years old and

⁷⁷ (1) s. D.3231-3. Workers are entitled to the full minimum wage from the age of 18.

⁷⁸ (1) s. 14(b).

⁷⁹ Workers employed for the first time after reaching 18 are applied the same regime.

⁸⁰ (2) s. 13(1).

⁸¹ (1) s. 7; (3) s. 2.

the extent of the reduction varies, on the basis of age, from 15 per cent of the national minimum wage for workers aged 22 to 70 per cent for workers aged 15. According to the Government, such measures strike a balance between two objectives of government policy, that is, on the one hand, ensuring that young people remain in education as long as possible and do not drop out of school without the necessary qualifications and, on the other hand, preserving and promoting employment for young persons who enter the labour market. The Government explained in its report that if minimum wages were higher for young workers, their wage costs would no longer correspond to their productivity and consequently the number of jobs available to them would be significantly reduced.⁸²

Finally, in the context of the measures adopted by several countries to combat the economic crisis, the Government of Greece⁸³ introduced a new minimum wage rate for workers under 25 years of age. While the adult minimum wage has been reduced by 22 per cent, the minimum wage applying to young workers has been reduced by an additional 10 per cent since March 2012. In this regard, the European Committee of Social Rights considered that with the total reduction amounting to 32 per cent, the wage had fallen below the poverty line and that the relevant provisions constituted a violation of the European Social Charter.⁸⁴

On the other hand, several countries reported that differentiated minimum wage rates for young workers had been abolished. This is the case in Czech Republic since 2013,⁸⁵ Hungary since 2005,⁸⁶ Latvia,⁸⁷ Romania,⁸⁸ Slovakia⁸⁹ and Spain.⁹⁰ With regard to the rationale underlying

⁸² In the General Survey, the Committee of Experts also recalled the long-term debate opposing the Government to Dutch trade unions regarding differentiated minimum wage rates for young workers. In its observations concerning the application of Convention No. 131, the Netherlands Trade Union Confederation (FNV) objected to the fact that young workers of 21 and 22 years of age are not entitled to the adult minimum wage, considering that there are no objective reasons to justify the situation. In this regard, the FNV underlined the fact that the required age to receive the full minimum wage (23 years old) is neither related to the legal age of majority (18 years), the definition of adulthood for financial matters or the end of parents' duty to maintenance (21 years). The FNV also pointed out that the Council of Europe's Committee of Social Rights had already ruled that the situation was not in conformity with the European Social Charter. Conversely, the Confederation of Netherlands Industry and Employers (VNO-NCW) and the International Organization of Employers (IOE) expressed their full support to the Government's views in this matter. See Netherlands, CEACR, Convention No. 131, observation, 2009 and 2013.

⁸³ (2) s. 1, para. IA. 11 point 3. This reduction forms part of the second economic adjustment programme. See European Commission: *The second economic adjustment programme for Greece: March 2012*, European Economy Occasional Papers No. 94, March 2012, p. 110.

⁸⁴ See complaint No. 66/2011, *General Federation of the National Electric Power Corporation and the Confederation of Greek Civil Servants Trade Union v. Greece*, 23 May 2012.

⁸⁵ (4) As amended by Regulation No. 246/2012. Additionally, the bill banning discrimination is intended to cover both direct and indirect discrimination based, among other grounds, on age.

⁸⁶ Following the amendment of the Labour Code in 2005, the provision that authorized the Minister of Labour to fix minimum wages at a level lower than the compulsory minimum wage, particularly for young workers, on the interest of promoting employment, was repealed.

⁸⁷ (2) s. 63(1). The Labour Law provides that the monthly wage for adolescents employed in accordance with the working time prescribed for those under 18 shall not be less than the minimum monthly salary applicable to normal working time. See also (7) ss 2-3. Under these provisions, the hourly minimum wage for workers under 18 is even set at a higher level than the applicable rate for adult workers.

⁸⁸ (2) s. 159(3). This provision guarantees the principle of equal remuneration for work of equal value, regardless of age.

⁸⁹ (3). Lower minimum wage rates for young workers have been abolished. According to the government, this reform was adopted under the legislation on equality of treatment and the protection against discrimination.

⁹⁰ Young workers have received the same minimum wage as other workers since 1998. See CEACR, Convention No. 131, observation, 2000.

these legislative changes, the Government of Slovakia explained in its report that the repeal of differentiated minimum wages was part of a broader legislative process aimed at enforcing equal treatment in general (e.g. age, disability, etc.). The Government of Hungary indicated that studies and surveys on the interconnection between employment and minimum wage and its possible incentive effect of reduced minimum wage rates had not proven effective and that therefore the idea of a lower remuneration for young workers had been rejected.

Some countries also indicated in their reports that reductions for young workers had been lowered in scope or abolished. For example in Belgium,⁹¹ three inter-occupational collective agreements were concluded in March 2013 with a view to the progressive abolition, by 1 January 2015, of lower rates of the general monthly guaranteed minimum wage (RMMMGM) for workers aged 18 to 20 who are covered by a contract of employment (with the exception of student contracts). Furthermore, the Government indicated in its report that since 2008, the social partners have progressively replaced the criterion of age with that of professional experience in their collective agreements. Similarly in Poland,⁹² the legislation refers to the criterion of 'limited professional experience' to provide for minimum wage rates. Workers may therefore receive remuneration equal to 80 per cent of the minimum wage during their first year of employment.

Finally, in its report the Government of Austria⁹³ referred to a judicial decision concerning the collective agreement for the meat industry in which the Vienna Provincial High Court held that there was discrimination on the grounds of age under the collective agreement as it provided for different wage rates for shop assistants above 18 years old in their first two years of work and for trainees in the same job under the age of 18.

⁹¹ (9), as amended by collective labour agreements Nos. 43 (12th) and 43 (13th) of 28 March 2013; and (10), as amended by collective labour agreement No. 50bis of 28 March 2013. Currently, reductions in the RMMMGM are as follows: 30 per cent for workers of 16 years of age and under; 24 per cent for workers aged 17; 12 per cent for workers aged 18; 8 per cent for workers aged 19; and 4 per cent for workers aged 20.

⁹² (3) s. 6(2).

⁹³ See CEACR, Convention No. 111, direct request, 2010.

3.3.2. Lower minimum wage rates applying to apprentices and trainees

| | Lower minimum wage rates for apprentices/trainees |
|-------------------|---|
| Austria | The Federal Conciliation Board may, under specific conditions, establish apprenticeship compensations or minimum wage rates. (1) ss 22 and 26 |
| Belgium | Apprentices are paid a maximum monthly compensation for apprenticeship corresponding to a percentage of the RMMMGM which varies depending on the age of the apprentice. Apprentices aged under 21 receive 50 per cent of the RMMMGM. For younger apprentices, the amount of the apprenticeship compensation increases progressively, with the minimum, which applies to apprentices aged 15, fixed at 64 per cent of the compensation received by apprentices aged 21. (12) s. 25; (13) s. 3(a)-(b) |
| Bulgaria | Apprentices receive a remuneration equivalent to 90 per cent of the applicable minimum wage. (2) s. 230(4) |
| France | The remuneration of apprentices varies according to their age and level of progress in the apprenticeship programme. (1) ss L.6222-27 and D.6222-26 Vocational training contracts are alternative contracts aimed at enabling the workers concerned to acquire certain qualifications and to help them to join or return to the labour market. Unless agreements or contracts contain more favourable provisions, employees aged under 26 years old receive a minimum wage calculated on the basis of their age and level of training during the training contract period. For employees aged 26 or over, pay may not be lower than the agreed SMIC, nor less than 85 per cent of the minimum remuneration established by the collective agreement for the branch in which the enterprise or its employees work. Vocational training contracts are open to people aged 16-25 years for the purpose of completing initial training and also to jobseekers aged 26 or over and those who receive certain social benefits. (1) ss L.6325-1 to L.6325-22 and D.6325-1 to D.6325-21 |
| Ireland | Apprentices are excluded from the national minimum wage. (1) s. 5(b) |
| Italy | Beneficiaries of employment access contracts receive remuneration that may not be lower than the wage fixed in the national collective agreement for the sector concerned for jobs two grades on the wage scale below the post they occupy. (3) ss 54(1) and 59 |
| Luxembourg | The legislation leaves it to the competent authority to determine the minimum remuneration of apprentices. (1) s. L.111-11 |
| Portugal | Apprentices receive 80 per cent of the guaranteed monthly minimum wage. However, this differentiated wage rate only applies for a period of 12 months, including the time spent training with the employer, and is reduced to 6 months if the apprentice has already undertaken vocational training or obtained an occupational qualification related to the job. (2) s. 275(1)(a), (2) and (3) |

| | |
|-----------------------|--|
| Slovenia | Apprentices are entitled to a wage equal to 70 per cent of the base wage for the post or type of post for which they are being trained but in no event, lower than the minimum wage. (1) s. 140 |
| Spain | Apprentices are entitled to remuneration equal to the minimum wage. (2) s. 11(2)(g) |
| United Kingdom | Apprentices between 16 and 18 years old and apprentices aged 19 in their first year of apprenticeship receive a reduced minimum wage (3) s. 13(3) |

In a number of EU countries, reduced minimum wage rates apply to apprentices and trainees. This is the case in Italy where most collective agreements reviewed for the purpose of this study provide for wage scale specific to apprentices (e.g. national collective agreement in the construction sector and national collective agreement in the textile industry).

In Belgium,⁹⁴ apprentices are paid a maximum monthly compensation for apprenticeship corresponding to a percentage of the general monthly guaranteed minimum wage (RMMM) which varies depending on the age of the apprentice. Apprentices aged under 21 receive 50 per cent of the RMMM. For younger apprentices, the amount of the apprenticeship compensation is a percentage of the compensation received by apprentices aged 21 and it increases with age (from 15 to 20 years). In Bulgaria,⁹⁵ apprentices receive a remuneration equivalent to 90 per cent of the applicable minimum wage.

In Portugal,⁹⁶ apprentices receive 80 per cent of the guaranteed monthly minimum wage. However, this differentiated wage rate only applies for a period of 12 months, including the time spent training with the employer, and is reduced to 6 months if the apprentice has already undertaken vocational training or obtained an occupational qualification related to the job. Furthermore in Slovenia,⁹⁷ apprentices are entitled to a wage equal to 70 per cent of the base wage for the post or type of post for which they are being trained but in no event, lower than the minimum wage. Lower minimum wages also apply to apprentices and trainees in France⁹⁸ and in the United Kingdom.⁹⁹

In Ireland,¹⁰⁰ apprentices are excluded from the scope of application of the national minimum wage.

Conversely, some countries do not provide for reduced minimum wages for apprentices. This is particularly the case of Spain where the legislation provides that apprentices are entitled to remuneration equal to the minimum wage.¹⁰¹

3.3.3. Lower minimum wage rates applying to workers with disabilities

| Lower minimum wage rates for workers with disabilities | |
|---|---|
| Portugal | The effective capacity for work of a worker with disabilities may be assessed at the request of the worker or the employer. When the gap between the capacity for work of a worker with and without any disabilities is more than 10 per cent, the minimum wage is reduced by a rate proportionate to this difference which may not exceed 50 per cent. (2) s. 275 |
| Spain | It is possible to sign a "low-productivity" contract with a worker with disabilities if the worker performs the normal number of hours of work but is 25 per cent less productive than average, the reduction of the worker's wage may not exceed this percentage. (5) s. 12(c) |

⁹⁴ (12) s. 25; (13) s. 3(a)-(b).

⁹⁵ (2) s. 230(4).

⁹⁶ (2) s. 275(1) (a), (2) and (3).

⁹⁷ (1) s. 140.

⁹⁸ (1) ss L.6222-27 and D.6222-26.

⁹⁹ (3) s. 13(3).

¹⁰⁰ (1) s. 5(b).

¹⁰¹ (2) s. 11(2) (g).

Several countries have abolished differentiated minimum wage rates for workers with disabilities. This is the case in Czech Republic since 2013,¹⁰² France,¹⁰³ Netherlands since 2005,¹⁰⁴ Romania¹⁰⁵ and Slovakia.¹⁰⁶

Similarly in other EU countries, the principle of equal treatment prevails. For example in Belgium,¹⁰⁷ a national collective agreement explicitly guarantees to workers with disabilities a remuneration equivalent to the remuneration fixed by one or more collective labour agreements concluded at the inter-occupational, sectorial or enterprise levels and/or by common practice that applies in the occupational category to which the disabled worker belongs.

However, two countries still apply specific schemes to workers with disabilities. In Portugal,¹⁰⁸ the effective capacity for work of a worker with disabilities may be assessed at the request of the worker or the employer. When the gap between the capacity for work of a worker with and without any disabilities is more than 10 per cent, the minimum wage is reduced by a rate proportionate to this difference which may not exceed 50 per cent. In Spain,¹⁰⁹ the legislation provides for the possibility of signing a "low-productivity" contract. Under the provisions of such contract, if the worker with disabilities performs the normal number of hours of work but is 25 per cent less productive than average, the minimum wage received is reduced but the reduction may not exceed this percentage.

