

## **Non-paper on a European wage policy initiative and other social policy proposals**

Several EU Member States currently have problems with dysfunctional labour markets. Resource utilisation is low. The wage share is often falling, and wages are low. There are few opportunities for full-time work. The problems are greatest in Eastern Europe, where functioning self-regulatory collective agreement models have rarely been put in place. There are similar problems in southern Europe, where in many cases collective agreement systems have been removed under neoliberal economic governance and the consequences of the euro crisis measures remain. But also in Western Europe a changed labour market presents challenges: zero-hour contracts and “self-employment” without the right to a social safety net are examples of this.

The low wages, combined with difficulties in earning a living wage, have repercussions on several levels in some of the Member States. First and foremost for individuals, but also national economies suffer from a lack of demand and lower growth. The promise of a better future has stagnated in many places.

For Member States with well-functioning labour markets, this development is a challenge. Free movement within the Union increases pressure on labour markets in other countries. This increases the risk of undercutting competition. Political tension increases and right-wing populism advances.

The need for a strong social Europe is greater than for a long time. Remedying this situation requires measures that can make a real difference in the Member States, while safeguarding party autonomy of the Treaty. Several types of initiative with different substantive provisions are required in order to increase social cohesion, to reduce undercutting competition and to prevent brain drain. Pay and conditions in their own Member State must be attractive enough to ensure that workers do not move across borders for the sole purpose of obtaining a living wage. Freedom of movement should be an option, not a force of necessity.

To achieve this, we see the need for two main initiatives; first a wage policy recommendation, and secondly, a collective agreement recommendation. There is also a need for a third initiative. Rules on public procurement, funding, grants, structural funds and CAP payments should support collective bargaining. Tenders in public procurement must ensure full respect for and support collective agreements. However, this third initiative will not be further developed in this paper.

### **Social Europe is to create the framework for self-regulation by the social partners**

The traditions of the labour market vary widely from one Member State to another. Many Member States are characterised by a high degree of government control. Other Member States give the social partners the primary responsibility to regulate the conditions under which labour is bought and sold.

Successful labour market models contribute to stable wage cost development and provide real wage increases. Wage formation should contribute to flexibility of the economy and enable adjustments. Resource utilisation must also be effective, and pricing must contribute to employment. A well-functioning labour market model must also lay the foundations for industrial peace and fair distribution of wages.

Overall, self-regulatory labour market models are the most successful and effective in the long term. The role of the State in such labour market models is essentially to create the conditions for trade unions and employers to regulate wages and conditions of employment. Initiatives by the European Commission in the area of wage policy should have the same starting point.

A strong social Europe should contribute to strengthening the framework for the social partners to regulate conditions. Social Europe cannot – and should not – replace national provisions. Instead, they must support the creation of a regulatory framework which, on the basis of national traditions and practices, strengthens the interests of workers in Europe.

### **Recommendations must be the legal form**

The choice of legal form for an initiative in the area of wage policy is crucial. The same applies to proposals which could strengthen the self-regulation of the social partners. The directive route is not legally viable as wage conditions along with the right to strike and the right of association are excluded from the scope of Article 153 (TFEU Article 153.5). In order to establish a social Europe based on nationwide collective agreements, Article 153.5 must be interpreted strictly. The ultimate purpose of this Article is to protect the autonomy of the social partners. The safeguarding of the autonomy of the social partners is a necessary prerequisite for building robust collective bargaining systems. Moreover, taking the directive route is deeply politically inappropriate. Resistance is strong in several Member States. Not least in the Nordic countries, there is very strong opposition.

For example: in Sweden, the issue of EU legislative competence in the wage policy area was a crucial issue in the context of the 1994 EU membership referendum. The Commission promised that the Swedish collective agreement model would not be affected by membership. At that time the Commission referred to Article 153.5 of the TFEU as protection of the Swedish collective agreement model.

A more viable route in compliance with the Treaty is the recommendation route. The advantages of using the legal form of a recommendation are numerous. There is a wide variety of labour market models within the EU Member States. A recommendation can allow for differences and does not risk causing unintended harm. On the contrary, a directive is binding on all Member States in the same way and also risks undermining the advantages of self-regulation models, and this at a time where more and more institutions and research institutes emphasise its potential.<sup>1</sup>

A crucial argument for recommendations is that this makes it possible to actually strengthen social Europe. The realisation of a more social Europe by building and strengthening

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<sup>1</sup> See for example the OECD report *Negotiating Our Way Up, Collective Bargaining in a Changing World of Work*, 18 November 2019.

nationwide collective agreements at industry level requires a differentiated approach, taking into account national traditions and conditions. Universal solutions to be applied to all Member States risk being directly counterproductive. Organically developed, and strong, collective bargaining models will suffer serious harm if European policy in this area is too interfering and one-dimensional. It has been argued that the institutional process on recommendations will exclude the European Parliament. However, that's not necessarily the case. There are prior examples on recommendations adopted jointly between the Council and the European Parliament.<sup>2</sup>

Adoption of a directive to increase wages in Europe would be very risky. It would mean that the EU institutions would assume competence contrary to the Treaty. In this context, it should be recalled that the same instrument could be used in the long term to reduce pay levels in the Member States. A wage policy directive thus constitutes a Pandora's box.

Instead of being caught up in political opposition over a proposal for a directive, perhaps even action for failure to fulfil obligations before the European Court of Justice, an initiative enabling European action should be presented. There is momentum for a social Europe. It would be very unfortunate if it were wasted due to misguided ambitions to harmonise widely differing labour market systems.

Well-designed recommendations linked either to the term system or the conditions for social funds could make recommendations effective, while having a social Europe built on the foundation of strengthened collective bargaining institutions.

### **Self-regulation models have many advantages**

In European contexts, the Nordic models are often highlighted as exemplary. However, the foundations of the Nordic models are all too rarely highlighted. Essentially, it is a matter of employees and employers having a decisive influence over the conditions to be applied. Those who buy and sell labour can collectively determine the price of labour. Thus the rules can gain broad legitimacy. Self-regulation can change and balance local power relations. It makes a difference in the variegated power relationships of real life.

Collective self-regulation puts power over wage formation in the hands of the social partners centrally and locally. Through collective agreements, most of the disputes in working life can be resolved without legal proceedings. Collective agreements make it possible to have strong responsible social partners that maintain their agreements. Collective agreements allow employers to secure industrial peace and stable conditions for their activities, but they also require strong representative trade unions.

Collective agreements can provide longer-term stability of production than the more short-term fluctuations of politics. If the social partners are given the opportunity to take responsibility, they take it. At the same time, systems with high levels of self-regulation have

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<sup>2</sup> Recommendation of the European Parliament and of the Council of 18 June 2009 on the establishment of a European Quality Assurance Reference Framework for Vocational Education and Training 2009/C 155/01

proved to be well placed to adapt rapidly to changing circumstances, for example in times of economic crisis.

Also for the State, collective self-regulation has many advantages. Regulation can be adapted to the conditions of the different sectors and branches of the economy. In Sweden, for example, there are just over 600 national agreements on the labour market. Regulation can also be adapted to local conditions. Effective collective self-regulation means that the State does not need to be exposed to conflict and politicisation of labour market problems. The State is released from being responsible for a political area with strong conflicts of interest and instead can focus on other issues. For politicians who want to address societal issues responsibly, collective self-regulation relieves pressure.

Collective self-regulation also benefits the social partners. If the social partners can bear responsibility for the labour market, it also means that they gain power over the issues that immediately and directly affect them. Collective self-regulation also gives power to unions, which generally provides a better balance both in the labour market as a whole and at individual workplaces. Self-regulation creates a good framework for improving working conditions in general, as well as a safer work environment.

A weakness of collective self-regulation is that it does not have the legal claim of state regulation, or of (erga omnes) extension of collective agreements, to cover all situations. Not all workers have terms and conditions of employment laid down in a collective agreement. Nor are all employers bound by collective agreements. The Commission sometimes raises the issue. The problem is essentially theoretical. In countries with strong self-regulation, such as Sweden, in practice almost everyone works with wages and conditions that correspond to the levels in the collective agreements. In fact, the level of cover may be the same as in a system with erga omnes extension of collective agreements. In practice, self-regulation systems generally provide a higher level of protection for workers. Another weakness of collective self-regulation is that it is sensitive to certain types of political interference, whether from national parliaments or from the EU institutions.

### **What can a recommendation in the area of collective bargaining achieve?**

In order to strengthen the regulation of collective agreements in the Member States, the conditions for self-regulation of the labour market by the social partners need to be improved. A recommendation must therefore focus on the three basic prerequisites for the functioning of a self-regulatory model.

1. First, the possibility of organising members. How do Member States support the social partners, both workers' and employers' organisations, to organise themselves on a voluntary basis? In this context, it is extremely important to stress that it is a matter for the Member States to report what action is being taken to create the conditions for organisation. These include capacity building investments for both workers' and employers' organisations, trade union access to workplaces, protection against harassment by employers, trade union leave, trade union continuing training, tax relief for membership of workers' or employers' organisations.

2. Second, the possibility of regulating wages and conditions of employment by means of collective agreements. Can the collective agreements diverge from the provisions of the law? Can the changes be both to the benefit/disadvantage of workers? The scope of the confidence the State may have in the social partner's agreement depends to a large extent on the strength of the social partners and may vary. A recommendation should reflect the measures taken by the Member States to strengthen collective agreements, as well as how interaction with legislation is designed. For example, it may be the case that Member States are required to disclose their reasoning on collective agreements being discretionary and what they are doing to strengthen the role of collective bargaining.
3. Third, the conditions for ensuring compliance with collective agreements. The ideal situation is that workers 'and employers' organisations themselves ensure compliance with collective agreements. But in practice, supporting measures by the State are required. For example, governmental labour inspections, mediation and labour courts, involving the social partners, may contribute indirectly and/or directly to strengthening compliance with collective agreements. A recommendation should require Member States to declare measures to strengthen compliance with labour legislation. This may be a matter of presenting structural measures or giving an account of changes in the number of labour inspectors in the country.

#### **What can a recommendation in the area of wage policy achieve?**

A recommendation in the area of wages should mainly address the 22 Member States that have statutory minimum wage systems. In these countries, the primary responsibility for wage floors has been taken over by the State; certain types of recommendations should therefore be possible to be addressed to the Member States without prejudice to the social partners' self-regulation through collective agreements. A recommendation in the area of wage policy can be complementary to recommendations aimed at promoting self-regulation through collective agreements.

Recommendations should create a dynamic which gradually increases national statutory minimum wages more rapidly than average general wage increases. The large differences in minimum wage levels between different countries should be reduced. To achieve such a process, as a first step the recommendation should focus on three areas.

1. First, transparency needs to improve; the statutory minimum wage levels should be reported in a uniform manner on the basis of common guidelines throughout the Union. Common calculation methods would enable useful comparisons, in an area where these are often lacking.
2. Second, the social partners' influence over the processes leading to minimum wage adjustments needs to be strengthened. A recommendation should provide guidance on how Member States can ensure the social partners' influence over the processes. More effective national models build on developed tripartite cooperation can serve as a model.

3. Third, development of minimum wages needs to be jointly monitored. This should be done by means of a scoreboard that compares minimum wages on the basis of various indicators. There should be further discussion on the exact design of indicators or key figures. However, it is clear that a number of different comparisons are needed, the question of levels must be examined from various aspects. These comparisons would also allow the statistical data from countries that set wage floors through collective agreements to be used, with a view to broadening the evidence base. The participation of countries with wage self-regulation must, however, be limited to those areas where the State has responsibility. In the case of Sweden, the State, through a special authority, has the task of facilitating the work of the social partners through the collection and processing of statistics.

## Confronting the Competence Conundrum of an EU Directive on Minimum Wages: In Search of a Legal Basis

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### Executive Summary

- > The new European Commission has boldly announced its plans to deliver an EU minimum wage legal measure within the first 100 days in office.
- > This commendable ambition raises the much-contested question of competence in this field.
- > Under Article 153 TFEU, the EU's main social legal basis, the issue of 'pay' is excluded from the provisions of this Article (para. 5). This seems to prevent the adoption, on this legal basis, of a binding EU measure that directly fixes the level of minimum wages in the Member States.
- > Another, and oft-overlooked social legal basis can be found in Article 175 TFEU on economic, social and territorial cohesion. Article 175 TFEU may offer an alternative route to adopt a fully-fledged minimum wage directive to diminish the social and economic disparities that are hampering a harmonious development of the Union in both economic and societal terms.
- > The main advantage offered by Article 175 TFEU, as compared to the other contending alternative legal basis found in the flexibility clause of Article 352 TFEU, is that it allows the EU to act through the ordinary legislative procedure rather than requiring unanimity while maintaining a social focus.
- > Furthermore, the objective of cohesion policy seems the most credible alternative, compared to the general harmonisation clause for the internal market under 115 TFEU or the free movement of workers under Article 46 TFEU.

In a bold and remarkable move, the new President of the European Commission, Ursula von der Leyen, has tasked her Commissioner for Jobs and Social Rights, Nicolas Schmit, with the mission to develop a proposal for a legal instrument ensuring that every worker in the EU has a fair

minimum wage, to be delivered within the first 100 days of this new Commission's mandate.

On the one hand, this could be seen as a natural continuation of the legacy of the Juncker Commission in strengthening Europe's social dimension. Indeed, the centre-piece of the outgoing Commission's social achievements, the European Pillar of Social Rights (EPSR), is the political anchor point for the delivery of these new ambitions concerning a minimum wage. With a commitment to prevent in-work poverty, Principle 6 EPSR enshrines the right to fair wages to provide a decent standard of living in a way that it satisfies the need of the worker and her/his family in the light of national economic and social conditions, whilst enabling access to employment and incentives to seek work. It further demands that all wages are set in a transparent and predictable way.

On the other hand, the obstacles for adopting a minimum wage at EU level are manifold and appear formidable. For one, not all Member States have minimum wages. Second, the role of social partners in wage setting is a sensitive question, and it is not entirely clear how an EU measure would be able to accommodate this. From a legal point of view, the most important obstacle is the thorny question of competence. The EU's social legal basis, Article 153 TFEU, excludes the issue of "pay". The EPSR, for all its solemnity, is not legally binding and does not expand the EU's competence to act. However, as this policy brief argues, the overlooked Article 175 TFEU on cohesion policy could provide suitable legal anchor point to successfully launch this important initiative.

### Article 153 TFEU on social policy: a slim and slack rope

Article 153 TFEU is the EU's standard social legal basis. It gives the EU competence to adopt a range of measures in various fields of social policy. Wages are part of "working conditions", which is one of the areas in which Article 153 TFEU allows the EU to adopt directives setting minimum requirements in accordance with the ordinary legislative procedure. However, as an explicit exception to the EU's social competence under Article 153 TFEU, its 5th paragraph states that "the provisions of this Article shall not apply to pay".

