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**The European Union Directive for 'Adequate Minimum Wages':
an Example of Inclusive Decision-Making**

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Contents

Introduction	3
1. History of the European social dialogue on minimum wages	6
1.1 <i>Early initiatives to develop a Minimum Wage Policy at European level</i>	6
1.2 <i>Viewpoints for the (re)definition of a Common Minimum Wage Policy</i>	8
1.3 <i>Minimum Wages and Collective Bargaining in the perspective of Neoliberal crisis management</i>	11
1.4 <i>Social Europe is back on the EU Agenda</i>	12
1.5 <i>From the proposal to the approval of the EU Directive for equitable Minimum Wage</i>	13
1.6 <i>EU Council approves Commission proposal for Adequate Minimum Wages</i>	16
1.7 <i>Council's green light to an EU law on Adequate Minimum Wages</i>	17
1.8 <i>Juridical implications involved in the Directive</i>	18
2. The Directive (EU) 2022/2041 in practice	20
2.1.1 <i>Analysing the Directive: Criteria for Adequate Minimum Wage levels and its possible impact</i>	20
2.1.2 <i>Analysing the Directive: Strengthening Collective Bargaining</i>	24
2.2 <i>Finding the right balance in the Labor Market between Minimum Wages and Collective Bargaining</i>	26
2.3.1 <i>A Critical Assessment: Four fault lines in the Directive conflict</i>	29
2.3.2 <i>A Critical Assessment: Economic analysis of employment and poverty as outcomes of the Directive</i>	31
3. Directive (EU) 2022/2041 as the outcome of the European Social and Labor Policy resilience	35
3.1 <i>The pursuit of new forms of Institutional Arrangements to safeguard Labour Standards</i>	35
3.2 <i>The intervention of the European Social Model</i>	38
3.3 <i>Re-emerging EU social ambitions in challenging years</i>	39
3.4 <i>How political dynamics have overcome territorial and institutional differences between Member States in implementing the Directive (EU) 2022/2041</i>	40
3.5 <i>Wage issue in Italy and the possible contribution of the Directive</i>	42
Conclusion	46
Bibliography	49
Normative acts	52
Webliography	54

Introduction

The newly adopted Directive for Adequate Minimum Wages is one of the most debated EU initiatives of recent times. EU law academics have been heatedly discussing whether EU law actually allows for such a directive. Critics claim that the EU Treaties do not even remotely provide a basis for legislative action in this field.¹ Supporters argue that the document puts its basis in the European Pillar of Social Rights, especially in principle 6.² Despite many conflicting opinions, the topic of compensation has always been central to the national and European debate.

The European Commission, in October 2020, put forward a proposal for a directive aimed at guaranteeing workers in the countries of the Union fair and adequate remuneration, in accordance with numerous international and European sources, namely Article 4 of the European Social Charter,³ Article 31 of the Charter of Fundamental Rights of the European Union,⁴ the ILO No. 131 of 1970,⁵ as well as to implement principle 6 of the European Pillar of Social Rights and the provisions of Directives 2006/54/EC and 2000/78/EC on equal opportunities and equal treatment of men and women in employment and occupation and equal treatment in employment and occupation, respectively.⁶ A preliminary political agreement was also reached between the Council and the European Parliament in June 2022. The document was recently approved by the European Parliament on 14 September 2022 and by the Council on 4 October 2022. The Directive (EU) 2022/2041 entered into force twenty days after its publication in the Official Journal and member states then have two years to comply with it.

The directive in question is the first legislative initiative on wages, having previously only been European recommendations on wage restraint. This is because Article 153(5) TFEU excludes direct EU intervention on the level of wages. However, according to Article 153(1)(b) TFEU, interventions of coordination between the various national regulations concerning working conditions are allowed.⁷ In the past, the Court of Justice has already included wage levels in this category by resorting to the principle of non-discrimination. Indeed,

¹ Sjödin, E., *European Minimum Wage: A Swedish Perspective on EU's Competence in Social Policy in the Wake of the Proposed Directive on Adequate Minimum Wages in the EU*, *European Labour Law Journal*, 13, pp. 273–291, 2022.

² Schulten, T., Müller, T., *A paradigm shift towards Social Europe? The proposed Directive on adequate minimum wages in the European Union*, *Italian Labour Law e-Journal*, Issue 1, Vol. 14, p. 3, 2021.

³ Council of Europe, *European Social Charter (revised)*, ETS No. 163, Strasbourg, 3.V.1996, Part II, Article 4 – The right to a fair remuneration, 1996.

⁴ Official Journal of the European Union, *Charter of Fundamental Rights of the European Union*, C 326/391, 2012/C 326/02, 26.10.2012, Art. 31, 2012.

⁵ International Labour Organisation, *Convention 131 on Minimum Wage Fixing*, 3 June 1970.

⁶ Official Journal of the European Union, *Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation*, L 204/23, 26.7.2006. Official Journal of the European Union, *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*, L 303, 02.12.2000.

⁷ Official Journal of the European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, C 326, 26.10.2012, Art. 153.

the provision is not aimed at establishing a single mechanism for wage determination but instead leaves the various Member States free to choose the implementation methods to guarantee this appropriate minimum treatment such as collective bargaining and the statutory minimum wage. The purpose of such an intervention is to counter the spread of low wages and wage dumping in the European context.

According to Article 1 of the Directive (EU) 2022/2041, the Directive aims to improve living and working conditions in the Union, in particular, the adequacy of minimum wages for workers in order to contribute to upward social convergence and the reduction of wage inequalities.⁸ Firstly, it should be made clear that the directive does not impose a single European minimum wage standard and does not seek the harmonisation of national systems for calculating statutory wages, where they exist. The intention of the directive is to improve the wage level of workers in the European Union, to protect employers from unfair competition based on low wages and to increase productivity by investing in people.

These objectives can be pursued either through collective bargaining or through a statutory minimum wage, leaving the national states free to take the direction they consider most appropriate in their legal and social context. The Directive provides, in a nutshell, that EU countries should guarantee 80% collective bargaining coverage (a limit respected by Austria, Belgium, Denmark, Finland, France, Italy, Spain and Sweden).

Below this threshold, the states will have to submit, after consultation with the social partners, an action plan to the European Commission for the promotion of collective bargaining. As far as the legal minimum wage is concerned, the directive provides that member states shall establish procedures for determining and updating legal minimum wages, indicating the criteria to be followed. Furthermore, it should be noted that advisory bodies are also to be established at the national level for the setting and updating of minimum wages in which the social partners should play a key role.

This thesis seeks to empirically analyse and review the Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union and the literature concerning social and labour policy in the specific view of wage protection and tries to understand if an EU-wide wage scheme can afford two crucial claims, decent living and working conditions. The first chapter will identify the context of the analysis outlining the historical overview of the European social dialogue on minimum wages. The extensive use of literature has been crucial in the drafting of this chapter, as authors such as T. Schulten and T. Müller provide solid foundations and historical references to best describe the European social commitment to securing rights for workers. The analysis begins with the first timid attempts to implement a European minimum wage policy already in the early 1990s, and then articulates and gets somewhat lost during the 2008 financial crisis, years in which a neoliberal approach prevailed at the expense of the social question. Since the middle of 2010, it is possible to notice a distinct, although to some extent symbolic, shift in the EU discourse regarding social and labour policies. Its peak has

⁸ Official Journal of the European Union, *Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union*, PE/28/2022/REV/1, OJ L 275, 25.10.2022, Chapter I, Art. 1, 2022.

been reached by passing in 2017 the European Pillar of Social Rights, which paved the way for the Proposal for a directive on a framework for adequate minimum wages in the EU in 2020. After discussion in the Council and Parliament and numerous criticisms, particularly from northern European countries, the proposal passed in a somewhat 'diluted' form on 4 October 2022.

The second chapter will focus on a theoretical, practical and critical analysis of the already-mentioned Directive. The directive envisages, in particular, a framework of rules aimed at promoting collective bargaining on wage determination and at ensuring the adequacy of statutory minimum wages wherever they exist. The study initially develops by focusing on two main aspects: the criteria for adequate minimum wage levels and its possible impact on European workers, and the ways to strengthen collective bargaining. The decision and updating of minimum wages are based on criteria established to contribute to their adequacy. Concerning collective bargaining, a minimum ceiling has been established that member countries will be required to respect in order to meet the objectives of social convergence and reduction of wage inequalities. The analysis further develops by focusing on the criticism towards the directive itself. They branch out into two categories: social and economic critiques. Analysing the criticism is necessary not only to understand the points of view of the different actors, as well as member states involved, but also as evidence of the considerable EU decision-making and negotiation efforts to achieve the ultimate goal, which is the approval of the directive itself.

The third chapter is a consideration of the extent to which the European social model has been fundamental to the development of cutting-edge and evolving labour and social policies. Indeed, Directive 2022/2041 is examined as a result of Europe's resilience in the area of support and guarantees for workers, issues that have been revived in recent years following the pandemic crisis. Precariousness and very low wages have been in the crosshairs of European criticism in recent years, and it is no coincidence that the Adequate Minimum Wage Directive intervenes to address these problems. Furthermore, the research analyses how political dynamics have overcome territorial and institutional differences between member states in the implementation of the Directive. Therefore, the final text of the document is "watered down" due to the negotiation resulting from the numerous criticisms and discussions. Finally, an outline of the wage issue in Italy is analysed with a reflection on the possible contribution of the directive to the state.

Finally, the conclusion will be the stage for a summary of the work and an answer to the research question. Overall, the Directive represents another demonstration that the strength of the Union lies in its inclusiveness, that is why it can be considered an example of inclusive decision-making. Even though the minimum wage is a topic that arouses debate and division among the member states - 22 out of 27 states have a statutory minimum wage, while the remaining manage the salary question exclusively through collective agreements - the Directive seems to bring everyone on board, without violating the subsidiarity principle.

1. History of the European social dialogue on minimum wages

From the first approaches to the implementation of the Directive for Adequate Minimum Wages

1.1 Early initiatives to develop a Minimum Wage Policy at European level

The intricate discussion concerning the implementation of a minimum wage policy at the European level dates back to the early 1990s when the European Union promulgated the so-called “Community Charter of the Fundamental Social Rights of Workers”. As the fulcrum of the charter, workers finally receive the proper attention to guarantee them a fair wage, in other words, a salary adequate to allow a decent standard of living.⁹ The Charter was adopted to contribute to the protection of workers' rights in Europe, as many trade unions and other social organisations expressed fears that the introduction of the European Single Market would lead to a reduction in workers' rights and an increase in wage dumping.¹⁰ Although the Charter has never become a legally binding document and, in practice, this initiative has had scarcely any impact on minimum wages or collective bargaining at the national level, it did have a powerful influence on European social policy during the first half of the 1990s.¹¹

The Charter included, by the way, a section regarding the right to a fair wage, and to implement such a political commitment, the European Commission and the Parliament made several proposals, which resulted in a European-wide coordinated minimum wage policy. The social condition of European workers was a notably a barely addressed concept in those years. It was first concluded by the Commission, via an international group of experts, that there was already a considerable share of low-paid workers in Europe in 1990.¹² Consequently, the European Commission published an 'Opinion on Equitable Wage' in 1993 in which it pointed out that the problem of low wages is a collective issue affecting all countries of the European Community.¹³ Moreover, the persistence of such low levels raises equity and social cohesion gaps, which could damage the efficiency of the economy in the long run. The Commission has therefore called on Member States to take suitable measures to ensure the protection of the right to a fair wage, in particular by enacting additional legislation or introducing mechanisms to define negotiated minima and strengthen collective bargaining agreements. Measures include other legislation on discrimination, in particular on gender, race, religion or ethnic origin; instruments to ensure fair and supportive treatment of workers of all age groups and homeworkers; and mechanisms to define negotiated minimums and strengthen collective

⁹ EU Council, *Community Charter of the Fundamental Social Rights of Workers*, Strasbourg, 8 December 1989.

¹⁰ Schulten, T., *Towards a European Minimum Wage Policy? Fair Wages and Social Europe*, European Journal of Industrial Relations, Volume 14 Number 4 p. 429, 2008.

¹¹ Schulten, T., Müller, T., *A paradigm shift towards Social Europe? The proposed Directive on adequate minimum wages in the European Union*, p. 6, 2021.

¹² Schäfer, C., *Europa sucht einen gerechten Lohn*, WSI-Mitteilungen 44, pp. 711–724, 1991.

¹³ European Commission, *Commission Opinion on an Equitable Wage*, Com (93) 388 final, Brussels, September 1993.

bargaining agreements. Furthermore, the Commission stated that it would conduct further studies to ensure fair wages and monitor wage developments at the national and European levels.¹⁴

The Commission's 1993 opinion may be seen as an initial, relatively vague attempt to coordinate national minimum wage policies at the European level. This was followed by a proposal from the European Parliament to take a step further and call for a more binding European guideline for national minimum wages. In the same year, a report by the Social Affairs Committee of the European Parliament invited all member states to set a minimum salary equal to a certain percentage of the national average wage.¹⁵

The introduction of a minimum wage Europe-wide policy, however, flopped in the course of the second half of the 1990s due to the political resistance of several Member States. At the time when the Commission released the so-called 'Fair Wages Progress Report' in 1997, only seven out of fifteen Member States were willing to furnish accurate data on their domestic salary structures.¹⁶ For most member states, minimum wage policy should have remained a national matter, and the European Union was not supposed to take action on this issue. Even though in the early 1990s, the EU's competence on social issues had been considerably widened through the inclusion of the 'social chapter' in the Maastricht Treaty, the question of wages was still left unaddressed.

Moreover, in the course of the 1990s, many EU countries adjusted their policy orientation towards a growth-promoting flexibilization of labour markets rather than the restriction of the low-wage sector.¹⁷ These orientations were strongly supported by some parts of the Commission, in particular by the Directorate General for the Economic and Financial Affairs Council (ECOFIN), which started to call for much higher wage dispersion. According to T. Schulten and in line with traditional neoclassical economics, expanding a low-wage industry was perceived as an essential condition to address the burden of high unemployment. Therefore, this political context is the reason for the exclusion of the right to a fair wage from the Charter of Fundamental Rights in 2000. Furthermore, the concept of a fair wage ceased to be considered a fundamental social right but merely a 'political objective'.¹⁸

From the end of the 1990s, the Commission did not attempt to establish a European minimum wage policy.¹⁹ Nevertheless, the Directorate General for Employment and Social Affairs has at least continued to stress the necessity of fair wages in the frame of other policy discussions. For instance, the debate on the quality of work, which for a while became rather significant at the European level after the 2000 Lisbon Summit where

¹⁴ European Commission, *Commission Opinion on an Equitable Wage*, Com (93) 388 final, Brussels, September 1993

¹⁵ European Parliament, *Report of the Committee on Social Affairs, Employment and the Working Environment on the draft opinion of the Commission on a fair wage*, (SEK) (91) 211 1endg), DOC-DE\RR\2222423, PE 202.744/endg, 18 February 1993

¹⁶ European Commission, *Equitable Wages: a Progress Report*, Com (96) 698 final, Brussels, January 1997

¹⁷ Gray, A., *Unsocial Europe. Social Protection or Flexploitation?* London: Pluto Press., 2004

¹⁸ European Commission, *Commission Communication on the Charter of Fundamental Rights of the European Union*, Com (2000) 559 final, Brussels, September 2000

¹⁹ Schulten, T., *Towards a European Minimum Wage Policy? Fair Wages and Social Europe*, p. 431, 2008

the Council demanded *'more and better jobs'*. Another example is a communication from the Commission stating that the promotion of *'intrinsic job quality'* must *'ensure that jobs are intrinsically satisfying, compatible with people's skills and abilities and provide adequate levels of income'*.²⁰

In more recent times, the Commission has highlighted the topic of minimum wages as a tool to foster gender pay equality, since women are usually heavily over-represented in the low-wage sector. As an example, in the 2004-05 Joint Employment Report the Commission recommended Austria to implement a monthly net minimum wage of EUR 1,000 to narrow the relatively high gender pay gap.²¹

Similarly, the Directorate General for Employment and Social Affairs released a report concluding that, in contrast to the mainstream neoliberal view, there is no compromise between the dispersion of wages and the level of employment.²² This study may be read as a harsh critique of the continued calls for greater wage dispersion stemming from ECOFIN. In short, it suggests that there are several EU policy fields in which the minimum wage could play an important role.

Finally, an eventual (re)establishment of an EU minimum wage policy could become more relevant considering the increasing use, starting from the second half of the 1990s, of new forms of governance by the EU known as the *'open method of coordination'* (OMC) in the areas of social and employment policy.²³ Contrary to the traditional approach, which was mainly based on compulsory hard law, the OMC-style of governance offers a new form of soft law, consisting of guidelines and indicators, and benchmarking and sharing of best practices. At the core of the OMC method there is the idea that some policy objectives and guidelines are designed at the European level for later being adopted at the national level employing individual strategies or action plans which take into consideration national diversity.²⁴ Given the vast differences between national systems of minimum wage protection, the OMC approach appears to offer a feasible way to institute a Europe-wide minimum wage policy.