Conclusion

A large number of EU countries apply lower minimum wage rates for young workers and apprentices. According to the information provided by some of these countries, the provision of lower minimum wage rates would allow for a better integration of these categories of workers in the labour market. However, the regimes applied in this framework, especially to young workers, are rather broad in scope and provide, in some cases, for extensive reductions.

In its General Survey, the Committee of Experts recalled the overarching principle of equal remuneration for work of equal value, proclaimed in the ILO Constitution and in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). With regard to young workers, it further underlined that rather than using the criterion of age, it might be preferable to take account of the qualifications and experience of the workers concerned. It also referred to the resolution of the International Labour Conference adopted in 2012, *The youth employment crisis: A call for action*, which urges governments to give serious consideration,

¹⁰² (4) As amended by Regulation No. 246/2012.

¹⁰³ (1) s. L.5213-7.

¹⁰⁴ The Disability (Reintegration) Act (REA Act) was repealed on 29 October 2005 and currently employers are entitled to apply for wage dispensation, the wage difference being compensated either by the Institute for Employee Benefit Schemes (UWV), or the schemes provided under the Work and Income (Ability to Work) Act (WIA), or the Disability Assistance Act for Handicapped Young Persons (Wajong), so that workers with disabilities are paid at least the national minimum wage. See CEACR, Convention No. 131, direct request, 2008.

¹⁰⁵ (2) s. 159(3). This provision prohibits any discrimination on the grounds of disability.

¹⁰⁶ (3).

¹⁰⁷ (14) s. 1.

¹⁰⁸ (2) s. 275.

¹⁰⁹ (5) s. 12(c).

as appropriate, to a number of measures, including: adopting a rights-based approach to youth employment; ensuring that young people receive equal treatment and are afforded rights at work; and ensuring that minimum wages set either by law or by collective agreement for young workers are observed.¹¹⁰

The Committee of Experts expressed similar views as regards differentiated minimum wage rates applying to apprentices. It considered that apprentices or trainees should only be paid at a differentiated rate where they receive actual training during working hours at the workplace. In general, the quantity and quality of the work performed should be the decisive factors in determining the wage paid.¹¹¹

Lastly, as regards workers with disabilities, the principle of equal remuneration for work of equal value is reaffirmed by the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), 1983.¹¹²

3.4. Temporary derogations to the binding force of minimum wages due to economic reasons

Convention No. 131 establishes the binding nature of minimum wage rates in its article 2(1) which provides that minimum wages shall have the force of law and shall not be subject to abatement. However, this prescription is not always abided by and some countries have introduced the possibility of temporary exemptions from the binding force of minimum wages with a view to support enterprises facing financial problems.

This is the case for example in Ireland¹¹³ where the legislation provides that the Labour Court may exempt an employer due to financial difficulty from the obligation of paying an employee at a rate that is not lower than the national minimum hourly rate for between three months and one year. However, according to the government, no valid application for temporary exemptions has been made under this provision.

In 2012, new legislation introduced the possibility of similar exemptions to the minimum wage fixed for certain sectors of the economy by employment regulation orders (ERO) and collective agreements registered with labour courts (registered employment agreements _ REA). Moreover, the requirements for these exemptions have been relaxed. In particular, exemptions requested in cases of financial difficulty faced by an enterprise may be granted even if the majority of the employees concerned, their representatives or a trade union representing a majority of the workers are opposed to it.

In Malta,¹¹⁴ the competent minister may, at the request of the employer or an employers' or workers' organization, fix, for a specific category of workers employed in a particular enterprise, branch or activity or profession and for a specific period, a minimum wage below the statutory minimum wage if he/she considers that the existence or scale of activities of the

¹¹⁰ See General Survey, paragraphs 178-179.

¹¹¹ See General Survey, paragraph 188.

¹¹² See General Survey, paragraph 196.

¹¹³ (1) s. 41; (2) ss 33A and 48A. See also Ireland - CEACR, Convention n° 26, direct request, 2013.

¹¹⁴ (1) s. 10(1).

enterprise is under serious threat. This request may not result in a decision until it is certain that whoever submitted it has considered the issue with those employers' or workers' organizations which the minister considers to be representative. Furthermore, in the Netherlands,¹¹⁵ the competent minister may, at the request of the employer or an employers' or workers' organization, fix, for a specific category of workers employed in a particular enterprise, branch or activity or profession and for a specific period, a minimum wage below the statutory minimum wage if he/she considers that the existence or scale of activities of the enterprise is under serious threat. This request may not result in a decision until it is certain that whoever submitted it has considered the issue with those employers' or workers' organizations which the minister considers to be representative.

Finally, in Slovenia,¹¹⁶ when the Minimum Wage Act was adopted in 2010, it provided that, if payment of the minimum wage set out by law would result in a substantial loss for, and threaten the existence of, a company or would cause a considerable number of redundancies for business reasons, the employer could, for a transitional period not extending beyond 31 December 2011, make a gradual transition to the payment of the minimum wage. The employer was required to conclude a written agreement on the matter with the trade union in the enterprise or, in its absence, with the workers' council, within two months after the entry into force of the Act. The employer was also required to notify the labour inspectorate. The Act also set the reduced minimum wage rates applicable during the transitional period. According to the information available, over 1600 enterprises made use of this possibility and between 7000 and 8000 employees were subject to a transitional system.

¹¹⁵ (1) s. 10(1).

¹¹⁶ (2) ss 9-10.

4. Minimum wage fixing and adjusting criteria

4.1. Criteria for the determination of minimum wage rates

Under article 3 of Convention No. 131, the elements to be taken into account in determining the level of minimum wages shall, as far as possible and appropriate in relation to national practice and conditions, include: (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits and the relative living standards of other social groups; (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment. However, as underlined by the Committee of Experts, Convention No. 131 only provides tools for constituents to adapt for themselves and leaves member States with considerable leeway to determine the precise criteria to be applied in the fixing or periodic adjustment of minimum wages and their respective weighting.¹¹⁷

Globally, EU countries apply a combination of social and economic factors, the weighting of these factors being quite imprecise in some countries, as for example in the United Kingdom where the Low Pay Commission has a margin of discretion in this regard, or conversely, very detailed as is the case where the minimum wage rate is indexed to a particular factor. This is the case for example in the Netherlands.

4.1.1. Application of multiple criteria or of a single criterion

Generally speaking, the legislation of most EU countries provides that multiple criteria should be taken into consideration when fixing and adjusting minimum wage rates, combining social and economic factors. While remaining an exception, the use of a single criterion is provided by the law in three EU countries. According to the Government of Cyprus, the Council of Ministers decided in 2003 that occupational minimum wage rates should reach 50 per cent of the median wage. This goal was achieved in 2008 and has remained the primary criterion ever since. In Malta¹¹⁸, reference is made to the cost of living by means of a cost of living indemnity (COLA) calculated on the basis of the inflation rate for the last 12 months, which is measured by the price index. Finally, in the Netherlands¹¹⁹, the minimum wage is indexed to the average rate of wage increases in the public and private sectors as calculated by the Netherlands Bureau for Economic Policy Analysis (CPB).

¹¹⁷ See General Survey, paragraph 283

¹¹⁸ (2) s. 8; (3) s. 3; (4) s. 3 and Schedule A, 1,3 and Schedule B.

¹¹⁹ (1) s. 14.

4.1.2. Criteria related to the needs of workers and their families

| | Cost of living, consumer price index (CPI) or inflation rate | Link between minimum wage and mean wage | Needs of workers and their families | General level of wages |
|-----------------------|---|--|--|--|
| Belgium | Adjustments are made on the basis of the average of the indices for the past four months. In addition, the Government mentions in its report the introduction of a health index, the value of which is obtained by removing certain products from the basket for the CPI (alcoholic drinks, tobacco, and fuel). (9) s. 3 | | | |
| Bulgaria | The National Statistical Institute provides annual data which is used to calculate the poverty line value. | Although the evolution of the mean wage is monitored and analysed, the ratio between mean wage and minimum wage is not taken into account when adjusting the national minimum wage. | | |
| Cyprus | | As of 2008, the minimum wage reached 50 per cent of the national median wage, achieving a specific goal set out by a decision taken by the Council of Ministers in 2003. This is the most important criterion. | | |
| Czech Republic | | The level of the average wage is taken into account. | According to the Government, the evaluation of the minimum subsistence level is taken into account. See General Survey, para. 249 | The evolution of wages is taken into account. (2) s. 111(2) |
| Estonia | Changes in the cost of living are taken into account. | | | |

| | | | | |
|-----------------------|--|--|--|--|
| <p>France</p> | <p>The SMIC is primarily indexed to variations in the national CPI. (1) ss L.3231-4 and R.*3231-2.</p> <p>This index has been measured since 2013 for households in the first quintile of the cost of living distribution (which designates the 20 per cent of the population with the lowest incomes). According to the Government, the new index targets low-income workers more effectively and takes into account better the weight of essential expenditure (rent, energy) borne by these households. The SMIC was previously indexed to the CPI, excluding tobacco, for urban households where the head of household was a salaries employee or wage earner.</p> | <p>The annual increase in the purchasing power of the SMIC cannot be less than half the increase in the purchasing power of the average hourly wages recorded by the quarterly survey of the Ministry of Labour. (1) ss L.3231-8, L.3231-9 and R.*3231-2-1.</p> <p>The SMIC is now readjusted on the basis on half the increase in purchasing power of wage earners and salaries employees, and no longer wage earners alone. According to the Government, this development, introduced in 2013, makes it possible to take into account the greater proportion of professional categories of employees among the active population and in the population whose remuneration is very close to the SMIC. The successive annual increments in the SMIC should tend to eliminate any long-term disparity between its increase and general trends in economic conditions and incomes.</p> | | |
| <p>Hungary</p> | <p>According to the Government's report, the expected trend in the inflation rate is taken into account. The Government also indicates that under the agreement signed in the Standing Consultative Forum of the Private Sector and the Government (VKF), the increase in the minimum wage should in future be higher than forecast increases in inflation in order to reverse the decline in the real minimum wage observed since 2007. See General Survey, para. 253</p> | <p>According to the Government, fluctuations in the ratio between the minimum wage and the national average wage, as well as fluctuations of the same ratio in neighbouring European Union countries are taken into account. See General Survey, para. 257</p> | | |

| | | | | |
|--------------------|--|---|--|---|
| Ireland | The likely effect of the proposed rate on the cost of living is taken into account. (1) s. 13(5) | | | Changes in earnings during the period concerned are taken into account. (1) s. 13(5) |
| Latvia | | | Reference is made to the average annual value of the minimum subsistence basket per inhabitant calculated by the Central Statistical Bureau. (5) s. 2 | |
| Lithuania | | The ratio between the minimum monthly wage and the average wage is also taken into account. The objective is to reach 50 per cent of the average wage. | According to the Government's report, the criteria taken into account are the minimum living wage and the poverty risk threshold. See General Survey, para. 249 | |
| Luxembourg | The social minimum wage is adapted to the weighted consumer price index. (1) s. L.222-3 | | | |
| Malta | The minimum wage is adapted to the cost of living by means of a cost of living indemnity calculated on the basis of the inflation rate for the last 12 months which is measured by the price index. (2) s. 8; (3) s. 3; (4) s. 3 and Schedule A, 1,3 and Schedule B | | | |
| Netherlands | | The minimum wage is indexed to the average rate of wage increases in the public and private sectors as calculated by the Netherlands Bureau for Economic Policy Analysis (CPB). However the amount of the minimum wage can be | | |

| | | | | |
|-----------------------|---|---|---|---|
| | | fixed without applying these criteria (see economic criteria). (1) s. 14 | | |
| Poland | | According to the Government, the increase in the minimum wage, which cannot be less than that of the forecast CPI, is increased by two-thirds of the forecast growth in GDP when the minimum wage is less than half the mean wage. See General Survey, para. 257 | | |
| Portugal | The cost of living is taken into account. (1) s. 59(2)(a); (2) s. 273(2) | | | |
| Slovakia | | The mean wage is taken into account. (3) s. 6 | The subsistence minimum and consumer prices are taken into account. | |
| Slovenia | The annual adjustment of the minimum wage must reflect at least the rise in consumer prices based on official data published by the Statistical Office. (2) ss 3 and 5(1) Since the adoption of the new Minimum Wage Act in 2010, the adjustment is no longer based on the expected inflation rate because inappropriately low inflation estimates led to minimum wage increases unrelated to the real situation and a loss of purchasing power of the minimum wage which, consequently, no longer fulfilled its primary purpose of the social protection of workers. | | | The general level of wages is taken into account. (2) s. 3 |
| Spain | The consumer price index is taken into account. (2) s. 27(1) | | | |
| United Kingdom | The inflation rate is taken into account. See General Survey, para. 253 | The objective assigned to the Low Pay Commission, when reviewing the | | |

| | | | | |
|--|--|---|--|--|
| | | minimum wage, is to maximize the ratio between the minimum wage and the average wage while avoiding adverse effects on employment. See General Survey, para. 257 | | |
|--|--|---|--|--|

With regard to the weighting of the needs of workers and their families in the fixing of minimum wage rates, the practice among EU countries is divided between two approaches by which reference is made either to the evolution of prices or to the mean or median wage.

