

# Global Workplace Law & Policy

## Building resilience in the labour market

David Mangan (Maynooth University (Ireland)) · Tuesday, January 11th, 2022



*Is the European Commission's proposed directive on adequate minimum wages an attempt to build resilience into the labour market?*

The European Commission's proposed directive on adequate minimum wages ([Directive on adequate minimum wages in the European Union COM/2020/682 final](#)) has elicited strong opinions. (The Commission's *Impact Assessment* also adds to the discussion.) The adequate minimum wage is one part of the Commission's larger agenda (including "reducing inequalities, defending fair wages, fighting social exclusion and tackling poverty"), as outlined in the [Porto Declaration of May 2021](#). Monthly minimum wages range from €332 in Bulgaria to €2202 in Luxembourg.

Since its release on 28 October 2020, this proposal has understandably generated significant discussion, as well as strong opinions (from its [not going far enough](#), to it is a step too far, as [Denmark maintains](#) – though [Sweden recently supported the measure](#). [One employer group argued it should be a recommendation, instead of a directive](#)). Examples of debate range from [academic engagement](#) to [position papers](#). If we may summarise the matter in an overly simplistic manner using the Commission’s wording, this proposal “aims to ensure that workers in the Union are protected by adequate minimum wages allowing for a decent living wherever they work.” If there is agreement on this point, the more significant challenge is to determine the “adequate” in minimum wage. The Commission has set thresholds which are shown here to be starting points for a larger discussion as to how the EU Commission engages with Member States to achieve a decent living for workers.

### **Momentum for Building Resilience?**

There is some momentum for what might broadly be called an agenda for resilience. It should be unsurprising that there are reports of opposition to the proposal, [even from Member State governments](#). The EU Commission’s draft directive should be viewed as bold step. It is not only launching an effort to address decent living at the lower income end of the labour market. It, additionally, links this effort to another significant step, an embedding of social dialogue by way of collective bargaining. The question raised by these two steps is whether worker remuneration has been so weakened by years of “globalisation” that drastic government action (such as the present proposal) is required.

The Covid-19 pandemic has certainly provided an opportunity for assessment; as the pandemic has spotlighted several issues, with the labour market being one. We can look at the United Kingdom (which is charting its own path after departing from the European Union) as the government has embarked on an agenda of “levelling up”, through which government targets ways to improve productivity levels. “The most important pillar in our approach to levelling up is supporting individuals across the UK to reach their potential, investing in people in every place and region”: [Build Back Better](#) (HM Treasury, 2021). (Levelling up (itself a vague phrase as used by the government), at the start of 2022, however, seems to be stalled.) The UK seems to have borrowed the now-familiar platform of, then-candidate for the United States presidency, Joe Biden. [Build Back Better](#) has focused on the middle class – “This framework will set the United States on course to meet its climate goals, create millions of good-paying jobs, enable more Americans to join and remain in the labor force, and grow our economy from the bottom up and the middle out.” Here too, [Build Back Better](#) seems to have encountered obstacles.

For its part, the Commission saw a need for this proposal earlier. The EU’s proposed directive predated the pandemic as it was outlined in Ursula von der Leyen’s *Political Guidelines* as a candidate for the Presidency of the EU Commission. There she wrote: “[I will propose a legal instrument to ensure that every worker in our Union has a fair minimum wage](#).” (emphasis in original) The financial resilience of the population (particularly those at the lower end of income) is one theme coming from these agendas. (Some may recall Nassim Nicholas Taleb’s *Anti-Fragile*, a concept he saw as distinct from resilience.)

We may even draw from the 2021 Nobel Prize for Economics. For some time, the argument against raising the minimum wage has been the financial peril that would ensue for businesses. As the Nobel Committee stated in awarding David Card a Nobel Prize in Economics, he “has analysed the labour market effects of minimum wages, immigration and education. His studies from the

early 1990s challenged conventional wisdom, leading to new analyses and additional insights. The results showed, among other things, that increasing the minimum wage does not necessarily lead to fewer jobs.” (The Royal Swedish Academy of Sciences 11 October 2021). One example of Card’s research is his work with the late Alan B. Krueger in “Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania” (1994) 84 *The American Economic Review* 772.

## Competence

The competence of the EU to implement this directive has been a focal point of discussion. The Commission anticipated this challenge and has arguably sought to parse out a novel space for its proposal. The Commission is banking on some form of consensus coalescing around a need to act. And so, the question really is: what can the Commission do in relation to adequate minimum wages across the jurisdiction?

The Commission set out its legal basis in the Explanatory Memorandum to the proposed Directive. The proposal argued that it did not violate (in particular) Article 153(5) of the [Treaty on the Functioning of the European Union](#) (TFEU). The Commission contended that the directive is consistent with the supporting and complementary role of the Commission with regards to Member States and working conditions. There is certainly a fine distinction being made when we consider that the Commission’s motivation, in part, has been to address “the large differences in standards for accessing an adequate minimum wage” which it views as “part of working conditions”. Accepting that “important discrepancies in the Single Market ... can be best addressed at Union level”, and that they can raise cross-cutting issues regarding the dignity of working life, some form of harmonisation of or some uniform parameters for the setting of the minimum wage within the EU may be unavoidable.