1.2 Viewpoints for the (re)definition of a Common Minimum Wage Policy

Minimum wages have recently become a relatively important topic among European politicians. This is first, and foremost, one reaction to the decreasing degree of acceptance of EU policy by workers, which has been so clearly expressed, for instance, from the negative referendum ballots on the European Constitution in France and the Netherlands in 2005, from the Lisbon Treaty in Ireland in 2008, in which working-class electorates were strongly against it. According to the academic T. Schulten, in France, the absence of a

²⁰ European Commission, *Employment and Social Policies: a Framework for Investing in Quality*, COM (2001) 313 final, Brussels, June 2001

²¹ European Commission, *Joint Employment Report 2004–2005*, Addendum 1, 2005

²² European Commission, *Employment in Europe 2005*, Luxembourg: European Communities, 2005

²³ Zeitlin, J. and Pochet, P., *The Open Method of Co-ordination in Action*, The European Employment and Social Inclusion Strategies. Brussels: Peter Lang, 2005

²⁴ Schulten, T., *Towards a European Minimum Wage Policy? Fair Wages and Social Europe*, p. 431, 2008

minimum wage right in the European draft Constitution was expressly taken up as an argument for voting against it.²⁵ Additionally, the EU enlargement and fears of increasing labour migration from Eastern to Western Europe have pushed minimum wage protection onto the political agenda. In line with a few recent judgments of the European Court of Justice, Viking, Laval, Ruffert (2007) and Luxembourg cases (2008), national regulations on employment standards for migrant workers can only employ those instruments protected by the posted workers directive, specifically extended collective agreements or statutory minimum wages.²⁶ Because certain member states, notably the Scandinavian countries, have neither the former nor the latter instrument, and instead, they just use voluntary collective bargaining, there is an increasing risk that foreign firms may jeopardise minimum wage standards that already exist. Moreover, the European Parliament acknowledged that the level of minimum wage is very low or below the subsistence level in most of the Member States.²⁷ Therefore, a coordinated minimum wage policy at the European level would be necessary to guarantee every worker a decent wage level.

Fundamentally, there were three possible solutions at the time to get to a Europe-wide minimum wage policy in line with T. Schulten's view.²⁸ Firstly, the concept of one harmonised European minimum wage demanded by some left-wing groups and trade unionists, particularly in France and other southern European countries. Given the wide disparity in statutory minimum wages in Europe and the subsequent discrepancy in economic development, this idea appears neither rational nor feasible.

Secondly, the approach proposed by Bourdieu in the 1990s envisages different harmonised minimum wages for certain groups of countries with comparable economic standards. Given that in the EU there are already three clusters of countries where minimum wage levels are relatively close to each other, this approach seems much more plausible at first glance. However, although minimum wage levels are similar in their nominal value, they may differ widely in their relative value, as this depends on several variables, such as the national cost of living and the wage structure.

Thus, most supporters of a European minimum wage policy advocate a harmonisation of the relative rather than the nominal level of minimum wages - European standard-setting criteria for national minimum wages commensurate with national economic performance. According to T. Schulten, exist several variants of this third approach. For example, within the French *Parti Socialiste* and the French trade union CGT, there were proposals for the introduction of a common European minimum wage based on national purchasing power standards, whereby after some convergence period all the minimum wages are supposed to have the same purchasing power.²⁹ Some other proposals, coming mainly from European socialist and social democratic

²⁵ Schulten, T., *Towards a European Minimum Wage Policy? Fair Wages and Social Europe*, p. 432, 2008

²⁶ *Ibidem*.

²⁷ European Parliament, *Resolution on social reality stocktaking*, adopted on 15 November 2007

²⁸ Schulten, T., *Towards a European Minimum Wage Policy? Fair Wages and Social Europe*, p. 432, 2008

²⁹ *Ivi.*, p. 433.

party environments, claimed the need to have an EU target for the minimum wage measured in terms of GNP per capita. Under this approach, minimum wages ought to be a specific proportion of the overall average income.

European trade union organisations have been very active in launching campaigns against low pay. Already in 1990, the European Trade Union Confederation (ETUC) adopted a resolution calling for the right to a guaranteed minimum wage for every worker backed by legislation or collective agreements.³⁰ Practically speaking, however, a dividing topic like minimum wages has never been the focus of ETUC policy. Only when the political debate spread to the European level did the ETUC also start to take an interest in this issue. In European trade unions, the discussions regarding whether a European minimum wage policy is necessary and useful have turned out to be rather controversial. In particular, Scandinavian and Italian trade unions have expressed strong scepticism or even refusal, as they are loyal to their national collectively agreed minimum wage systems and do not want to empower the state to establish wages. Jan Kæraa Rasmussen, the chief economist of the Danish LO confederation, described the proposal for a European minimum wage standard as '*an attack on the Danish model*'.³¹

There are ongoing debates in other countries on the adequate level of the statutory minimum wage. For instance, in Spain, a country where the relative value of the minimum wage ranks among the lowest in Europe, trade unions have advanced a proposal to raise it substantially. The unions explicitly reference the right to a fair wage enshrined in the Council of Europe's 1961 European Social Charter as justification for their proposal. The ruling Spanish Socialist Workers' Party (PSOE)³² has also stated its full support for this project. Comparable approaches can be observed in certain Eastern European countries. In Poland, for instance, in 2005 the parliament passed new legislation to adjust the national minimum wage, which will rise in line with expected inflation plus two-thirds of the GDP growth rate reaching half the national average wage.³³ Moreover, in Lithuania, trade unions are striving for a stepwise extension of the minimum wage up to 50 per cent of the average wage.³⁴

Considering the diverging perspectives of European trade unions, the question of a policy on European minimum wages proved to be one of the few disputed issues at the ETUC Congress in May 2007. The ETUC finally reached a consensus, stating that it will support trade union campaigns for effective minimum wages in countries where trade unions perceive them to be necessary. It also stated that up to 2008, the differences in terms of skills, productivity, living standards and trade union policies are too marked for a campaign on collective minimum wage mechanisms at the European level. As a result of its internal

³⁰ Schulten, T., *Towards a European Minimum Wage Policy? Fair Wages and Social Europe*, p. 433, 2008

³¹ *Ibidem*.

³² The Sánchez II government is the current government of the Kingdom of Spain, in office since 13 January 2020. The executive is governed by a centre-left majority formed by PSOE, Podemos, PSC, IU, with the external support of some autonomist parties.

³³ Czarzasty, J., *Poland: New Rules for Adjusting National Minimum Wage*, 2005

³⁴ Blažiene, I., *Lithuania: Government Shelves Social Partners' Proposals to Increase Minimum Wage*, 2006

divisions, the ETUC is not actively pressing for an EU minimum wage policy for the time being, but it has nevertheless agreed to continue discussions on this subject.³⁵

1.3 *Minimum Wages and Collective Bargaining in the perspective of Neoliberal crisis management*

In the aftermath of the 1990s, which had been rather far-reaching with respect to social and labour policy, European social initiatives slipped behind over the next two decades.³⁶ Nevertheless, especially issues related to labour policy, like the regulation of work relations or pay and collective bargaining policy, acquired evident relevance following the financial crisis of 2008. Through the new European economic governance emerged in response to the crisis at the EU level, resulting therein in a variety of new patterns of economic policy coordination, European labor policy likewise arose in its own right as a distinct new strategic policy field.³⁷

The return to a new strategic emphasis on labor policy stems mainly from the prevailing neoliberal crisis narrative, which is centered on the absence of price competitiveness, the main reasons for an overly high labor cost and heavily regulated labor markets. The two authors T. Schulten and T. Müller pointed out that given that it is no longer possible within the European Monetary Union to achieve an enhancement of price competitiveness through devaluing national currencies, according to the prevailing crisis narrative the approach of internal devaluation was the only conceivable strategy. This concept's exact meaning can be seen, for instance, in the famous European Commission report on "Labor Market Developments in Europe 2012" and through its list of what are known as "employment-friendly reforms".³⁸ Among other things, this listing includes a number of labor and social policy measures, namely deconstructing labor protection rights, addressing the concept of flexibility and precarization of labor relations, making collective bargaining less centralised reducing their coverage, and lastly, limiting the decision power of trade unions in setting wage threshold.³⁹ Although the Commission has later denied that it meant to formulate concrete recommendations to take action using this list, it appears as a sort of blueprint for all social and labour policy measures implemented in many EU countries as a reaction to the crisis of 2008-09.

The issue of wages and collective bargaining has come to the fore as a central area of the new European labour policy, where the Commission has deployed new economic governance mechanisms to shape national governments to an unprecedented scale. This phenomenon was by far most evident in member states such as

³⁵ Schulten, T., *Towards a European Minimum Wage Policy? Fair Wages and Social Europe*, p. 435, 2008

³⁶ Graziano P., Hartlapp M., *The end of social Europe? Understanding EU social policy change*, *Journal of European Public Policy*, 26 (10), pp. 1484-1501, 2019

³⁷ Schulten, T., Müller, T., *A paradigm shift towards Social Europe? The proposed Directive on adequate minimum wages in the European Union*, p. 4, 2021

³⁸ *Ibidem*.

³⁹ European Commission, *Labour Market Developments in Europe 2012*, *European Economy*, 5, p.103f., 2012

Portugal and, first and foremost, Greece, which received loans under the European Stability Mechanism while having to fulfil extensive political conditions in return.⁴⁰ All of this was monitored by a body consisting of the European Commission, the European Central Bank and the International Monetary Fund, the so-called Troika. In essence, the main consequences of the conditions set by this triple body are all intended to decrease or freeze salaries, especially minimum ones, and weaken collective bargaining systems in favour of the decision-making prerogatives of companies. It may be true that the Commission within the European Semester did not have the opportunity to establish Troika-like modes of intervention; however, in some countries, like France, the gentle pressure of the Semester's non-binding recommendations was sufficient to affect substantial reforms of the collective bargaining system.⁴¹

1.4 *Social Europe is back on the EU Agenda*

The outcomes of how the crisis was managed on the basis of the new European labour policies have been dysfunctional for the EU in several respects. Firstly, from a social point of view, they have contributed to increasing poverty and job insecurity, as well as to further increasing social inequalities in the EU as a whole. Secondly, from an economic perspective, they have further undermined the domestic growth potential of many nations and significantly boosted economic dependence on exports. And finally, in terms of politics, they fostered a more Eurosceptic attitude among European citizens and also undermined the public perception and legitimacy of political systems as a whole, both at the national and EU level, thereby leading to the electoral victories of populist right-wing parties.⁴²

In this context, since the middle of 2010, it is possible to notice a distinct shift in the EU discourse. Indeed, the revised narrative powerfully stresses how important functional social and labour systems are for economic development and political stability. Quite exemplary in this respect is the call by former European Commission President Jean-Claude Juncker for Europe to reach not only an economic and financial rating but also a social goal. Besides the reform of the Posting of Workers Directive, however, the strengthening of the social dimension has essentially been symbolic: its peak has been the passing of the 2017 'European Pillar of Social Rights', which, despite its title, does not contain any enforceable rights, merely soft policy principles.⁴³

Over the course of the last few years, the European Union has experienced a shift away from the neo-liberal narrative centred on improving national economies' competitiveness through more flexible labour markets

⁴⁰ Schulten T., Müller T., *European economic governance and its intervention in national wage development and collective bargaining*, in S. Lehndorff (ed.), *Divisive integration: The triumph of failed ideas in Europe – revisited*, ETUI, Brussels 2015, 331-363; Van Gyes G., Schulten T. (eds.), *Wage bargaining under the new European Economic Governance – Alternative strategies for inclusive growth*, ETUI, Brussels 2015

⁴¹ Schulten, T., Müller, T., *A paradigm shift towards Social Europe? The proposed Directive on adequate minimum wages in the European Union*, p. 5, 2021

⁴² *Ivi.*, p. 6.

⁴³ Barnard C., *Are social 'Rights' rights?*, in *European Labour Law Journal*, 11 (2), pp. 351-361, 2020

and cheaper labour costs. According to the academics T. Schulten and T. Müller, the new orientation of the EU discourse is characterised by the Social Europe formula, under which employment protection standards and social security systems have a key function in guaranteeing economic development and political stability. Such a change was mirrored by the adoption of the European Pillar of Social Rights in 2017. When it comes to the minimum wage, special attention needs to be paid to section 6 of the Pillar, according to which an adequate minimum wage must be paid to satisfy the needs both of the worker and his or her family considering national economic and social conditions, while maintaining access to employment and job seeking incentives. In-work poverty must also be avoided. Following this commitment, on October 28, 2020, the European Commission submitted a proposal for a Directive on adequate minimum wages in the EU to the two co-legislators, the Council and the European Parliament.⁴⁴

1.5 From the proposal to the approval of the EU Directive for equitable Minimum Wage

The European Commission led by President Ursula von der Leyen, in charge since 2019, has targeted to go further than just symbolic statements by pushing forward a series of legislative initiatives in the labour and social policy field. Among these is the Action Plan for the Implementation of the European Pillar of Social Rights, which was adopted in March 2021 and includes a variety of concrete initiatives and draft pieces of legislation.⁴⁵ However, the most far-reaching and significant labour policy initiative of the EU Commission remains the proposal for a common European legal framework for an adequate minimum wage, a project that the Commission has carried out as a top priority since the beginning of its mandate.



Timeline of the Directive for Adequate Minimum Wages, 2022 – source: Council of the European Union

The proposal for a directive on adequate minimum wages tabled in autumn 2020 is clearly meant to implement principle 6 of the European Pillar of Social Rights. The EU Commission has put forward, for the first time, a practical legal proposal for a common coordination across Europe of national minimum wage policies, aiming at significantly expanding both the level and scale of minimum wages and collective bargaining in Europe.⁴⁶ The narrative employed to support the proposed directive appears to be nothing less

⁴⁴ Bomba K., *Minimum Wage Fixing Mechanisms in the EU Member States: A Comparative Overview in the Light of the Draft Directive on Adequate Minimum Wages*, Journal of the University of Latvia. Law, No. 15, p. 146, 2022

⁴⁵ European Commission, *The European Pillar of Social Rights Action Plan*, Luxembourg 2021

⁴⁶ *Ibidem*.

than a proper counterprogram to what was advocated in the preceding crisis. Adequate minimum wages and comprehensive collective bargaining were no longer considered barriers to economic growth and competitiveness but rather acknowledged to be significant institutional prerequisites for inclusive and sustainable economic performance. Thus, the European Commission considers that a minimum wage fixed at appropriate levels *"ensures a decent living for workers, helps support domestic demand, strengthens work incentives and reduces in-work poverty and inequality at the lower end of the wage distribution"*.⁴⁷ Moreover, also the gender quota is included, because protecting the minimum wage would also support gender equality, given that more women than men earn wages equal to or close to the minimum salary. Certainly, this new outlook for adequate minimum wages and comprehensive collective bargaining has escalated in the course of the Covid-19 crisis, as it became evident that many of the "essential" workers were receiving only a rather paltry wage.⁴⁸ Therefore, during the German Presidency, the Council and the Commission delivered information on the proposal⁴⁹ for a Directive on adequate minimum wages across the European Union, which was followed by a brief debate at the December 2020 meeting of the Employment and Social Affairs Council. Overall, the adoption of the Directive represents a crucial change of paradigm in the labor policy of the European Union.

On 14 June 2021, the Portuguese Presidency briefed ministers on the progress made for the Directive in the Council, where ministers also had the opportunity to exchange viewpoints on the desired developments in the Directive. They also had the chance to point out what they consider to be the critical elements of the proposal, thereby defining a potential way forward for future negotiations to achieve an agreement. The main discussions made during the Portuguese Presidency revolved around the following points:⁵⁰

- the term *'promoting'* was introduced to replace the term *'setting'*;
- the great concerns of Member States that this Directive would generate individual rights for workers;
- specific rules for maritime workers, also known as seafarers, who are covered by the Maritime Labour Convention;
- the protection of the minimum wage through collective bargaining as opposed to the protection afforded by the statutory minimum wage.

The proposal for a directive deals mainly with those mechanisms used to set minimum wages, in an attempt to guarantee workers an adequate minimum wage through legislation or collective bargaining agreements.⁵¹

⁴⁷ European Commission, *The European Pillar of Social Rights Action Plan*, Luxembourg 2021

⁴⁸ Schulten, T., Müller, T., *A paradigm shift towards Social Europe? The proposed Directive on adequate minimum wages in the European Union*, pp. 6-7, 2021

⁴⁹ EU Council, *Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union - Progress report, 2020/0310(COD)*, Brussels, 4 June 2021

⁵⁰ *Ibidem*.

⁵¹ Bomba K., *Minimum Wage Fixing Mechanisms in the EU Member States: A Comparative Overview in the Light of the Draft Directive on Adequate Minimum Wages*, p. 146, 2022

Although Article 1 of the proposal is limited to establishing a framework for improving the adequacy of minimum wages and enhancing the access of workers to minimum wage protection, it does not seek to standardise minimum wage rates throughout the EU or set a common mechanism for fixing minimum wages, nor does it touch upon Member States' freedom to set legal minimum wages or to facilitate workers' access to minimum wage protection through collective agreements. Furthermore, Member States where minimum wage protection is only afforded by collective agreements have no obligation to establish a statutory minimum wage or to enforce collective agreements in general.⁵² Moreover, the proposal does not delineate a rank order between legal solutions and collective bargaining as ways to set minimum wages, allowing thus Member States to freely opt for the most favoured mechanism following several variables of their national systems, like for instance national competencies, the autonomy of social partners and the bargaining freedom. Concerning the above, the academics A. Aranguiz and S. Garben argue that Member States will maintain the authority of setting themselves their minimum wages, either through collective agreements or statutory provisions, as long as the national rules comply with the EU criteria for setting appropriate minimum wages.⁵³

The proposal likewise lays out the conditions to which national mechanisms should comply for setting an adequate minimum wage. In the instance of a statutory mechanism, states must first guarantee the effective involvement of the social partners in the setting and adjustment of minimum wages. In Article 7 of the proposal, Member States should adopt measures to assure that the social partners are effectively and promptly engaged in the setting and updating of statutory minimum wages, for example, through their participation in the advisory bodies as referred to in Article 5. The Directive's provisions do not state extensive regulations for such cooperation but rather point out the necessity of including social partners in the work of advisory bodies.⁵⁴ The functioning of the latter is foreseen by Article 5, paragraph 5 of the Directive, according to which States shall set up advisory bodies to provide guidance to the relevant authorities on matters relating to statutory minimum wages.