The Treaty itself does not define ‘pay’. The Court of Justice of the European Union (CJEU), however, has consistently held in its case law that the limitation under Article 153(5) TFEU stands for ‘the establishment of the level of all or some of the constituent parts of pay and/or the level of pay in the member States, or the setting of a minimum guaranteed wage’ (C-395/08 - *Bruno and Others*, EU:C:2010:329, §37; C-268/06 – *Impact*, EU:C:2008:223, §125). This, quite clearly, does not bode well for a fully-fledged EU minimum wage directive based on Article 153 TFEU.

On the other hand, the CJEU has confirmed that the exclusion of Article 153(5) TFEU cannot hollow out and unduly restrict the EU’s competence in relation to the other areas of social policy under Article 153(1) TFEU. As an exception to a rule, Article 153(5) TFEU has to be interpreted narrowly and it should not completely undermine the effectiveness of EU social law and policy. Hence, as the CJEU has held, the exception of ‘pay’ cannot be extended to every issue related to ‘pay’, as many areas of social policy would otherwise be deprived of much of their substance. Thus, pay has been legitimately included in the ‘working conditions’ regarding various types of workers’ right to equal treatment under EU directives adopted on the basis of Article 153 TFEU.

The conclusion is that ‘only’ provisions directly interfering in the way pay is determined, and the setting of the levels thereof, are excluded from EU competence under Article 153(5) TFEU. It might perhaps not be impossible to conceive of an instrument that avoids the setting of wages or the components of pay directly, but that instead prescribes certain procedural requirements such as transparency and predictability. It would, however, be a very slim and slack rope to balance on. Any such measure on the social policy legal basis that would manage to avoid the ‘lethal’ exception of paragraph 5 would inherently and necessarily lack the very substance and thus legal and political punch that the promised initiative should carry.

#### **Article 175 TFEU on social, economic and territorial cohesion: the road less travelled**

An important part of the rationale of introducing an EU minimum wage is to decrease the social and economic inequalities between different parts of the EU, to promote upward social and economic convergence and a more harmonious development of the Union. Article 4(2) TFEU qualifies economic, social and territorial cohesion as one of the principal areas of shared competence. In accordance with Article 2(2) TFEU, “When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union ... may legislate and adopt legally binding acts in that area”.

More specifically, Article 174 TFEU states that “in order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion”. Article 175 TFEU continues that “if specific actions prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other Union policies,

such actions may be adopted ... in accordance with the ordinary legislative procedure”. Thus, if Article 175 TFEU would be used, it would entail QMV and, importantly for the European Parliament, co-decision.

#### **Interpreting Article 175 TFEU as a possible legal basis for a minimum wage directive**

A textual interpretation of Article 175 TFEU, in conjunction with Article 174 TFEU, does not in principle seem to oppose the adoption of a minimum wage directive, if it would be designed so as to significantly strengthen the Union’s economic and social cohesion and thus genuinely diminish disparities between Member States. It would be imperative that a rigorous and systematic impact assessment accompany the proposal. This assessment should, through data and reasoned projection, provide sufficient ground and reason for the CJEU to accept, if the Directive were to be challenged afterwards, that the way in which the Directive sets minimum wages for the EU genuinely (and not incidentally or purely indirectly) contributes to social and/or economic cohesion and the Union’s harmonious development. The assessment should perhaps not just focus on the measure’s by reduction of disparities but also on taking the sharp edges of wage-competition that has distorted the internal market as can be seen from the Posting-saga, as well as producing upward socio-economic convergence). The fact that such a measure would protect workers in all Member States does not necessarily seem to be a problem, as long as it can clearly be shown that in doing so, the measure significantly contributes to social and/or economic cohesion.

While this would entail a somewhat creative legal reading of the provision, the CJEU has explicitly acknowledged that EU cohesion policy gives extensive discretion to the Union as to the actions that might be taken in the field of economic, social and territorial cohesion (C-420/16 P, *Izsák and Dabis v Commission*, ECLI:EU:C:2019:177, §68). The Court in another judgment (C-166/07, *Parliament v Council*, ECLI:EU:C:2009:499) furthermore considered that “economic and social progress” correspond to the objectives pursued by the EU policy on economic and social cohesion.

The case to further explore the under-used potential of Article 175 TFEU has already been made in the context of economic policy (Flynn, 2019), to avoid the lack of legislative competence in Article 121 TFEU on economic policy. It seems pertinent to cite here, and apply *mutatis mutandis*, what has been said in this respect: “when they wish to institute measures that will affect the economic performance of the Member States the Union institutions can take another route, to overcome the limitations associated with Article 121 TFEU. It is perfectly proper for them to adopt such measures on another legal base if the measures in question come within the ambit of the Treaty provision used” (ibid.: 48). Indeed, as Flynn notes, “In recent years, the Union legislator has turned repeatedly to the cohesion policy chapter of the Treaty (Articles 175 to 178 TFEU) when considering such measures” (ibid.: 49). Particularly relevant to counter the argument that



recourse to Article 175 TFEU would illegally circumvent the constraints of Article 153 TFEU, Flynn considered that: “the fact that the effects of the measure will have an impact on economic policy does not mean that the use of that other legal base constitutes a circumvention of the limitations associated with Article 121 TFEU. The Court accepted in *Gauweiler* and *Weiss* that monetary policy measures taken by the European Central Bank (‘ECB’) do not fall into the sphere of economic policy for the sole reason that they may have indirect effects that can also be sought in the context of economic policy. By the same logic, measures adopted by the other Union institutions under other policies are not equivalent to economic policy measures due to such indirect effects. Moreover, the fact that such effects are definitely foreseeable by the measure’s author(s) and are knowingly accepted does not rob them of the status of ‘indirect’ effects” (ibid.: 48).

### **The main legal uncertainties concerning Article 175 TFEU as a legal basis for a minimum wage directive**

While Article 175 TFEU therefore deserves serious consideration, a number of uncertainties related to using this provision as the legal basis for a directive on minimum wages remains.

First, it is ambiguous what ‘specific action’ under Article 175 TFEU may entail. As the CJEU held, the “provision does not set out the form which such specific actions can take” (Case C-166/07, *op cit*, § 46). The Court then considered that “the Community, through all of its actions, implements an independent Community policy, with the result that Title XVII of the EC Treaty provides adequate legal bases allowing for the adoption of means of action which are specific to the Community, administered in accordance with the Community regulatory framework and the content of which does not extend beyond the scope of the Community’s policy on economic and social cohesion”. This does not give much guidance on the question whether ‘specific actions’ could comprise the adoption of (minimum) harmonising legislation.

However, in principle, it does not seem impossible to defend that the introduction of an EU minimum wage is an ‘EU action’, as this term could be considered to comprise both legal and non-legal measures. There are areas where the EU is given the competence to adopt ‘incentive measures’ or ‘measures to complement actions of the Member States’ but which exclude the harmonisation of Member States’ laws, notably in the areas of complementary competence such as education (Article 165 TFEU), culture (Article 167 TFEU) and tourism (Article 195 TFEU). In these cases, the provision itself explicitly excludes such harmonisation. Article 175 TFEU, in a marked difference, does not feature such a prohibition. Social and economic cohesion is, instead, a shared competence, where according to Article 2 TFEU the Union may legislate. To derive a prohibition of harmonisation, or of substantive legislation, from the word ‘actions’ or ‘specific actions’ would seem overly restrictive: it would go against the principle of effectiveness and does not seem to be supported by the case law of the CJEU.

Similarly, the fact that the provision enshrines the role of co-ordination and funding in cohesion policy does not necessarily confine all EU actions in this field to measures of co-ordination or funding. In fact, a step-by-step reading of the Article clearly suggests that different forms of EU action are possible for attaining the overall objective in Article 174 TFEU, which include, but are not necessarily limited to, measures of co-ordination and action through the Structural Funds. This is supported by the explicit wording of the provision where Article 175 TFEU foresees also actions ‘outside the Funds’.

Another ambiguity can be found in Article 175 TFEU where it says ‘without prejudice to the measures decided upon within the framework of the other Union policies’. Could it be argued that this lays down a subordination of Article 175 TFEU to other provisions in the Treaty, in a way that would hamper the adoption of a minimum wage directive on this legal basis? There is no ground to interpret this phrase to such a limiting extent. First, the wording of the caveat itself is weak. If the provision had read ‘to be decided upon’ or ‘other provisions of the Treaties’, it might have been different, but even then, the Treaty is riddled with such references (see, for example Article 18 TFEU on nationality discrimination or Article 22 TFEU on citizenship) which have not been given a restrictive reading. Furthermore, while it may be taken to mean that measures adopted under this provision need to respect existing measures adopted on the basis of other provisions, this does not cause any problems: at present there seems to be no such measure that would stand in the way of a minimum wage directive.

In similar vein, it may be argued that Article 153 TFEU is the more specific provision (*lex specialis*) for what a minimum wage directive would try to achieve, and as such it should be used. However, the CJEU’s case law does not seem to prohibit the use of a more general and indirect legal basis, provided that its conditions are fulfilled, if the more specific legal basis excludes the type of action to be taken. Examples are the Tobacco Advertisement legislation adopted based on Article 114 TFEU because the legal basis on public health excludes harmonisation, or the above-mentioned *Gauweiler* and *Weiss* cases. Arguably, it is thus precisely because Article 153(5) excludes the issue of pay that another legal basis, like Article 175 TFEU, can be used. Indeed, the most logical interpretation is that this limitation in paragraph 5 only applies to Article 153 TFEU itself and does not prevent the EU legislature to use another provision in the Treaties as a legal basis, provided there is one. This interpretation is supported by a textual interpretation of Article 153(5) which says that “the provisions of this Article shall not apply to pay” – meaning that other provisions potentially can.

It is true that in relation to this provision, the Court has consistently held that the “establishment of the level of the various parts of pay of a worker fall outside the competence of the EU legislature and rests with the Member States” (C-395/08 - *Bruno and Others*, EU:C:2010:329, §39; C-268/06 –

*Impact, EU:C:2008:223, §129*). These words could be interpreted as a more general statement of the limits of EU powers. This seems to have been the approach taken by Advocate-General Jääskinen in Case C-507/13 (*United Kingdom v Parliament and Council, ECLI:EU:C:2014:2394, §114*) where he opined (in relation to the CRD IV Directive) that in light of this above-mentioned statement by the Court, another legal basis (in this case Article 53(1) TFEU) could not be used “in order to circumvent the limitation imposed by Article 153(5) TFEU”. This Opinion is not binding and does not seem to be in keeping with the approach of the Court to legal basis choice in general. The CJEU’s stance instead appears to be that as long as the conditions for the use of a particular legal basis are fulfilled, it is irrelevant whether the matter is explicitly prohibited or excluded from another legal basis. Another interpretation could seriously harm the effectiveness of EU law. And again, textually, the argument for such a cross-cutting prohibition seems to fall flat in the face of the explicit phrasing that “the provisions of this Article shall not apply to pay”.

### Alternative legal bases

Beyond the realm of social and cohesion policy, there are a number of other options worth contemplating.

#### *The flexibility clause*

For attaining one of the objectives set in the Treaties where these do not provide the necessary powers, on the basis of Article 352 TFEU, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the Parliament, may adopt the appropriate measures. Following Article 3 TEU, a highly competitive social market economy aims at full employment and social protection and shall combat social exclusion and discrimination. Arguably, the so-called ‘flexibility clause’ could serve to implement such objectives through EU minimum wages.

Nevertheless, a proposal for a directive on minimum wages based on Article 352 TFEU would come up against a number of drawbacks. First, besides the obstacle of unanimity and the special legislative procedure that downgrades the role of the Parliament, national procedures might block the use of this provision. This is the case of Germany, for example, that requires a law for any measure that is adopted under this provision to be passed with a two-third majority both in the Bundestag and the Bundesrat. Second, an arguably even bigger obstacle relates to the explicit limitation to use this provision to adopt laws or regulations where the Treaties exclude such harmonisation. It is unclear whether the exclusion of ‘pay’ under Article 153(5) TFEU constitutes such a ‘prohibition of harmonisation’ in the sense of Article 352 TFEU. The European Commission previously did not think so, as it proposed the Monti II Regulation, an initiative on collective action which is another field excluded under Article 153(5) TFEU, on the basis of Article 352 TFEU. Then again, this proposal became the first victim of the ‘yellow card’ procedure, as national parliaments considered this an illegitimate way of circumventing Article 153(5) TFEU.

### *Approximation of laws*

Could a directive on minimum wages be based on the general harmonisation of the internal market enshrined in Article 115 TFEU, which applies explicitly to fields excluded from its ‘twin’ Article 114 TFEU such as ‘measures that affect the right and interests of employed persons’? First, it is not immediately clear that wage differences between the Member States directly affect the functioning of the internal market in more than a number of specific sectors. Moreover, the adoption of measures under Article 115 TFEU requires unanimity. Most importantly, the adoption of an instrument on the basis of the internal market is likely to backlash when the interests of the internal market conflict with the social objective. This was at the centre of the discussion in *Viking and Laval (C-438/05 - The International Transport Workers' Federation and The Finnish Seamen's Union, EU:C:2007:772 and C-341/05 - Laval un Partneri, EU:C:2007:809)*. In these cases, the fact that the Posting of Workers Directive was adopted on the services provisions in the Treaties pushed the CJEU to interpret the directive in light of its main objective and see the instrument as a maximum harmonisation of labour standards rather than a social minimum directive. This subordinated workers’ fundamental social rights to the economic interests of the internal market.

If the objective of adopting a minimum wage directive is to fight in-work poverty and guarantee fair wages for workers in order to enhance social progress in Europe to further its more harmonious development, a directive on minimum wages should have a social focus. If follows, that the usage of Article 115 TFEU for the adoption of a directive on minimum wages should be avoided.

### *The free movement of workers*

A final approach to consider would be to adopt a directive on minimum wages under Article 46 TFEU according to which ‘the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure ... issue directives or regulations setting out measures required to bring about freedom of workers’. Using free movement of workers as the legal basis for the adoption of a directive on minimum wages would entail QMV. However, it seems quite an overstretch to argue that a directive on minimum wages at the EU level has in fact the objective of enhancing the free movement of workers. It may, in contrast, be argued that it may have the opposite effect, as such a directive would, to some extent, eliminate the wage-incentive that induces many workers to move.

### Conclusion

Given the content and the objective of a directive on minimum wages that guarantees fair wages for workers as to effectively tackle in-work poverty, this instrument should have a strong social focus so that in the case that conflict arises between social and other interests, the former always prevail. Moreover, because of the high sensitivity in the area of

wages, with some Member States arguing a possible downward pressure and others fearing that they will lose their competitive advantage in the internal market, a legal basis that allows for QMV would be necessary to avoid vetoes. Not subordinating the role of the Parliament to consultation, moreover, would increase the democratic value of a directive in minimum wages.