In a number of countries, the evolution of prices, monitored by reference to the cost of living, the consumer price index (CPI) or the inflation rate, is a key consideration for the adjustment of the minimum wage. This is the case in Belgium¹²⁰ where adjustments of the general monthly guaranteed minimum wage (RMMM) are made on the basis of the average of the consumer price indices for the past four months. The Government also mentions in its report the introduction of a health index, the value of which is obtained by removing certain products from the basket for the consumer price index (alcoholic drinks, tobacco, and fuel). In France¹²¹, the minimum inter-occupational growth wage (SMIC) is primarily indexed to variations in the national consumer price index. According to the Government's report, this index is measured since 2013 for households in the first quintile of the cost of living distribution (which designates the 20 per cent of the population with the lowest incomes). The Government indicates that the new index targets low-income workers more effectively and takes into account better the weight of essential expenditure (rent, energy) borne by these households.¹²² According to the Government, in Poland, the increase in the minimum wage cannot be less than that of the forecast consumer price index, while in Slovenia¹²³, the annual adjustment of the minimum wage must reflect at least the rise in consumer prices based on official data published by the Statistical Office.

Similarly, other Governments take into consideration the evolution of prices in their country when adjusting minimum wage rates. This is the case in Portugal¹²⁴ and, according to the Government's report, in Estonia where fluctuations in the cost of living are taken into account. In Ireland¹²⁵, the likely effect of the proposed minimum wage rate on the cost of living is one of the factors taken into consideration. In Luxembourg¹²⁶, the social minimum wage is adapted to the weighted consumer price index. Similar provisions apply in Spain.¹²⁷ In Malta¹²⁸ and in the United Kingdom, reference is made to the cost of living. Lastly, provisions of a Finnish national sectorial collective agreement have been identified whereby different hourly minimum wages apply to different "cost of living groups". Under this classification, districts of the country are divided into two groups on the basis of the cost of living in these areas.¹²⁹

¹²⁰ (9) s. 3.

¹²¹ (1) ss L.3231-4 and R.*3231-2.

¹²² The SMIC was previously indexed to the CPI, excluding tobacco, for urban households where the head of household was a salaries employee or wage earner.

¹²³ (2) ss 3 and 5(1). In its report, the Government indicates that since the adoption of the new Minimum Wage Act in 2010, the adjustment is no longer based on the expected inflation rate because inappropriately low inflation estimates led to minimum wage increases unrelated to the real situation and a loss of purchasing power of the minimum wage which, consequently, no longer fulfilled its primary purpose of the social protection of workers.

¹²⁴ (1) s. 59(2) (a); (2) s. 273(2).

¹²⁵ (1) s. 13(5).

¹²⁶ (1) s. L.222-3.

¹²⁷ (2) s. 27(1).

¹²⁸ (2) s. 8; (3) s. 3; (4) s. 3 and Schedule A, 1,3 and Schedule B.

¹²⁹ Collective agreement between the Federation of Finnish technology industries and the Finnish metalworkers' Union, 2009-2012, s. 6.

Following the second approach adopted by a number of EU countries, minimum wage levels may be linked to the mean or median wage, generally by fixing the amount of the minimum wage to a certain percentage of the mean or median wage. As mentioned above, this is the case in Cyprus but also in Lithuania where the Government endeavours to fix the national minimum wage at 50 per cent of the mean wage. According to the Government of Hungary, fluctuations in the ratio between the minimum wage and the national average wage, as well as fluctuations of the same ratio in neighbouring European Union countries are taken into account. As mentioned above, in the Netherlands,¹³⁰ the minimum wage is indexed to the average rate of wage increases in the public and private sectors as calculated by the Netherlands Bureau for Economic Policy Analysis (CPB).

In France¹³¹, the annual increase in the purchasing power of the minimum inter-occupational growth wage (SMIC) cannot be less than half the increase in the purchasing power of the average hourly wages recorded by the quarterly survey of the Ministry of Labour. According to the information provided by the Government of Poland, the increase in the national minimum wage, which cannot be less than that of the forecast consumer price index, is increased by two-thirds of the forecast growth in Gross Domestic Product (GDP) when the minimum wage is less than half the mean wage.

Similar considerations are taken into account in Czech Republic, Slovakia¹³² and in the United Kingdom where, according to the Government, one of the objectives assigned to the Low Pay Commission, when reviewing the minimum wage, is to maximize the ratio between the minimum wage and the average wage while avoiding adverse effects on employment. Finally, the Government of Bulgaria indicates in its report that the evolution of the mean wage is monitored and analysed, however the ratio between mean wage and minimum wage is not taken into account when adjusting the national minimum wage.

When reviewing minimum wage rates, several countries from Eastern Europe also seek to assess the needs of workers and their families by referring to the minimum subsistence level. This is the case in Czech Republic where according to the Government's report, the minimum standard of living is evaluated and used as a benchmark for the revision of the national minimum wage. The Government indicates that in application of Act No. 110/2006 Coll. on living and existence minimum, the minimum subsistence level was last revised in 2012, excluding housing costs from its components, while the national minimum wage was last adjusted in 2007. As a result, the ratio between the net minimum wage rate and the minimum subsistence level has decreased from 117 per cent in 2007 to 81 per cent in 2012.

¹³⁰ (1) s. 14.

¹³¹ (1) ss L.3231-8, L.3231-9 and R.*3231-2-1. The SMIC is now readjusted on the basis on half the increase in purchasing power of wage earners and salaries employees, and no longer wage earners alone. According to the Government, this development, introduced in 2013, makes it possible to take into account the greater proportion of professional categories of employees among the active population and in the population whose remuneration is very close to the SMIC. The successive annual increments in the SMIC should tend to eliminate any long-term disparity between its increase and general trends in economic conditions and incomes.

¹³² (3) s. 6.

In Slovakia¹³³, the legislation explicitly provides that subsistence minimum levels shall be taken into consideration for the adjustment of the national minimum wage. Furthermore, in Latvia¹³⁴, reference is made to the average annual value of the minimum subsistence basket per inhabitant calculated by the Central Statistical Bureau, while according to the Government of Lithuania, the minimum living wage and the poverty risk threshold are taken into account when adjusting the minimum monthly wage.

¹³³ (3) s. 6(d).

¹³⁴ (5) s. 2.

4.1.3. Criteria related to economic factors

| | Requirement of economic development | Economic situation of the country | Levels of productivity | Desirability of attaining and maintaining a high level of employment | Economic competitiveness | Financial capacity of enterprises |
|-----------------------|-------------------------------------|---|---|--|--|------------------------------------|
| Belgium | | | The level of the sectorial minimum wage depends, inter alia, on the productivity of the sector and its profitability. See General Survey, para. 262 | | Each inter-occupational agreement must set a maximum margin for fluctuation in wage costs, taking into account forecast trends in wage costs in three neighbouring reference States during the two years covered by the agreement. (4) ss 1-13 | |
| Bulgaria | | | | Impact on job creation. | | Financial capacity of enterprises. |
| Croatia | | | | The ratio between the active population and the total population was taken into consideration for the 2013 minimum wage revision See General Survey, para. 263 | | |
| Czech Republic | | Economic results, including forecast trends, as well as a comparison of the | According to the Government, productivity is also one of the adjustment | | | |

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| | | national and international situation are taken into account. See General Survey, para. 260 | criteria. See General Survey, para. 262 | | | |
| Estonia | The requirements of economic development are taken into account. | | | | | |
| France | | According to the Government, growth trends will be taken into account in future adjustments of the SMIC in order to encourage, where appropriate, the redistribution of the benefits of growth. See General Survey, para. 260 | | | | |
| Hungary | | The national economic situation is taken into account. (1) s. 153(3) | | Labour markets indicators and the labour requirements of certain sectors or geographical areas are taken into account. (1) s. 153(3) | | According to the Government, the financial capacity of enterprises is taken into account. See General Survey, para. 265 |
| Ireland | | | | Any increase or decrease in unemployment and employment rates as well as the likely effect of the proposed rate on levels of employment and | The likely effect of the proposed rate on national competitiveness is taken into account. (1) s. 13(5) | |

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| | | | | unemployment are taken into account. (1) s. 13(5) | | |
| Latvia | | The minimum wage is not linked to a macroeconomic indicator but variations are assessed on the basis of the country's economic situation and other elements. Macroeconomic forecasts prepared by the Ministry of the Economy, changes in the economic situation which occurred during the preceding year have to be taken into account. (4) option 1; (5) s. 2 | | | Account is taken of the evolution of the minimum wage in the other Baltic States. (5) s. 2 | |
| Luxembourg | | The Government prepares and submits to the Chamber of Deputies a report on trends in the general economic conditions and incomes. (1) s. L. 222-2(2) | | | | |
| Netherlands | | | | Adjustments of minimum wage can be made without applying the criteria set out by law in the event of a threat to employment. In practice, the | | |

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| | | | | <p>indexation of the minimum wage is maintained provided that the inactivity rate, expressed as the ratio between the number of persons receiving social benefits and the number of persons in paid employment, is lower than 82,6 per cent.</p> <p>(1) s. 14</p> <p>In a judgment issued on 22 June 1995, in an appeal by the Federation of Christian Trade Unions (CNV) concerning the minimum wage freeze, the court found in favour of the Government, confirming that this ratio was effectively the decisive norm in this regard although it was not laid down in legislation.</p> | | |
| Poland | <p>According to the Government, the forecast growth in GDP is taken into account. See General Survey, para. 261</p> | | | | | |

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|-----------------|---|--|---------------------------------------|---|---|--|
| Portugal | The level of development of the productive sector, the requirements for economic and financial stability and the accumulation of capital for development are taken into account. (1) s. 59(2)(a) | | | | | |
| Romania | | The criteria used are fluctuations in macroeconomic indicators and economic and social development. See General Survey, para. 260 | | In its report, the Government indicates its intention to correlate in future the increase of the national minimum wage rate with a decrease in social contributions paid by employers with a view to foster a high level of employment. | In its report, the Government indicates its intention to correlate in future the increase of the national minimum wage rate with a decrease in social contributions paid by employers with a view to foster the economic competitiveness of businesses. | |
| Slovakia | | The country's socio-economic situation over the previous two years is taken into account. (3) s. 6 | | The situation of employment is taken into account. | | |
| Slovenia | | The economic situation and the economic growth of the country are taken into account. (2) s. 3 | | Employment trends are taken into account. (2) s. 3 | | |
| Spain | | The national economic situation is taken into | Average national productivity and the | | | |

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|---------------------------|--|--------------------------|---|---|--|--|
| | | account. (2) s. 27(1) | increase in the share of labour in national income are taken into account. (2) s. 27(1) | | | |
| United Kingdom | The state of the national economy, growth prospects and GDP growth are taken into account, according to the Government. See General Survey, para. 261 | | | The objective assigned to the Low Pay Commission, when reviewing the minimum wage, is to maximize the ratio between the minimum wage and the average wage while avoiding adverse effects on employment. See General Survey, para. 257 | | |

In most EU countries, reference is made to the economic situation of the country and/or the employment situation. Other factors are also applied, such as economic competitiveness, levels of productivity or the financial capacity of enterprises.

A significant number of EU Governments refer to the economic situation of the country to adjust minimum wage levels. In Luxembourg,¹³⁵ the Government prepares a report on trends in the general economic conditions and incomes, while in Spain,¹³⁶ the national economic situation is part of the criteria applied to review the amount of the inter-occupational minimum wage (SMI). Similar provisions apply in Slovakia,¹³⁷ where the country's socio-economic situation over the previous two years is taken into account, and in Slovenia¹³⁸ where account has to be taken of the economic situation and the economic growth of the country. Other Governments indicated in their report that the economic situation of the country was an important criterion for the determination of minimum wages. This is the case for example in Czech Republic, France,¹³⁹ Hungary,¹⁴⁰ Latvia,¹⁴¹ and Romania.

Similarly, in Portugal¹⁴² the level of development of the productive sector, the requirements for economic and financial stability and the accumulation of capital for development are taken into account. According to the information provided in their reports, in the United Kingdom, the Low Pay Commission refers to the state of the national economy, growth prospects and the evolution of the gross domestic product (GDP), while in Poland, the forecast growth of GDP is taken into consideration.

Other EU countries assess the employment situation in the country when reviewing their minimum wage rate, usually by weighing the impact of the minimum wage level on the unemployment rate. For example, in Ireland,¹⁴³ the legislation provides that account must be taken of any increase or decrease in unemployment and employment rates as well as the likely effect of the proposed minimum wage rate on levels of employment and unemployment. In the Netherlands,¹⁴⁴ the national minimum wage is in principle indexed to the average rate of wage increases. However in the event of a threat to employment, adjustments of minimum wage may be made without applying the criteria set out by law. In practice, the indexation of the minimum wage is maintained provided that the inactivity rate, expressed as the ratio between the number of persons receiving social benefits and the number of persons in paid employment is lower than 82,6 per cent. In Croatia, the ratio between the active population and the total population was taken into consideration for the last revision of the minimum wage in 2013. The

¹³⁵ (1) s. L222-2(2).

¹³⁶ (2) s. 27(1).

¹³⁷ (3) s. 6.

¹³⁸ (2) s. 3.