The Draft aims also to enhance the function of collective bargaining in all EU Member States. It emphasizes that collective bargaining plays a key part in ensuring the adequacy of wages and affirms the need to create the conditions under which it can take place. Hence, whatever kind of mechanism is employed, according to Article 4 of the draft, Member States are required to provide a conducive environment in which wages may be agreed upon.⁵⁵ For this purpose, states must take measures to expand the scale of collective bargaining,

⁵² EU Council, *Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union*, 2020/0310(COD), Brussels, 4 June 2021

⁵³ Aranguiz, A., Garben, S., *Combating income equality in the EU: a legal assessment of a potential EU minimum wage directive*. *European Law Review*, Vol. 2, p. 164, 2021

⁵⁴ Bomba K., *Minimum Wage Fixing Mechanisms in the EU Member States: A Comparative Overview in the Light of the Draft Directive on Adequate Minimum Wages*, p. 147, 2022

⁵⁵ Visentini, L., *Directive on Adequate Minimum Wages: European institutions must respect the promise made to workers!*, *Italian Labour Law e-Journal*, Vol. 14, issue 1, p. 35., 2021

such as by helping social partners developing and strengthening their ability to undertake collective bargaining over setting wages at either the sectoral or inter-sectoral level and fostering social partners in constructive and negotiations on wages. According to Article 4, paragraph 2 of the proposal, Member States in which the range of collective bargaining is no more than 70 per cent of the labor force are also required to lay down a framework of favourable terms and conditions for collective bargaining by agreement or consultation with the social partners and enact a plan of action to foster collective bargaining. In Recital 19 of the Preamble, such a framework is supposed to be set by legislation or through a tri-party agreement.⁵⁶

1.6 EU Council approves Commission proposal for Adequate Minimum Wages

After several debates, the Council finally reached a general orientation on a proposal for an EU law on minimum wages on December 6, 2021. This was based on the good performance of the trio's presidencies, Germany, Portugal and the latter Slovenia, as outlined in the progress report of the Portuguese Presidency.⁵⁷ The Council passed therefore its opinion on the proposal of the Commission for a European law on adequate minimum wages. This draft law, with the aim of improving people's working and living conditions, lays down a legal framework to foster adequate levels of statutory minimum wages, to support collective bargaining on promoting wage and to enhance real access to minimum wage protection for those workers who are eligible for it. Since countries with high collective bargaining coverage usually have a lower quota of low-wage workers and higher minimum wages compared to those with low collective bargaining coverage, Council ministers decided that Member States should support stronger capacity-building of social partners to involve themselves in collective bargaining. As a result, this so-called general approach gives the Council Presidency a mandate to negotiate with the European Parliament, and the latter agreed on its stance in late November 2021.⁵⁸

Council presidency and European Parliament negotiators led in June 2022, to a provisional political agreement on the proposal for a Directive on adequate minimum wages across the EU. The new law, when it ultimately achieves its final adoption (it will then reach in the autumn of the same year), would foster the adequacy of legal minimum wages, contributing to the realization of decent working and living conditions for European workers.

As already seen before, the Directive sets up procedures for the adequacy of statutory minimum wages, encourages collective bargaining for wage setting, and improves access to the protection of the minimum wage effectively among those eligible for minimum wage protection in accordance with national legislation, it means through a statutory minimum wage or collective agreements. Having reached this point, the concept

⁵⁶ Bomba K., *Minimum Wage Fixing Mechanisms in the EU Member States: A Comparative Overview in the Light of the Draft Directive on Adequate Minimum Wages*, pp. 147–148, 2022

⁵⁷ EU Council, *Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union - General Approach*, 2020/0310(COD), Brussels, 26 November 2021

⁵⁸ *Ibidem*.

of adequacy of legal minimum wages is likewise relevant. All the Member states with statutory minimum wages are required to establish a procedural framework for setting and updating these minimum wages following a clear set of criteria. Both the Council and the European Parliament agreed that there will be biannual updates to promote legal minimum wages (or maximum every four years for Member States which use an automatic indexation mechanism). Moreover, social partners should be associated with the procedures for establishing and keeping statutory minimum wages updated. However, the final Directive – it will be then adopted in October of the same year – does not specify the minimum wage level that Member States are required to attain.

An additional important aim that the Directive seeks to achieve is the promotion of collective bargaining on wage determination. Since collective bargaining on wage determination is a key instrument to guarantee the provision of adequate minimum wages to workers, the Directive targets the extension of workers' coverage through collective bargaining. For this reason, the Council and the European Parliament agreed that countries are expected to promote the strengthening of the capacity of social partners in engaging in collective bargaining, by including the protection of the representatives of workers. In particular, the draft agreement between the two co-legislators foresees an 80 per cent threshold under which collective bargaining coverage rate cannot go below. To guarantee this balance, Member States should establish an action plan, for setting up a clear timetable and concrete measures to gradually raise the collective bargaining coverage rate.

Furthermore, the Council and the European Parliament mutually agreed on a range of policy measures to improve workers' effective access to minimum wage protection. Examples of these measures comprise monitoring by labour inspectorates, providing easy access to information on minimum wage protection and expanding the capacity of law enforcement authorities to prosecute employers who fail to comply.

1.7 Council's green light to an EU law on Adequate Minimum Wages

Finally, on October 4, 2022, the EU Council definitively adopted the Directive, that entered into force the twentieth day after its publication in the official journal,⁵⁹ which will help to promote the adequacy of legal minimum wages and thus contribute towards decent living and working conditions for people in Europe. The ball is now in the Member States' court, which have two years to transpose the directive into national law.

More than two years have passed from the discussion to the proposal to the debates and negotiation and finally to the adoption, and the Deputy Prime Minister and Minister of Labour and Social Affairs of the Czech Republic, Marian Jurečka, remarks on the achievement of this milestone: *When people have to penny-pinch because of the energy crisis, this law is a message of hope. Minimum wages and collective wage*

⁵⁹ Official Journal of the European Union, *Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union*, 33–47, 2022

setting are powerful tools that can be used to ensure that all workers earn salaries that allow for a decent standard of living.”

1.8 Juridical implications involved in the Directive

In examining the implications of adopting the Directive for national legal systems, attention needs to be paid to the point of this being a legally binding instrument providing the establishment of a legal framework for minimum wage setting mechanisms. Thus, adopting the Directive requires Member States to comply with the obligations arising from it. As for the obligation, provided by Article 7 of the Directive, to guarantee that public authorities and social partners are properly involved in consultation within this mechanism, it is worth noting that the majority of the examined States envisage adequate solutions in this respect.⁶⁰ However, there is a distinct picture of the situation in Poland, as the Directive's adoption requires the establishment of a consultation procedure of the public authorities with the social partners in case of failure in negotiations on setting the minimum wage.⁶¹ Even the Spanish legislation is potentially in need of revision, because there have been reservations about the actual nature of consultations with employer and employee representatives. With respect to the obligation of states to reinforce collective bargaining, it should be pointed out that measures need to be taken in most EU Member States to enforce this obligation. Only in ten of the twenty-seven member states does the coverage of collective bargaining exceed 70 per cent. This indicator was met in France, Portugal, Austria, Spain, and Italy. Poland - country in which collective bargaining coverage is below 14 per cent - encounters a more difficult challenge in the implementation of the Directive compared to all the beforementioned countries.⁶² In relation to the Directive's proposal, M. Fuchs points out the need to implement an action plan to reinforce collective bargaining in Germany, in which the subjective coverage of collective bargaining is 44 per cent.⁶³ According to the academic E. Menegatti, strengthening enterprise collective bargaining at the sectoral level may be accomplished in some states through government intervention into two areas. Under the first framework, legislation would be introduced to encourage the growth and spread of autonomous sectoral and inter-sectoral collective bargaining. This could be done by states taking a series of measures to improve the ability of social partners to be involved in collective bargaining through, among other things, training, arrangements to ease the access of trade unions to workplaces, employer benefits for their participation in cross-sectoral collective agreements or membership in an employers' organization. On the other hand, the second area of intervention would involve diverse forms of support for collective bargaining, like the provision of a tool that extends sectoral agreements. The

⁶⁰ Bomba K., *Minimum Wage Fixing Mechanisms in the EU Member States: A Comparative Overview in the Light of the Draft Directive on Adequate Minimum Wages*, Journal of the University of Latvia. Law, No. 15, pp. 148–149, 2022

⁶¹ Surdykowska, B. Pisarczyk, Ł., *The Impact of the Directive on Adequate Minimum Wages in the European Union on Polish Labour Law*, Italian Labour Law e-Journal, Vol. 14, issue 1, p. 97., 2021

⁶² Bomba K., *Minimum Wage Fixing Mechanisms in the EU Member States: A Comparative Overview in the Light of the Draft Directive on Adequate Minimum Wages*, Journal of the University of Latvia. Law, No. 15, p. 148, 2022

⁶³ Fuchs, M., *Notes on the proposal for a directive on adequate minimum wages: A German perspective*. Italian Labour Law e-Journal, Vol. 14, issue 1, 2021

author cited above states that the Directive does not mandate these solutions but that the Member States remain open to implement them once the social partners have been consulted.⁶⁴

The elevate number of requirements regarding the strengthening of collective bargaining may help in substituting the mechanism based on agreements for setting the minimum wage with a lawful mechanism. Italy would be primarily affected by this change as a result of the adoption of the Directive.⁶⁵ The scholar M. Delfino underlines the problems in reshaping the organizational model of trade unions in Italy and that this model does not facilitate the successful application of the EU Directive on minimum adequate wages, therefore, a legislative action is necessary. The implementation of this Directive could involve changes in trade union representativeness rules, support for collective bargaining or the establishment of a statutory minimum wage.⁶⁶

Nevertheless, adopting the Directive would not necessarily entail a shift from a statutory to an agreement-based mechanism. According to the Austrian social partners, for example, the collective mechanism to fix the minimum wage is marked by both stability and quasi universal subjective coverage. This is why they do not recognize the necessity of a statutory regulation. Particularly trade unions are concerned about legislative regulation becoming a benchmark for collective bargaining, rendering collective agreement solutions reliant on the political situation. A development of this kind will result in trade unions forfeiting their autonomy when fixing the amount of the minimum wage. Moreover, the introduction of a statutory mechanism also triggers intra-party controversies.⁶⁷

⁶⁴ Menegatti, E., *Much ado about little: The Commission proposal for a Directive on adequate wages*. Italian Labour Law e-Journal, Vol. 14, issue 1, p. 22, 2021

⁶⁵ Menegatti, E., *Wage-setting in Italy: The Central Role Played by Case Law*. Italian Labour Law e-Journal, Vol. 12, issue 2, p. 66, 2019

⁶⁶ Delfino, M., *The Proposal for the EU Directive on adequate Minimum Wages and its impact on Italy*. Italian Labour Law e-Journal, Vol. 14, issue 1, pp. 57-63, 2021

⁶⁷ Bomba K., *Minimum Wage Fixing Mechanisms in the EU Member States: A Comparative Overview in the Light of the Draft Directive on Adequate Minimum Wages*, Journal of the University of Latvia. Law, No. 15, p. 149, 2022

2. The Directive (EU) 2022/2041 in practice

Theoretical, practical and critical analysis of the EU Directive for Adequate Minimum Wages

2.1.1 Analysing the Directive: Criteria for Adequate Minimum Wage levels and its possible impact

Having reached this point, it is worth summarising briefly what the recently approved Minimum Wage Directive provides for.

Those Member States with statutory minimum wages (21 out of 27 countries) are committed to:

- i. Develop clear criteria for setting and updating minimum wages that allow an adequate standard of living while safeguarding employment;
- ii. Ensure that the social partners have increasingly more influence in determining the minimum wage;
- iii. Limit exemptions through lower minimum wages to specific groups or regions.

Every Member State is obliged to:

- iv. Promote collective agreements;
- v. Report yearly to the European Commission on measures adopted and other information pertinent to wage setting.

The Directive entrusts the Member States to determine the level of the minimum wage compared to other salaries but indicates as possible benchmarks values 50 per cent of the average wage or 60 per cent of the median wage.⁶⁸ These relative measures are often called the 'bite' of the minimum wage or, more officially, the Kaitz index. This pragmatic method of determining appropriate wage levels adopts a distribution-oriented approach, which takes into account of the relative position of the minimum wage in the national wage structure through the measurement of the minimum wage value with respect to the median or average wage.⁶⁹ The benchmarks values that the Directive suggests, which are currently reached by only a limited number of Member States, would probably function as strong signals for national governments and might result in political pressure to push the minimum wage up to such levels.⁷⁰ However, in Member States with rather low median or average wage levels, the Kaitz index might not be a sufficient indicator for adequacy of minimum wage and therefore needs to be combined with a "living wage approach". According to T. Schulten and T. Müller, such a second approach establishes an adequate minimum wage by calculating the costs of a given basket of goods and services required for a decent living and involvement in social life.

⁶⁸ Official Journal of the European Union, *Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union*, 2022

⁶⁹ Schulten, T., Müller, T., *A paradigm shift towards Social Europe? The proposed Directive on adequate minimum wages in the European Union*, pp. 6-7, 2021

⁷⁰ Skedinger P., *The Economics behind the Directive on Adequate Minimum Wages in the EU: A Critical Assessment*, IFN Working Paper No. 1438, pp. 2-3, 2022

However, no universally accepted calculation for a living salary exists, neither concerning the proper components of the baskets nor the types of households that should be accounted for.⁷¹

Taking into account the diverse national contexts, the EU Directive does not deliver a unique definition of an adequate minimum wage but rather instructs the Member States to guarantee the establishment and maintenance of legal minimum wages through a set of criteria to foster adequacy towards decent working and living conditions, social cohesion and increasing convergence. Even though countries have nearly unlimited freedom to incorporate the criteria they consider most appropriate, the Directive invites them to consider the following four aspects:

- (a) *“the purchasing power of statutory minimum wages, taking into account the cost of living;*
- (b) *the general level of wages and their distribution;*
- (c) *the growth rate of wages;*
- (d) *long-term national productivity levels and developments.”*⁷²

Comparing the provisions provided by the Commission under the proposal with the latest adopted provisions of the Directive, an improvement can be noted regarding the specificity of the topics covered. Particularly to the criterion on the 'purchasing power', what in the proposal was *“the purchasing power of statutory minimum wages, taking into account the cost of living and the contribution of taxes and social benefits”*, was changed in the Directive by deleting the reference to taxes and social benefits, as it was unclear whether adequacy is calculated on a gross or net basis, causing the responsibility for an adequate minimum wage level to be confused between the state and the companies. More problematic is the criterion 'd', which was indicated just as *“labour productivity developments”* in the proposal. Firstly, it is unclear which type of productivity should be considered, whether national, sectoral, company or even individual. Furthermore, there is a clear danger that the reference to productivity weakens the concept of adequacy, which is necessarily defined by the need for a decent living.⁷³ Therefore, this criterion has been amended adding *“long-term national productivity”*, making it less vague. As far as the *“growth rate of wages”* is a rational criterion for the regular adjustment of minimum wages, probably the most important criterion is *“the general level of wages and their distribution”*. The Directive explicitly requires, in a separate paragraph, that Member States use the before-mentioned guideline benchmarks in assessing the adequacy of statutory minimum wages with reference to the general level of gross wages, such as those commonly used internationally.