In light of these considerations, the most desirable and realistic options for the Commission can be narrowed down to two. Keeping on the beaten track of the social policy title, the Commission could try to propose an instrument on minimum wages under Article 153 TFEU that in no direct way interferes with fixing the level of minimum wages. Or it would take a road much less travelled, and propose a fully-fledged minimum wage directive based on Article 175 TFEU.

Because a directive on the basis of social policy would be substantially limited to regulating methods and rules of allocation of pay, therefore having minimal impact on the adequacy of wages, it is highly unlikely that such a directive would have the necessary drive to boost upward convergence on minimum wages and effectively tackle the issue of in-work poverty. Hence, any such measure that would manage to avoid being struck down by the exception of Article 153(5) TFEU would necessarily lack the very substance and thus legal and political punch that the promised initiative should carry to avoid disappointment and backlash.

The more innovative approach under the cohesion policy, by contrast, could indeed contain provisions on adequacy, including methodologies to establish adequate incomes so as to fight income poverty. The use of this legal basis, while somewhat creative, would thus allow for a directive on minimum wages that is rich in content, can be adopted through the ordinary legislative procedure and by QMV and has at its centre the social objective of diminishing economic and social disparities between Member States. It is uncharted territory and, as such, not an entirely risk-free approach (either), but if the Commission is serious about delivering legally on the political promises made, then this seems the most viable way.

Ultimately, the challenges that plague the successful adoption of legislation in matters of social policy, that translates clear objectives of the Union and basic fundamental social rights enshrined in primary law, seriously beg the question of whether the limitation on social policy competence should be revisited. This could be done either by amending the social policy title or by starting a discussion about a future Treaty revision that gives sufficient social competences to the EU so as to finally become a true social market economy.

## Further Reading

Flynn, L., "Greater Convergence, More Resilience? Cohesion Policy and the Deepening of the Economic and Monetary Union", in D. Fromage and B. de Witte (eds.), *Recent Evolutions in the Economic and Monetary Union and the European Banking Union: A Reflection*, Faculty of Law Working Paper Series, 2019/03, Maastricht University, 2019, pp. 48-60.

## About the Authors

**Ane Aranguiz** is a PhD Fellow of the Flanders Research Foundation (FWO) at the Faculty of Law of the University of Antwerp. Her research focuses on European Social Law.

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European Foundation  
for the Improvement  
of Living and Working  
Conditions

The tripartite EU Agency providing knowledge  
to assist in the development of better social,  
employment and work-related policies

# Decent minimum wages across Europe

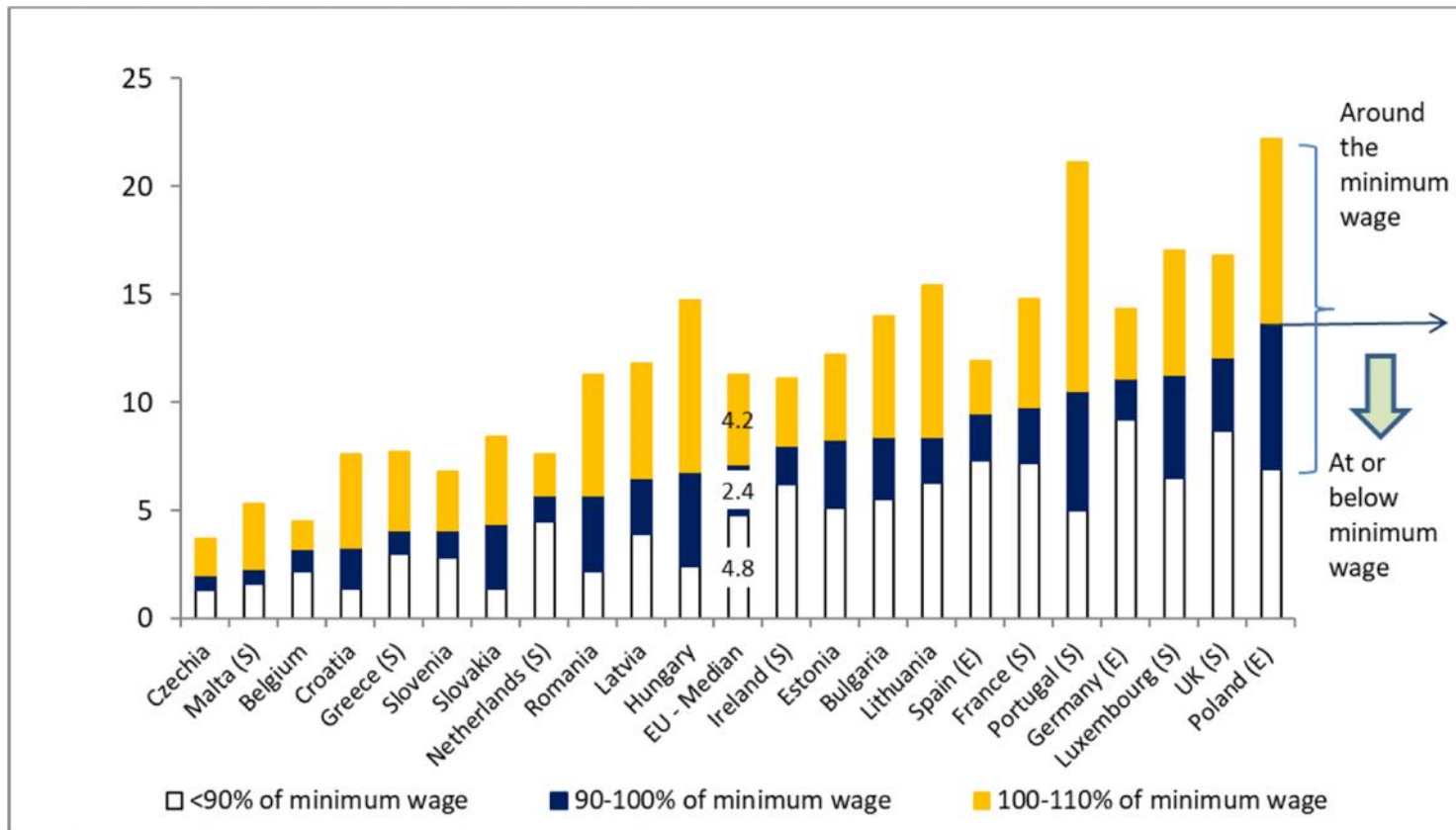
Minimum wages in Europe – Aspiration and reality

S&D Workshop, 5 February 2020, European Parliament

Dr. Christine Aumayr-Pintar

# Around 1 in 10 EU workers earn ‘around’ the national statutory minimum wage or below

Proportion of workers on, around or below the minimum wage (2016/2017)



Minimum wages set in sectoral collective agreements:  
  
AT, CY, DK, IT, FI, SE

Source: Eurofound (2019), Minimum wage in 2019 – Annual review, based on EU-SILC

# What minimum wages and their increase can (perhaps) do and what they can't

## Likely benefits

- A binding wage floor
- Protection against unacceptably low pay
- Level playing field for companies
- Reduce wage inequalities
- Shift some bargaining power to lower paid
- Stimulate consumer demand

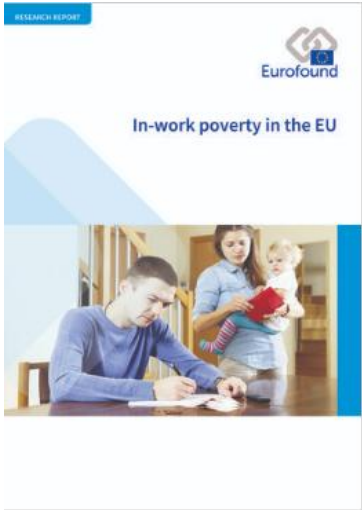
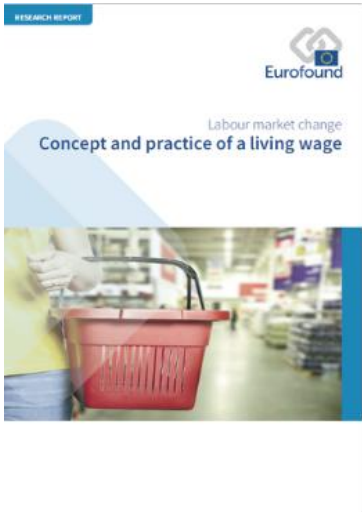
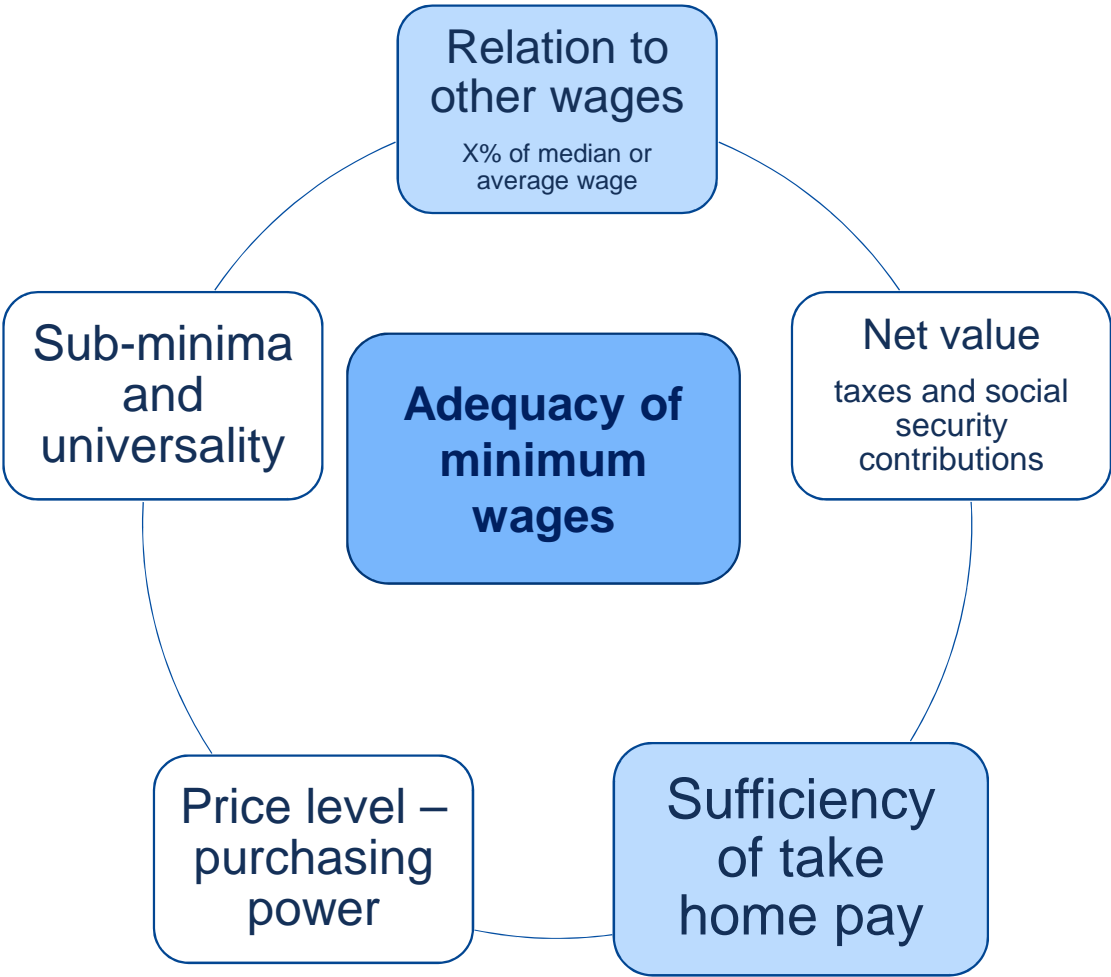
## Depending on circumstances, or combined with other policies

- Reduce in-work poverty
- Reduce the gender pay gap
- Increase worker motivation, supply and labour productivity
- Increase public health
- Re-allocate workers to more productive economic activities
- Increase/dampen wages of workers further up the pay scale.

## What they can't do or potentially negative effects

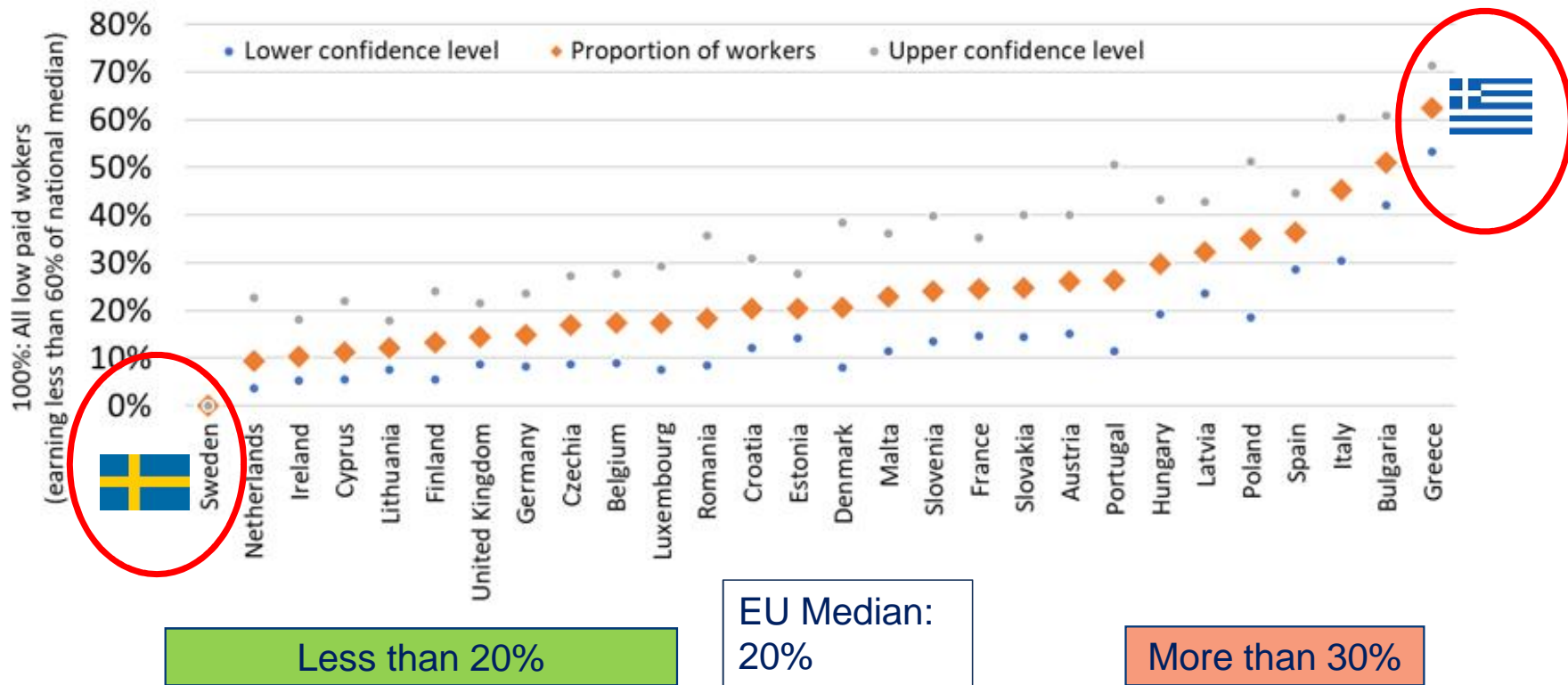
- Reach all workers
- Reduction of employment or working hours of low paid/skilled workers
- Increase of undeclared work or hours
- Some company closures
- Increase of labour costs/prices
- Reduction of profits