¹³⁹ The Government indicated that growth trends will be taken into account in future adjustments of the SMIC in order to encourage, where appropriate, the redistribution of the benefits of growth.

¹⁴⁰ (1) s. 153(3).

¹⁴¹ (4) Option 1; (5) s. 2. Macroeconomic forecasts prepared by the Ministry of the Economy and changes in the economic situation which occurred during the preceding year have to be taken into account.

¹⁴² (1) s. 59(2) (a).

¹⁴³ (1) s. 13(5).

¹⁴⁴ (1) s. 14. In a judgment issued on 22 June 1995, in an appeal by the Federation of Christian Trade Unions (CNV) concerning the minimum wage freeze, the court found in favor of the Government, confirming that this ratio was effectively the decisive norm in this regard although it was not laid down in legislation.

Government of the United Kingdom explained in its report that the objective assigned to the Low Pay Commission, when reviewing the minimum wage, is to maximize the ratio between the minimum wage and the average wage while avoiding adverse effects on employment. Employment trends and labour market indicators are also taken into account in Hungary¹⁴⁵ and Slovenia,¹⁴⁶ as well as in Bulgaria, where according to the Government, account is taken of the impact of the minimum wage level on job creation.

Other economic factors are also considered, such as economic competitiveness. In Belgium,¹⁴⁷ each inter-occupational agreement must set a maximum margin for fluctuation in wage costs, taking into account forecast trends in wage costs in three neighbouring reference States during the two years covered by the agreement. In Latvia,¹⁴⁸ the evolution of the minimum wage in the other Baltic States is part of the criteria applied when reviewing the national minimum wage, while in Ireland,¹⁴⁹ the likely effect of the proposed rate on national competitiveness is taken into account.

Levels of productivity are also a criterion applied by several EU countries. In Spain,¹⁵⁰ the average national productivity and the increase in the share of labour in national income are taken into account. Moreover, according to the Government of Belgium, the level of the sectorial minimum wage depends *inter alia* on the productivity of the sector and its profitability.

A number of other economic factors are used by some EU countries, including: financial capacity of the enterprises in Bulgaria and Hungary, according to the information provided by these Governments; changes in currency exchange rates during the period concerned in Ireland;¹⁵¹ and planned tax reforms in Latvia.¹⁵²

Conclusion

Where minimum wages are fixed statutorily, a large majority of EU countries refer to both social and economic factors to determine and adjust their minimum wage(s) and apply a multiplicity of criteria, in conformity with the prescriptions of Convention No. 131. While no mathematical formula has been identified in the review of national legislations, it appears that a number of countries adjust the minimum wage by reference to a specific indicator, be it of a social (e.g. the evolution of prices) or of an economic nature (e.g. level of employment). While this method guarantees that minimum wage rates are regularly adjusted, as prescribed by Article 4(1) of the Convention, the weighting of factors is crucial to ensure that both social and economic considerations are taken into consideration. In this regard, the Committee of Experts highlighted that “social and economic considerations are not necessarily conflicting. Fixing an adequate minimum wage can contribute to a lower turnover of workers in enterprises and

¹⁴⁵ (1) s. 153(3).

¹⁴⁶ (2) s. 3.

¹⁴⁷ (4) ss 1-13.

¹⁴⁸ (5) s. 2.

¹⁴⁹ (1) s. 13(5).

¹⁵⁰ (2) s. 27(1).

¹⁵¹ (1) s. 13(5).

¹⁵² (4) Option 1; (5) s. 2.

encourage the latter to increase their productivity by improving work organization and through capacity development of employees. At a broader level, it can contribute to an increase of consumer spending and therefore economic growth”.¹⁵³

Furthermore, it would appear that only a few countries refer to the poverty threshold or minimum subsistence levels to assess the needs of workers. As emphasized by the Committee of Experts, “although the Convention does not specify the types of needs that have to be met, it should be borne in mind that the Preamble to the ILO Constitution proclaims that an improvement of conditions of labour is urgently required, in particular the provision of an adequate living wage. [...] the concept of ‘living wage’ takes into account more than the satisfaction of food, housing and clothing needs, and includes the possibility of participating in the country’s social and cultural life.”¹⁵⁴

4.2. Adjustment of minimum wages

| | Adjustment frequency |
|-----------------------|---|
| Austria | According to the Government's report, wage agreements are usually revised annually. |
| Bulgaria | No fixed frequency. |
| Croatia | Annual adjustment. (2) s. 4 |
| Cyprus | Annual adjustment. |
| Czech Republic | No fixed frequency for adjustments. The last increase in the minimum wage rate was made in 2006, with effect in 2007. |
| Estonia | The national minimum wage is set by an annual bipartite agreement. |
| France | Annual adjustment of the SMIC. (1) ss L.3231-4 to L.3231-11. In addition, in the event of a rise at least 2 per cent in the national CPI during the year in relation to the index at the time the SMIC was determined for the immediately preceding period, it is automatically increased by the same proportion, with effect from the first day of the following month. Finally, the Government may decide during the year on a supplementary increase in the SMIC ('coup de pouce'). |
| Hungary | Annual adjustment. (1) s. 153(4) |
| Ireland | No fixed frequency. |
| Latvia | Annual adjustment. (5) ss 2-5 |
| Lithuania | Annual adjustment. |
| Luxembourg | Every two years. (1) ss L.222-2(2) and L.222-3 |
| Malta | Annual adjustment. (2) s. 8; (4) Schedule A, ss 1,2-1,3 |
| Netherlands | Half-yearly adjustment. (1) s. 14 In addition, the responsible minister has to consider, at least every four years, whether circumstances exist which justify a special adjustment of minimum wages. |
| Poland | According to the Government, the minimum wage is adjusted annually if the forecast CPI is less than 105 per cent and twice a year if it is equal to or greater than 105 per cent. |
| Portugal | Annual adjustment. (2) s. 273(1) However the amount of the minimum wage was frozen in 2012 in the framework of a financial assistance programme. See General Survey, para. 270 |
| Romania | According to the Government, the revision is annual or half-yearly. See General Survey, para. 269 |
| Slovakia | Annual adjustment. (3) ss 7-9 |
| Slovenia | Annual adjustment. (2) s. 5(1) |

¹⁵³ See General Survey paragraph 284

¹⁵⁴ See General Survey paragraph 283

| | |
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| Spain | Annual adjustment. If forecasts for the CPI do not materialize, the minimum inter*occupational wage is also subject to a half-yearly adjustment. (2) s. 27(1) In Spain, the rate of the minimum inter-occupational wage was frozen in 2012 so as not to burden on the state budget and with a view to encouraging economic recovery and job creation, while a national collective agreement, concluded in 2012 between the social partners, provided for wage moderation in collective bargaining. See General Survey, para. 341 |
| United Kingdom | Annual adjustment. |

Generally speaking, EU countries have opted for an annual adjustment of the minimum wage applicable. This is the case in Croatia¹⁵⁵, Hungary,¹⁵⁶ Latvia,¹⁵⁷ Malta,¹⁵⁸ Portugal,¹⁵⁹ Slovakia,¹⁶⁰ Slovenia,¹⁶¹ and according to the Governments' reports, in Austria, Estonia, Lithuania and the United Kingdom.

In France,¹⁶² the inter-occupational minimum growth wage (SMIC) is revised annually. In addition, in the event of a rise at least 2 per cent in the national consumer price index during the year in relation to the index at the time the SMIC was determined for the immediately preceding period, it is automatically increased by the same proportion, with effect from the first day of the following month. Finally, the Government may decide during the year on a supplementary increase in the SMIC.

In some countries, the adjustment can be half-yearly or annual, depending on the evolution of specific criteria. For example in Spain,¹⁶³ the legislation provides that the revision of the minimum inter-occupational wage (SMI) is annual unless forecasts for the consumer price index do not materialize in which case the SMI is also subject to a half-yearly adjustment. The Government of Poland indicated in its report that the minimum wage is adjusted annually if the forecast consumer price index is less than 105 per cent and twice a year if it is equal to or greater than 105 per cent. According to the Government's report, the national minimum wage is also adjusted annually of half-yearly in Romania.

In the Netherlands,¹⁶⁴ the national minimum wage is reviewed half-yearly. In addition, the responsible minister has to consider, at least every four years, whether circumstances exist which justify a special adjustment of the minimum wage. In other EU countries, minimum

¹⁵⁵ (2) s. 4.

¹⁵⁶ (1) s. 153(4).

¹⁵⁷ (5) ss. 2-5.

¹⁵⁸ (2) s. 8; (4) Schedule A, ss 1,2-1,3.

¹⁵⁹ (2) s. 273(1). However, the amount of the minimum wage was frozen in 2012 in the framework of a financial assistance programme.

¹⁶⁰ (3) ss 7-9.

¹⁶¹ (2) s. 5(1).

¹⁶² (1) ss L.3231-4 to L.3231-11.

¹⁶³ (2) s. 27(1). In Spain, the rate of the minimum inter-occupational wage was frozen in 2012 so as not to burden on the state budget and with a view to encouraging economic recovery and job creation, while a national collective agreement, concluded in 2012 between the social partners, provided for wage moderation in collective bargaining.

¹⁶⁴ (1) s. 14.

wages are revised every two years. This is the case in Luxembourg¹⁶⁵ and according to the Government's report, in Belgium for sectorial minimum wages.

In other EU countries where minimum wage rates are agreed upon collectively, the adjustment frequency depends on the social partners. On the basis of the collective agreements reviewed for this study, it appears that minimum wage provisions are established for a period of one year in Sweden¹⁶⁶ to up to three years in Italy.¹⁶⁷

Finally, according to the information provided by the Governments in their reports, there is no provision fixing an adjustment frequency and minimum wages are revised from time to time in Bulgaria, Czech Republic and Ireland.

4.3. Link between the minimum wage and social security instruments

With regard to the link between minimum wage rates and social security benefits, only a handful of countries have provided replies.

Some of these countries have indicated in their report that they do not take minimum wage rates into account in the calculation of social welfare benefits. This is the case for example in the United Kingdom where according to the Government there is however a number of benefits that support people in work such as Working Tax Credit, Housing Benefit, Income Support and Council Tax Benefit. Moreover, a new integrated working-age credit was introduced in October 2013 with a view to providing a basic allowance with additional elements for children, disability, housing and caring called Universal Credit. The idea underlying such credit is to ensure a higher level of earnings to people moving into work. In addition, the Government increased the threshold at which people pay income tax so that for example, the tax income paid by a person working full time at the minimum wage rate will be halved.

Other countries, such as Cyprus, Czech Republic, Latvia and Lithuania, also indicated that minimum wage rates were not taken into account when calculating social security benefits. In addition, the Government of Belgium indicated that although the level of the general monthly guaranteed minimum (RMMMG) was not taken into consideration to fix social security benefits, it is nevertheless an element of the strategy aimed at providing incentives to (re)enter the labour market.

On the other hand, some countries have indicated in their report that minimum wage rates were an element of the calculation of social security benefits. In Italy¹⁶⁸ for example, the Administration issued a circular setting out the daily minimum wage rates to use to calculate insurance premiums provided under collective agreements. In Luxembourg,¹⁶⁹ the Social Security Code provides that the contribution base for pension insurance shall not be lower than the amount of the minimum social wage for an adult worker. Furthermore in Ireland, the Government decides annually on the appropriate rate of social security benefits by taking into

¹⁶⁵ (1) ss L.222-2(2) and L.222-3.

¹⁶⁶ Collective agreement for wage earners between Teknikarbetsgivarna and IF Metall, 1 February 2012-31 March 2013.

¹⁶⁷ National collective agreement in the construction sector, 2010-2013.

¹⁶⁸ Circular No. 21 of 24 March 2011.

¹⁶⁹ S. 241 of the Social Security Code.

consideration a number of factors including the fiscal environment, Government policy and priorities, tackling poverty and maintaining a significant financial incentive to avail of an employment opportunity. In relation to this last point, detailed replacement rates comparing social security benefits to the national minimum wage and 67 per cent of the average industrial wage are calculated on a regular basis and used to determine the financial incentive involved in an individual moving from social welfare benefits to employment. According to the Government, existing replacement rates show that for the vast majority of social welfare recipients there is a significantly strong financial incentive to avail of an employment opportunity.

In Hungary, contributions paid in the framework of the social insurance system and minimum contributions are linked to the minimum wage rate. In addition, the minimum wage level is also taken into account when establishing the upper limit to certain social welfare benefits. For example, the maximum amount of sick pay, maternity allowance and childcare allowance is fixed at a certain percentage of the national minimum wage. Lastly, the legislation aims at fostering the reintegration of low-income groups into the labour market by providing that the amount of benefits received by them shall always be less than the lowest amount of wage paid for actual work. According to the report provided by the Government of Estonia, similar provisions apply in the country.

Lastly, in its report the Government of Greece indicated that when the current pension scheme was first introduced in 1993, the amount of the minimum pension was set at 70 per cent of the minimum wage paid to a married employee working full time.