⁷¹ Schulten T., Müller T., *What's in a name? From minimum wages to living wages in Europe*, in *Transfer: European Review of Labour and Research*, 25(3), pp. 267-284, 2019

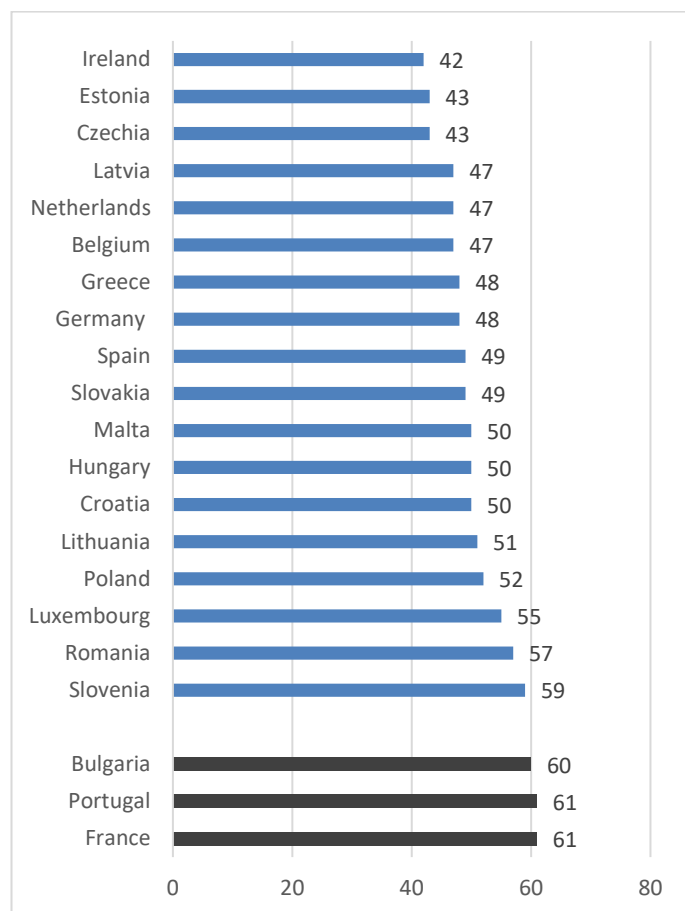
⁷² Official Journal of the European Union, *Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union*, Chapter II, Art. 5(2), 2022

⁷³ Schulten, T., Müller, T., *A paradigm shift towards Social Europe? The proposed Directive on adequate minimum wages in the European Union*, p. 8, 2021

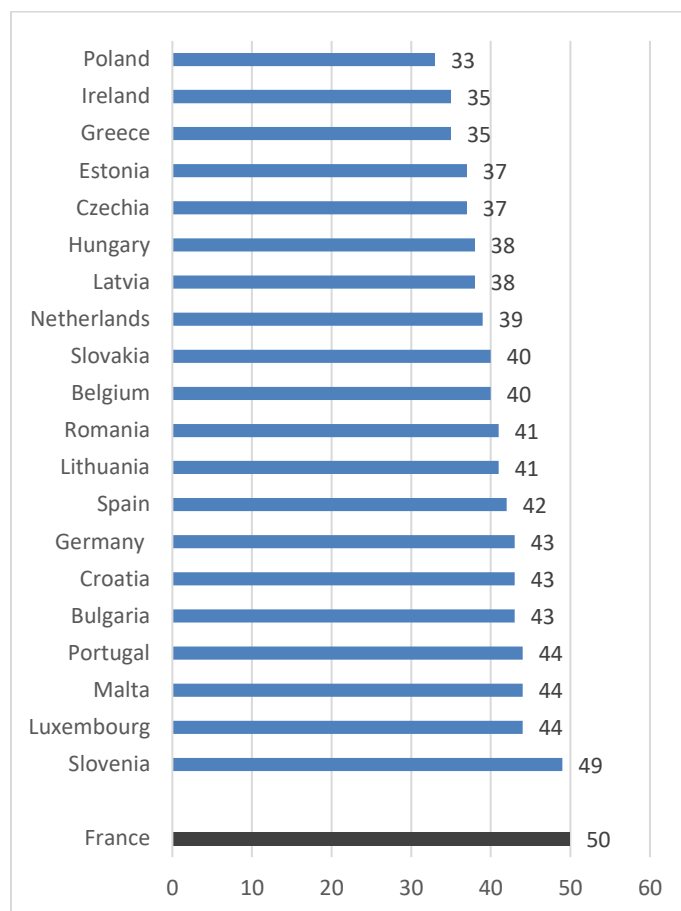
Figure 1: EU Minimum wages in 2019

As a percentage of national median and average wages of full-time workers

As a % of median wage



As a % of average wage



Source: OECD Earnings Database, supplemented by Eurostat and European Commission

Data on EU minimum wages in 2019 as a percentage of national median and average wages of full-time workers shows that the levels are actually well below the decency thresholds in the majority of EU countries (**Figure 1**). Enforcing the double threshold of 60 per cent of the median wage and 50 per cent of the average wage in all EU Member States with statutory minimum wages would result in a rise in minimum wages affecting more than 25 million employees, representing 18.7 per cent of all workers in EU countries with a statutory minimum wage (Table 1).⁷⁴ More than half of this figure comprises three Member States, namely Germany (6.8 million employees), Spain (4.1 million) and Poland (4.0 million), whose minimum wages remain well below the double decency threshold. Significantly fewer employees are directly impacted in those countries that are already near the reference values, like France (2.2 million). Moreover, the number of workers who would benefit from a corresponding raise in the minimum wage varies between less than 10 per cent in countries such as France, Slovenia, and Belgium to more than 30 per cent in countries such as Romania and Greece (Table 1).

⁷⁴ Lübker M., Schulten T., *WSI Minimum Wage Report 2021: Is Europe en route to adequate minimum wages?*, WSI-Report No. 63e, 2021

Table 1: Number of workers who would benefit raising the statutory minimum wage to 60% of the median wage and 50% of the average wage

	in 1,000	as a percentage of all employees
Germany	6,835	18.2
Spain	4,120	24.9
Poland	3,998	30.9
Romania	2,354	35.9
France	2,202	9.3
Greece	907	34.4
Hungary	804	20.2
Netherlands	658	9.0
Bulgaria	649	23.1
Portugal	508	12.7
Czechia	492	11.4
Ireland	487	25.0
Slovakia	409	18.9
Croatia	250	17.1
Latvia	144	18.7
Estonia	116	20.6
Lithuania	116	9.9
Belgium	114	2.8
Slovenia	62	7.3
Luxembourg	58	21.9
Malta	24	11.6
Total EU	25,306	18.6

Source: The figures are calculated by T. Schulten, T. Müller, based on European Commission data on estimates using the EUROMOD microsimulation model and based on the 2019 employment figures (Eurostat Labour Force Survey).

Under the Directive, the criteria for an adequate minimum wage ought to apply only to Member States where the minimum wage is set by legislation because there should be no interference with collective agreements. Therefore, this part of the Directive does not apply to the Nordic EU countries such as Denmark, Sweden and Finland or to Austria and Italy, where only collective agreements can determine minimum wages. In response to concerns expressed by Denmark and Sweden, the Directive also clearly states that those Member States that do not have a statutory minimum wage will not be obliged to introduce

one.⁷⁵ The clause stipulating that adequate wage levels can be fixed through collective bargaining arrived only after intense resistance from Denmark, Sweden, and other countries, in which collective bargaining plays a central role within them. The initial opposition stemmed from a coalition of neo-liberals in Austria and the Netherlands, far-right populists in Hungary and Poland, and left-wing parties in Sweden and Denmark. Consequently, the Directive became somewhat vaguer and much less binding than some would have wished. Notably, social democrats and trade unions in Denmark and Sweden perceived the minimum wage Directive as something dangerous for their labour market model since it implies political intervention in an area where social partners value their independence from the state.⁷⁶

Generally, states with minimum wage systems based exclusively on collective agreements tend to have relatively high levels of collective bargaining coverage (**Figure 2**). In addition, minimum wages under collective bargaining are usually higher than legal minimum wages. Thus, the introduction of a comprehensive statutory minimum wage in Austria and the three Nordic countries, Denmark, Finland and Sweden, is rejected by both employers and trade unions. The Italian academic E. Menegatti explains that even if collective agreements set minimum wages, this does not imply that they are always established at an appropriate level, particularly with a view to a living wage or the decency threshold. This is why, for instance, in Italy, the introduction of a legal minimum wage has been discussed for years.⁷⁷

2.1.2 *Analysing the Directive: Strengthening Collective Bargaining*

Besides setting a common framework for statutory minimum wage criteria, the second key target of the Directive is to reinforce independent collective bargaining. It is a commonly known fact that exists a significant correlation between the coverage of collective bargaining, the extent of wage dispersion and the scale of the low-wage sector.⁷⁸ Member States having higher bargaining coverage usually have a much lower wage dispersion and a smaller low-wage sector. Overall, strong bargaining coverage appears to be a significant institutional precondition to promote adequate minimum wages. Moreover, where minimum wages are prescribed by law, different interactions with collectively agreed minimum wages often occur.⁷⁹ For instance, introducing the statutory minimum wage in Germany in 2015 has also reinforced collective bargaining in many low-wage sectors.⁸⁰ On the contrary, an appropriate wage level is not only attained

⁷⁵ Official Journal of the European Union, *Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union*, Preamble (19), 2022

⁷⁶ H. Haapanala, I. Marx, Z. Parolin, *Decent Wage Floors in Europe: Does the Minimum Wage Directive Get It Right?*, IZA DP No. 15660, pp. 3-4, 2022

⁷⁷ Menegatti E., *Wage-Setting in Italy: The central role played by case law*, pp. 53-65, 2019

⁷⁸ Schulten, T., Müller, T., *A paradigm shift towards Social Europe? The proposed Directive on adequate minimum wages in the European Union*, p. 12, 2021

⁷⁹ Dingeldey I., Grimshaw D., Schulten T. (eds.), *Minimum Wage Regimes. Statutory Regulation, Collective Bargaining and Adequate Level*, Routledge, London, 2021.

⁸⁰ Schulten, T., Müller, T., *A paradigm shift towards Social Europe? The proposed Directive on adequate minimum wages in the European Union*, p. 12, 2021

through statutory minimum wages, indeed, it also demands a comprehensive system of collective bargaining and a broad level of bargaining coverage. Many countries have a considerable wage premium from collective bargaining, meaning that employees whose salaries are determined by a collective agreement earn significantly more than those not covered by a collective agreement in conditions that are otherwise comparable.

In this context, a further purpose of the Directive is to boost national collective bargaining systems by requiring all Member States with less than 80% collective bargaining coverage to engage in a national dialogue with trade unions and employers' associations to foster collective bargaining at the sectoral and inter-sectoral level and to implement a concrete action plan for promoting collective bargaining.⁸¹ The Directive underlines explicitly that public procurement plays a crucial role in this end as it guarantees that the economic operators observe and respect the salaries set by collective agreements.⁸²

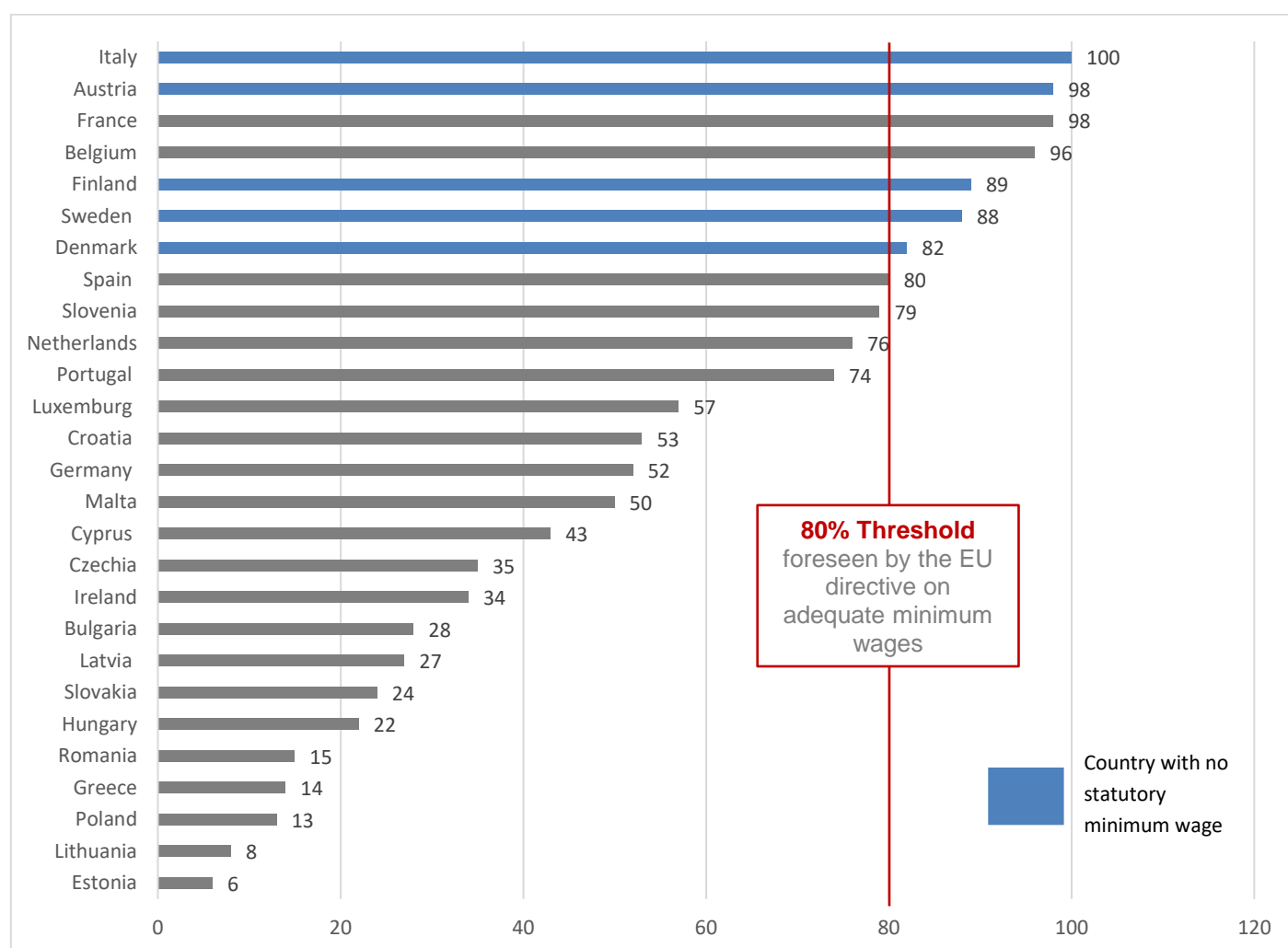
At the moment, collective bargaining coverage is below the 80% threshold in 19 of the 27 EU countries (**Figure 2**). Thus, European Commission's action focuses on collective agreements' role as guarantors of better working conditions and the ability of policy actors to enhance collective bargaining coverage by setting more favourable and supportive framework terms. The need to take action is most acute in Ireland and Greece, where coverage is 34% and 14% respectively, and in Central and Eastern Europe. For seven EU Member States in Central and Eastern Europe, below a quarter of the workforce is under a collective agreement.

⁸¹ Official Journal of the European Union, *Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union*, Preamble (25), 2022

⁸² *Ivi.*, Preamble (31).

Figure 2: Collective bargaining coverage in EU countries in 2019

Workers covered by collective agreements in % to all workers eligible to collective bargaining



Source: OECD/AIAS ICTWSS Database (<https://www.oecd.org/employment/ictwss-database.htm>).

2.2 Finding the right balance in the Labor Market between Minimum Wages and Collective Bargaining

Although the figures expressed in the Minimum Wage Directive are very ambitious, the operative provisions are carefully formulated so as to respect both the social policy competencies of the EU countries and the social partners' primacy in labour relations. In particular, the Directive does not take a position regarding the need for a statutory minimum wage, as it does not oblige the five⁸³ Member States that do not have a legal minimum wage to implement it. Recent developments, however, indicate that it is hardly possible to implement wage levels without a statutory minimum wage in the entire labour market unless collective

⁸³ Cyprus is the last Member State introducing a national minimum wage on January 1, 2023.

bargaining contracts are almost universal. Indeed, reducing collective bargaining contracts was a critical motivation for the decision of Germany to introduce a statutory minimum wage in 2015.⁸⁴

The analysis of the German case represents a rare but prominent example of a statutory minimum wage system being introduced nationwide in a large and developed country based on collective bargaining agreements.

To sum up, Germany, before introducing a statutory minimum wage on 1 January 2015, had strong social dialogue, and was based on collective bargaining until the late 1980s. However, the coverage of collective bargaining started to fall at the beginning of the 1990s, particularly in East Germany, where the productivity of many newly established companies was still very low. In the context of rapid unemployment rising, many firms wanted to set salaries unilaterally and not negotiate with trade unions. Many employers openly supported the withdrawal from collective agreements favouring so their decline. In 2013, collective bargaining fell from its peak of 85 per cent before reunification to just 60 per cent and 48 per cent in West Germany and East Germany, respectively.⁸⁵ Later on, in 2015, employment kept growing rather strongly after the introduction of the statutory minimum wage. In the following two years, there was an increase of 1.9 and 1.8 per cent, respectively.⁸⁶ Moreover, studies showed that since the introduction of the legal minimum wage in Germany, there has been a slight decrease in the number of people marginally employed. The results are more contrasting with regard to standard employment, however, the effects measured were modest and never showed a real loss of jobs. Rather, studies indicate slower growth in employment that would have happened in the absence of the statutory minimum wage.⁸⁷ Further research indicates that the first-impact effects of the statutory minimum wage have been much less ambiguous.

Introducing the statutory minimum wage in 2015 has resulted in a substantial hourly wage increase at the lower end of the wage distribution. On average, wages per hour for workers earning less than €8.50, the statutory minimum wage rose by about 14 per cent between 2014 and 2016, whereas the two-year average increase between 1998 and 2014 was just around 1 per cent for this group.⁸⁸ To conclude, recent evaluations suggest that the statutory minimum wage is successful in raising hourly remuneration at the bottom end of the wage distribution but that this has often been associated with shorter working hours and reduced work

⁸⁴ Bosch, G., *The Making of the German Minimum Wage: A Case Study of Institutional Change*, *Industrial Relations Journal*, 49(1), pp. 19-33, 2018

⁸⁵ Bosch, G., *The Making of the German Minimum Wage: A Case Study of Institutional Change*, pp. 19-33, 2018

⁸⁶ H. Haapanala, et al., *Decent Wage Floors in Europe: Does the Minimum Wage Directive Get It Right?*, IZA DP No. 15660, p. 8, 2022

⁸⁷ *Ivi*, p.9.