# The dimensions of adequacy



# Is it (very) difficult to make ends meet when on low earnings?

Proportion of full-time workers in low earning households who find it difficult to make ends meet

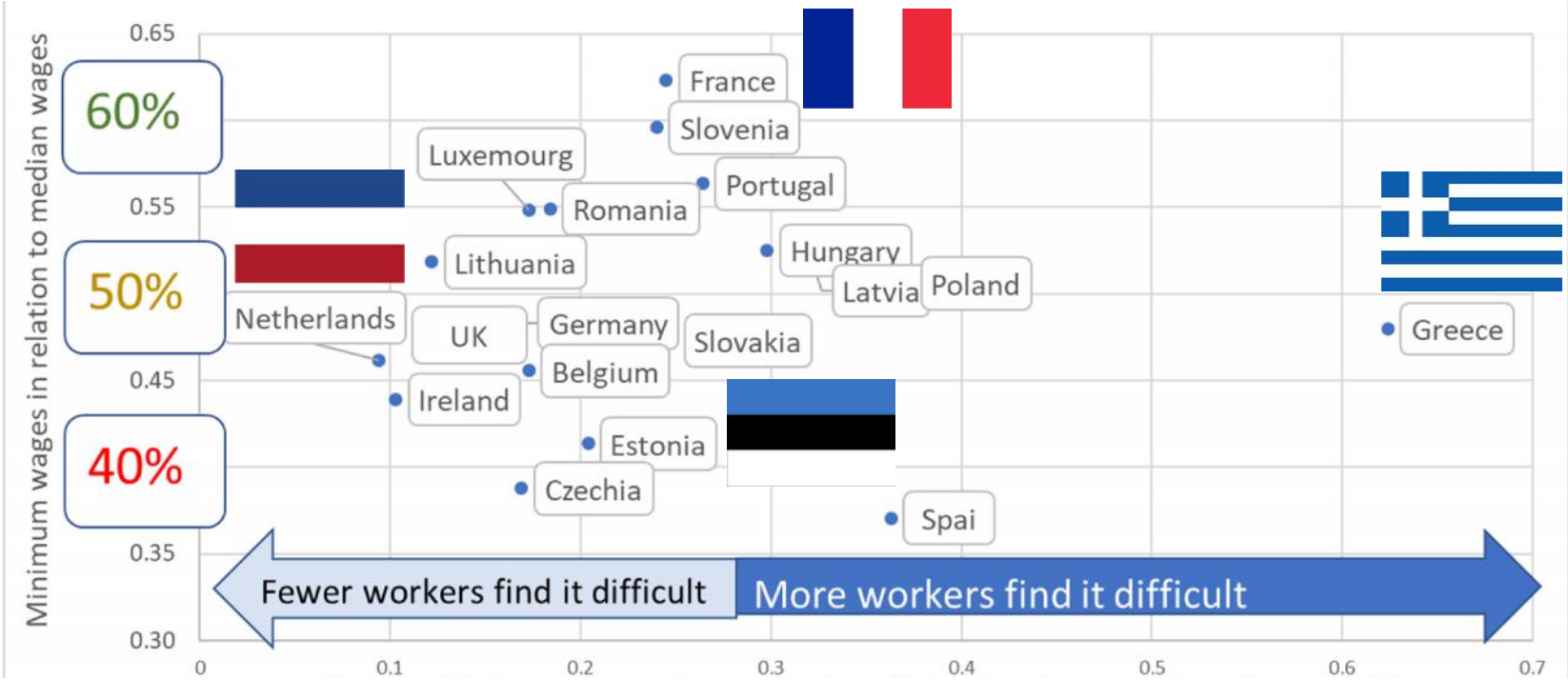


Source: Eurofound based on European Working Conditions Survey, 2015



# Increasing minimum wages towards X% of median wages ALONE is not enough...

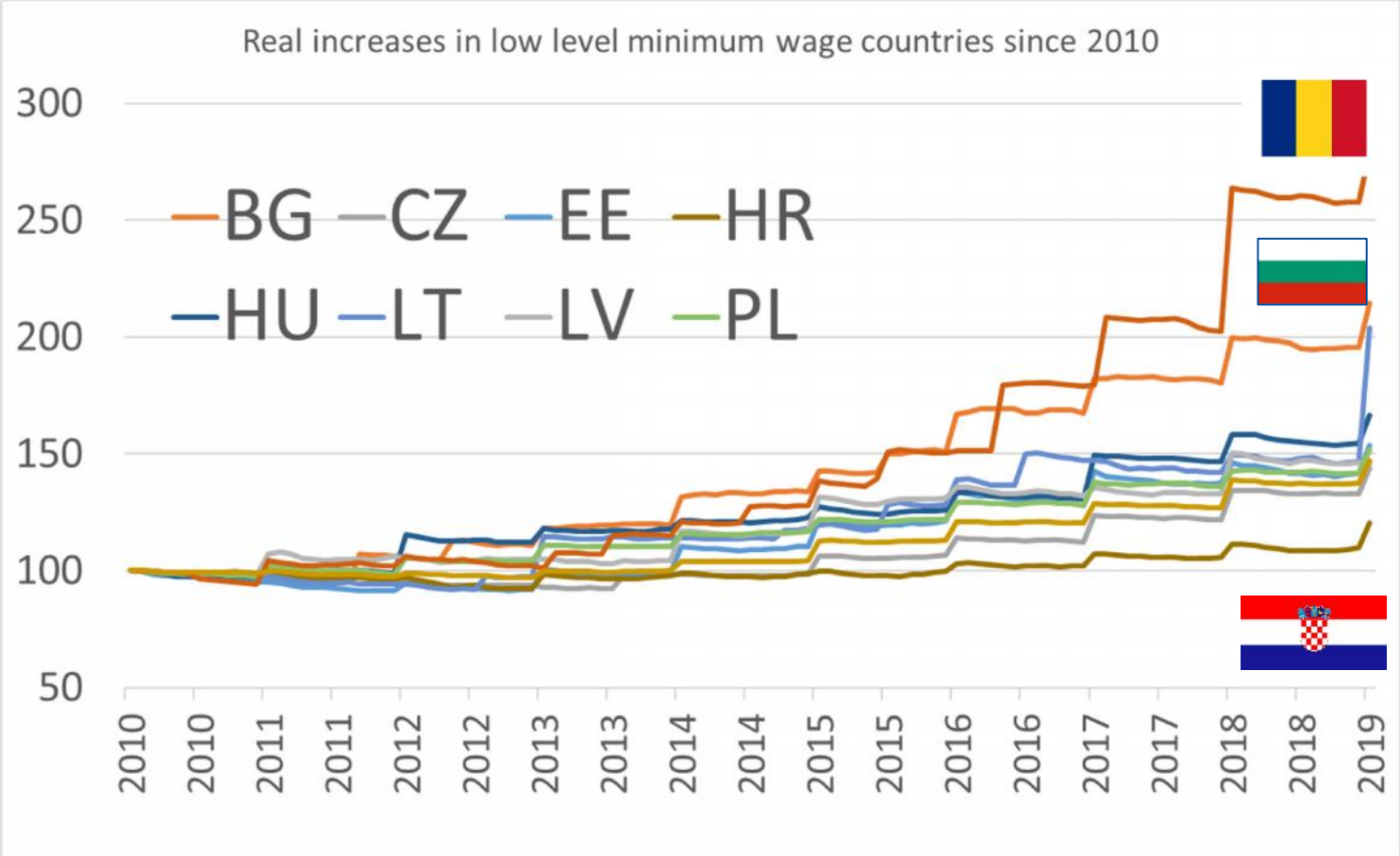
How difficult it is to make ends meet versus minimum wage relative to median wages, 2015



Being able to make ends meet when living in a low-earnings household (and working full-time)

Source: Eurofound, European Working Conditions Survey, 2015 (x-axis) and OECD (2019): Minimum wages relative to average wages of full-time workers (y-axis), 2015

# Return to growth of real statutory minimum wages and some convergence - lately

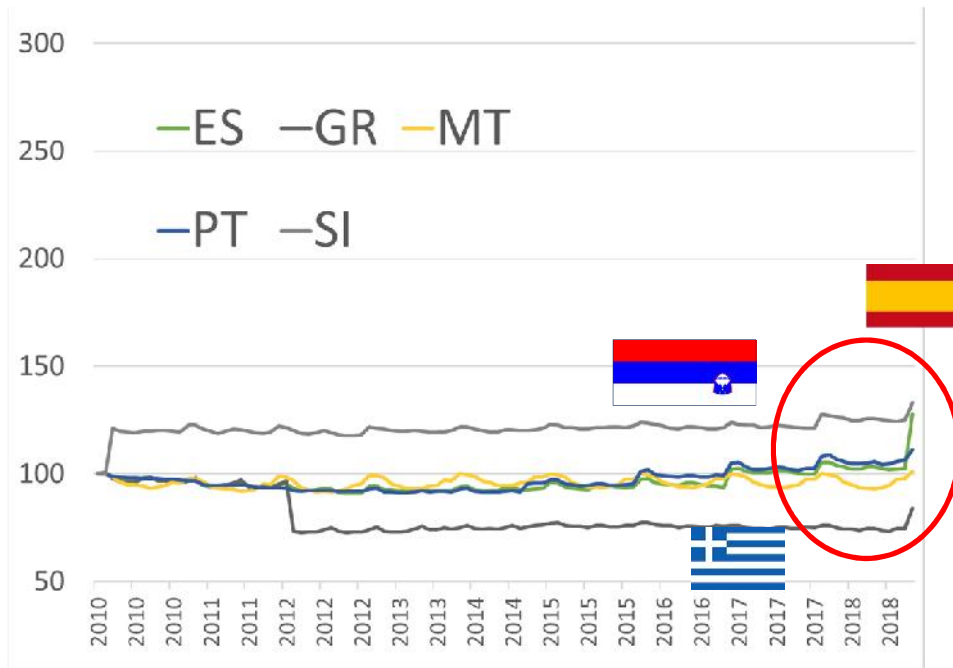


Source: Eurofound based on gross minimum wages in national currency, as reported by Network of Eurofound correspondents, deflated with harmonised index of consumer prices, Eurostat.

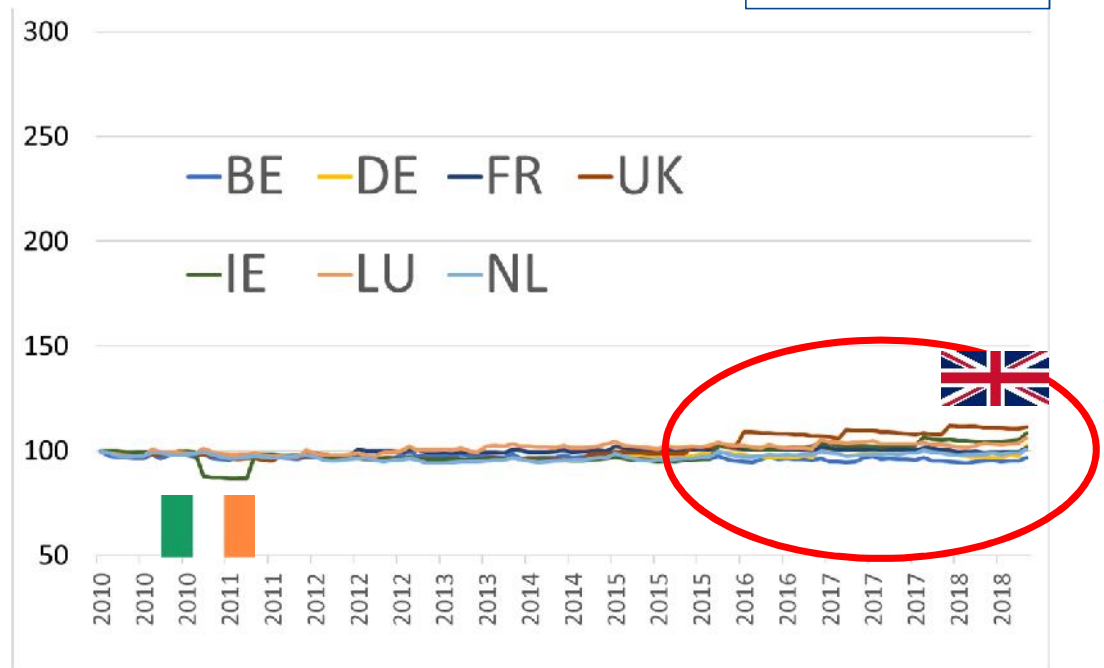
# Return to growth of real statutory minimum wages and some convergence - lately



Real increases in medium level minimum wage countries



Real increases in higher level minimum wage countries



Source: Eurofound based on gross minimum wages in national currency, as reported by Network of Eurofound correspondents, deflated with harmonised index of consumer prices, Eurostat.



### Slovenian MPs pass ten percent minimum wage rise



Date created: 13/12/2019 - 18:54



Di Maio: salario minimo di 9 euro l'ora

Macron raises minimum wage to appease Yellow Vest protesters



	1614 €
	1578 €
	1562 €
	1498 €

**SALARIO MINIMO IN EUROPA**

**NON Pervenuto**

Carla Rucco  
Politician

60 comments 171 shares

**MINDESTLOHN > KOMMISSION**

**LOW PAY COMMISSION**

SPD fordert für 2021 Euro Deutscher Mindestlohn hinkt hinterher



Auf zwölf Euro soll der gesetzliche Mindestlohn in Deutschland „perspektivisch“ angehoben werden, hat die SPD beschlossen. Rückendeckung kommt von Wirtschaftsforschern: Demnach liegt die Lohnuntergrenze in Westeuropa meist über 9,60 Euro pro Stunde - in Deutschland nur bei 9,19 Euro.