5. Minimum wage fixing mechanisms in EU countries and the role of the social partners

Convention No. 131 prescribes that minimum wage fixing machinery adapted to national conditions and requirements be created and maintained whereby minimum wages for groups of wage earners covered by the Convention can be fixed and adjusted from time to time.¹⁷⁰ It also sets out requirements for the full consultation and, where appropriate, the direct participation of the social partners in the establishment and operation of such machinery.¹⁷¹

As emphasized in the General Survey, the process of dialogue and the desire to cover all vulnerable workers should always remain at the heart of the minimum wage setting machinery.

¹⁷⁰ Article 4(1) of the Convention: “each Member which ratifies this Convention shall create and/or maintain machinery adapted to national conditions and requirements whereby minimum wages for groups of wage earners covered in pursuance of Article 1 thereof can be fixed and adjusted from time to time”.

¹⁷¹ Article 4(2) of the Convention: “provisions shall be made, in connection with the establishment, operation and modification of such machinery, for full consultation with representative organisations of employers and workers concerned or, where no such organizations exist, representatives of employers and workers concerned.”

5.1. The role of the social partners in the establishment and the operation of minimum wage fixing mechanisms

Minimum wage fixing mechanisms by country

| | MW fixed by the public authorities without consultation with the social partners | MW fixed by the public authorities after consultation with the social partners | MW fixed on a tripartite basis | MW fixed by collective bargaining |
|-----------------|--|--|---|---|
| Austria | | | The Federal Conciliation Office, a tripartite institution, may on a subsidiary basis establish minimum wage scales at the request of a group of workers with the legal capacity to conclude collective agreements. Such scales can only be fixed for groups of workers in respect of whom a collective agreement has not been concluded as there is no employers' association with the legal capacity to conclude agreements or where a wage regulation has not followed the extension of a collective agreement, including domestic workers. (1) ss 22, 26, 141 and 58(3)-(4) | Yes: minimum wage fixing mechanism is essentially based on collective bargaining. |
| Belgium | | | | The national minimum wage is fixed by an inter-sectorial collective agreement adopted by the National Labour Council. In addition, sectorial minimum wages are fixed by joint commissions. (2) ss 5-7; (9) |
| Bulgaria | | The national minimum wage is fixed by decree after consultation with the National Tripartite Cooperation Council and its Commission on | | The legislation provides that collective agreements may fix minimum wage rates higher than the national minimum wage set by |

| | | | | |
|-----------------------|--|---|--|--|
| | | Incomes and Living Standards. (2) ss 3 and 244 | | decree. (2) s. 50 |
| Croatia | | | | |
| Cyprus | | The Government issues an order fixing wage rates for specific occupations in which employees are characterized by weak bargaining power based on the recommendations of the Tripartite Labour Advisory Board. (2) ss 3-4 | | Wages are generally fixed through collective bargaining. Collective agreements are concluded both at the sectorial and enterprise levels. In February 2013, a bill to give the Minister of Labour power to extend sectorial collective agreements was put before Parliament. (1) s. 26(2); (2) s. 3(1) |
| Czech Republic | | | | Minimum wage rates fixed through collective agreements may not be lower than the national minimum wage. |
| Denmark | | | | Collective bargaining is the principal method of determining minimum wages. There is no procedure for extending collective agreements. However, the Government states in its report that minimum wage levels in sectors covered by a collective agreement may represent a point of reference for sectors that are not covered. There is no legislation on collective agreement in Denmark. Regulation has developed on the basis of the case law of the Permanent Court of Arbitration. See General Survey, para. 130 and 155. |

| | | | | |
|----------------|--|--|---|---|
| Estonia | | | In 1992, the national minimum wage was first fixed in a tripartite agreement. Since 2002, the minimum wage is set through a bipartite agreement between the Estonian Trade Unions Confederation and the Estonian Employers' Confederation which is then brought into effect by a Government decree and at the same time, by an extended collective agreement. | |
| Finland | | | | Minimum wages are principally fixed by collective agreements. |
| France | | The SMIC is fixed by decree after consultation with the National Collective Bargaining Commission (NCBC). Before reaching a decision, the NCBC receives a report prepared by a group of experts mandated each year with reporting on trends in the SMIC. Since 2013, this group must hear the representatives designated by the member organizations of the NCBC and annex their opinions to its report. (1) ss L.2271-1(5), L.2271-2, L.3231-4 to L.3231-8, R.2272-1 and R.3231-1; (2) s. 24; (3) s. 3 | | In addition to the SMIC, wage scales are determined by sectorial collective agreements. |
| Germany | | | | Minimum wages, where they exist, are traditionally set by collective agreement, generally by sector. There are two distinct procedures for the extension of collective agreements (one in the framework |

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| | | | | <p>of the general legislation and the other under the Posted Workers Act.).</p> <p>(2) s. 1(1)</p> <p>Under the applicable legislation, if employers having concluded a sectorial collective agreement employ less than 50 per cent of the employees in that sector, minimum wages may be fixed by order of the Minister of Labour, on the recommendation of a committee of experts composed of representatives of the sectors concerned. However, according to the Government, this option has never been used.</p> |
| Greece | | <p>In December 2012, the Government made a commitment to establish a new minimum wage fixing mechanism. The minimum wage will no longer be fixed by means of collective bargaining but by government decision to be made after consultation with the social partners and independent experts. This measure will come into force after the completion of the economic adjustment programme that is on 1 January at the earliest.</p> <p>(3) s. 103</p> | | <p>In pursuance of the Government's commitment made in December 2012, collective agreements can still set higher minimum wage but they will be binding only for their signatories.</p> <p>(2) s. 1, para. IA. 11 point 2a</p> |
| Hungary | | <p>The minimum wage is fixed by Government decree after consultation with the Standing Consultative Forum of the Private Sector and the Government (VKF),</p> | | |

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| | | established by an agreement dated 22 February. If a consensus is reached, this decision will serve as a basis for consultations with the National Economic and Social Council (NGTT). (1) s. 153 | | |
| Ireland | In addition, the legislation also provides for the possibility of the minister fixing unilaterally the national minimum wage. (1) ss 11-13 | The national minimum wage is set by ministerial order and the social partners may participate in the process either by concluding a national economic agreement submitted to the minister for approval or through the consultations undertaken by the Labour Court with a view to formulating recommendations to the minister. (1) ss 11-13 | | |
| Italy | | | | Collective bargaining is the principal method of determining minimum wages and takes place at two levels: there are national sectorial collective agreements and enterprise agreements. (2) ss. 2067-2080; (4); (5) See General Survey, para. 131 and 155 |
| Latvia | | The minimum monthly wage is fixed by the Council of Ministers after consultations with the National Tripartite Cooperation Council (2) s. 61; (3) s. 3.1.7; (5) | | |
| Lithuania | | The minimum hourly pay and the minimum monthly wage are determined by a Government | | Collective agreements may determine higher minimum wage rates. |

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| | | Resolution on the recommendation of the Tripartite Council. If the Government fails to determine the minimum wage rate by June 1 of the current year or if the Tripartite Council submits no recommendation, the Parliament shall determine the new rate having regard to the average annual inflation of the precedent year and the evolution of the mean wage. (2) ss 45 and 187(1) | | |
| Luxembourg | | The social minimum wage is fixed by law and, for this purpose, the Government submits to the Chamber of Deputies a report on socio-economic trends in the country accompanied, if necessary, by a bill to increase the rate. In practice, according to the Government, trade unions and employers' organizations are invited to give their views in a consultation procedure on draft legislation to adjust the minimum social wage. See General Survey, para. 120 | | |
| Malta | | The national minimum wage is fixed by government order on the recommendation of the Employment Relations Board (ERB). (2) ss 3-4 | | Collective agreements may also establish minimum rates of pay for categories of employees. These rates may not be lower than those established in the National Standard Order. |
| Netherlands | The legislation provides for the indexation of the minimum wage to the average increase in contractual wages in the public and private | | | |

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| | sectors. The Government may, however, derogate unilaterally from this rule if there is reason to believe that the increase in the minimum wage resulting from the application of the indexation rule would have a negative effect on employment or if the growth of social security schemes is such that a significant increase in contributions or taxes is necessary. In that case, the Government simply has to submit its proposal to that effect to Parliament. (1) s. 14 | | | |
| Poland | | | The minimum wage is determined by the Tripartite Commission for Social and Economic Affairs, based on a proposal by the Government. If the Commission does not reach consensus, the minimum wage is fixed directly by the Council of Ministers. In that case, the minimum wage may not be set at an amount less than that originally proposed by the Government to the Commission. (3) s. 2. | |
| Portugal | | The amount of the minimum guaranteed monthly wage is set by legislative decree after consultations with the Standing Committee for Social Dialogue. (2) s. 273(1); (3) ss 1-3; (5) | | |
| Romania | | The national minimum wage is fixed by government decision after | | The social partners may also conclude collective agreements |

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| | | consultation with workers' and employers' organizations in the National Tripartite Council for Social Dialogue. (2) s. 164(1); (3) s. 78(a) | | providing for higher minimum rates. (3) s. 128 and 132 |
| Slovakia | | | | In principle, the adjustment of the minimum wage is decided each year by agreement between employers' and workers' representatives and is then the subject of a government decision. However if an agreement is not concluded by a certain date, the adjustment is decided by the Government alone (3) s. 7 |
| Slovenia | | The national minimum wage is determined by the Government after consultation with the Economic and Social Council (ESC). (2) s. 6(3) | | |
| Spain | | Consultations outside an institutionalized body are conducted. (2) s. 27 | | |
| Sweden | | | | Collective bargaining is the principal method of determining minimum wages. (1) s. 23 |
| United Kingdom | | Before fixing the minimum wage, the Secretary of State must consult the Low Pay Commission which before making a recommendation, must consult employers' and workers' representative organizations. The Commission undertakes extensive consultation | There is a special procedure for the agricultural sector only applicable in Scotland and Northern Ireland minimum wages are fixed by the Agricultural Wages Board, a tripartite body. These Boards were abolished in | |

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| | | with relevant stakeholders, as is provided by the law. According to the Government, the Commission's recommendations are always accepted. (1) ss 1(3), 2 and 5-8 | England and Wales in April 2013. (4) s. 72 | |
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Consultation and participation of the social partners

| | | Within an institutionalized body | | | Outside an institutionalized body |
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| | Direct participation through collective bargaining | Designation and composition | Participation of the social partners in the designation | Participation in the operation on an equal footing | |
| Austria | Yes: minimum wage fixing mechanism based on collective bargaining. | | | | |
| Belgium | Yes: minimum wage fixing mechanism based on collective bargaining. (2) ss 5-7; (9) | <p>National Labour Council only the most representative organizations of employers and workers</p> <p>The Act specifies the distribution of membership of the most representative employers' organizations between those persons put forward by:</p> <ul style="list-style-type: none"> - the most representative employers' organizations operating at the national level and representing an absolute majority of employers in the industrial, | <p>Yes. National Labour Council the employer and worker members of the National Labour Council are appointed by the King on the basis of a double list of candidates submitted respectively by the most representative organizations of employers and the most representative organizations of workers. (15) s. 2.</p> <p>Joint Committees the organizations concerned are invited to indicate whether they wish to be</p> | <p>Yes. National Labour Council 26 members + President (independent person) (15) s. 2.</p> <p>Joint Committees (2) ss 39 and 41.</p> | |

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| | | <p>trade and services sectors, provided that the majority of workers are also represented (8 members);</p> <ul style="list-style-type: none"> - the Higher Council for Self-employed Workers and Small and Medium-Sized Enterprises (3 members); - the most representative employers' organizations representing employers in agriculture (1 member); and - the most representative organization of employers that operates at the national level and represents employers in the non-commercial sector (1 member). <p>The Act also sets criteria for identifying the most representative workers' organizations (13 members), specifying that membership for these organizations shall be distributed among them by an order discussed at the Council of Ministers. (15) s. 2.</p> <p>Joint Committees at the sectorial level</p> | <p>represented and if so, to demonstrate their representatively. The minister then decides which organizations will be represented and determines the number of members that each will have. Organizations thus designated are invited to present two candidates for each seat they have been allocated and the members are appointed by the minister.</p> <p>(2) ss 39 and 42.</p> | | |
| Bulgaria | | <p>National Council for Tripartite Cooperation and its Commission on Income and Living Standards representative organizations</p> | <p>representatives of employers' and workers' organizations are nominated by their respective organizations (2) s. 3a(2)</p> | <p>6 members: 2 members from the Council of ministers, 2 employer members and 2 worker members</p> <p>The legislation provides that</p> | |

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| | | of employers and workers (2) s. 3a(2) | | decisions must be taken by consensus. (2) s. 3a) and e) | |
| Croatia | | | | | Consultation of the social partners outside an institutionalized body. (2) s. 7 |
| Cyprus | Yes: collective bargaining at sectorial and enterprise levels. | Tripartite Labour Advisory Board (2) ss 3-4 Tripartite Technical Committee which is appointed by the Board representatives of workers' and employers' organizations + Government representatives | | | |
| Czech Republic | | Council of Economic and Social Agreement The worker group is made up of six representatives of the Czech-Moravian Confederation of Trade Unions (CMKOS) and one workers member representing another workers' organization that meets the representativeness criteria. The employer group comprises seven representatives designated by the Confederation of Industry and Transport and | The legislation designates by name the organizations that sit on the Council of Economic and Social Agreement in plenary session. (3) s. 4(2) and (4) and Annexes 1-3 | 7 worker members + 7 employer members (3) s. 4(2) | |