⁸⁸ Burauel, P., et al., *The Impact of the German Minimum Wage on Individual Wages and Monthly Earnings*, *Jahrbücher Für Nationalökonomie und Statistik*, 240(2-3), pp. 201-231, 2020

intensity, leaving net earnings per month at a similar level to pre-reform ones for many low-income workers.⁸⁹

Studies on the effects of minimum wages on the labour market focus on two separate results: employment and earnings. Concerning the former, a body of econometric evidence following the work of two academics Card and Krueger has shown that statutory minimum wages fixed at reasonable levels do not hurt the employment rate. More specifically, research has shown that there is no significant decline in employment as the statutory minimum wage increases, assuming that variations are in line with general trends in salaries and consumer prices⁹⁰. However, even though the vacancies are substantially unchanged, the figures from the previous German case show a decline in the working hours of low-wage employees after the introduction of the statutory minimum wage. Although the minor effect of the minimum wage on employment had a substantial impact on earnings at the minimum level, it influenced the debate at the European level and led the majority opinion towards the adoption of an ambitious minimum wage Directive. Rather than analysing the impact on job vacancies, the attention of minimum wage research, therefore, moved to earnings and wage distribution in a broader sense.

Evaluating the impact of the minimum wage on earnings is a more complex matter. Firstly, understanding who exactly earns the minimum wage and if their income is sufficient to cover the cost of living is essential. Low wages are over-represented in retail trade, food and accommodation services, people under 25, women, migrants and individuals with a low level of education.⁹¹ The prevalence of part-time and non-standard minimum wage occupations can evidence that even relatively generous minimum wages may be insufficient to provide decent earnings for employees on limited hours. This problem can be intensified if employers counterbalance rising labour costs by cutting working hours. Moreover, given that income insecurity replaces employment insecurity as the core problem for low-paid workers, this translates into highly uncertain situations in which workers' lives as well as their long-term planning, are limited by the variability of the income received or the need to remain 'on call' to the employer at short notice.⁹² According to this theory, it is easy to understand why countries with non-mandatory minimum wages are determined to protect their wage-setting system in the Minimum Wage Directive. Trade unions believe that a high level of collective bargaining, especially in low-paid professions, is enough to guarantee adequate and binding wage levels.⁹³

⁸⁹ Caliendo, M., Fedorets, A., Preuss, M., Schröder, C., & Wittbrodt, L., *The Short-Term Distributional Effect of the German Minimum Wage Reform*, IZA Discussion Paper no. 11246, 2017

⁹⁰ Card, D., & Krueger, A. B., *Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania*, *American Economic Review*, 84(4), 772-793, 1994

⁹¹ Eurofound, *Minimum wages in 2022: Annual review*, Luxembourg: Publications Office of the European Union, 2022

⁹² H. Haapanala, et al., *Decent Wage Floors in Europe: Does the Minimum Wage Directive Get It Right?*, IZA DP No. 15660, p. 8, 2022

⁹³ Alsos, K., Nergaard, K., & Van Den Heuvel, A., *Collective bargaining as a tool to ensure a living wage. Experiences from the Nordic countries*. Transfer: European Review of Labour and Research, 25(3), 2019

Additional evidence for this point comes from Belgium and France, two countries that challenge the theory of effective substitutes by mixing statutory minimum wages with extensive collective agreements and detailed wage scales. At a closer look, these countries are in line with the argument, as the statutory minimum wage acts more as a mere normative reference point rather than an effective wage floor. Instead, wage levels are contained in practice by collective agreements, equivalent to the non-statutory minimum wage system.⁹⁴ For example, in Belgium, negotiated sectoral wage levels in 2020 are on average 19 per cent higher than the statutory minimum wage and only 3 per cent of employees earn the statutory minimum wage.⁹⁵ Therefore, according to H. Haapanala, I. Marx, and Z. Parolin, they expect the proportion of people eligible for the statutory minimum wage to be lower in countries with high statutory minimum wages and high levels of collective agreements compared to countries with lower collective agreements.⁹⁶

Finally, the previously discussed German case shows the impact of the collapse of collective bargaining on the definition of the minimum wage. Following decades of decentralisation of bargaining and a drop in collective agreements, the leading trade union confederations accepted the introduction of a statutory minimum wage in 2015 since they had become too fragile to enforce negotiated wage levels across the vast low-wage sector of the German economy.⁹⁷ In particular, trade unions represent mostly workers with low salaries, namely the service sector union "Ver.Di", which was the first supporter of the policy change. On the contrary, unions defending the manufacturing sector that have high average wages and minimal drops in collective agreements came into the campaign only after it became evident that collective bargaining was unable to maintain wage levels throughout the economy. From the point of view of power resources, trade unions are strongly interested in advocating for as long as possible the model of wage setting centred on negotiated wage levels and supported by high collective bargaining contracts. Trade unions are concerned that the introduction of a statutory minimum wage would sharply limit their politico-economic influence, because the final word on setting the wage level would shift from social partners to legislators, thus it would enhance industrial relations' exposure to political intervention.⁹⁸

2.3.1 A Critical Assessment: Four fault lines in the Directive conflict

The EU Directive for an adequate minimum wage represents one of the political projects aimed at reinforcing the social dimension of European integration through a fundamental reorientation of European labour policy. Therefore, it is hardly surprising that it has been hotly contested and met with considerable political resistance. Thus, at least four fault lines exist in the conflict over the Directive.

⁹⁴ Fougère, D., Gautier, E., & Roux, S., *Wage floor rigidity in industry-level agreements: Evidence from France*, Labour Economics, 55, 2018

⁹⁵ Vandekerckhove, S., Desiere, S., & Lenaerts, K., *Minimum Wages and Wage Compression in Belgian Industries*. National Bank of Belgium, Working Paper no. 387, 2020

⁹⁶ H. Haapanala, et al., *Decent Wage Floors in Europe: Does the Minimum Wage Directive Get It Right?*, p. 9, 2022

⁹⁷ Bosch, G., *The Making of the German Minimum Wage: A Case Study of Institutional Change*, 2018

⁹⁸ H. Haapanala, et al., *Decent Wage Floors in Europe: Does the Minimum Wage Directive Get It Right?*, pp. 12-13, 2022

Firstly, there is the classic conflict between capital and labour. In recent decades, marketisation and liberalisation of European integration have contributed to a significant shift in power relations favouring capital. The Directive stands as a political project aiming at rebalancing the power relations in favour of labour. Unsurprisingly, therefore, the vast majority of trade unions in the EU support the Directive,⁹⁹ while most European employers' organisations, which are naturally uninterested in strengthening the employees' side, completely reject the initiative.¹⁰⁰ Within each camp, however, there are different views: Denmark, Sweden and Norway's trade unions, for example, firmly oppose the Directive,¹⁰¹ while France's largest employers' association has indicated its cautious support in favour of a Europe-wide regulatory framework on minimum wages.¹⁰²

The diverging stances inside the European trade unions and associations of employers show a second dividing line between the representatives of various national salary-setting systems. The strongest criticism also comes from Denmark and Sweden, in which almost every social actor, ranging from the government to employers, trade unions and all the main political parties on both the left and the right, deny the Directive as a threat to the 'Nordic model' - where minimum wages are solely set by collective bargaining agreements. On the contrary, there are also countries, such as Italy or Finland, where there is no legal minimum wage but whose respective trade unions and governments agree with the Directive. The highest percentage of EU Member States with statutory minimum wages do not see any systematic problems with the Directive in relation to their national wage-setting systems. A few of them, such as France, even strongly support the Directive, as its framework could be interpreted as a European extension of their national wage-setting regime – combining a rather high statutory minimum wage with a high level of coverage by collective bargaining.

Another fault line mirrors the socio-economic and political attitudes of the stakeholders involved. The more left-wing-oriented governments, for example in Spain and Portugal, expressed strong support for the Directive. In the case of the Nordic countries, like Denmark and Sweden, however, the main political orientation lies over the institutional logic of their specific salary-setting regimes, resulting in Social Democratic-led governments also opposing the proposed Directive. On the other hand, the more neo-liberal governments, such as those of the Netherlands and Austria, along with the radical right-wing populist governments of Hungary and Poland, have expressed their opposition to the Directive.

⁹⁹ European Trade Union Confederation, *Crucial wages directive needs improvement*, press release of 28 October 2020, <https://www.etuc.org/en/pressrelease/crucial-wages-directive-needs-improvement>

¹⁰⁰ Business Europe, *Proposal for an EU directive on fair minimum wages*, a Business Europe position paper, Brussels, 4 December 2020, https://www.buinessurope.eu/sites/buseur/files/media/position_papers/social/2020-12-04_pp_minimum_wages.pdf

¹⁰¹ Risgaard L. et al., *EU wage minimum undercuts Scandinavian model*, in *Euroobserver*, 23 November 2020 <https://euobserver.com/opinion/150145>

¹⁰² Schulten, T., Müller, T., *A paradigm shift towards Social Europe? The proposed Directive on adequate minimum wages in the European Union*, p. 14, 2021

The fourth and last fault line is a legal one. The main critics of the Directive have claimed that the EU does not have any regulatory power in the area of wage policy. This view is justified on the basis of Article 153(5) of the Treaty on the Functioning of the EU, according to which wage determination is explicitly excluded from the EU's regulatory powers in the area of social policy. Consequently, the Directive is considered contrary to this article.¹⁰³

By contrast, the European Commission has considered the draft Directive to be fully covered by Article 153(1b), which confers on its regulatory powers in the area of 'working conditions'. Given that the Directive does not oblige member states to set the statutory minimum wage at any specific threshold or to establish a particular system for fixing minimum wages, the exclusion of competencies in Article 153(5) TFEU does not apply in this case. Finally, the EU regulations, which affect wage developments only indirectly, are allowed by European law and are also protected by the case law of the European Court of Justice.¹⁰⁴

2.3.2 *A Critical Assessment: Economic analysis of employment and poverty as outcomes of the Directive*

Considering the opinion of the academic P. Skedinger, who critically analysed the economic outcome of employment and poverty as a result of the new Directive, it can be drawn that the job losses associated with a substantial increase in minimum wages are underestimated, whilst the poverty reduction is exaggerated,¹⁰⁵ the reason why the Commission should have taken other, more effective policy measures into consideration.

Skedinger's assessment reveals that there is much evidence to suggest a stronger job loss as a result of a sharp increase in minimum wages than is recognised by the European Commission.¹⁰⁶ Also questionable is whether there is any value in limiting the possibilities of lower minimum wages for groups that are expected to have low productivity, as the Commission claims. A wide differentiation of minimum wages is a feature of the collective bargaining systems that the European Commission cites as a model. Moreover, the expectations of the Commission for minimum wages to be effective tools to fight poverty appear exaggerated. What the Commission should have considered is in what way minimum wages relate to other policies that may diminish the prevalence of poverty in the Union.¹⁰⁷ Part of the reason why the Commission has been so strongly engaged in the minimum wage route might be that wages may be more easily connected to binding rules than other policies, like taxation, and not induce clashes with other EU legislations.

¹⁰³ Schulten, T., Müller, T., *A paradigm shift towards Social Europe? The proposed Directive on adequate minimum wages in the European Union*, p. 15, 2021

¹⁰⁴ Di Federico G., *The Minimum Wages Directive Proposal and External Limits to Article 153 TFEU*, in *Italian Labour Law E-Journal*, 13 (2), pp. 107-111, 2020.

¹⁰⁵ Skedinger P., *The Economics behind the Directive on Adequate Minimum Wages in the EU: A Critical Assessment*, IFN Working Paper No. 1438, pp. 1-2, 2022.

¹⁰⁶ *Ivi.*, pp. 3-5.

¹⁰⁷ *Ivi.*, pp. 5-6.

In Skedinger's critical assessment of *'The Economics behind the Directive on Adequate Minimum Wages in the EU'*, the Commission's views as to the benefits of minimum wages could be questioned in many aspects. This can also be said of the Commission's own assessment of the situation in the labour market for low-paid workers in the EU. To carry out his research, Skedinger divided EU Member States into three groups, namely the New, the Old South and the Old North. The New group includes those countries, located mainly in Eastern and Central Europe, that joined the Union during or after 2004, i.e., Bulgaria, Czech Republic, Cyprus, Croatia, Estonia, Hungary, Lithuania, Latvia, Malta, Poland, Slovenia, Slovakia, and Romania. The Old South comprises Italy, Greece, Spain, and Portugal, and the Old North consists of the remaining Member States. Possibly, the most surprising finding of this publication is the speed with which the average minimum wage adjusted for purchasing power in the new Member States has approached its equivalent in the old Member States since the beginning of the millennium. Minimum wages have not lagged behind other wages in any of the three groups of countries surveyed over the past ten years. Low-wage workers in the New group of countries have also seen an increase in their earnings compared to low-paid workers in the Old North group since 2006. The proportion of low-wage workers dropped significantly in the New and did not grow in any of the remaining groups, while it is true that there are single Member States with worse performances than those emerging from these aggregates, but this should not obscure the general view.¹⁰⁸ Large differences in minimum wages and salaries still exist between Member States and the course may not seem rapid enough, but its orientation is clear.

The trend in wages observed in the New Group is aligned with standard economic theory, which assumes that economic integration by means of, for instance, free trade, diffusion of know-how and common technical standards results in convergence of average wages between countries at various levels of economic growth. Greater returns on capital in the least developed countries boost the stimulus to invest in those countries, resulting in higher productivity and wages. One can also assume a convergence of minimum wages, which are positively correlated with wages. However, the idea that there is a downward race on minimum wages in the EU, voiced by the European Commissioner for Employment and Social Rights, is not sustained by any figures.¹⁰⁹

Finally, the low-paid workers in the Old South are particularly left behind compared to the other Member States and the proportion of the in-work poverty among employees has also risen.¹¹⁰ The Member States in Southern Europe are usually characterised by a particularly strong share of poorly educated workers and, to some extent, dysfunctional labour markets with high unemployment, low mobility, and depressed employment rates. Moreover, also the growth in productivity has lagged behind and it is difficult to imagine, for the academic Skedinger, that minimum wage regulation at the European level can solve these structural

¹⁰⁸ Skedinger P., *The Economics behind the Directive on Adequate Minimum Wages in the EU: A Critical Assessment*, pp. 8-10, 2022

¹⁰⁹ *Ibidem*.

¹¹⁰ *Ivi.*, pp. 12-14.

problems. From this perspective, the EU Directive might seem to be a disguised protectionism form, designed to target the competitive benefits of the New Member States with relatively low wages. Perhaps it is remarkable that none of the countries of the Old South expressed opposition to a legally binding Directive, whereas several of the New Member States did so.¹¹¹

¹¹¹ Skedinger P., *The Economics behind the Directive on Adequate Minimum Wages in the EU: A Critical Assessment*, pp. 12-14, 2022.

*“Europe will be forged in crisis,
and will be the sum of the solutions adopted for those crises”
– Jean Monnet*

3. Directive (EU) 2022/2041 as the outcome of the European Social and Labor Policy resilience

What is the reason behind the EU's decision to develop a Directive for Adequate Minimum Wages?

3.1 The pursuit of new forms of Institutional Arrangements to safeguard Labour Standards

Today, the institutions that once were counted on to safeguard the wages, conditions and job security of workers are eroding.¹¹² The number of trade union members has declined in most countries since the 1980s and in many of them traditional forms of 'common regulation', such as collective bargaining, have been introduced. An increasing percentage of workers are employed precariously on temporary or short-term contracts or through platforms without the traditional protections available to employees. For many workers, it has become more difficult to negotiate respectable wages, which has contributed to increasing inequality. The rise of outsourcing and fragmentation of supply chains has complicated employers to deliver secure working conditions and commitment-driven human resource management. Moreover, these dynamics have been exacerbated by the global COVID-19 pandemic.

To meet these challenges, new ways to protect workers are emerging. Within some countries, governments have advanced new forms of regulation to address corporate structures contributing to workers' insecurity. Trade unions and EU organisations have also evolved innovative strategies for workers whose insecurity complicates conventional forms of organisation and bargaining.

Against this backdrop, the academic B. Colfer argues that the so called 'web of rules' that has underpinned standard employment contracts since the end of the Second World War has been substituted by a 'mosaic' or 'patchwork' of rules comprising joint regulation, employer-driven voluntarist mechanisms, legal minimum standards, and 'institutional experimentation'¹¹³ to improve labour protections and to address the growth of non-standard forms of work. This is important to unions and trade unionism studies because more and more diverse and intricate ways in which work is structured demand attention to the increasingly heterogeneous set of stakeholders and institutions engaged in guaranteeing adequate protection of workers.¹¹⁴ Trade unions still play a crucial role in this effort.¹¹⁵ However, in organisations, industries and nations where trade unions

¹¹² Colfer, B., Harney B., McLaughlin, C., & Wright, C. F., *Introduction: New Institutional Arrangements for Safeguarding Labour Standards*, in *Protecting the Future of Work: New Institutional Arrangements for Safeguarding Labour Standards* (Trade Unionism), Emerald Publishing Limited, Bingley, p. 1, 2023.