**SMIC**

# Minimum wage setting – Quo vadis?

## Take-away points (beyond: 'It's complicated')

- Minimum wage policies will not reach all workers.
- Important to combine minimum wage policies with other policies.
- Minimum wage increases have generally not harmed employment overall – but this should not be taken for granted.
- Importance of monitoring the impact of increases on employment, working hours, wages and collective bargaining
- Important role of social partners and evidence-informed wage-setting

# Thank you for your interest!

For further questions:

Dr. Christine Aumayr-Pintar

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@ChristineAumayr



Eurofound

# What is an adequate minimum wage system?

Patrick Belser  
Senior Economist  
ILO Geneva  
[Belser@ilo.org](mailto:Belser@ilo.org)

## The principle of an adequate minimum wage has been reaffirmed at the ILO in 2019

- The 2019 ILO Centenary Declaration for the Future of Work calls for “strengthening the institutions of work to ensure adequate protection of all workers”, including “An adequate minimum wage, statutory or negotiated”
- The preamble of the 1919 ILO Constitution calls for “the provision of an adequate living wage” and the 1944 Declaration of Philadelphia calls for wage policies that ensure “a just share of the fruits of progress to all, and minimum living wage to all employed and in need of such protection”





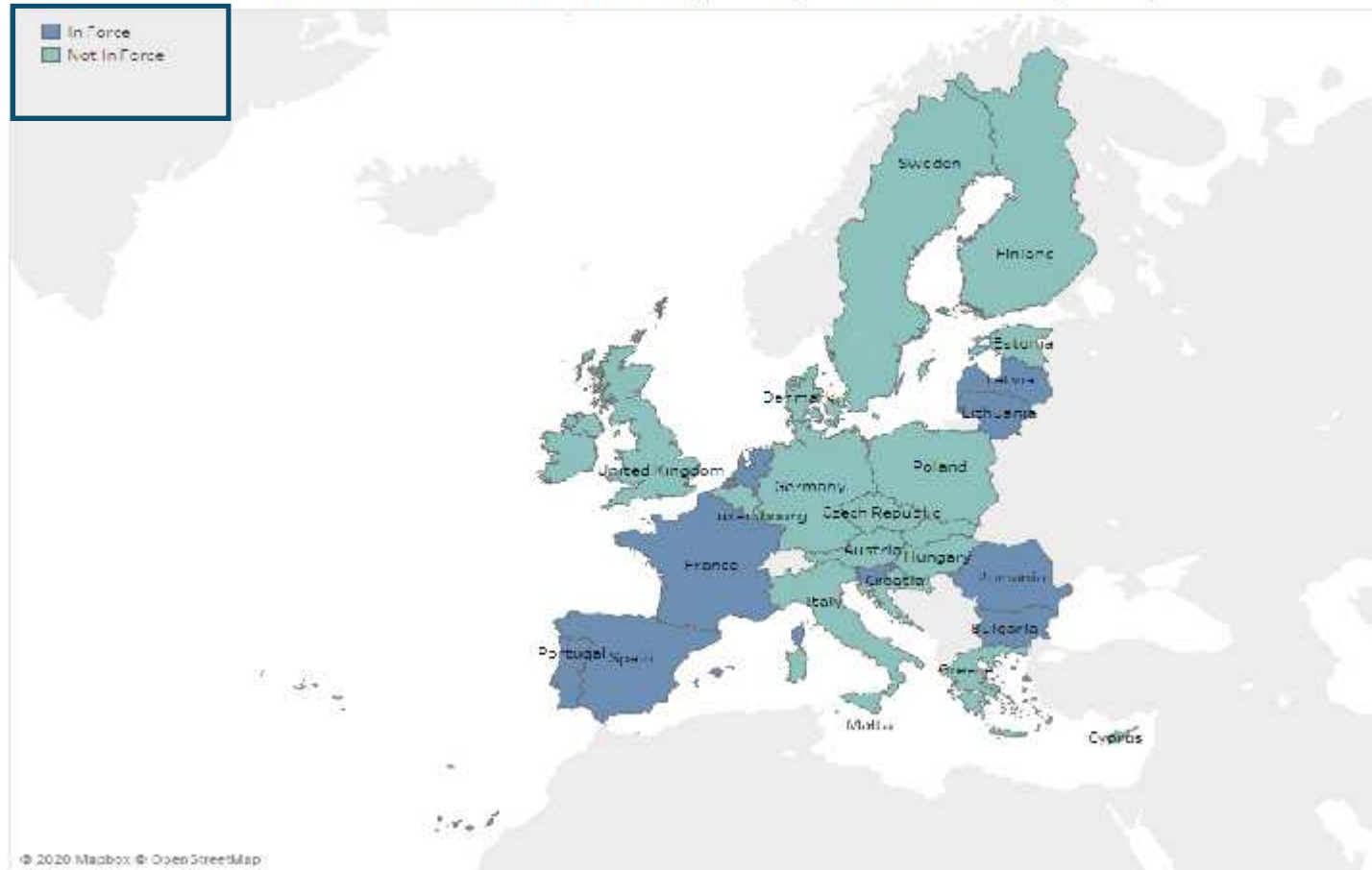
## At a more operational level

- The ILO **Minimum Wage Fixing Convention No.131**, and Recommendation No.135, establish key principles, reviewed in the 2014 ILO General Survey and discussed by governments and social partners at the International Labour Conference in June 2014
- The ILO Minimum wage policy guide, available online at [www.ilo.org/minimumwage](http://www.ilo.org/minimumwage) used for ILO capacity building and policy advice around the world.



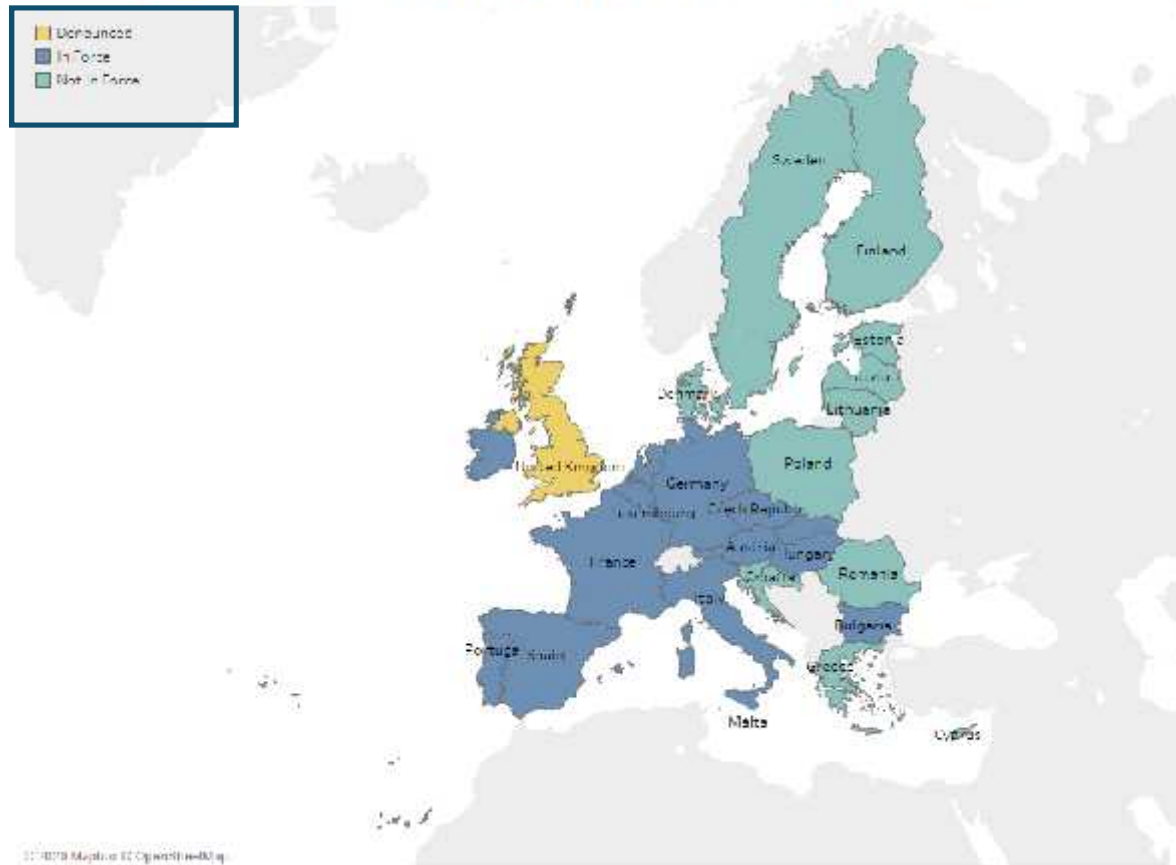
# Ratification of ILO Convention No.131 in Europe still relatively low ...

Ratifications of C131 - Minimum Wage Fixing Convention, 1970 (No. 131)



# ... even though more countries ratified the earlier ILO Convention No.26

Ratifications of C26 Minimum Wage Fixing Machinery Convention, 1928 (No. 26)



# What is an adequate minimum wage system? 6 key questions

1. How is the minimum wage defined?
2. Who is legally covered?
3. Who sets the minimum wage and what is the process?
4. What is an adequate level?
5. How frequently is the minimum wage adjusted?
6. What is being done to ensure effective application?

# 1. How is the minimum wage defined

The ILO definition of a minimum wage

=

“The minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract”



**MINIMUM WAGES MUST HAVE  
THE FORCE OF LAW**

## Can minimum wages be set through collective bargaining?

Minimum wage fixing through collective bargaining is consistent with ILO Convention No.131, provided that collective agreements are legally binding (not necessarily extended)



(General Survey, Report of the Committee of Experts on the Application of Conventions and Recommendations, 2014)

# What exactly is included in the definition of a minimum wage?



- Hourly or monthly rate?
- If minimum wage rates are monthly, they must apply to normal hours of work
- Are tips, bonuses and allowances paid on top of the minimum wage?
- In-kind benefits should be limited and fairly valued

## 2. Who should be covered by the minimum wage legislation?

- Minimum wages should have a broad scope of application, covering all groups of wage earners “whose terms of employment are such that coverage would be appropriate” (ILO C.131)
- Exclusions should be kept to a minimum (ILO R.135) – excluding workers in vulnerable situations defeats the purpose (e.g. agriculture, domestic work, piece rate workers)





### 3. How should minimum wages be set and operated?

The key ILO principle is: **full consultation with social partners and if possible direct participation on the basis of equality**

There can be different modalities: consultation can take place within minimum wage commissions, or separately with workers' and employers' organisations

Independent experts, representing the general interest of the country should also be involved

## 4. What is an adequate minimum wage level ?

An evidence-based approach considering two sets of criteria:

- **Needs of workers and their families** – e.g. the cost of living, the general level of wages within the country, social security benefits, and the relative living standard of other social groups
- **Economic factors** – e.g. the requirements of economic development, levels of productivity, and the need to attain/maintain high levels of employment



# A widespread indicator is the ratio of the minimum wage to the median wage

- In many instances minimum wages are insufficient to cover the needs of workers and their families
- What indicators and methodologies are best to estimate the cost of a decent living standard? ILO is currently working on this question with support of the NL



## Employment effects are key in the debate about the adequate level

“Recent evidence shows that when minimum wages are set at an adequate level, taking into account the needs of workers and their families as well as economic factors, they can raise the wages of low-paid workers – many of whom are women – without significant negative effects on jobs”  
(ILO Global Wage Report 2016/17 p. 24)

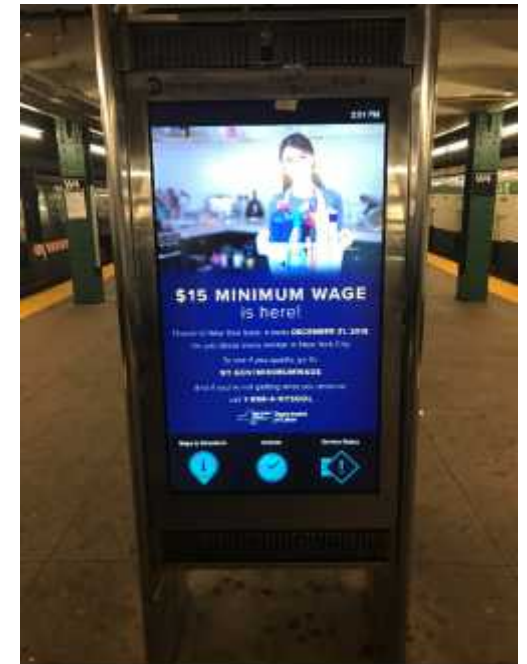
## 5. How often should the rate(s) be adjusted to take account of changes in the cost of living and other economic conditions?

- In many countries around the world there is little regularity or predictability in minimum wage adjustments
- Most frequently used adjustment criteria include changes in the CPI, the evolution of economic growth, and general economic and employment circumstances



## 6. How to promote the effective application of minimum wages?

- A clear definition of the minimum wage
- Labour inspections
- Dissuasive sanctions
- Information campaigns
- Training activities



# The next ILO Global Wage Report will be focusing on minimum wages

At the 2020 International Labour Conference there will be a tripartite discussion on “inequalities and the world of work”

The Global Wage Report 2020-21 will be on minimum wages, focusing on the relationship between minimum wages and inequality





**ILO at disposal for  
any future collaboration**

**Thank you !**

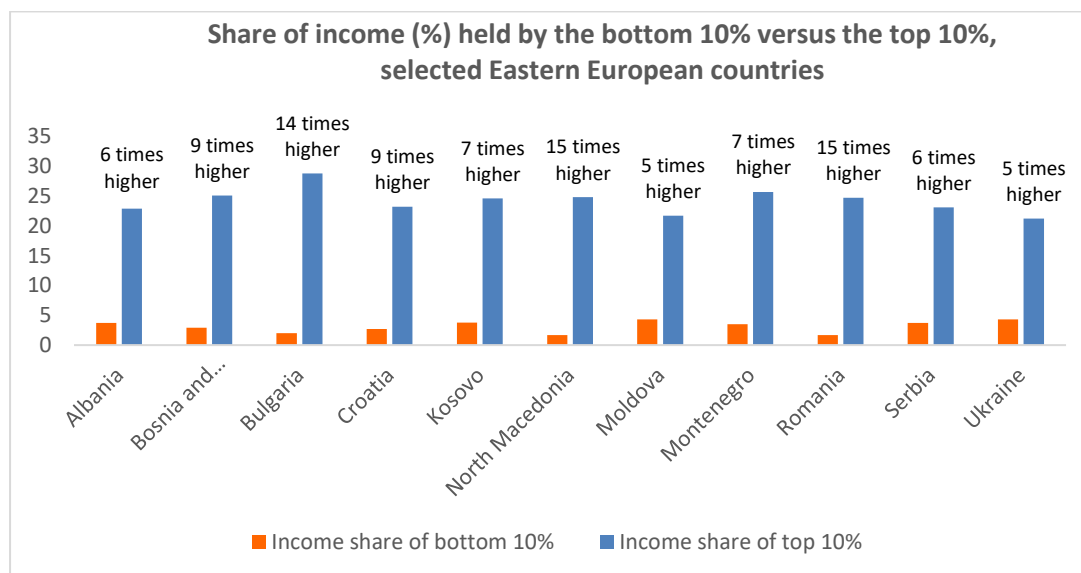


# The Case for Fair Pay in Eastern Europe

## *Economic growth in Eastern Europe – a blueprint for inequality*

**Eastern Europe has experienced relatively steady economic growth over the past decades.** Gross Domestic Product (GDP) in the region has nearly quadrupled since the year 2000, from 570 billion USD to nearly 2 trillion<sup>1</sup>. Romania and Bulgaria are growing faster than the European Union average, with GDP growth rates at 4 per cent and 3.1 % last year, respectively, compared to the EU average of 2%. In the Western Balkans, the growth for the period of 2018-2020 is forecast at an average rate of 3.5% between 2018-2020<sup>2</sup>.