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| | | the Confederation of Employers' and Entrepreneurs' Associations. If other trade unions or employers' organizations meet the representativeness criteria established by law, the Council would have to discuss their participation in plenary. (3) s. 4(2) and (4) and Annexes 1-3 | | | |
| Denmark | Yes: minimum wage fixing mechanism based on collective bargaining. See General Survey, para. 130 and 155 | | | | |
| Estonia | Yes: bipartite collective agreement between the Estonian Trade Unions Confederation and the Estonian Employers' Confederation. | | In its report, the Government indicates that the representatives of the Estonian Trade Unions Confederation and the Estonian Employers' Confederation are appointed freely and directly by these organizations. | | |
| Finland | Yes: minimum wage fixing mechanism essentially based on collective bargaining at the sectorial level. (1) Chapter 2, ss 7 and 10; (2) s 2 and 4; (3) s. 1 | | | | |
| France | Yes: collective bargaining in occupational branches. | National Collective Bargaining Commission 3 Government representatives + 18 | The legislation designates by name the employers' and workers' organizations that propose members for the | Equal numbers of representatives (1) R. 2272-1(5) | |

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| | | employer members + 18 worker members + 1 independent person (1) L. 2271-2; R. 2272-1 to R. 2272-3 | NCBC. (1) R. 2272-3 | | |
| Germany | Yes: minimum wage fixing mechanism based on collective bargaining at the sectorial level | | | | |
| Greece | | | | | In its report, the Government indicates that representatives of the social partners are consulted during the minimum wage fixing process. |
| Hungary | | National Economic and Social Council (NGTT) 32 members including representatives of the economy (including employers' organizations) + workers' representatives (2) ss 2(2) and 4(1) Standing Consultative Forum of the Private Sector and the Government (VKF) Government representatives + 3 trade unions confederations representing the private sector employees (Democratic League of Independent Trade Unions; National Federation of | The legislation sets out conditions for the representativeness of the workers' and employers' organizations. Each organization is represented by its President. | Every NGTT member has one vote. (2) s. 7 | |

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| | | Hungarian Trade Unions; National Association of Workers' Councils) + 3 national employers' organizations representing employers (National Association of General Consumers' Cooperatives and Business Enterprises; National Association of Employers and Industrialists; National Association of Employers and Entrepreneurs) | | | |
| Ireland | Yes: collective bargaining at the sectorial level. (2) ss 27, 42, 42A, 42B, 42C | | | | The social partners may participate in the minimum wage fixing process by concluding a national economic agreement or through the consultations undertaken by the Labour Court with a view to making recommendation to the minister. (1) ss 11-13 |
| Italy | Yes: minimum wage fixing mechanism based on collective bargaining at the sectorial and the enterprise levels. (2) ss. 2067-2080; (4); (5) | | | | |
| Latvia | | National Tripartite Cooperation Council (NTCC) | | | |

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| | | Government representatives + Employers' Confederation of the Republic of Latvia + Free Trade Confederation of Latvia | | | |
| Lithuania | | Tripartite Council Tripartite composition of max 21 members | National representative organizations of workers designate their representatives on the basis of mutual agreement. The same procedure applies for national representative organizations of employers. | Equal numbers of representatives (2) s. 45 | |
| Luxembourg | | | | | According to the Government, trade unions and employers' organizations are invited to give their views in a consultation procedure on draft legislation to adjust the minimum social wage. See General Survey, para. 120 |
| Malta | | Employment Relations Board 13 members including 4 employer members and 4 workers members | Representatives of the social partners on the Employment Relations Board are nominated by the Malta Council for Economic and Social Development from among the representative organizations of employers and workers that sit on the Council. (2) s. 3(2) | Equal numbers of representatives (4 each) (2) s. 3(2) | |

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| Poland | | Tripartite Commission for Social and Economic Affairs (4) | The legislation indicates by name those employers' and workers' organizations that are considered representative and whose representatives participate in the Commission. (4) ss 6-7 | Equal numbers of representatives (4) ss 9(1) and 10 | |
| Portugal | | Standing Committee for Social Dialogue | The legislation designates by name the employers' and workers' organizations represented on the Committee. (3) s.9(2); (4) s. 7(1) | | |
| Romania | The social partners can conclude sectorial collective agreements. However the minimum wage rates fixed may not be lower than the national minimum wage. (3) s. 128 and 132 | National Tripartite Council for Social Dialogue The Presidents of the national confederations of employers and workers are members of the Council. | | | |
| Slovakia | the social partners can directly negotiate the monthly minimum wage (3) s. 7 | | | | |
| Slovenia | | Economic and Social Council Comprising Government members + employers' representatives + workers' representatives | Every representative workers' organization or confederation designates at least one member of the Economic and Social Council while employer representatives are nominated by employers' organizations operating at the national level. (3) s. 4 | Irrespective of the number of members of the ESC, each party has one vote and decisions are taken unanimously (3) s. 9 Max 8 representatives for each of the three partners. | |

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| Spain | | | | | According to the Government, the most representative organizations of employers and workers are consulted before setting/adjusting the minimum wage. (1) s. 6a, (1), (c) |
| Sweden | Yes: minimum wage fixing mechanism based on collective bargaining. (1) s. 23 | | | | |
| United Kingdom | | Consultation with employers' and workers' representative organizations within the Low Pay Commission. (1) s. 8(9) and schedule 1 + Agricultural Wages Board in Scotland and Northern Ireland | | | |

Convention No. 131 does not impose one minimum age fixing method. On the contrary, it leaves countries free to implement the method or methods of their choice, provided that they respect the other requirements of the Convention and particularly the obligation to consult fully the social partners and, where appropriate, to allow them to participate directly in the application of the machinery.

In this regard, Recommendation No. 135 contains an indicative list of the methods which may be used, according to which minimum wage fixing machinery can take various forms such as the fixing of minimum wages by statute; decisions of the competent authority, with or without formal provision for taking account of recommendations of other bodies; decisions of wages boards or councils; industrial or labour courts or tribunals; or giving the force of law to provisions of collective agreement.

In the European Union, minimum wage fixing mechanisms in place are diverse and range from the determination of minimum wage rates by the Government with prior consultation of the social partners to the direct participation of the social partners through collective bargaining. The fixation of minimum wage rates without consultation of the social partners remains a marginal procedure provided only in two countries and in exceptional circumstances.

5.1.1. Minimum wages fixed by the Government after consultation of the social partners

In a number of EU countries, minimum wages are fixed by the public authorities after consultation with the social partners represented in an institutionalized body. This is the case for example in Bulgaria¹⁷² where the national minimum wage is fixed by decree after consultation with the National Tripartite Cooperation Council and its Commission on Incomes and Living Standards.

In France,¹⁷³ the minimum inter-occupational growth wage (SMIC) is fixed by decree after consultation with the National Collective Bargaining Commission (NCBC). This Commission is composed of three Government representatives, 18 employer members, 18 worker members and one independent person.¹⁷⁴ The legislation designates by name the employers' and workers' organizations which may propose members for the NCBC.¹⁷⁵ Before reaching a decision, the NCBC receives a report prepared by a group of experts mandated each year with reporting on trends in the SMIC. Since 2013, this group must hear the representatives designated by the member organizations of the NCBC and annex their opinions to its report.

In Portugal,¹⁷⁶ the amount of the minimum guaranteed monthly wage is set by legislative decree after consultations with the Standing Committee for Social Dialogue which comprises representatives of employers' and workers' organizations designated by name in the legislation.¹⁷⁷

¹⁷² (2) ss 3 and 244.

¹⁷³ (1) ss L.2271-1(5), L.2271-2, L.3231-4 to L.3231-8, R.2272-1 and R.3231-1; (2) s. 24; (3) s. 3.

¹⁷⁴ (1) ss L. 2271-2 and R. 2272-1 to R. 2272-3.

¹⁷⁵ (1) R. 2272-3.

¹⁷⁶ (2) s. 273(1); (3) ss 1-3; (5).

¹⁷⁷ (3) s. 9(2); (4) s. 7(1).

In Malta,¹⁷⁸ the national minimum wage is fixed by Government order on the recommendation of the Employment Relations Board (ERB) which is composed of representatives of the social partners nominated by the Malta Council for Economic and Social Development from among the representative organizations of employers and workers that sit on the Council. The employers and workers groups have four representatives each on the Board.

In Lithuania,¹⁷⁹ the minimum hourly pay and the minimum monthly wage are determined by a Government Resolution on the recommendation of the Tripartite Council which, according to the Government, comprises 21 members at most. National representative organizations of workers designate their representatives on the basis of mutual agreement. The same procedure applies for national representative organizations of employers. With regard to the minimum wage fixing procedure, the legislation provides that if the Government fails to determine the minimum wage rate by 1 June or if the Tripartite Council submits no recommendation, the Parliament shall determine the new rate having regard to the average annual inflation of the previous year and the evolution of the mean wage.

Moreover, in several Eastern European countries, the national minimum wage is also fixed by the Government after consultation of a tripartite body. This is the case in Hungary,¹⁸⁰ Latvia,¹⁸¹ Romania¹⁸² and Slovenia.¹⁸³

Lastly in the United Kingdom,¹⁸⁴ the employers and workers representatives are consulted by the Low Pay Commission, which is composed of nine independent personalities, before it makes its recommendation to the Government. In its report the Government indicated that the Low Pay Commission undertakes extensive consultation with relevant stakeholders, as is provided by the law. It added that the Commission's recommendations are always accepted.

In a few countries, the consultation of the social partners is conducted outside any institutionalized body. This is the case in Spain¹⁸⁵ where the most representative organizations of employers and workers are consulted by the Government prior to fixing the inter-occupational minimum wage (SMI). Similar provisions apply in Croatia.¹⁸⁶ In Luxembourg,¹⁸⁷ the social minimum wage is fixed by law and, for this purpose, the Government submits to the Chamber of Deputies a report on socio-economic trends in the country accompanied, if necessary, by a bill to increase the rate. In practice, according to the Government, trade unions and employers' organizations are invited to give their views in a consultation procedure on draft legislation to adjust the minimum social wage. In Ireland,¹⁸⁸ the national minimum wage is fixed by ministerial order. The social partners may participate in the process either by concluding a national economic agreement submitted to the minister for approval or through

¹⁷⁸ (2) ss 3-4.

¹⁷⁹ (2) ss 45 and 187(1).

¹⁸⁰ (1) s. 153.

¹⁸¹ (2) s. 61; (3) s. 3.1.7; (5).

¹⁸² (2) s. 164(1); (3) s. 78(a).

¹⁸³ (2) s. 6(3).

(3) s. 4.

¹⁸⁴ (1) ss 1(3); 2; 5-8; and Schedule 1.

¹⁸⁵ (2) s. 27.

¹⁸⁶ (2) s. 7.

¹⁸⁷ (1) s. L.222-2 and L.222-3.

¹⁸⁸ (1) ss 11-13.

the consultations undertaken by the Labour Court with a view to formulating recommendations to the minister. In this last case, any employers' or workers' organization which the Labour Court deems substantially representative may jointly or separately request it to examine the national minimum wage and make recommendations to the minister. In considering the application, the Labour Court shall consult such persons, including representatives of employers and employees in the private and the public sectors as it thinks appropriate.

5.1.2. Minimum wages fixed on a tripartite basis

This method is seldom used by EU countries. In Poland,¹⁸⁹ the minimum wage is determined by the Tripartite Commission for Social and Economic Affairs, based on a proposal by the Government. The legislation indicates by name those employers' and workers' organizations that are considered representative and whose representatives participate in the Commission as follows: Independent and Self-Governing Trade Union "Solidarnosc" and All-Poland Alliance of Trade Unions (OPZZ) for workers representatives; the Employers of Poland (former CPE) and the Polish Craft Association for employer representatives.¹⁹⁰ In its communication, the Government indicated that other organizations representative at the national level and meeting a number of criteria, i.e. criteria regarding membership, could also participate in the Commission. In practice, the Trade Unions Forum for Workers and the Polish Confederation Lewiatan and the Business Centre Club are also represented in the Tripartite Commission for Social and Economic Affairs.¹⁹¹ Workers and employers each have an equal number of representatives.¹⁹²

With regard to the procedure followed, the Council of ministers submits by 15 June each year a proposal fixing the minimum wage level for the subsequent year. Negotiations within the Tripartite Commission are held from 15 June to 15 July and the new national minimum wage rate is announced on 15 September. Moreover, the legislation also provides for a subsidiary minimum wage fixing method. If the Commission fails to reach a consensus by 15 July, the minimum wage is fixed directly by the Council of Ministers. In that case, the minimum wage may not be set at an amount less than that originally proposed by the Government to the Tripartite Commission.

According to the information provided by the Government of Estonia, the national minimum wage was first set up in a tripartite agreement. Since 2002, the minimum wage is set through a bipartite agreement between the Estonian Trade Unions Confederation and the Estonian Employers' Confederation which is then brought into effect by a Government decree and at the same time, by an extended collective agreement.