¹¹³ Murray, G., Lévesque, C., Morgan, G., & Roby, N., *Disruption and re-regulation in work and employment: From organisational to institutional experimentation*. *Transfer: European Review of Labour and Research*, 26 (2), pp. 135–136, 2020.

¹¹⁴ Doellgast, V., Lillie, N., & Pulignano, V. (Eds.), *Reconstructing solidarity: Labour unions, precarious work, and the politics of institutional change in Europe*. Oxford: OUP, 2018.

¹¹⁵ Pulignano, V., Köhler, H., & Stewart, P., *Employment relations in an era of change*. Brussels: ETUI., 2016.

are fragile or oppressed, it is relevant to realise the range of possible mechanisms for the development and maintenance of labour standards and emerging labour relations systems.

So, what is the reason behind the European Union's decision to develop a Directive for Adequate Minimum Wages? What emerged from the previously analysed studies by B. Colfer et al. is that over time, there has been a shift from a traditional regulatory model characterised by a 'web of rules' to delineate European social and labour policies, to a 'mosaic of rules'. This 'mosaic' is made up of various separate but interrelated contemporary rule networks, which are easily seen more in liberal market economies, where the shrinking of the classic 'web of rules' has been more prominent.¹¹⁶

First is the traditional network of joint regulation through collective bargaining or similar agreements, often with the participation of trade unions. These latter employed their bargaining power and collective-worker-based strategies to counterbalance the power advantage that employers typically exercised above single workers, hence striving towards establishing and sustaining safe and fair working conditions for the workforce.

The second is a web of voluntarist, employer-driven rules based on corporate social responsibility and intensive human resource management. This model has largely dominated the public policy dialogue since the 1990s and deals with a wide variety of labour market issues, such as gender and race equality, human rights violations, work-life balance, and child labour in global supply chains. Because societal expectations of company behaviour have evolved, many organisations have implemented proactive approaches within their ethical behaviour, including minimising reputational and litigation risks and hiring and recruiting qualified employees.¹¹⁷ This is particularly dominant in professions and sectors that have recorded considerable expansion over the last quarter century. These sectors comprise white-collar workers in the private service sector, like professional services and fast-developing consumer goods companies. They are associated with the rise of human resource management and particularly talent management and with a unified ideological current.¹¹⁸ The relatively extensive individual bargaining power of workers in these areas, due to their low skills and mobility, diminishes the perceived need for minimum standards negotiated by trade unions and required by law.¹¹⁹ In this sense, the contemporary practices of high-commitment human

¹¹⁶ Colfer, B., et al., *Introduction: New Institutional Arrangements for Safeguarding Labour Standards*, p. 5, 2023.

¹¹⁷ McLaughlin, C., *Corporate social responsibility and human resource management*. In R. Carbery & C. Cross (Eds.), *Human resource management* (2nd ed., pp. 273-292). London: Bloomsbury Publishing, 2019.

¹¹⁸ Dundon, T., & Rafferty, A., *The (potential) demise of HRM?* *Human Resource Management Journal*, 28 (3), pp. 377–391, 2018. Geare, A., Edgar, F., McAndrew, I., Harney, B., Cafferkey, K., & Dundon, T., *Exploring the ideological undercurrents of HRM: Workplace values and beliefs in Ireland and New Zealand*, *International Journal of Human Resource Management*, 25 (16), 2275–2294, 2014.

¹¹⁹ Rosseau, D., *I-deals: Idiosyncratic deals employees bargain for themselves*. London: Routledge, 2014. Trevor, J., & Brown, W., *The limits on pay as a strategic tool: Obstacles to alignment in non-union environments*. *British Journal of Industrial Relations*, 52(3), pp. 553-578, 2015

resource management are viewed as a 'substitute' for the governance, stability and the people-orientation that the network of traditional rules provides.¹²⁰

As the third web of rules, it deals with legal minimum standards, aimed mainly at the less skilled non-unionised professions, the private non-professional service sector and businesses susceptible to outsourcing, offshoring and automation, which move the balance of power from workers to employers. The emphasis here is on the suppression of labour power on the basis of anti-union sentiment. As a reaction to the rising inequality in the labour market and reports of low wages, precarious contracts and exploitation of low-wage employees, public pressure has pushed governments to enact a vast array of individual labour rights regulations. The academic W. Brown argued for 'increased pluralism' in his works,¹²¹ recognising the power imbalance inherent in the labour relationship and the necessity of addressing the issue of equity and fairness. Within the framework of many liberal market economies¹²² and also in some coordinated market economies like Germany,¹²³ governments' introduction of minimum wages and conditions set by law has been mainly directed at professionals in this network who can no longer count on trade unions for their coverage. Within the European framework, all the following EU directives have been particularly important in fostering minimum labour standards, even though their effect is linked to the diffusion and dilution dynamics undertaken at the national level. Trade unions have also been capable of using individual labor rights disputes to supplement rather than replace collective bargaining with regard to gender discrimination and inequality in pay.¹²⁴

Apart from these three webs, there are several kinds of institutional experimentation that have arisen as a response to the growth of precarious forms of work. These initiatives are in some cases designed specifically to give protection to workers with non-standard labor contracts, rather than the generalized standards which would be covered by the third network. In some other cases, institutional experimentation appears in the form of localized, bottom-up or sector-specific initiatives advanced by employee representatives in response to the lack of government regulation.¹²⁵ Therefore, all three networks do not rule each other out and may integrate or occasionally function in friction with each other.

¹²⁰ Dundon, T., & Rafferty, A., *The (potential) demise of HRM?* Human Resource Management Journal, 28(3), pp. 377-391, 2018

¹²¹ Brown, W., *The role of independents in collective bargaining and conflict resolution*. Presentation at University College Dublin, Dublin 2008.

¹²² Colvin, A. J., & Darbishire, O., *Convergence in industrial relations institutions: the emerging Anglo-American model?* ILR Review, 66(5), pp. 1047-1077, 2013.

¹²³ Sack, D. & Sarter, E. K., *Collective bargaining, minimum wages, and public procurement in Germany: Regulatory adjustments to the neoliberal drift of a coordinated market economy*. Journal of Industrial Relations, 60, pp. 669- 644, 2018.

¹²⁴ Deakin, S., Butlin Fraser, S., McLaughlin, C., & Polandka, A., *Are litigation and collective bargaining complements or substitutes for achieving gender equality? A study of the British Equal Pay Act*. Cambridge Journal of Economics, 39(2), pp. 381-403, 2015.

¹²⁵ Wright, C. F., Wood, A., Trevor, J., McLaughlin, C., Huang, W., Harney, B., Brown, W., *Towards a new web of rules: An international review of institutional experimentation to strengthen employment protection*. Employee relations, 41(2), pp. 313-330, 2019

3.2 *The intervention of the European Social Model*

Within the European framework, EU policies and legislation have been instrumental in introducing, revising, and contracting various rules in the area of social and labour policy at various times in the last seventy years. More generally, the European Union has reshaped the landscape of the Union's social and labour policies through the development of what has been called the European Social Model, probably until its destruction, or at least its deterioration, after the 2008 financial crisis, to its potential recovery on the heels of the global pandemic.¹²⁶

The European social model is a controversial term employed by policymakers, scholars and analysts to refer to the desire shared by members of the European political elite and EU decision-makers to foster economic growth and social cohesion simultaneously. This characteristic emerged in the aftermath of World War II, which generated a consensus that prevailed in Europe until the 1980s at least. In substance, the European Social Model is a philosophy at the heart of governance founded on the absence of human and social rights and a historical trade-off between economic advancement and social protection.¹²⁷ It can be interpreted to be the encouragement of public policies that protect Europe's workforce and citizens against the potentially harmful effects of a free and unfettered market. The European Social Model can be best represented by the body of EU social legislation, which provides for safeguards and minimums, particularly in the areas of health and safety at work, information and consultation rights, working hours, employment equality, and rules on part-time, fixed-term, temporary and interim work.¹²⁸

More specifically, the EU regulation does not directly touch upon wage setting, since this remains a strictly controlled national competence. However, due to the increasing influence of the EU on the shaping of domestic budgets by the EU's economic governance regime, this generates a significant indirect influence on wage determination.¹²⁹ Furthermore, the well-known Directive on adequate minimum wages in the EU and the commitment to establish equitable and resilient economies and societies, as outlined in the European Pillar of Social Rights, could bring about a change in this field.¹³⁰

¹²⁶ Dølvik, J. E., & Martin, A., *European social models from crisis to crisis: Employment and inequality in the era of monetary integration*, Oxford: OUP, 2015. Jepsen, M., & Pascual, A. S., *The European social model: An exercise in deconstruction*, *Journal of European Social Policy*, 15 (3), pp. 231–245, 2005.

¹²⁷ Feickert, D., *Social rights protection in the European Union: The trade union perspective*, In K. Feus (Ed.), *The EU charter of fundamental rights: Text and commentaries*, London: Kogan Page, pp. 161–175, 2000

¹²⁸ Bercusson, B., *European labour law*. Oxford: OUP, 2009

¹²⁹ Copeland, P., Daly, M., *The European semester and EU social policy*, *Journal of Common Market Studies*, 56 (4), pp. 1001–1018, 2018

¹³⁰ Colfer, B., *The European Social Model and the Patchwork of Rules*, Colfer, B., Harney, B., McLaughlin, C. and Wright, C.F. (Ed.) *Protecting the Future of Work: New Institutional Arrangements for Safeguarding Labour Standards (Trade Unionism)*, Emerald Publishing Limited, Bingley, pp. 37-38, 2023.

In recent decades, because of the trend towards liberalisation in Europe¹³¹ and especially in the aftermath of the post-2008 crisis and the responses of the Union to it, it was widely believed that the European Social Model had been inevitably damaged by the EU's measures. In particular, the bailout agreements negotiated by the European Commission with countries like Greece, Portugal and Ireland beginning in 2010 were subordinated to austere labour market reforms that fostered non-standard jobs and a downward push on labour and wage conditions. However, by the time the peak effects of the COVID-19 pandemic started to fade in Europe by mid-2021, there were reasons to be cautiously optimistic about the revival or reinvention of the European Social Model.¹³²

3.3 *Re-emerging EU social ambitions in challenging years*

The outbreak of the COVID-19 pandemic caused an unprecedented mobilisation of financial and other resources at the national and EU levels. National governments implemented new forms of social protection and income support for people and companies that incurred economic losses due to the pandemic. Meanwhile, in a crucial way, the EU is providing financial support straight to the regions most impacted by the pandemic through the Next Generation EU Recovery Programme and a temporary instrument to mitigate the risks of unemployment through the Support to mitigate Unemployment Risks in an Emergency (SURE). However, even during the years before the start of the pandemic, the EU was becoming a key player in shaping a comprehensive set of rules.¹³³ In 2020, for instance, the Commission released the famous proposal for a Directive on Adequate Minimum Wages in the European Union. This can inevitably be seen as a form of revival of the European Social Model, which once again puts the spotlight on a long-lasting but totally current debate.

The directive proposal bases on the European Pillar of Social Rights, introduced in 2017 to set out a vision for the social future of the Union with ambitious but non-binding objectives for protecting and promoting the social standards of the EU.¹³⁴ The European Pillar of Social Rights offers 20 principles aimed to build a robust, equal, and inclusive social Europe with fair opportunity, focusing on equality, social protection and inclusion. However, due to the non-binding status of the European Pillar of Social Rights, it offers only limited grounds for optimism, while critics have stressed that economic growth, rather than social protection and cohesion, remains at the core of the pillar as it currently stands.¹³⁵

¹³¹ Baccaro, L., & Howell, C., *Trajectories of neoliberal transformation: European industrial relations since the 1970s*, Cambridge: Cambridge University Press, 2017.

¹³² Colfer, B., *The European Social Model and the Patchwork of Rules*, pp. 38-39, 2023.

¹³³ *Ivi.*, pp. 47-48.

¹³⁴ *Ibidem.*

¹³⁵ Lörcher, K., & Schömann, I., *The European Pillar of Social Rights: Critical legal analysis and proposals*, ETUI Report 139, 2016.

The renewed influence of the EU on the social life of citizens and the growing role of the state in Europeans' lives in general during the pandemic is in sharp contrast to the self-defeating social policies of the EU in the post-2008 period. Besides the renovated respect for workers at the forefront of the public discourse, awareness of occupational health, safety and the balance between work and private life has increased along the lines of COVID-19. The temporary instrument SURE is an outstanding example in this regard, as it is designed to help protect jobs and workers following the socio-economic consequences of the pandemic. SURE, will help ensure a faster recovery once the health emergency is over, jobs and workers affected by the coronavirus pandemic can be protected by providing up to 100 billion euros in loans on favourable terms. The loans will help finance Member States' short time working schemes and similar measures, as well as some additional workplace health measures implemented to ensure that employees and the self-employed continue to receive an adequate income and that companies retain staff and provide a safe working environment for their employees.

The European Social Model has always been weakly delineated and transitory. According to the researcher and academic B. Colfer, what became clear is that the body of EU social policies that in part shape the European Social Model were dramatically undermined by the austerity agenda of the EU in the immediate aftermath of the 2008 Great Recession, which put pressure on the nascent patchwork of rules.¹³⁶ By contrast, the EU's reply to the COVID-19 pandemic crisis has seen the establishment of a limited degree of burden-sharing in the form of the EU's Next Generation Recovery Plan, which marks a sharp departure from the austerity measures of the past decade and a fundamental paradigm shift in EU social policymaking.¹³⁷ This change was motivated by several factors. Partly from a desire to reinforce the social face of Europe and to assist those areas most affected by the pandemic, partly to encourage a green upturn, giving support to green jobs and the call for a 'just transition' as foreseen by the Next Generation EU, and partly in an attempt to halt the growing political salience and electoral successes of anti-European voices across Europe, which has only been reinforced by public scorn regarding the European response to the Great Recession. Whatever the motivation, what becomes evident is that this presents a window for the rebound of the European Social Model in the European context.¹³⁸

3.4 *How political dynamics have overcome territorial and institutional differences between Member States in implementing the Directive (EU) 2022/2041*

As the previous chapters explained, the European Social Model, although threatened by the sudden outbreak of the pandemic crisis, has managed to be resilient and has produced far more ambitious social and labour policy proposals than in the past concerning various issues. For example, before the announcement by the

¹³⁶ Colfer, B., *The European Social Model and the Patchwork of Rules*, pp. 48-49, 2023

¹³⁷ *Ibidem*.

¹³⁸ Rathgeb, P., & Klitgaard, M. B., *Protagonists or consenters: Radical right parties and attacks on trade unions*, *Journal of European Public Policy*, 29, pp. 1049–107, 2021.

European Commission president Ursula Von der Leyen in 2020, the sensitive issue of minimum wage setting had never reached the Commission's agenda in recent times. The vast heterogeneity between national wage-setting systems had acted as a brake on a topic that would quickly put at odds not only between lefties and righties but more generally between countries with different social models and trade union traditions. Moreover, the legal minimum wage had for a long time encountered widespread scepticism not only among conservative parties and employers' associations but also among many trade unions that saw state intervention in the sector as interference in trade union autonomy – whereas, in this interpretation, collective bargaining would have protected workers better than political choices that were feared to trigger a race to the bottom in minimum wages – a position still dominant in northern European countries.¹³⁹

Moreover, the spread of in-work poverty, the difficulty for trade unions to reach marginalised sectors and workers, and the general erosion of collective bargaining have shifted the political balance in many European countries. First of all, Germany, where, in the face of a progressive loss of ability to offer protection to the most vulnerable workers through bargaining, trade unions and Social Democrats pushed for the introduction of a legal minimum wage, which came into force in January 2015. These political dynamics were not slow to be reflected at the European level. The majority of progressive forces, from the Progressive Alliance of Socialists and Democrats, the first promoter of the directive, to the Greens and the European United Left, including French President Macron and the liberals of Renew Europe, have made this demand their own.¹⁴⁰ National political realignments have thus 'infected' European politics. Once politicised in Brussels, the minimum wage issue did not take long to reach the Commission. Indeed, in 2019, the inclusion of the minimum wage directive in the programme of the then Centre-Right candidate for the presidency was instrumental in securing sufficiently broad support for Ursula Von der Leyen in the European Parliament.

However, the path of the directive, as seen in the previous chapters, was not without obstacles. Despite the convinced supporters of the European trade union confederation (ETUC), in northern European countries, especially in Denmark and Sweden, governments, trade unions, and parties of all colours strongly opposed the measure and obtained substantial concessions. The directive, which came out in a 'watered-down' form of the necessary mediations in the EU Council, does not touch the national models that still function effectively, especially the 'Nordic' model of non-interference of the state in matters of bargaining and wage setting. Instead, the directive is a pivotal instrument for giving trade unions a voice where they are weak, such as in many Eastern European countries, where they have been relegated to an extremely marginal role following the post-socialist transition. Moreover, the directive gives complete respect for the autonomy of social partners which execute their roles in formulating collective bargaining agreements in totally

¹³⁹ Natili, M., Ronchi, S., *La direttiva europea sui salari minimi*, Art. in Osservatorio nazionale sulle politiche sociali, 4 November 2022 <https://www.welforum.it/la-direttiva-europea-sui-salari-minimi/>

¹⁴⁰ *Ibidem*.

recognition of the subsidiarity principle, even in a complex policy field which has historically been a central domain of EU Member States and a tough area for the EU.¹⁴¹

Additionally, as noted by T. Müller and T. Schulten, the Directive began to make its effects felt in many countries even before it was effectively adopted. For example, Germany recently raised the legal minimum wage from €10.45 to €12 per hour, a figure close to 60% of the median salary.¹⁴² The Irish government has announced that the current minimum wage will be replaced by a new 'living wage' set at 60% of the median wage by 2026. In a similar vein, the Belgian Minister of Economics and Labour and the Dutch trade union federation have pointed out the inadequacy of national measures concerning the new EU standards. Furthermore, Cyprus, one of the six Member States covered by national collective agreements rather than a minimum wage until 2022, adopted a statutory minimum wage as of 1 January 2023.