**It is nevertheless clear that economic growth is not being shared equitably among the region’s people,** nor has it adequately translated into decent work opportunities or improved living conditions. The UNDP office for Europe and Central Asia has stressed, ‘*Lack of inclusive economic growth in the region has meant that income and job insecurity continue to affect large sections of the population*<sup>3</sup>. Instead, growth has largely benefitted those who are already well-off. Income inequality has grown substantially among most countries in the region in the last two decades<sup>4</sup>. The share of income among the top 10% is over 10 times higher than that of the bottom 10% in some Eastern European countries such as Bulgaria, North Macedonia and Romania.



Source: ITUC analysis based on the World's Bank Development Indicators.

Note: Latest data available. Albania (2012); Bosnia and Herzegovina (2011); Bulgaria, Montenegro (2014); Croatia, North Macedonia, Romania, Serbia (2015), Ukraine (2016), Kosovo, Moldova (2017).

<sup>1</sup> See World Bank statistical database (GDP in USD), looking at GDP in 2017 (latest figure available) compared to 2000

<sup>2</sup> IMF (2018) World Economic Outlook Update for Europe and Central Asia

<sup>3</sup> See UNDP Europe and Central Asia Office: [Employment and Livelihoods](#)

<sup>4</sup> See UNDP (2015) [Poverty, Inequality, and Vulnerability in the Transition and Developing Economies of Europe and Central Asia](#)

**According to the United Nations Development Programme, low wages and a lack of decent work opportunities have strongly contributed to income inequality in the region.** High levels of unemployment, economic inactivity and poverty moreover remain serious challenges.

**These trends are not only an affront to social justice, but they are also a risk to social and political stability as well as sustainable economic development.** Low wages and high poverty rates have led contributed to **deficits in aggregate demand**, which are constraining further growth<sup>5</sup>. High levels of income inequality also carry significant risks, including low social mobility, underutilisation of human capital, reduced social cohesion and eroded trust in institutions<sup>6</sup>.

**Poor working and living conditions are moreover leading many people within the region to emigrate in order to seek better opportunities, with major consequences in terms of labour shortages and the sustainability of public finances.** Over one third of the nationals of Western Balkan regions now live abroad<sup>7</sup>. The IMF has projected that given current trends, such emigration is expected to continue and labour supply will decline significantly<sup>8</sup>. Bulgaria, for instance, is expected to lose more than one fifth of its population by 2050<sup>9</sup>. As mass emigration includes many high-skilled workers and educated young people, **skills depletion** is a major concern as well<sup>10</sup>. A recent poll by the European Council on Foreign Relations (ECFR) shows that citizens from Eastern European countries worry more about the consequences of massive emigration than immigration<sup>11</sup>.

*In brief...*

- Economic growth has not translated into decent work opportunities
- Inequality is high and rising
- Poor working and living conditions are leading to massive emigration
- A lack of decent work opportunities and high levels of poverty are having disastrous social, political and economic consequences

### *The need for a pay rise in Eastern Europe*

**For many workers, having a job is unfortunately not a means out of poverty, let alone a guarantee for a decent livelihood.** In work-poverty remains a major challenge in the region – one in six workers lives below the poverty line in Bulgaria and Serbia – increasing to one in five in Romania and one in four in North Macedonia.

<sup>5</sup> IMF (2015) Caucasus and Central Asia Regional Economic Outlook

<sup>6</sup> See for instance World Bank (2016) Poverty and Shared Prosperity; IMF (2015) Causes and Consequences of Income Inequality: A Global Perspective; Wilkinson and Pickett (2009) The Spirit Level: Why More Equal Societies Almost Always Do Better

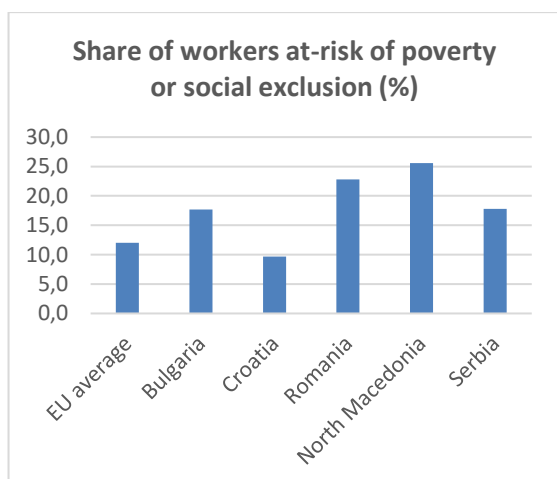
<sup>7</sup> ILO (2017) What Future for Decent Work in Europe and Central Asia

<sup>8</sup> IMF (2019) Demographic Headwinds in Central and Eastern Europe

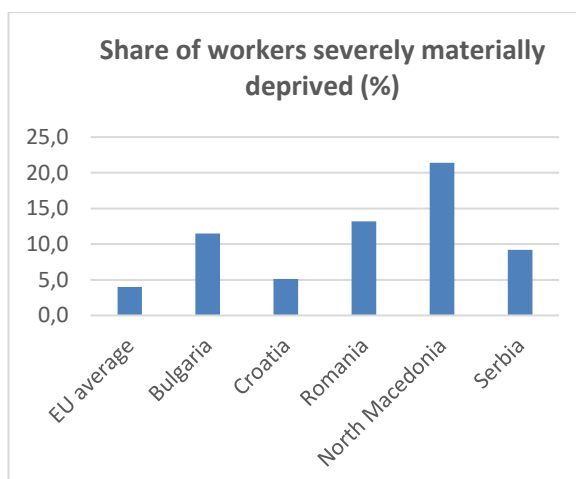
<sup>9</sup> Ibid

<sup>10</sup> International Institute for Applied Systems Analysis( 2016) Labor market and migration across the Eurasian continent, workshop report

<sup>11</sup> See summary of the poll here: <https://www.theguardian.com/world/2019/apr/01/europe-south-and-east-worry-more-about-emigration-than-immigration-poll>

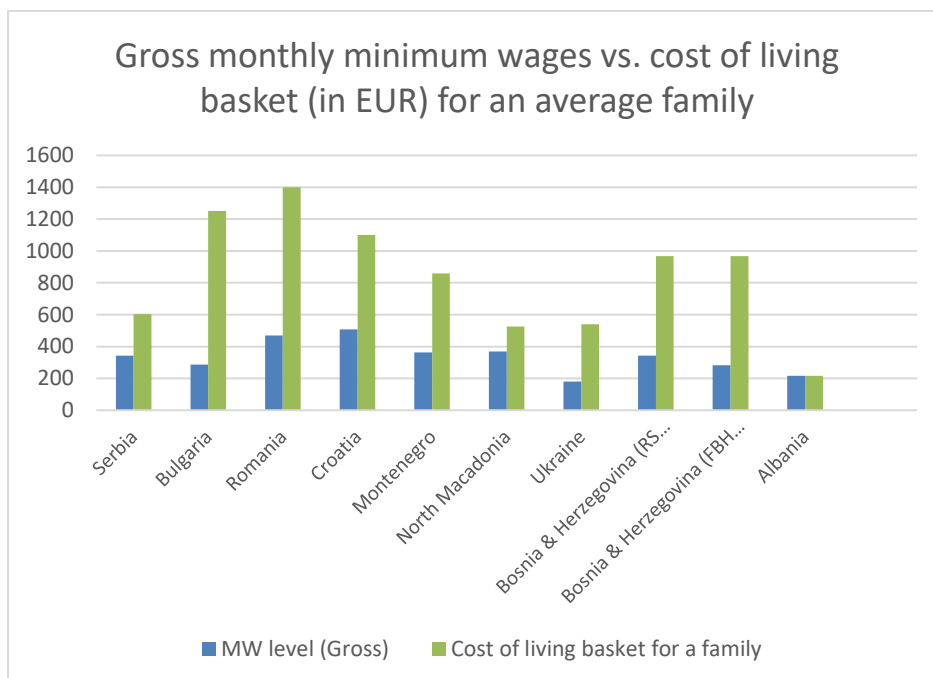


Source: Eurostat. Latest data available: Bulgaria and Romania (2018); EU 28, Croatia, North Macedonia and Serbia (2017).



Source: Eurostat Database. 2018 data. Data for population more than 18 years old.

**While all countries in the region have statutory minimum wages, they tend to be extremely low and inadequate in affording workers and their families a decent life.** In nearly all cases, statutory minimum wage levels tend to be set below national poverty lines for a household, let alone the average cost of living basket for a family. In Bulgaria, for instance, the gross minimum wage represents only a quarter of the cost of living basket for an average family – and after taxes and social security contributions, it is worth only 17%. In Serbia, the minimum wage after taxes and social security contributions amounts to only 27% of an average consumer basket.



Source: ITUC calculations based on information provided by national trade union centres (2019)

Note Cost of living baskets are estimated for an average sized family. In Albania, it is for 3.2 people, Serbia it is for 3 people, and Croatia 2.7 people – while in all other countries it is for 4 people. The cost of living basket for Ukraine was converted for an individual to a household of four using the OECD equivalency scale.

**Low statutory minimum wages in some countries are further exacerbated by irregular updates in order to take into account changes to inflation and the costs of essential goods, leading to a further depreciation of their value over time.** While some countries provide for minimum wage consultations and adjustments on an annual basis, such as in Bosnia and Herzegovina, Kosovo, Serbia and Ukraine, there is no fixed period for minimum wage adjustments foreseen in the legislation for Albania, Croatia and Romania. In Montenegro, while the minimum wage is supposed to be reviewed by the Social Council every six months, the last adjustment to the minimum wage level occurred in 2013 – leading to a loss in value of around 8 percent<sup>12</sup>.

**In addition to low statutory minimum wages, workers' possibilities to organize and collectively bargain for fair wages above the minimum wage level are also being compromised in many countries in the region as trade union rights have been under attack.** The ITUC 2019 global rights index shows that trade unions rights have been systematically or regularly violated in Romania, Bulgaria, Albania North Macedonia and Serbia (scores 3 and 4) and that no guarantee of trade union rights can be assured in Ukraine (score 5)<sup>13</sup>.

**Low wages in the formal economy are also linked to informality in many countries in the region** –with many workers receiving top-ups from employers in cash above the minimum wage level, while other workers seeking to complement low wages received in the formal economy with informal activities elsewhere<sup>14</sup>. These practices have negative implications both for public finances and the adequacy of social protection benefits for many workers later on in life.

**Wage theft affects many workers in the region** – with arrears in wage payments and non-compliance in paying minimum wages a regular occurrence in some countries. In Ukraine, for instance, the State Statistics Service has estimated unpaid wages to reach 2.5 billion UAH in March 2018 (78 million euros), with half of these wages being withheld by economically active enterprises. Delayed wages and underpayment of wages are further exacerbated by labour inspectorates who are often poorly resourced and/or have limited powers of enforcement<sup>15</sup>. Severe limitations on the frequency of labour inspections and the restrictions on the powers of inspectors have further exacerbated these problems<sup>16</sup>.

**Dismally low wages constrain household consumption, which in turn reduces aggregate demand,** particularly when wages are stagnating in many economies at the same time<sup>17</sup>. This in turn compromises job creation and productivity, and limits possibilities for even greater economic growth. Low wages also can contribute to excessive household debt that can in turn threaten macroeconomic stability – as evidenced by the recent economic and financial crisis<sup>18</sup>.

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<sup>12</sup> See WorldData [historical inflation rates](#) for Montenegro

<sup>13</sup> For more information please refer to the [ITUC Global Rights Index 2019](#)

<sup>14</sup> ILO (2017) What Future for Decent Work in Europe and Central Asia

<sup>15</sup> *ibid*

<sup>16</sup> *ibid*

<sup>17</sup> ILO (2017) [Global Wage Report 2016/2017](#)

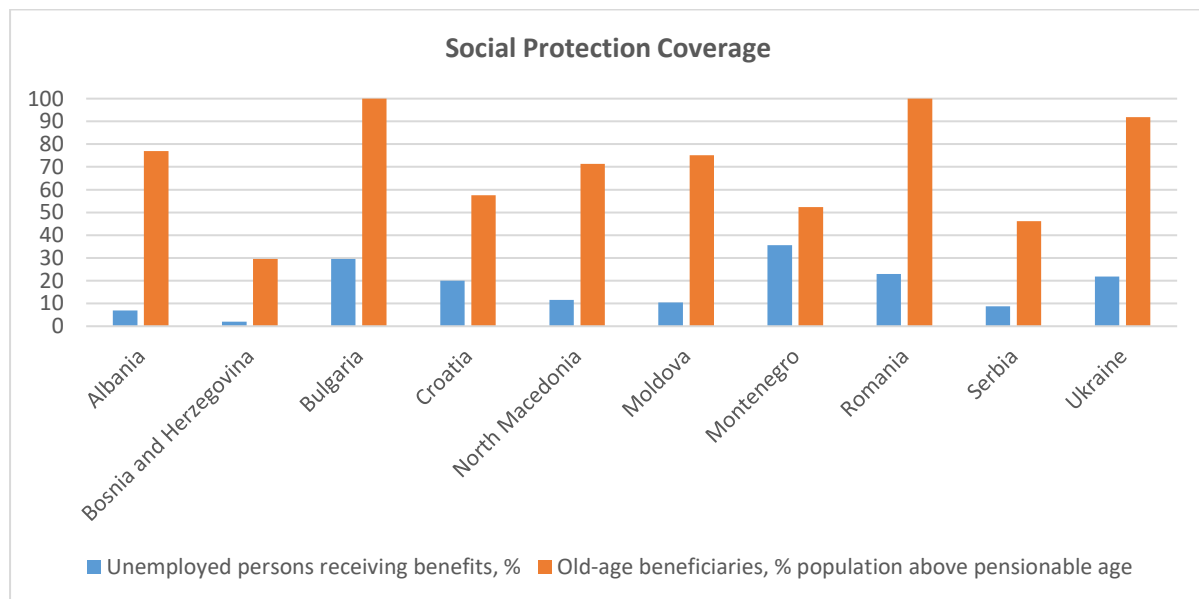
<sup>18</sup> IMF Working Paper (2018) [Understanding the Macro-Financial Effects of Household Debt: A Global Perspective](#)

*In brief...*

- Statutory minimum wages rates in Eastern Europe are poverty wages
- The cost of living outstrips statutory minimum wages
- Collective bargaining on wages is under attack
- Non-enforcement of labour law is denying workers their rights
- Low wages encourage informality, suppress aggregate demand and have negative economic consequences

*Addressing inadequate social protection*

**In addition to low wages, social protection systems in the region remain woefully inadequate and leave many workers unprotected.** While social security and social protection floors exist in most countries, major coverage gaps remain. In Bosnia and Herzegovina and Serbia, less than half of the elderly receive any sort of pension. Support for people out of work is extremely limited – with unemployment benefits covering less than one out of eight unemployed people in Albania, Bosnia and Herzegovina, Serbia, North Macedonia and Moldova. In addition to very limited coverage, the ILO has reported that very low benefit levels have compromised the adequacy of social protection and its ability to prevent and reduce poverty<sup>19</sup>.