Finally in Austria,¹⁹³ collective bargaining is the principal method for fixing minimum wages. However, the Federal Conciliation Office, a tripartite institution, may on a subsidiary basis establish minimum wage scales at the request of a group of workers with the legal capacity to

¹⁸⁹ (3) s. 2.

¹⁹⁰ (4) ss 6-7.

¹⁹¹ 2007 report of the Government of Poland under the Minimum Wage Fixing (Agriculture) Convention (No. 99), 1951.

¹⁹² (4) ss 9(1) and 10.

¹⁹³ (1) ss 22, 26, 141 and 58(3)-(4).

conclude collective agreements. Such scales can only be fixed for groups of workers in respect of whom a collective agreement has not been concluded as there is no employers' association with the legal capacity to conclude agreements or where a wage regulation has not followed the extension of a collective agreement.

5.1.3. Minimum wages fixed through collective bargaining

In several countries, minimum wages are traditionally fixed through collective bargaining at the sectorial and/or the national level. This is the case in Austria, Belgium, Denmark, Finland, Germany, Italy, and Sweden. A number of differences may nevertheless be outlined.

Firstly, in some countries, the fixing of minimum wages by collective agreements results from national practice. This is the case in Denmark¹⁹⁴ where there is no legislation on collective agreement and regulation has developed on the basis of the case law of the Permanent Court of Arbitration. As a result, there is no procedure for extending collective agreements.¹⁹⁵

In Finland, minimum wage rates are essentially determined through sectorial collective agreements. A commission operating under the minister of Social Affairs is responsible for declaring the general applicability of national collective agreements which are representative of the sector that they cover. To be representative, a collective agreement must apply to half of the workers employed in the industry or sector. Furthermore, when no collective agreement is applicable, workers have the right to normal and reasonable remuneration.

In Germany,¹⁹⁶ minimum wages, where they exist, are traditionally set by sectorial collective agreements. Two distinct procedures allow for the extension of collective agreements: one in the framework of the Minimum Conditions of Work Act and the other under the Posted Workers Act. Altogether 4 million workers, employed in 12 sectors are covered by sectorial minimum wages (60 per cent of the workers).

In Belgium,¹⁹⁷ the general monthly guaranteed minimum (RMMM) is fixed by an inter-sectorial collective agreement adopted by the National Labour Council which is composed of 26 members and a President. It comprises delegates of the most representative organizations of employers and workers in equal numbers. Employer representatives are nominated by the King on the basis of a list elaborated by the most representative organizations of employers in the industry, services, agriculture, trade, craft and the non-market sector, some of them representing small and medium-sized enterprises and family businesses. A similar procedure, applying membership and representativeness criteria, is used for the designation of worker representatives.¹⁹⁸

¹⁹⁴ See General Survey, paragraph 130.

¹⁹⁵ However, the Government stated in its report that minimum wage levels in sectors covered by a collective agreement may represent a point of reference for sectors that are not covered.

¹⁹⁶ (2) s. 1(1).

¹⁹⁷ (2) ss 5-7; (9).

¹⁹⁸ (15) s. 2.

In addition, sectorial minimum wages are fixed by joint commissions which are composed of an equal number of employer and worker representatives, designated by the minister for Labour on the proposal of the representative organizations.¹⁹⁹

Finally, in Slovakia,²⁰⁰ the adjustment of the minimum wage is in principle decided each year by agreement between employers' and workers' representatives and is then the subject of a government decision. However, the legislation provides for a subsidiary mechanism in case the social partners do not reach an agreement by a certain date. In this case, the adjustment is decided by the Government alone.

5.1.4. Minimum wages fixed by the Government without consultation of the social partners

As indicated in the introduction to this Part, the fixation of minimum wage rates without consultation of the social partners remains a marginal procedure provided only in two countries and in exceptional circumstances.

In the Netherlands,²⁰¹ the legislation provides for the indexation of the minimum wage to the average increase in contractual wages in the public and private sectors. The Government may, however, derogate unilaterally from this rule if there is reason to believe that the increase in the minimum wage resulting from the application of the indexation rule would have a negative effect on employment or if the growth of social security schemes is such that a significant increase in contributions or taxes is necessary. In that case, the Government simply has to submit its proposal to that effect to the Parliament.

As mentioned above, in Ireland,²⁰² the legislation provides that the national minimum wage is in principle set by ministerial order and the social partners may participate in the process. However, under the same provisions, the minister is offered the possibility of fixing unilaterally the national minimum wage.

Conclusion

As this study has already had cause to emphasize, minimum wage fixing mechanisms in the EU can roughly be classified in two groups, one relying on collective bargaining and the other providing for the consultation of the social partners prior to the determination of the minimum wage rate(s). In this regard, it is recalled that Convention No. 131 does not impose one fixing method but rather leaves it to Member States to elaborate and implement the method or methods that are adapted to the conditions and needs of the country. In this connection, it is worth recalling that the fixation of minimum wages through collective agreements is allowed under Convention No. 131, provided that such collective agreements are legally binding.

As regards the involvement of the social partners, the Committee of Experts strongly underlined in its General Survey that “the close involvement of employers’ and workers’ organizations at all stages of the process of determining minimum wages is not only a requirement set out in

¹⁹⁹ (2) ss 39(2), 41 and 42.

²⁰⁰ (3) s. 7.

²⁰¹ (1) s. 14.

²⁰² (1) ss 11-13.

Convention No. 131, but also and above all an essential condition for the proper functioning of the process. Such synergy between governments and social partners allows the concerns and priorities of those most directly affected by the minimum wage policy to be taken into account more effectively".²⁰³ In that sense, the Committee of Experts emphasized that systems based on the unilateral determination of minimum wages by the Government raise problems of compliance with this fundamental requirement of the Convention.

Moreover, the existence of a formal consultation procedure is not sufficient. Consultation of the social partners should not be confused with the mere provision of information, or with negotiation, nor does the notion of full consultation necessarily imply the conclusion of an agreement between the various partners. Such consultations have to be held before decisions are taken and result in the concerns expressed being genuinely taken into account. Similarly, the participation of employers' and workers' organizations has to be on a basis of equality and involve real collaboration between the tripartite or bipartite partners, depending on the type of minimum wage system in place at the national level.²⁰⁴

²⁰³ See General Survey, paragraph 242

²⁰⁴ See General Survey, paragraphs 139, 202-203 and 242-244.

5.2. The participation of persons representing the general interests of the country in the operation of minimum wage fixing mechanisms

| | qualifications of persons representing the general interests of the country | consultation of employers' and workers' organizations on the appointment of these persons | participation of persons representing the general interests of the country in the operation of the minimum wage |
|-----------------|--|--|--|
| Austria | | | |
| Belgium | <p>National Labour Council The Chairperson is appointed from among the independent persons with particular experience in social and economic matters. (15) s. 2(6)</p> <p>Joint Committees The positions of chairperson and vice-chairperson on joint committees are occupied by people who are experienced in social matters and have no personal interest in the matters that may come before the committee. (2) s. 40</p> | | <p>National Labour Council The Chairperson does not have a right to vote. (15) s. 5bis</p> <p>Joint Committees The chairpersons and vice-chairpersons do not have a right to vote. (2) s. 47</p> |
| Bulgaria | No independent persons | | |
| France | <p>The President of the Social Section of the Council of State is a member of the NCBC. (1) R. 2272-1</p> <p>The NCBC may appoint representatives of relevant ministerial departments to serve in an advisory capacity. (1) R. 2272-9</p> <p>In addition the group of experts issuing opinions annually on the evolution of the SMIC and reporting to the NCBC and the Government is composed of 5 persons chosen for their knowledge and experience in economic and social matters who may neither seek nor receive instructions from any authority. (3) ss. 1 and 4.</p> | <p>Members of the group of experts are appointed without prior consultation of the social partners. (3) s. 1</p> | |

| | | | |
|-----------------------|--|--|--|
| Hungary | <p>National Economic and Social Council (NGTT) Representatives of the scientific community NGO active in national policy Representatives of the churches (2) ss 2(2), 4(1) and 5(2)</p> <p>Ministers or their representatives have a permanent invitation to participate in plenary meetings in an advisory capacity.</p> <p>In addition, representatives of the Hungarian Competition Authority and Central Statistics Office may be invited to take part in plenary meetings of the Council in an advisory capacity. See General Survey, para. 236</p> | | Every NGTT member has one vote (2) s. 7 |
| Latvia | The Latvian Association of Local and Regional Governments participates to the NTCC meetings. | | |
| Malta | The ERB is also composed of: - one independent person acting as Chairperson - the Director responsible for employment and industrial relations acting as Deputy-Chairperson - 3 other persons appointed by the Minister | | |
| Poland | A representative of the President of the National Bank and a representative of the National Statistics Office take part in meetings of the Commission. The Government may also invite representatives of central and local government, associations and cooperatives to participate in an advisory capacity. (4) ss 4-9 | | |
| Romania | In addition to the employer and worker members, government representatives and the chairpersons of statistical institutes and offices participate in the Council. | | |
| United Kingdom | The 9 members of the Low Pay Commission are independent persons: 3 have an academic background; 3 have trade union background; 3 have | The Low Pay Commission members are appointed without prior | |

| | | | |
|--|---|--|--|
| | links with the world of work. (1) s. 8(9) and schedule 1 | consultation of the social partners. (1) s. 8(9) and schedule 1 | |
|--|---|--|--|

Article 4(3) of Convention No. 131 established that provision shall be made, wherever it is appropriate to the nature of the minimum wage fixing machinery, for the direct participation in its operation of persons having recognized competence for representing the general interests of the country and appointed after full consultation with representative organizations of employers and workers concerned, where such organizations exist and such consultation is in accordance with national law or practice.

In connection with the previous section, it appears that in some EU countries, the institutionalized bodies consulted within the framework of the minimum wage fixing mechanisms often comprise independent personalities having recognized competence and representing the general interests of the country.

In the United Kingdom,²⁰⁵ the minimum wage fixing mechanism in place provides the consultation of the Low Pay Commission, a body composed of nine independent personalities. Three of them have an academic background, three other have trade union background and the remaining three have links with the world of work. The Low Pay Commission members are appointed in a personal capacity without prior consultation of the social partners.

In France,²⁰⁶ the President of the Social Section of the Council of State is a member of the National Collective Bargaining Commission (NCBC). In addition, the NCBC may appoint representatives of relevant ministerial departments to serve in an advisory capacity.²⁰⁷ Furthermore, the group of experts issuing opinions annually on the evolution of the minimum inter-occupational growth wage (SMIC) and reporting to the NCBC and the Government is composed of five persons chosen for their knowledge and experience in economic and social matters who may neither seek nor receive instructions from any authority. These personalities are appointed without prior consultation of the social partners.²⁰⁸

In Belgium,²⁰⁹ the Chairperson of the National Labour Council is appointed by the King from among the independent persons with particular experience in social and economic matters. However, he or she does not have a right to vote.²¹⁰ Similarly in joint commissions, the positions of chairperson and vice-chairperson are occupied by people who are experienced in social matters and have no personal interest in the matters that may come before the committee. The legislation also provides that they do not have a right to vote.²¹¹

In Hungary,²¹² the National Economic and Social Council (NGTT), which issues recommendations to the Government on the level of the minimum wage, comprises, in addition to worker and employer members, representatives of the scientific community, representatives of non-governmental organizations active in national policy and representatives of the churches. The legislation provides that the NGTT shall endeavour to reach a consensus, each member

²⁰⁵ (1) s. 8(9) and Schedule 1.

²⁰⁶ (1) s. R. 2272-1.

²⁰⁷ (1) s. R. 2272-9.

²⁰⁸ (3) ss. 1 and 4.

²⁰⁹ (15) s. 2(6).

²¹⁰ (15) s. 5bis.

²¹¹ (2) ss 40 and 47.

²¹² (2) ss 2(2), 4(1) and 5(2).

having one vote.²¹³ The NGTT currently has 32 members. In addition, Ministers or their representatives have a permanent invitation to participate in plenary meetings in an advisory capacity. Furthermore, representatives of the Hungarian Competition Authority and Central Statistics Office may be invited to take part in plenary meetings of the Council in an advisory capacity.

Finally in Poland,²¹⁴ a representative of the President of the National Bank and a representative of the National Statistics Office participate to the meetings of the Tripartite Commission for Socio-economic Affairs which is consulted by the Government prior to the fixing of the national minimum wage. The Government may also invite representatives of central and local government, associations and cooperatives to participate in an advisory capacity.

Conclusion

While a number of EU countries provide for the participation of independent persons in the operation of minimum wage fixing mechanisms, this is not common practice. Moreover, it appears that most legislations, if not all do, not provide for the consultation of the social partners prior to the designation of these personalities, as prescribed by Article 4(3) of the Convention. Finally, their mandate in the operation of minimum wage setting methods may be restricted to the role of mere observers in an advisory capacity or these independent persons may have a “decisive” role in issuing recommendations to the competent authority.

In this regard, the Committee of Experts expressed the hope that “ in countries where this is not yet the case, governments will consider allowing the participation of independent experts, if possible appointed after consultation of representative organizations of employers and workers, in the operation of minimum wage fixing machinery”. According to the Committee, “such participation can shed new light on discussions, allow the concerns of other members of society to be taken into account and, in certain cases, make it easier to reconcile differing points of view.”²¹⁵

²¹³ (2) s. 7.