One hurdle of a number for this proposal may be the Commission’s past statements: “In the Commission’s view, wage-setting is a matter for the Member States and the two sides of industry alone. ... It is not the task of the Community to fix a decent reference wage. This concept corresponds to different criteria from one country of the Community to another and should be defined at the level of the Member States.”: [Communication from the Commission Concerning its Action Programme Relating to the Implementation of the Community Charter of Basic Social Rights for Workers](#) (9978/89, COM (89) 568 Final; 29 November 1989).

## Setting the Minimum Wage

Subtle or otherwise, the proposed directive steers the determination of a minimum wage at Member State level in the direction of collective agreements (a method used by 6 Member States). Most of the Member States set their minimum wage through a statutory process. The latter form has been the subject of pointed comment in the proposal. Where there is a statutorily set minimum wage, the wage is fixed at a low level, in the Commission’s assessment: lower than 60% of the gross median wage and/or 50% of the gross average wage in almost all Member States. Still, many workers remain outside of collective agreement coverage. (Collective bargaining will be discussed later.)

### *The example of Belgium*

Belgium offers an interesting case study for the adequate minimum wage where there is no statutory framework in place, but high collective bargaining coverage. Minimum wages are not set

regularly, but they are automatically increased when a 2% increase in prices is reached; which was met in March 2020 (€1625.72/month). Increases can arise outside of this threshold, but this method relies upon a bipartite collective agreement reached by the National Labour Council (2008 was the last time this agreement was achieved). The country's National Labour Council could not come to a unanimous opinion on the proposed adequate minimum wage directive. Its opinion was divided between worker organisations (largely for) and employer associations (against): [Opinion 2.198 \(5 Feb 2021\)](#).

With the Covid-19 pandemic, a decision was made to freeze the minimum wage for 2021. Belgium was one of four Member States to do this. On 29 March 2021, the Belgian Government set the “wage norm” for 2021–2022 at .4%. This decision was viewed as quite low by labour, and resulted in a national day of strike on the same day. (The “wage norm” is a maximum rate for the increase of wages that factors in wages in neighbouring countries. The premise of the wage norm is to promote employment, and to protect competitiveness.)

Focusing on the minimum wage for Belgium in 2021 as a number offers some contradictory views. This minimum wage is [the fourth highest amongst EU Member States](#). As of 1 April 2022, the monthly minimum wage will be €1702. Belgium is also one of six countries where the minimum wage has progressed below average wages between 2009 and 2021. According to Eurostat's July 2021 report, [the purchasing power of workers in Belgium on minimum wage was approximately €1400/month](#) In 2018, Belgium sat at 50% where minimum wage was a proportion of median gross earnings. These figures can be deployed in differing ways with regards to the proposed directive and its contents. Belgian employers may contend that the figure is already quite high, bearing in mind the wage norm. Conversely, Belgian workers can argue that the jurisdiction has been on a decade-long decline, exacerbated by the diminished purchasing power of the minimum wage.

Belgium is not alone in having this conflicted situation. Ireland has the second highest minimum wage at €1723.80– €10.50/hour as of 1 January 2022 (a rise of 3% from 2021 which was €10.20). And yet, [this wage diminishes significantly when factoring in the cost of living](#). This divergence arises even with a statutory commission (the [Low Pay Commission](#), which has been in place since 2015) charged with setting the rate each year.

### **Collective Bargaining**

This portion of the proposal has garnered less attention – though opinions are not meek (see for example [CEEMET's criticism of the inclusion of collective bargaining](#) in the proposal). One reason for this may be the relatively light treatment of the topic within the proposed directive itself. It largely consists of Article 4 which identifies points that shall be considered in determining the minimum wage at Member State level. It should be noted that the opening phrase of Article 4(1) states: “With the aim to increase the collective bargaining coverage Member States shall take”. As part of this aim, a 70% threshold has been asserted. Where a Member State's collective bargaining coverage falls below that figure, the Member States shall in addition provide for a framework of enabling conditions for collective bargaining, either by law after consultation of the social partners or by agreement with them, and shall establish an action plan to promote collective bargaining.” Note also that there is language about collective efforts in relation to platform workers in the [EU Commission's proposed directive on improving working conditions in platform work](#), which was released 9 December 2021.

Ireland has a low trade union density (26.2% in 2020), and its collective bargaining coverage was 34% in 2017. According to this same OECD dataset, Belgium, however, has a remarkable 96% collective bargaining coverage, with Trade Union Density in 2019 at 49.1% (the figure dipped below 50% for the first time in the 21st century).

Belgium tests the boundaries of the existing proposal. It has high collective bargaining coverage, and a high (amongst Member States) minimum wage. Does Belgium actualise the proposal's aims, or should it too adjust? Independent of the discussion on setting an adequate minimum wage, the insertion of a collective bargaining framework stands out as particularly bold given the general languishing of collective bargaining coverage within the EU.

As we continue *Global Workplace Law & Policy*, we are interested in your thoughts on the blog, its postings, and any topics that you may suggest.

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