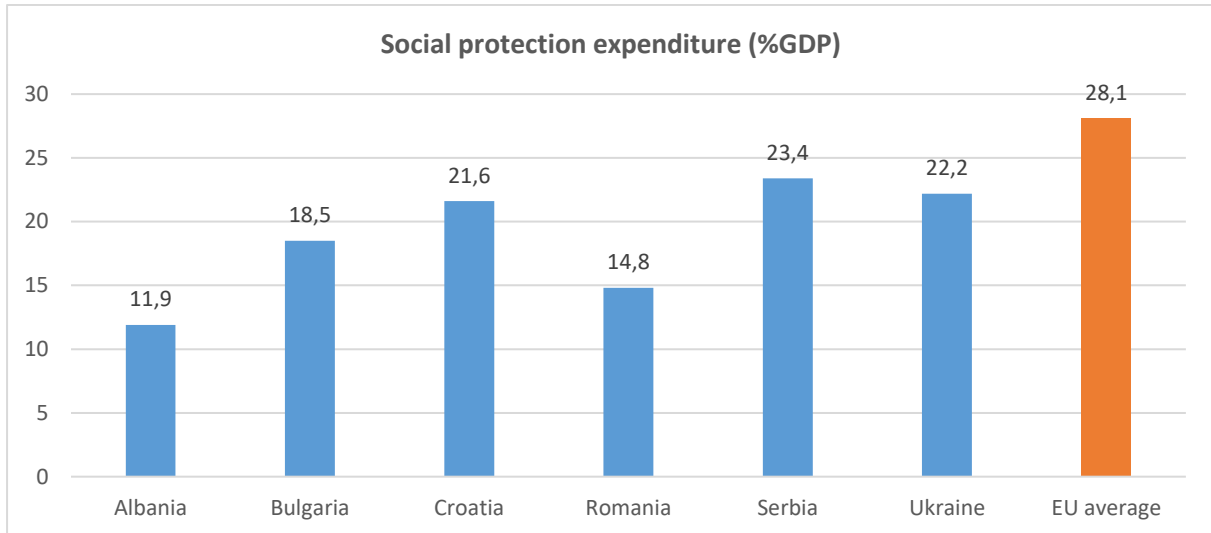
Source: ITUC analysis based on data from the ILO World Social Protection Report Data 2017-2019.

Note: Figures are for 2015 expenditures or latest available year.

**The low coverage and adequacy of social protection systems is largely driven by the fact that social spending remains insufficient to meet demand.** All countries spend considerably less than the EU average on social protection in terms of percentage of GDP. Albania and Romania, for instance, spend less than half of what the average country in the EU spends on their social protection systems in GDP terms, despite the fact that the rates of unemployment and poverty are substantially higher in these countries. Recent reforms in many countries have been undertaken with the aim of further reducing social spending, risking to further reduce adequacy of and access to social protection. In Montenegro, the pension age has increased

<sup>19</sup> ILO (2017) What Future for Decent Work in Europe and Central Asia

and the average replacement rate, which used to amount to 85 percent of average earnings, has been reduced to below 60% of average earnings<sup>20</sup>. In Croatia, the pension age has similarly been increased substantially and the financial penalty for retiring early has been increased substantially, despite the fact that life expectancy remains among the lowest in the European Union<sup>21</sup>. In Romania, a recent reform to reduce employer social security contributions by shifting the vast majority of them on to workers themselves is leading to a substantial loss of revenue for social protection and has led to a reduction in workers' net wages by an estimated 20%<sup>22</sup>.



Source: ITUC analysis on the basis of the ILO World Social Protection Report Data 2017-2019, Eurostat and OECD database.  
 Note: no data available for Bosnia and Herzegovina, Kosovo, North Macedonia and Montenegro. \*Latest data available: OECD (2018), EU 28 (2016).

Governments tend to cite a lack of resources to considerably expand social protection coverage, and many countries in Eastern Europe have cited demographic pressures as an additional reason for not further extending social protection. **However estimations show that the cost of extending social protection in order to provide guaranteed minimum level of protection for everyone would be far from unaffordable<sup>23</sup>.** There are moreover numerous means at governments' disposal to raise revenue and create fiscal space, including reallocating public expenditures, leveraging progressive taxation, tackling tax evasion and illicit financial flows, ensuring that employers pay their fair share of social security contributions, supporting the transition to the formal economy, and addressing barriers to the labour market of women, youth and other underrepresented groups<sup>24</sup>.

**Overall, inadequate social protection is having negative social and economic consequences.** Underdeveloped social protection systems in the region have been reported to contribute to greater poverty and inequality are driving people into informal work<sup>25</sup>. Inadequate social protection is also further dampening aggregate demand, placing an impediment to sustainable economic growth.

<sup>20</sup> See explanation of reform here: <https://balkaneu.com/trade-unions-demand-reform-montenegrin-pension-system/>

<sup>21</sup> See ETUI explanation of the reform [here](#)

<sup>22</sup> See an explanation and analysis of the reform by Equal Times (2018) [here](#)

<sup>23</sup> See for instance ILO Cost Calculator and the Friedrich Ebert Stiftung's Social Protection Floor Index

<sup>24</sup> See, for instance, the conclusions of the ITUC 2018 [Global Conference on Financing Social Protection](#); Ortiz et al. (2017) [Fiscal Space for Social Protection and the SDGs](#)

<sup>25</sup> See for instance ILO (2017) [What Future for Decent Work in Europe and Central Asia](#)

*In brief...*

- Social protection systems fail to cover most workers
- Social spending is insufficient
- Inadequate social protection systems are contributing to greater poverty and inequality and are holding back inclusive economic growth
- Extending social protection to all workers is financially feasible

### *The economic case for minimum living wages and social protection*

**Ensuring statutory minimum living wages and extending social protection within Eastern Europe would have significant social and economic benefits.** Raising the statutory minimum wage has been shown to be effective in reducing poverty as well as wage inequalities by pushing up wages at the bottom of the distribution<sup>26</sup>. While employers and some governments have wrongly argued that raising the minimum wage compromises companies' abilities to operate and reduce jobs, the vast majority of literature has shown that this is not the case<sup>27</sup>. Empirical evidence across other regions of the world, such as Indonesia, Brazil, South Africa and India - has shown that increasing the minimum wage can boost aggregate demand, job creation and employment levels, and overall economic growth<sup>28</sup>. The International Labour Organisation highlighted in 2017 that, *"Recent evidence shows that when minimum wages are set at an adequate level and adjusted regularly to reflect the cost of living and economic factors, they can raise the wages of low-paid workers – many of whom are women – without significantly negative effects in jobs."*<sup>29</sup>

**Research also shows that minimum wages increases have not affected competitiveness,** and there are other, more critical factors that can affect competitiveness such as skill supply, the rule of law, the stability of industrial relations, availability and use of technology and infrastructure, logistics, and trade rules<sup>30</sup>. Numerous studies have also highlighted the positive effects of minimum wages on improved skills, reduced turnover, higher organizational efficiency and higher productivity<sup>31</sup>.

**Likewise, adequate, well-designed social protection systems** have been shown to be extremely effective in preventing and reducing poverty and inequality, fostering skills development and employability, providing crucial automatic stabilisers, reducing informality and supporting overall economic growth and development<sup>32</sup>.

---

<sup>26</sup> See for instance [ILO Global Wage Report 2016/2017](#)

<sup>27</sup> See for instance the ILO [Minimum Wage Policy Guide](#); World Bank (2015) Balancing Regulation to Promote Jobs

<sup>28</sup> See for instance OECD (2016) Employment Outlook; World Bank (2012) Balancing Regulation to Promote Jobs; L20 Policy Brief (2018) [The Case for Wage-led Growth](#)

<sup>29</sup> ILO (2017) What Future for Decent Work in Europe and Central Asia

<sup>30</sup> See for instance, OECD (2008) Skills for Competitiveness: Tackling the low skilled equilibrium conceptual framework; World Bank (2017) Trouble in the Making? The Future of Manufacturing-Led Development

<sup>31</sup> See for instance a comparative evidence review conducted by the Ontario Ministry of Labour (2015) The Economic Impact of Minimum Wages; OECD (2016) Employment Outlook; ILO (2017) [Global Wage Report 2016/2017](#)

<sup>32</sup> See ILO World Social Protection Report 2017-2019; European Commission (2013) Evidence of Demographic and Social Trends: Social policies' contribution to inclusion, employment and the economy; ILO (2011) Decent Work and the Informal Economy; ILO (2014) Monotax: Promoting formalization and protection of independent workers

*In brief...*

- Raising statutory minimum wages reduces poverty and inequality
- Raising statutory minimum wages boosts aggregate demand, employment and overall economic growth
- Minimum statutory living wages and adequate social protection foster inclusive economic growth

### *Supporting a pay rise in Eastern Europe through a regional trade union campaign*

**Unions across Eastern Europe are calling on governments to set statutory minimum wage floors that would allow workers and their families to live in dignity, combined with adequate comprehensive social protection systems.** Such measures would support formal work, enhanced productivity, job creation and employment, and inclusive economic development.

**Regional coordination on wages is necessary.** If governments support and promote minimum wage increases across the region, competition can no longer be argued to be a barrier. Moreover, given the increasing economic integration across Europe, coordination between European countries on wages can help to stem the tide of massive emigration from Eastern Europe and counter skills depletion.

**Unions' across the region are calling for minimum wages to be evidence based, taking into consideration the cost of living.** They should moreover be developed through transparent processes with full involvement of social partners, as well as regular updates of the minimum wages in order to take into account inflation and changes in living costs. Governments must address wage arrears and enforce minimum wages through well-resourced labour inspectorates, as well as through issuing dissuasive penalties to enterprises for non-compliance in line with ILO Convention 131, which most countries in the region have ratified. Adequate, comprehensive social protection systems should likewise be in line with International Labour Standards, including ILO Convention 102 on Social Security and Recommendation 202.

**In parallel, unions call on governments to ensure and promote collective bargaining rights in order to achieve fair wages above the minimum wage level.** Accordingly, workers should have the right to organise, join trade unions, and negotiate appropriate wages and compensation for their work with their employers.

**The European Union must be supportive of these objectives and promote their achievement,** in order to guarantee decent livelihoods for its citizens, promote upward social convergence in Europe and fight against social dumping. **The Union must accordingly adapt its policies and instruments and take ambitious actions to ensure that its Member States achieve decent statutory minimum wages, and really promote and strengthen collective bargaining, including in the context of the follow-up to the social partner consultation launched by the European Commission on possible action addressing the challenges related to fair minimum wages.** For those States outside the European Union, it must equally ensure that fair wages and decent work are properly considered within its trade and association agreements, as well as within enlargement processes.

It is high time for fair pay in Eastern Europe: to allow workers and their families to be able to eat, to live, and to stay.





# The need for a pay rise in Eastern Europe

S&D Workshop: Building decent minimum  
wages across Europe  
5 February 2020

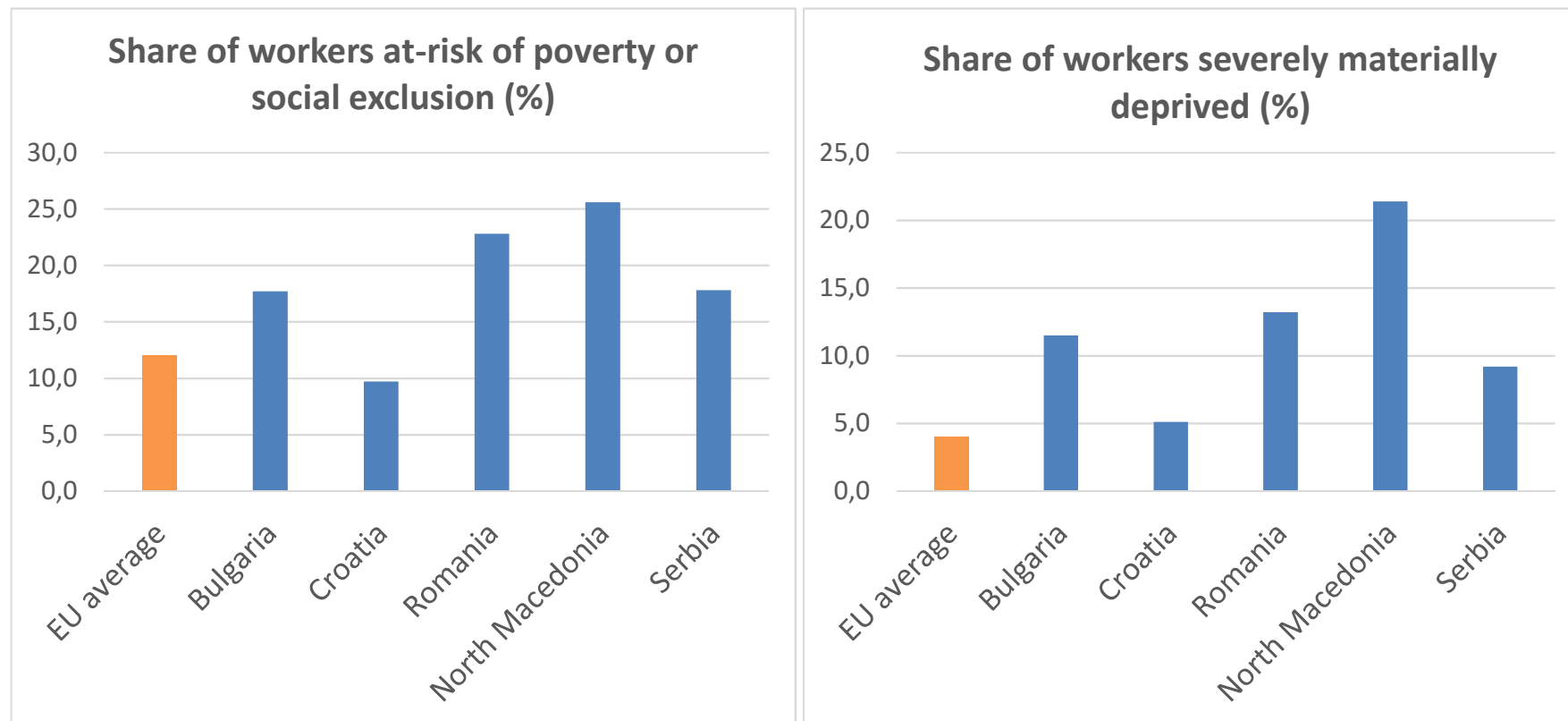
Evelyn ASTOR  
Economic and Social Policy Advisor  
International Trade Union Confederation (ITUC)  
[Evelyn.astor@ituc-csi.org](mailto:Evelyn.astor@ituc-csi.org)