3.5 *Wage issue in Italy and the possible contribution of the Directive*

As for Italy, how has the adoption of the Directive been perceived? Although according to the directive, Italy would not be obliged to intervene, the legal minimum wage was one of the main themes of the election campaign of the centre-left parties and the Five Star Movement. However, the victory of the right could shift the focus of social and labour policies away from this issue.

Italy, along with Austria, Denmark, Finland and Sweden, belongs to the countries where the minimum wage is not determined by law, but by collective bargaining, which, in the opinion of the directive and the Impact Assessment, is better able to guarantee decent minimum wages in contexts characterised by strong trade unions. Even in view of the high coverage of collective bargaining – over 80% and equal to 100% if the data include the worker's possibility of obtaining the minimum wage set by national collective agreements through the courts – Italy should therefore represent a virtuous model.

In this context, what contribution does the minimum wage directive make to the Italian wage issue? This Directive is an important step forward in European social policy as it clarifies that competition in the single market cannot play on wage dumping, long considered by EU institutions as a legitimate competitive advantage of companies operating in low-wage countries such as Eastern Europe.

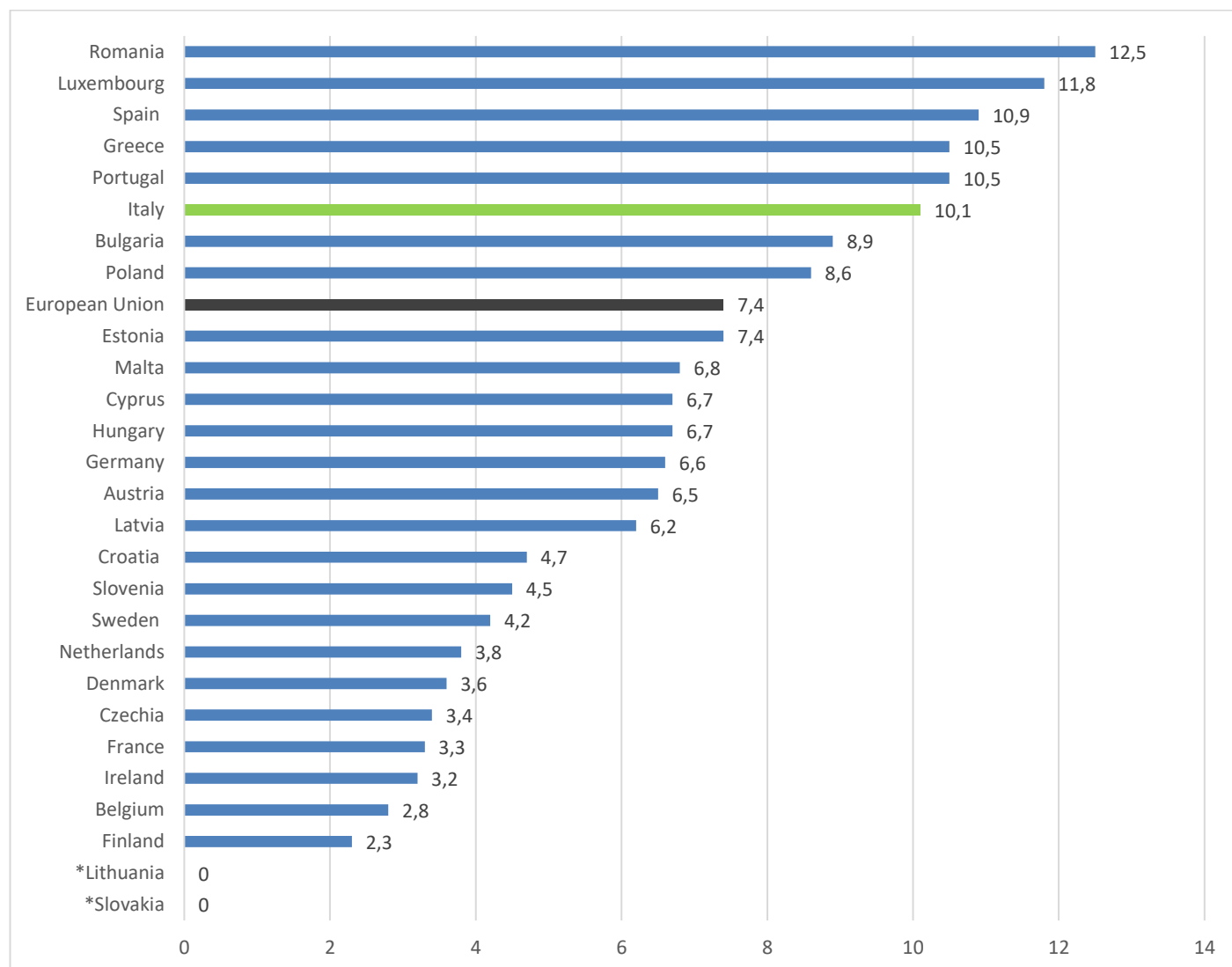
However, with specific reference to Italy, the directive risks being almost counterproductive. In asserting that the best instrument to raise wages is collective bargaining with high coverage, it may become an easy alibi for not intervening at all and shelving the debate on the possible introduction of a legal minimum wage. On the other hand, such a debate must continue since it is clear to all that, despite collective bargaining, Italy

¹⁴¹ Haapanala, H., et al., *Decent Wage Floors in Europe: Does the Minimum Wage Directive Get It Right?*, p. 6, 2022

¹⁴² Schulten, T., Müller, T., *A paradigm shift towards Social Europe? The proposed Directive on adequate minimum wages in the European Union*, p. 14, 2021

has one of the highest rates of in-work poverty (**Figure 3**) and inequality (**Figure 4**) in Europe and wages among the most stagnant.¹⁴³

Figure 3: In-work at-risk-of-poverty rate by full-/part-time work in EU countries in 2021



Source: Eurostat – In-work at-risk-of-poverty rate by full-/part-time work, EU Statistics on Income and Living Conditions (EU-SILC) survey

https://ec.europa.eu/eurostat/databrowser/view/ilc_iw07/default/bar?lang=en

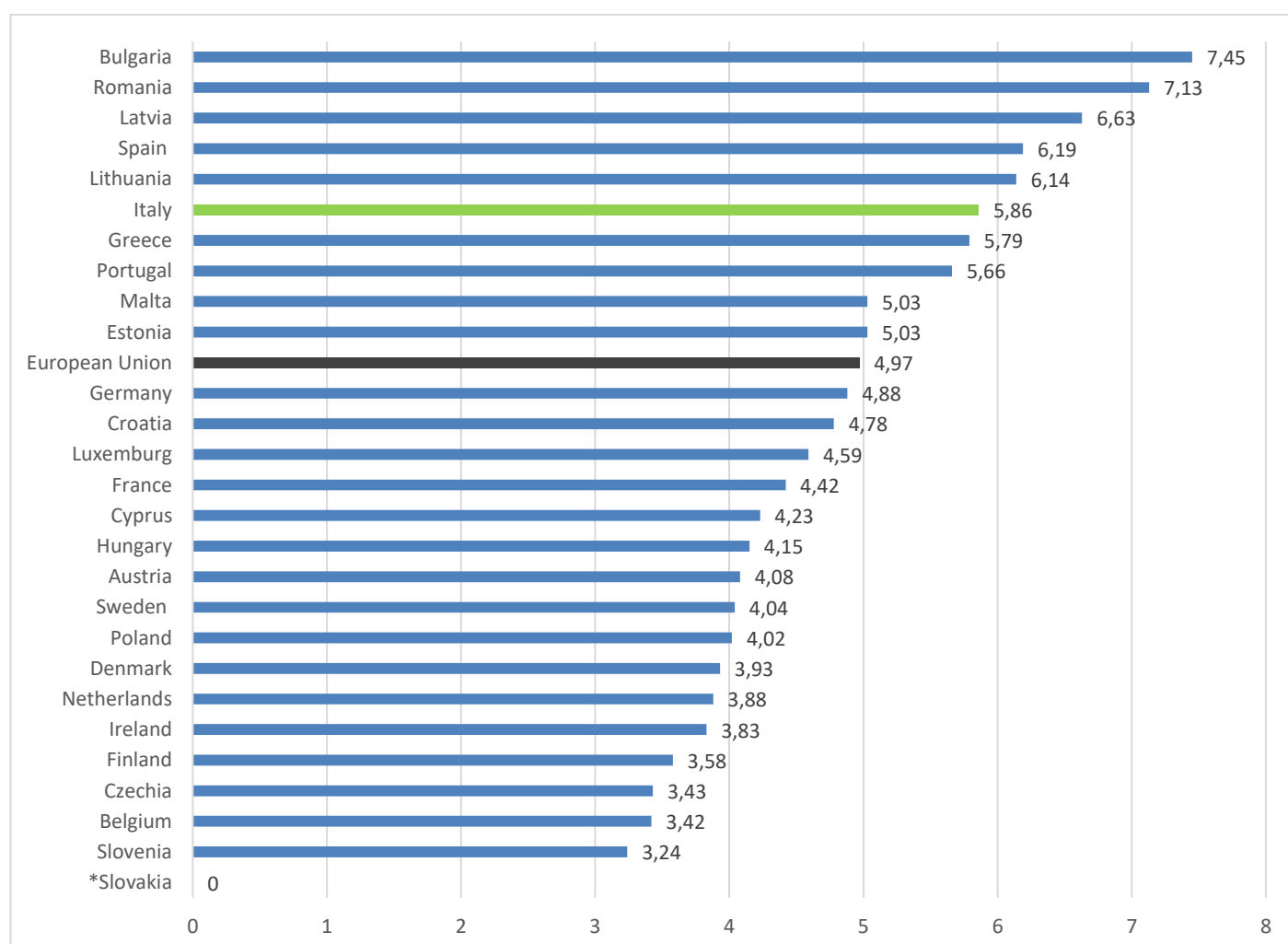
To analyse in-work poverty in EU countries, with a specific mention of Italy, we use the EU-SILC, a tool that seeks to accumulate suitable and simply comparable microdata of numerous sectors and dimensions, specifically on income distribution, social exclusion and poverty. For Lithuania and Slovakia in the chart above, there is no updated data for 2021, while for Slovakia alone, there is no data available for 2021 in the bar chart below.

¹⁴³ Razzolini, O., *Questione salariale in Italia e direttiva sui salari minimi adeguati*, Art. in Osservatorio nazionale sulle politiche sociali, 21 November 2022 <https://www.welforum.it/questione-salariale-in-italia-e-direttiva-sui-salari-minimi-adequati/>

At the moment of the last surveys in 2021, the risk of in-work poverty is higher the EU average (7.4%) in 8 of the 27 EU countries (**Figure 3**). Thus, these countries, along with the Union, should focus their actions to foster income distribution and tackle monetary poverty. The need to take action is most acute in Romania and Luxemburg, where in-work at-risk-of-poverty rate is 12.5 and 11.8 per cent respectively, and in Iberic countries and Italy. Particularly Italy has both the sixth highest rates of in-work poverty and inequality of income distribution (**Figure 4**) in Europe, with 10.1 and 5.86 per cent respectively.

The following chart shows the inequality of income distribution in EU countries in 2021. This data comes from the ratio of overall income earned by 20 per cent of the population of a single country with the highest income – known as top quintile – to that earned by 20 per cent of the population of the same country with the lowest income – lowest quintile. Italy figures among the nations with the highest inequality ratio in the Union, exceeding the EU average of +0.89 per cent. Anyway, the Italian rate is not the greatest in Europe, in which take the lead Baltic and East European countries, and even its percentage is not too far from the EU average (4.97%), meaning that the problem of inequality is still a sensitive topic that the European Union still needs to work on to try to reduce the wage gap, especially between gender differences.

Figure 4: Inequality of income distribution in EU countries in 2021



Source: Eurostat – Inequality of income distribution

Under a different and less investigated profile, the directive could, however, make a significant contribution to the wage issue in Italy by providing the impetus to proceed to give the collective bargaining system the form of law that is compatible with Article 39 of the Constitution. In other words, the State could finally intervene to at least establish the categories and better select the stakeholders.

It is Article 8 of the directive, under the heading '*Effective access of workers to the legal minimum wage*', that offers a starting point in this respect: states must guarantee workers' access to the protection afforded by the legal minimum wage by adopting a series of measures, including the strengthening of labour inspections and the provision of effective, proportionate and dissuasive sanctions.¹⁴⁴

Art. 8 refers only to the legal minimum wage, but reading the provisional agreement, Art. 1 of the directive, which identifies among its objectives the guarantee of '*workers' access to the protection guaranteed by the minimum wage, in the form of wages determined by collective agreements or a legal minimum wage*',¹⁴⁵ Art. 12 on sanctions (a horizontal provision) and referring more generally to the principle of effectiveness and the primacy of EU law, it is understood that every country, regardless of the system adopted, must guarantee workers effective access to the appropriate minimum wage, including by providing for the imposition of effective, proportionate and dissuasive sanctions in the event of violations.¹⁴⁶

This is an objective that, without a minimum regularisation of the contractual system, Italy will not be able to achieve. In fact, how is it possible to provide for labour inspectors to intervene and impose sanctions if there are no legal rules whose compliance must be ascertained, if the collective agreement is applied on an entirely voluntary basis, thus excluding the possibility of imposing a particular collective agreement on the parties?¹⁴⁷

All in all, the principle of 'effective access' to an adequate minimum wage is the pretext through which Italy may be forced to set up a minimum legislative framework of the bargaining system, finally addressing the unresolved knots of the wage issue.

¹⁴⁴ Official Journal of the European Union, *Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union*, Art. 8, 2022

¹⁴⁵ *Ivi.*, Art. 1.

¹⁴⁶ *Ivi.*, Art. 12.

¹⁴⁷ Santoro, V. C., *La contrattazione collettiva nel diritto sanzionatorio del lavoro*, Adapt University Press, 2018; M. Novella, *Effettività del diritto alla retribuzione e attività di vigilanza*, in *Riv. giur. lav.*, p. 288, 2019

Conclusion

Directive (EU) 2022/2041 represents a landmark victory for European workers and all progressive movements in Europe. It marks a milestone in EU social policy and demonstrates that the European Pillar of Social Rights can offer a real guideline for legislative actions to improve the quality of life for millions of citizens.

With the purpose to achieve an improvement in living and working conditions in the European Union, the directive under scrutiny with a view to reducing wage inequalities establishes guidelines concerning:

- The adequacy of statutory minimum wages in order to achieve decent living and working conditions;
- The promotion of collective bargaining on wage determination;
- The improvement of workers' effective access to minimum wage protection, where provided by national law and/or collective agreements.

Such an intervention aims to counter the spread of low wages and wage dumping within Europe. According to the Explanatory Memorandum attached to the proposal, this phenomenon is more widespread in countries with national statutory minimum wages. Indeed, the text points out that in many Member States, the statutory salary is lower than 60 per cent of the median gross wage and/or 50 per cent of their average wage, on the contrary, the Member States with high collective bargaining coverage have lower percentages of low paid workers and higher minimum wages.

As mentioned above, however, each country will be able to achieve the envisaged objectives either through the use of legal minimum wage determination or through collective bargaining.

The Directive stipulates that countries with a statutory minimum wage must take the necessary measures to ensure stable and clear criteria for determining and updating the minimum wage, also with the participation of the social partners. With the agreement of 7 June 2022, the Council and the European Parliament also stipulated that statutory minimum wages should be updated at most every two years (four years where countries use an automatic indexation mechanism).

Concerning collective bargaining, the proposal originally considered a collective bargaining coverage of at least 70 per cent of the employees as sufficient, this threshold was raised to 80 per cent following the agreement of 7 June 2022. It is further stipulated that failure to reach the threshold will lead to the definition of a public action plan to promote it, in consultation with the social partners.

All in all, what can be said about the Directive on Adequate Minimum Wages in the European Union is that it represents yet another demonstration that the strength of the union lies in its inclusiveness. Even though the minimum wage is a topic that arouses debate and division among the member states – 22 out of 27 states have a statutory minimum wage, while the remaining 5 manage the salary question exclusively through

national collective agreements – the EU Directive seems to bring everyone on board. Indeed, even after various attempts by countries opposed to the Directive such as Sweden and Denmark, what has resulted from European political bargaining is a Directive, somewhat diluted, but with enormous future perspectives. Indeed, it can only be a directive that sets the goal of adjusting the minimum wage to the rising cost of living and increasing the national coverage of collective bargaining, as it is up to individual countries to define through national provisions how these goals are to be achieved. The directive does not preclude the competence of individual member states to regulate minimum wage levels independently. No provision of the directive can determine for each state the obligation to introduce a statutory minimum wage, where wage formation is exclusively guaranteed by collective agreements and the obligation to declare a collective agreement universally applicable. In this way, the Union does not violate the principle of subsidiarity and likewise closes the legislative process of yet another, but necessary, step forward for an increasingly social Europe.