²¹⁴ (4) ss 4-9.

²¹⁵ See General Survey, paragraph 245.

Conclusions

While providing a flexible framework for Governments to establish a minimum wage system, Convention No. 131 sets out a number of requirements which should guide them in the process.

First of all, the Convention does not require or promote any particular machinery for setting minimum wages or for consulting the social partners, nor does it impose a type of coverage. However certain considerations should be kept in mind. For instance, Convention No. 131 aims at providing coverage for all workers, including the most vulnerable. In this regard, exclusions from the scope of application of the minimum wage fixing method(s) should be kept to a minimum. In this regard, a number of EU countries have established a statutory minimum wage and sectorial or occupational minimum wages fixed at a higher level. Such system may provide flexibility by taking account of differences between geographical areas, sectors or occupations. However in this case, particular attention should be paid to the risk of discrimination and minimum wage rates should be reviewed in light of the principle of equal remuneration for work of equal value.

With regard to the criteria applied to fix and adjust the minimum wage, the minimum wage fixing mechanism in place should allow for the application of a combination of economic and social criteria that are closely monitored in order to keep abreast of socio-economic changes. In this regard, the Committee already emphasized in its General Survey that “the minimum wage is intended to provide a legally binding indication of the minimum permissible wage level practiced nationally, and it must therefore directly and faithfully mirror the social and economic realities in the country. Minimum wages that are maintained either excessively low so that they bear no relationship with evolving indicators, such as inflation, or unreasonably high so that they threaten the financial sustainability of enterprises or are unenforceable in practical terms, are unfair and unproductive”.²¹⁶

Furthermore the Committee highlighted that “the need to ensure that proper weight is given to social and economic conditions when fixing minimum wages points to two further considerations: first, the need for detailed and reliable statistical information to serve as a basis for technical discussions; and second, the essential role of employers’ and workers’ organizations in conveying labour market realities as experienced by those directly concerned”.²¹⁷

As regards the involvement of the social partners in the establishment and the operation of the minimum wage setting mechanism, the obligation to fully consult them at all stages of the minimum wage fixing process is one of the core elements of Convention No. 131. In this regard, the Committee of Experts underlined that “consultations need to be genuine, in the sense of a process that is receptive to constructive and balanced proposals and seeks to accommodate in good faith, in so far as possible, the inevitably conflicting interests of the social partners”.²¹⁸

²¹⁶ See General Survey, paragraph 398.

²¹⁷ *Ibid.*

²¹⁸ See General Survey, paragraph 389.

Finally, it should be recalled that the 1970 instruments call for the establishment of a minimum wage fixing mechanism as part of policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families and that the fundamental purpose of minimum wage fixing should be to give wage earners necessary social protection as regards the minimum permissible levels of wages.

Further suggested readings

ILO: *Working out of poverty*, Report of the Director-General, Report 1 (A), International Labour Conference, 91st Session, Geneva, 2003.

ILO: *Global Wage Report 2012-2013: Wages and equitable growth* (Geneva, 2012).

ILO: *The minimum wage: Catalyst for social dialogue or economic policy instrument?*, GB.291/ESP/5(&Corr.)

D. Vaughan-Whitehead (ed.): *The minimum wage revisited in the enlarged EU* (Geneva, 2010) (Cheltenham and Northampton, Edward Elgar Publishing).

R. Anker: *Estimating a living wage: A methodological review* (Geneva, ILO, 2011)

K. Lawton and M. Pennycook: *Beyond the bottom line: The challenges and opportunities of a living wage* (London, Institute for Public Policy Research/Resolution Foundation, 2013)

G. Starr: *Minimum wage fixing: An international review of practices and problems* (Geneva, ILO, 1982).

G. Starr: "Minimum wage fixing: International experience with alternative roles", in *International Labour Review* (1981, Vol. 120, No. 5, Sep.-Oct.)

A. Marinakis: *The role of the ILO in the development of minimum wages* (ILO, 2008)

Table of legislation

This table reproduces the table of legislation contained in the General Survey for countries members of the European Union.

Austria

1. Collective Labour Relations Act (ArbVG) of 14 December 1973
2. Wage and Social Anti-Dumping Act (LSDB-G) of 28 April 2011
3. Agricultural Employment Act (LAG) of 1984
4. Act governing domestic help and domestic employees (HgHag) of 1962
5. Labour Inspection Act (ArbIG) of 1993

Belgium

1. Constitution of 17 February 1994
2. Act of 5 December 1968 on collective labour agreements and joint committees
3. Act of 12 April 1965 on the protection of workers' remuneration
4. Act of 26 July 1996 on the promotion of employment and protection of competitiveness
5. Anti-Discrimination Act of 10 May 2007
6. Act of 10 May 2007 against discrimination between men and women
7. Act of 22 April 2012 aimed at tackling the wage gap between men and women
8. Act of 6 June 2010 establishing the Social Criminal Code
9. Collective Labour Agreement No. 43 of 2 May 1998 modifying and coordinating collective labour agreements No. 21 of 15 May 1975 and No. 23 of July 1975 regarding a guaranteed minimum monthly wage
10. Collective Labour Agreement No. 50 of 29 October 1991 on a guaranteed minimum monthly wage for workers under 21 years of age
11. Royal Order of 29 June 1973 awarding guaranteed remuneration to certain officials of the federal public services
12. Act of 19 July 1983 on apprenticeship for occupations practiced by salaried workers
13. Royal Order of 19 August 1998 fixing the maximum remuneration for apprentices whose contracts are governed by the Act of 19 July 1983 on apprenticeship for occupations practiced by salaried workers
14. Collective Labour Agreement No. 99 of 20 February 2009 on the level of remuneration of disabled workers and replacing Collective Labour Agreement No. 26 of 15 October 1975 on the level of remuneration of disabled persons in mainstream employment
15. Act of 29 May 1952 on the National Labour Council
16. Social Penal Code of 6 June 2010

Bulgaria

1. Constitution of 1991
2. Labour Code of 1986
3. Labour Inspection Act 2008

Croatia

1. Labour Act of 4 December 2009
2. Act of 27 March 2013 on the minimum wage
3. State Inspectorate Act of 2 October 2008

Cyprus

1. Constitution
2. Minimum Wage Act 1941 (c. 183)
3. Minimum Wage (shop assistants, assistant nurses, security guards, cleaners) Order 2012

Czech Republic

1. Resolution of the Presidium of the Czech National Council of 16 December 1992 on the declaration of the Charter of Fundamental Rights and Basic Freedoms as a part of the constitutional order
2. Labour Code, Act No. 262/2006 of 21 April 2006
3. Statutes of the Council of Economic and Social Agreement, 1997
4. Ordinance No. 567/2006 on minimum salary, minimum level of guaranteed salary, determination of hazardous work environments and salary supplement for work in hazardous work environments
5. Labour Inspection Act No. 251/2005 of 3 May 2005

Estonia

1. Act of 17 December 2008 on employment contracts
2. Substitutive Enforcement and Penalty Payment Act of 9 May 2001
3. Regulation No. 26 of the Minister of Social Affairs of 17 October 2007 on the Statutes of the Labour Inspectorate

Finland

1. Employment Contracts Act No. 55/2001
2. Collective Agreements Act No. 436/1946
3. Act No. 56/2001 on confirmation of the general applicability of collective agreements
4. Act No. 951/1977 on the employment of household workers

France

1. Labour Code
2. Act No. 2008-1258 of 3 December 2008 on earned income
3. Decree No. 2009-552 of 19 May 2009 on the Expert Group on the minimum inter-occupational growth wage provided for by Article 24 of Act No. 2008-1258
4. Decree No. 2013-123 of 7 February 2013 on modalities for increasing the minimum inter-occupational growth wage
5. National Collective Agreement of Employees of Individual Employers of 24 November 1999

Germany

1. Collective Agreement Act (TVG) of 25 August 1969
2. Act of 11 January 1952 to establish minimum working conditions (MiArbG)
3. Act of 20 April 2009 on posted workers (AEntG)
4. Act on part-time and temporary work (TzBfG)
5. Home Work Act (HAG) of 14 March 1951

Greece

1. Act No. 4046/2012 of 31 January 2012
2. Act No. 4093/2012 of 31 January 2012
3. Omnibus Act of 19 July 2013

Hungary

1. Act No. 1 of 2012 enacting the Labour Code
2. National Economic and Social Council Act (XCIII/2011)
3. Simplified Employment Act (LXXV/2010)
4. Labour Inspection Act (LXXV/1996)
5. Public Works Legislation (Amendment) Act (CVI/2011)
6. Decree No. 170/2011 (VIII.24) on wage fixing and the guaranteed wage in the public works employment
7. Government Regulation No. 390/2012 of 20 December 2012 fixing the minimum wage and the guaranteed minimum wage

Ireland

1. National Minimum Wage Act No. 5 of 2000
2. Industrial Relations Act of 1946

Italy

1. Constitution of 1947
2. Civil Code, 1942
3. Legislative Decree No. 276 of 10 September 2003 delegating to the Government powers in the fields of employment and the labour market, under Act No. 30 of 14 February 2003
4. Inter-confederations agreement of 15 April 2009 to implement the framework agreement on reform of the organization of collective bargaining
5. Inter-confederations agreement of 28 June 2011

Latvia

1. Constitution of 15 February 1922
2. Labour Law of 20 June 2001
3. Regulations of 30 October 1998 on the National Tripartite Cooperation Council

4. Ministerial Order No. 111 of 16 March 2011 on fixing the minimum monthly wage for the coming years
5. Ministerial Regulation No. 390 of 17 May 2011 on the procedure for fixing and adjusting the minimum monthly wage
6. Administrative Violations Code of 25 August 1985
7. Cabinet Regulation No. 1096 of 30 November 2010 on fixing the minimum wage and the minimum hourly wage

Lithuania

1. Constitution of 1992
2. Labour Code No. XI-1219 of 4 June 2002
3. Act No. I-614 of 25 October 1994 on the State Labour Inspectorate
4. Administrative Offences Code No. 1-1, 1985
5. Resolution No. 718 of 20 June 2012 on increasing the minimum wage

Luxembourg

1. Act Of 31 July 2006 to establish a Labour Code
2. Act of 22 June 1963 laying down the system for civil servants' salaries

Malta

1. Constitution of 21 September 1964
2. Employment and Industrial Relations Act, 27 December 2002
3. National Minimum Wage Standard Order, 1992
4. Wage Increase National Standard Order, 1989 (Notice No. 169)

Netherlands

1. Minimum Wage and Minimum Leave Allowance Act of 27 November 1968
2. Ministry of Social Affairs and Employment Regulation of 11 August 2010 laying down policy for implementing the Minimum Wage and Minimum Leave Allowance Act
3. Decree of 29 June 1983 on setting the minimum wage for young workers

Poland

1. Constitution of 2 April 1997
2. Labour Code of 26 June 1974 (consolidated 1997)
3. Minimum Wage Act, 10 October 2002
4. Act of 6 July 2001 on the Tripartite Commission for Socio-economic Affairs
5. Council of Ministers Resolution of 28 May 1996 on vocational training and remuneration of young people

Portugal

1. Constitution of 25 April 1976
2. Labour Code, Act No. 7/2009 of 12 February 2009

3. Act No. 108/91 of 17 August 1991, Economic and Social Council
4. Rules of Procedure of the Standing Committee for Social Concentration approved on 4 June 1993
5. Decree-Law No. 143/2010 of 31 December 2010 updating the amount of the guaranteed minimum wage for the year 2011

Romania

1. Constitution of 1991
2. Labour Code, Act No. 53/2003 of 25 January 2003 (republished 2011)
3. Act No. 62/2011 concerning social dialogue

Slovakia

1. Constitution of 1992
2. Labour Code (No. 311 of 2001)
3. Act No. 633/2007 of 5 December 2007 on minimum wages
4. Act No. 103/2007 of 9 February 2007 on tripartite consultations at the national level
5. Act No. 125/2006 of 2 February 2006 on labour inspection and to supplement Act No. 82/2005 on illegal work and employment

Slovenia

1. Employment Relationships Act of 24 April 2002
2. Minimum Wage Act of 19 February 2010
3. Rules on the Operation of the Economic and Social Council (consolidated text, 29 June 2007)

Spain

1. Constitution of 29 December 1978
2. Royal Legislative Decree No. 1/1995 of 29 March 1995 enacting the Workers' Charter
3. Royal Legislative Decree No. 5/2000 of 4 August 2000 to approve the Act on infringements and sanctions in the social order
4. Royal Legislative Decree No. 1620/2011 of 14 November 2011 regulating the special labour relationship of domestic workers
5. Royal Legislative Decree No. 1368/1985 of 17 July 1985 regulating the special labour relationship of disabled persons working in special employment centres
6. Royal Decree No. 1717/2012 of 28 December 2012 fixing the inter-occupational minimum wage for 2013

Sweden

1. Act (1976:580) on co-determination in the workplace

United Kingdom

1. National Minimum Wage Act 1998

2. National Minimum Wage Regulations, 1999
3. Employment Act 2008
4. Enterprise and Regulatory Reform Act 2013
5. Equality Act 2010