Moreover, in light of the prevalent path of EU economic and social policy in recent decades, the Directive on Adequate Minimum Wages marks a paradigm shift in favour of a more social Europe. Its approval would prove that the cultural asymmetry of European integration does not constitute a natural course set permanently, but that it can in certain situations be overtaken by social forces striving for the social reintegration of liberalised markets. The considerable decline in the legitimacy of the European integration process manifested in the strengthening of right-wing populist movements with a distinctly nationalist and anti-European orientation has led to a political impulse towards a more social focus of EU policy. The Covid-19 pandemic has even boosted this enthusiasm, encouraging a sort of 'emergency pragmatism' in the Union, which has made it easier to take many policy measures, particularly in the realm of economic policy, that were regarded as inconceivable only a short time ago.¹⁴⁸

Obviously, there is no automatic process that a more social Europe will materialise. Important social forces and significant fault lines that might stall social progress still exist. This might occur for the minimum wage directive. The Directive is not a seemingly magical solution to solve the complicated problem of in-work poverty and wage inequality. Rather, it shows an expected long-term change in the prevailing vision of the role of minimum wages and collective bargaining. Moreover, it even goes a step further by setting procedural rules that place on Member States the burden of implementing improvements. Directive (EU) No. 2022/2041 becomes likewise crucial for safeguarding the working conditions of European citizens as it prohibits regression to less favourable conditions and punishes them with sanctions. In fact, the Directive does not allow a reduction in the levels of protection already enjoyed by workers in the member states with regard to minimum wages. Each individual EU state is free to apply or introduce better rules than the general rules, more precisely, each individual country can increase the legal minimum wages. The Member States

¹⁴⁸ Schulten, T., Müller, T., *A paradigm shift towards Social Europe? The proposed Directive on adequate minimum wages in the European Union*, p. 16, 2021

determine the provisions for sanctions in case of violation of rights and obligations within the scope of the Directive under scrutiny. Finally, the sanctions provided must be dissuasive, effective, and proportionate.

But now more than ever it is up to domestic political actors to adopt the necessary political measures to substantially raise minimum wages and reinforce the coverage of collective bargaining. Member States shall take the necessary measures to comply with this Directive by 15 November 2024 by communicating to the Commission the text of the main provisions of national law that they adopt in the field covered by this Directive.

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Abstract

This thesis seeks to empirically analyse and review the Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union and the literature concerning social and labour policy in the specific view of wage protection and tries to understand if an EU-wide wage scheme can afford two crucial claims, decent living and working conditions. The thesis work is made up of three chapters and a conclusion, which is the stage to answer to the research question of why the Directive under analysis can be considered an example of inclusive decision-making.

Chapter 1

The first chapter identifies the context of the analysis outlining the historical overview of the European social dialogue on minimum wages. The extensive use of literature has been crucial in the drafting of this chapter, as authors such as T. Schulten and T. Müller provide solid foundations and historical references to best describe the European social commitment to securing rights for workers. The analysis begins with the first timid attempts to implement a European minimum wage policy already in the early 1990s, when the European Union promulgated the so-called “Community Charter of the Fundamental Social Rights of Workers”. As the fulcrum of the charter, workers finally receive the proper attention to guarantee them a fair wage, although the document has never become a legally binding one. During all 1990s, the commitment of the European Commission and the Parliament in response to the question of a European-wide coordinated minimum wage policy was considerable. Moreover, many EU countries adjusted their policy orientation towards a growth-promoting flexibilization of labour markets rather than the restriction of the low-wage sector. However, from the end of the 1990s, the Commission did not attempt to establish a European minimum wage policy.

In the aftermath of the 1990s, which had been rather far-reaching with respect to social and labour policy, European social initiatives slipped behind over the next two decades. Nevertheless, especially issues related to labour policy, like the regulation of work relations or pay and collective bargaining policy, acquired evident relevance following the financial crisis of 2008. Through the new European economic governance emerged in response to the crisis at the EU level, resulting therein in a variety of new patterns of economic policy coordination, European labor policy likewise arose in its own right as a distinct new strategic policy field. The return to a new strategic emphasis on labor policy stems mainly from the prevailing neoliberal crisis narrative, which is centered on the absence of price competitiveness, the main reasons for an overly high labor cost and heavily regulated labor markets. The issue of wages and collective bargaining has come to the fore as a central area of the new European labour policy, where the Commission has deployed new economic governance mechanisms to shape national governments to an unprecedented scale. This phenomenon was by far most evident in member states such as Portugal or Greece, which received loans under the European Stability Mechanism while having to fulfil extensive political conditions in return

monitored by Troika. In essence, the main consequences of the conditions set by this triple body are all intended to decrease or freeze salaries, especially minimum ones, and weaken collective bargaining systems in favour of the decision-making prerogatives of companies.

The outcomes of how the crisis was managed on the basis of the new European labour policies have been dysfunctional for the EU in several respects. Firstly, from a social point of view, they have contributed to increasing poverty and job insecurity, as well as to further increasing social inequalities in the EU as a whole. Secondly, from an economic perspective, they have further undermined the domestic growth potential of many nations and significantly boosted economic dependence on exports. And finally, in terms of politics, they fostered a more Eurosceptic attitude among European citizens and also undermined the public perception and legitimacy of political systems as a whole, both at the national and EU level, thereby leading to the electoral victories of populist right-wing parties. In this context, since the middle of 2010, it is possible to notice a distinct shift in the EU discourse. Indeed, according to the academics T. Schulten and T. Müller, the new orientation of the EU discourse is characterised by the Social Europe formula, under which employment protection standards and social security systems have a key function in guaranteeing economic development and political stability. Such a change was mirrored by the adoption of the European Pillar of Social Rights in 2017, which paved the way for the Proposal for a directive on a framework for adequate minimum wages in the EU.

The von der Leyen Commission, in charge since 2019, has targeted to go further than just symbolic statements by pushing forward a series of legislative initiatives in the labour and social policy field. Among these is the proposal for a common European legal framework for an adequate minimum wage. The narrative employed to support the proposed directive appears to be nothing less than a proper counterprogram to what was advocated in the preceding crisis. The EU Commission has put forward, for the first time, a practical legal proposal for a common coordination across Europe of national minimum wage policies, aiming at significantly expanding both the level and scale of minimum wages and collective bargaining in Europe. Adequate minimum wages and comprehensive collective bargaining were no longer considered barriers to economic growth and competitiveness but rather acknowledged to be significant institutional prerequisites for inclusive and sustainable economic performance. After discussion in the Council and Parliament and numerous criticisms, particularly from northern European countries, the proposal passed in a somewhat 'diluted' form on 4 October 2022. The Directive (EU) 2022/2041 will help to promote the adequacy of legal minimum wages and thus contribute towards decent living and working conditions for people in Europe. The ball is now in the Member States' court, which have two years to transpose the directive into national law.

Chapter 2

The second chapter focuses on a theoretical, practical and critical analysis of the (EU) 2022/2041. The directive envisages, in particular, a framework of rules aimed at promoting collective bargaining on wage determination and at ensuring the adequacy of statutory minimum wages wherever they exist. The study

initially develops by focusing on two main aspects: the criteria for adequate minimum wage levels and its possible impact on European workers, and the ways to strengthen collective bargaining. The Directive provides, in a nutshell, that EU countries should guarantee 80% collective bargaining coverage and entrusts Member States to determine the level of the minimum wage compared to other salaries indicating as possible benchmarks values of 50% of the average wage or 60% of the median wage. The benchmarks values that the Directive suggests, which are currently reached by only a limited number of Member States, would probably function as strong signals for national governments and might result in political pressure to push the minimum wage up to such levels. Under the Directive, the criteria for an adequate minimum wage ought to apply only to Member States where the minimum wage is set by legislation because there should be no interference with collective agreements. Therefore, this part of the Directive does not apply to the Nordic EU countries such as Denmark, Sweden and Finland or to Austria and Italy, where only collective agreements can determine minimum wages. In response to concerns expressed by Denmark and Sweden, the Directive also clearly states that those Member States that do not have a statutory minimum wage will not be obliged to introduce one.

Besides setting a common framework for statutory minimum wage criteria, the second key target of the Directive is to reinforce independent collective bargaining. It is a commonly known fact that exists a significant correlation between the coverage of collective bargaining, the extent of wage dispersion and the scale of the low-wage sector. Member States having higher bargaining coverage usually have a much lower wage dispersion and a smaller low-wage sector. Overall, strong bargaining coverage appears to be a significant institutional precondition to promote adequate minimum wages. On the contrary, an appropriate wage level is not only attained through statutory minimum wages, indeed, it also demands a comprehensive system of collective bargaining and a broad level of bargaining coverage. Many countries have a considerable wage premium from collective bargaining, meaning that employees whose salaries are determined by a collective agreement earn significantly more than those not covered by a collective agreement in conditions that are otherwise comparable. In this context, a further purpose of the Directive is to boost national collective bargaining systems by requiring all Member States with less than 80% collective bargaining coverage to engage in a national dialogue with trade unions and employers' associations to foster collective bargaining at the sectoral and inter-sectoral level and to implement a concrete action plan for promoting collective bargaining.

The analysis further develops by focusing on the criticism towards the directive. It is hardly surprising that the Directive has been hotly contested and met with considerable political resistance. Starting with most European employers' organisations, which are naturally uninterested in strengthening the employees' side, who completely reject this initiative. The strongest criticism also comes from Denmark and Sweden, in which almost every social actor, ranging from the government to employers, trade unions and all the main political parties on both the left and the right, deny the Directive as a threat to the 'Nordic model'. Another fault line mirrors the socio-economic and political attitudes of the stakeholders involved. A fourth fault line

is a legal one. The main critics of the Directive have claimed that the EU does not have any regulatory power in the area of wage policy. This view is justified on the basis of Article 153(5) of the Treaty on the Functioning of the EU, according to which wage determination is explicitly excluded from the EU's regulatory powers in the area of social policy. Moreover, considering the opinion of academics such as P. Skedinger, who critically analysed the economic outcome of employment and poverty as a result of the new Directive, it can be drawn that the job losses associated with a substantial increase in minimum wages are underestimated, whereas the poverty reduction foreseen by the Commission is exaggerated.

Analysing the criticism is necessary not only to understand the points of view of the different actors, as well as member states involved, but also as evidence of the considerable EU decision-making and negotiation efforts to achieve the ultimate goal, which is the approval of the directive itself.

Chapter 3

The third chapter is a consideration of the extent to which the European social model has been fundamental to the development of cutting-edge and evolving labour and social policies. Indeed, Directive (EU) 2022/2041 is examined as a result of Europe's resilience in the area of support and guarantees for workers, issues that have been revived in recent years following the pandemic crisis. In recent times, the institutions that once were counted on to safeguard the wages, conditions and job security of workers are eroding. The number of trade union members has declined in most countries since the 1980s and in many of them traditional forms of 'common regulation', such as collective bargaining, have been introduced. An increasing percentage of workers are employed precariously on temporary or short-term contracts or through platforms without the traditional protections available to employees. To meet these challenges, new ways to protect workers are emerging. Within some countries, governments have advanced new forms of regulation to address corporate structures contributing to workers' insecurity. Trade unions and EU organisations have also evolved innovative strategies for workers whose insecurity complicates conventional forms of organisation and bargaining. Against this backdrop, the academic B. Colfer argues that the so called 'web of rules' that has underpinned standard employment contracts since the end of the Second World War has been substituted by a 'patchwork' of rules comprising joint regulation, employer-driven voluntarist mechanisms, and legal minimum standards to improve labour protections and to address the growth of non-standard forms of work.

Despite the pursuit of new forms of institutional arrangements to safeguard labour standards, what arose from the study is that within the European framework, EU policies and legislation have been instrumental in introducing, revising, and contracting various rules in the area of social and labour policy at various times in the last seventy years. More generally, the European Union has reshaped the landscape of the Union's social and labour policies through the development of what has been called the European Social Model, probably until its destruction, or at least its deterioration, after the 2008 financial crisis, to its potential recovery on the heels of the global pandemic. The European social model is a controversial term employed by policymakers,

scholars and analysts to refer to the desire shared by members of the European political elite and EU decision-makers to foster economic growth and social cohesion simultaneously. In recent decades, because of the trend towards liberalisation in Europe and especially in the aftermath of the post-2008 crisis and the responses of the Union to it, it was widely believed that the European Social Model had been inevitably damaged by the EU's measures. In particular, the bailout agreements negotiated by the European Commission with countries like Greece, Portugal and Ireland beginning in 2010 were subordinated to austere labour market reforms that fostered non-standard jobs and a downward push on labour and wage conditions. However, by the time the peak effects of the COVID-19 pandemic started to fade in Europe by mid-2021, there were reasons to be cautiously optimistic about the revival or reinvention of the European Social Model.

The outbreak of the COVID-19 pandemic caused an unprecedented mobilisation of financial and other resources at the national and EU levels. National governments implemented new forms of social protection and income support for people and companies that incurred economic losses due to the pandemic. Meanwhile, in a crucial way, the EU is providing financial support straight to the regions most impacted by the pandemic through the Next Generation EU Recovery Programme and a temporary instrument to mitigate the risks of unemployment through the Support to mitigate Unemployment Risks in an Emergency (SURE). However, even during the years before the start of the pandemic, the EU was becoming a key player in shaping a comprehensive set of rules. In 2020, for instance, the Commission released the famous proposal for a Directive on Adequate Minimum Wages in the European Union. This can inevitably be seen as a form of revival of the European Social Model, which once again puts the spotlight on a long-lasting but totally current debate. Precariousness and very low wages have been in the crosshairs of European criticism in recent years, and it is no coincidence that the Adequate Minimum Wage Directive intervenes to address these problems.

Furthermore, the analyses further develops on how political dynamics have overcome territorial and institutional differences between member states in the implementation of the Directive. The vast heterogeneity between national wage-setting systems had acted as a brake on a topic that would quickly put at odds not only between lefties and righties but more generally between countries with different social models and trade union traditions. However, the path of the directive, as seen in the previous chapters, was not without obstacles. Despite the convinced supporters of the European trade union confederation (ETUC), in northern European countries, especially in Denmark and Sweden, governments, trade unions, and parties of all colours strongly opposed the measure and obtained substantial concessions. The directive, which came out in a 'watered-down' form of the necessary mediations in the EU Council, does not touch the national models that still function effectively, especially the 'Nordic' model of non-interference of the state in matters of bargaining and wage setting. Instead, the directive is a pivotal instrument for giving trade unions a voice where they are weak, such as in many Eastern European countries, where they have been relegated to an extremely marginal role following the post-socialist transition. Moreover, the directive gives complete

respect for the autonomy of social partners which execute their roles in formulating collective bargaining agreements in total recognition of the subsidiarity principle, even in a complex policy field which has historically been a central domain of EU Member States and a tough area for the EU.

Finally, an outline of the wage issue in Italy is analysed with a reflection on the possible contribution of the Directive to the state. Italy, along with Austria, Denmark, Finland and Sweden, belongs to the countries where the minimum wage is not determined by law, but by collective bargaining. Even in view of the high coverage of collective bargaining – over 80% and equal to 100% if the data include the worker's possibility of obtaining the minimum wage set by national collective agreements through the courts – Italy should therefore represent a virtuous model. However, with specific reference to Italy, the directive risks being almost counterproductive. In asserting that the best instrument to raise wages is collective bargaining with high coverage, it may become an easy alibi for not intervening at all and shelving the debate on the possible introduction of a legal minimum wage. On the other hand, such a debate must continue since it is clear to all that, despite collective bargaining, Italy has one of the highest rates of in-work poverty and inequality in Europe and wages among the most stagnant. Under a different and less investigated profile, the directive could, however, make a significant contribution to the wage issue in Italy by providing the impetus to proceed to give the collective bargaining system the form of law that is compatible with Article 39 of the Constitution. In other words, the State could finally intervene to at least establish the categories and better select the stakeholders.

To conclude, what can be said about the Directive on Adequate Minimum Wages in the European Union is that it represents yet another demonstration that the strength of the union lies in its inclusiveness. Even though the minimum wage is a topic that arouses debate and division among the member states – 22 out of 27 states have a statutory minimum wage, while the remaining 5 manage the salary question exclusively through national collective agreements – the EU Directive seems to bring everyone on board. Indeed, even after various attempts by countries opposed to the Directive such as Sweden and Denmark, what has resulted from European political bargaining is a Directive, somewhat diluted, but with enormous future perspectives. Indeed, it can only be a directive that sets the goal of adjusting the minimum wage to the rising cost of living and increasing the national coverage of collective bargaining, as it is up to individual countries to define through national provisions how these goals are to be achieved. The directive does not preclude the competence of individual member states to regulate minimum wage levels independently. No provision of the directive can determine for each state the obligation to introduce a statutory minimum wage, where wage formation is exclusively guaranteed by collective agreements and the obligation to declare a collective agreement universally applicable. In this way, the Union does not violate the principle of subsidiarity and likewise closes the legislative process of yet another, but necessary, step forward for an increasingly social Europe.