# Major divergences in wages exist...

## Average gross wages in Euro

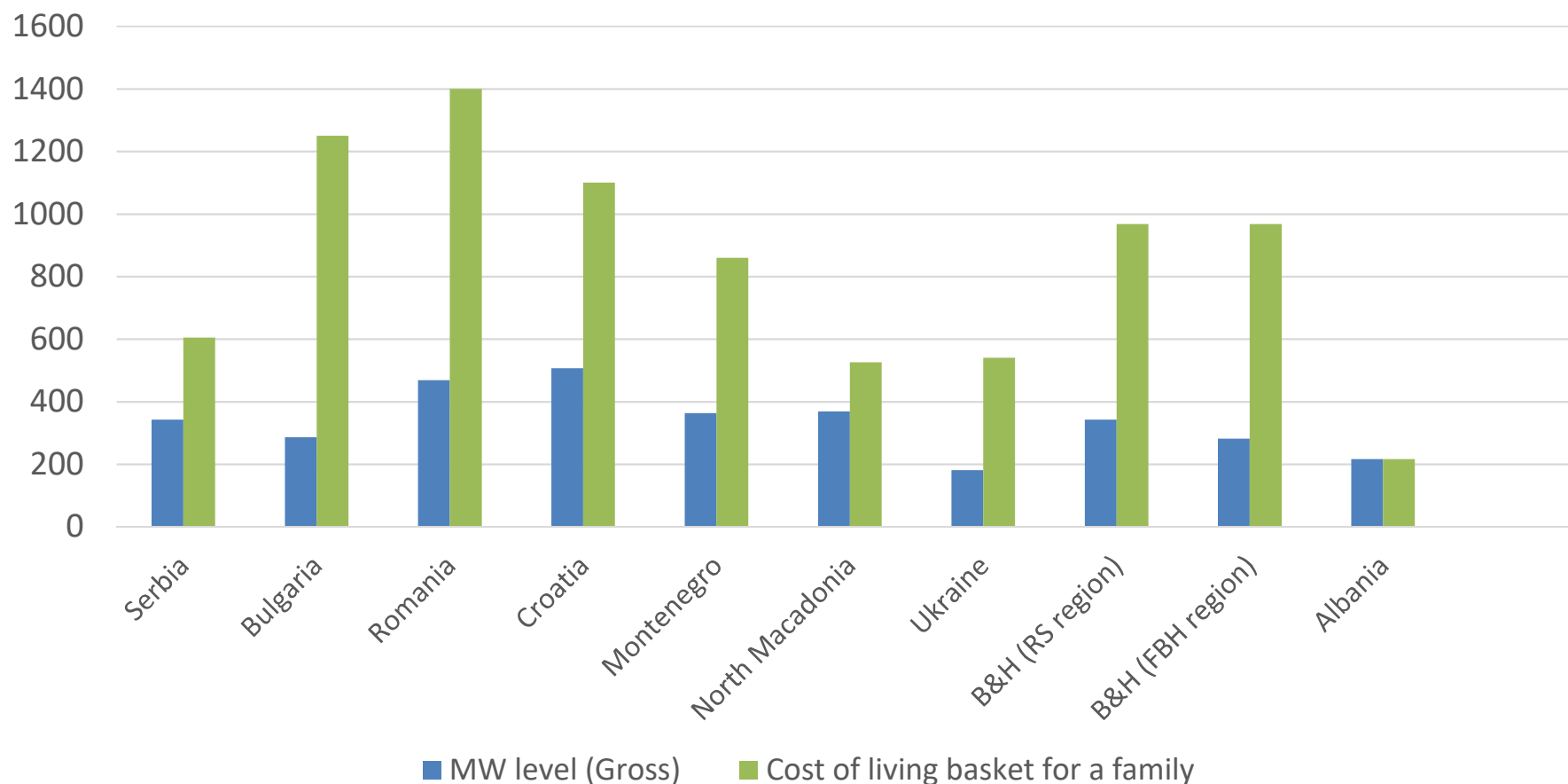
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Montenegro	715.00	722.00	727.00	726.00	723.00	725.00	751.00	765.00	25.6
North Macedonia	491.36	497.38	498.45	503.79	508.33	522.17	532.85	547.10	18.3
Serbia	460.49	517.24	507.66	536.59	523.64	506.45	515.55	543.74	18.2
Bulgaria	331.37	350.65	373.81	396.31	420.13	448.87	484.87	530.37	17.8
Croatia	1,053.5	1,047.9	1,046.9	1,047.5	1,041.7	1,057.9	1,029.0	1,079.2	36.2
EU15 average	2,655	2,708	2,782	2,841	2,891	2,950	2,954	2,979	100.0

# Workers are earning poverty wages



Source: Eurostat - latest data available:

## Gross monthly minimum wages vs. cost of living basket (in EUR) for an average family



*Source: ITUC calculations based on information provided by national trade union centres (2019)*  
*Note: Cost of living baskets are estimated for an average sized family. In Albania, it is for 3.2 people, Serbia it is for 3 people, and Croatia 2.7 people – while in all other countries it is for 4 people. The cost of living basket for Ukraine was converted for an individual to a household of four using the<sub>4</sub> OECD equivalency scale.*

# In Search of a Legal Basis for an EU minimum wage Directive

Prof. dr. Sacha Garben  
College of Europe, Bruges

# Presentation overview

1. The European Pillar of Social Rights and a fair minimum wage
2. A legal basis for an EU minimum wage directive: what options are there?
  - i. Article 153 TFEU on social policy?
  - ii. Article 175 TFEU on social and economic cohesion?
3. Conclusion

# 1. The European Pillar of Social Rights and minimum wage

- Principle 6 of the EPSR provides:

“Workers have the right to fair wages that provide for a decent standard of living.

Adequate minimum wages shall be ensured, in a way that provide for the satisfaction of the needs of the worker and his / her family in the light of national economic and social conditions, whilst safeguarding access to employment and incentives to seek work. In-work poverty shall be prevented.

All wages shall be set in a transparent and predictable way according to national practices and respecting the autonomy of the social partners.”

- The EPSR is a high-level political commitment but does not in itself constitute a legal basis or grant enforceable rights

## 2. In search of a legal basis: Article 153 TFEU?

- Article 153 TFEU is the main social policy legal basis, allowing the adoption of minimum harmonisation directives on a range of social issues including working conditions, social security and protection of workers
- However, it provides in paragraph 5 that “The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.”
- The CJEU has held that the limitation under Article 153(5) stands for “the establishment of the level of all or some of the constituent parts of pay and/or the level of pay in the Member States, or the setting of a minimum guaranteed wage” C-395/08, *Bruno and Others*
- On the other hand, including wage in the principle of equal treatment is not covered by this limitation
- Conceivably one could adopt an instrument that avoids the setting of wages or the components of pay directly, but that instead prescribes certain procedural requirements such as transparency and predictability.
  - This would inherently and necessarily lack the very substance and thus legal and political punch that the promised initiative should carry.
    - Disappointing citizens with a false promise!



## 2. In search of a legal basis: Article 175 TFEU?

- The starting point of the EU's competence Social and Economic Cohesion is Article 174 TFEU:

*“In order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion.*

*In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions.*

*...”*

## 2. In search of a legal basis: Article 175 TFEU?

- Article 175 provides the actual legal basis:

*« Member States shall conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in Article 174. The formulation and implementation of the Union's policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 174 and shall contribute to their achievement. The Union shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing Financial Instruments.*

...

***If specific actions prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other Union policies, such actions may be adopted by the European Parliament and the Council acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions. »***

## 2. In search of a legal basis: Article 175 TFEU?

- A minimum wage directive based on 175 TFEU would have to demonstrate how it would contribute significantly to economic and social cohesion
  - A thorough Impact Assessment would be warranted
  - Focus not only on reducing disparities;
  - but on taking the sharp edges of wage-competition that has distorted the internal market as can be seen from the Posting-saga,
  - as well as producing upward socio-economic convergence
- This entails a creative reading of Article 175 TFEU but finds elements of support in the case law
  - extensive discretion to the Union as to the actions that might be taken in the field of economic, social and territorial cohesion: C-420/16 P, *Izsak and Dabis*
  - “economic and social progress” correspond to the objectives pursued by the EU policy on economic and social cohesion: C-166/07, *Parliament v Council*

## 2. In search of a legal basis: Article 175 TFEU?

- **It is not a risk-free option:** legal uncertainties do exist:
  1. CJEU has said “establishment of the level of the various parts of pay of a worker fall outside the competence of the EU legislature and rests with the Member States” in C-395/08, *Bruno and Others*
    - But this was in reference to Article 153 TFEU
      - AG Jaaskinen in Case C-507/13, *UK v EP and Council* did say that another legal basis may not be used to “circumvent” Article 153(5) TFEU but this has not been confirmed by the Court and textual reading opposes such a narrow view
  2. Article 175 TFEU mentions “without prejudice to the measures decided upon within the framework of the other Union policies” the meaning of which is unclear and could indicate a subordination of this legal basis to others
    - There however don’t seem to be any ‘measures decided upon in the framework of other competences’ that would be prejudiced by a minimum wage directive
  3. “specific actions” as authorised in Article 175 are not defined, and so it is not fully clear that this can include harmonising legislation
    - But where Treaty wants to exclude harmonising measures it does so explicitly
  4. Is Article 153 TFEU a *lex specialis* that has to be used (and thus cannot) rather than 175 TFEU for wages?
    - Finds no support in the case law of the CJEU, see eg *Tobacco Advertisement*

## 3. Conclusion

- There is no ideal legal basis in the current Treaties to adopt an EU minimum wage directive...
- but the discussion does not have to stop there.
- Article 153 TFEU does not give the competence to adopt a real EU minimum wage measure and anything that would manage to stay in its limits would disappoint the citizens as an false promise,
- But Article 175 TFEU on social and economic cohesion could provide an unconventional but promising way forward (QMV and OLP!)
- The measure would have to be designed (and supported by IA) to genuinely contribute to EU's harmonious development and economic and social cohesion
- There are legal uncertainties but at this stage they do not seem unsurmountable, with a bit of **courage and creativity**



Thanks for your attention

Comments welcome: [Sacha.Garben@coleurope.eu](mailto:Sacha.Garben@coleurope.eu)

# A EUROPEAN INITIATIVE TOWARDS FAIR MINIMUM WAGES?

**Prof. Dr. Thorsten Schulten**

**S&D EMPL Workshop**

Decent Minimum Wages Across Europe

European Parliament

**5 February 2020, Brussels**



# The New Initiative on Minimum Wages

by the European Commission



## Minimum Wages:

- **protect workers** with low wages and low bargaining power
- support **gender equality**
- relieve **tax and social security systems**
- support overall **wage growth** and strengthen **internal demand**



Brussels, 14.1.2020  
C(2020) 83 final

CONSULTATION DOCUMENT

First phase consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges related to fair minimum wages

**A New Discourse**  
in the EU on  
Minimum Wages !!!



# The Uprating of Minimum Wages – a (Global) European Trend?

DJIA 25942.37 ▲ 0.44% ▲ S&P 500 2881.40 ▲ 0.37% ▲ Nasdaq 7916.94 ▲ 0.08% ▲ U.S. 10 Yr -6/32 Yield 2.467% ▼ Crude Oil 61.71 ▲ 0.02% ▲

## THE WALL STREET JOURNAL.

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ECONOMY | THE OUTLOOK

### World Governments Test Minimum-Wage Raises

Major economies consider trial and error to see at what threshold costs could outweigh benefits

By *Tom Fairless*  
May 4, 2019 5:30 a.m. ET

FRANKFURT—From Athens to Seoul, governments around the world are increasing the minimum wage, seeking to assuage voter concerns over years of weak pay growth and

# Demands for structural Increases of Minimum Wages – The example of Germany



"Positiver Effekt auf die Wirtschaft"

Gewerkschafts-Chef fordert Mindestlohn von zwölf Euro

26.12.2018, 12:45 Uhr | AFP, t-online.de



Reiner Hoffmann bei einer Protestversammlung. Der DGB-Boss geht davon aus, dass mehr Mindestlohn die Wirtschaft stärken werde. (Quelle: Christoph Soeder/dpa)

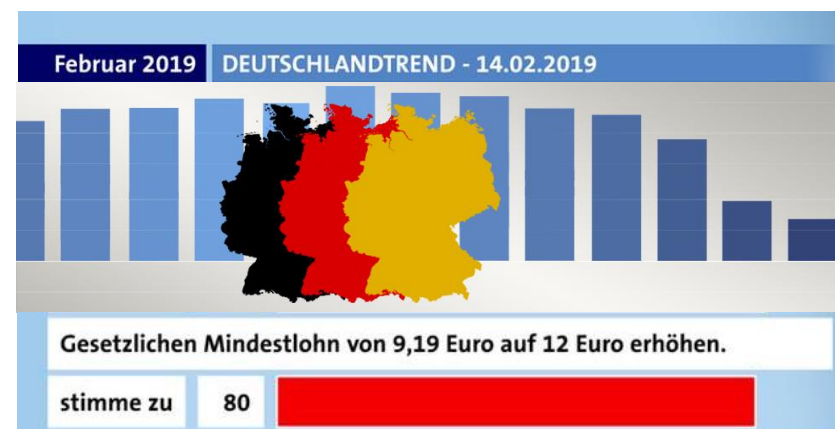


## Opinion poll 02/2019:

80% is in favour to increase  
the Minimum Wage to **12 Euro**  
≈ **60% of the Median Wage**



MW = 9,35 € → 12 €: **28%**



# Demands for structural Increases of Minimum Wages in Europe



**EL ECONOMISTA** 30 ANIVERSARIO

SEGÚN ANUNCIÓ PEDRO SÁNCHEZ

## España aumentará un 22% el salario mínimo en 2019

La subida del salario mínimo pasará de 858 euros a 1.050 euros brutos a partir del año 2019, será la mayor desde 1977, anunció el presidente del gobierno español, Pedro Sánchez.

AFP 12 de diciembre de 2018, 06:56

De Telegraaf NIEUWS SPORT ENTERTAINMENT FINANCIËL VIDEO LIFESTYLE WAT U ZEGT

NIEUWS / FINANCIËL

## Werknemers met laag inkomen moeten meeprofiteren

# FNV: minimumloon verhogen naar €14

Door **ERTANBASEKIN**  
Updated: 15 apr. 2019 14 apr. 2019 in FINANCIËL

**ABVV-FGTB**  
Ensemble, on est plus forts  
Samen sterk



**TUC** Changing the world of work for good

Home / News

## We demand a £10 per hour national living wage



2019 RATE	REPUBLIC OF IRELAND	REPUBLIC OF IRELAND
	LIVING WAGE €12.30 PER HOUR	MINIMUM WAGE € 9.80 PER HOUR

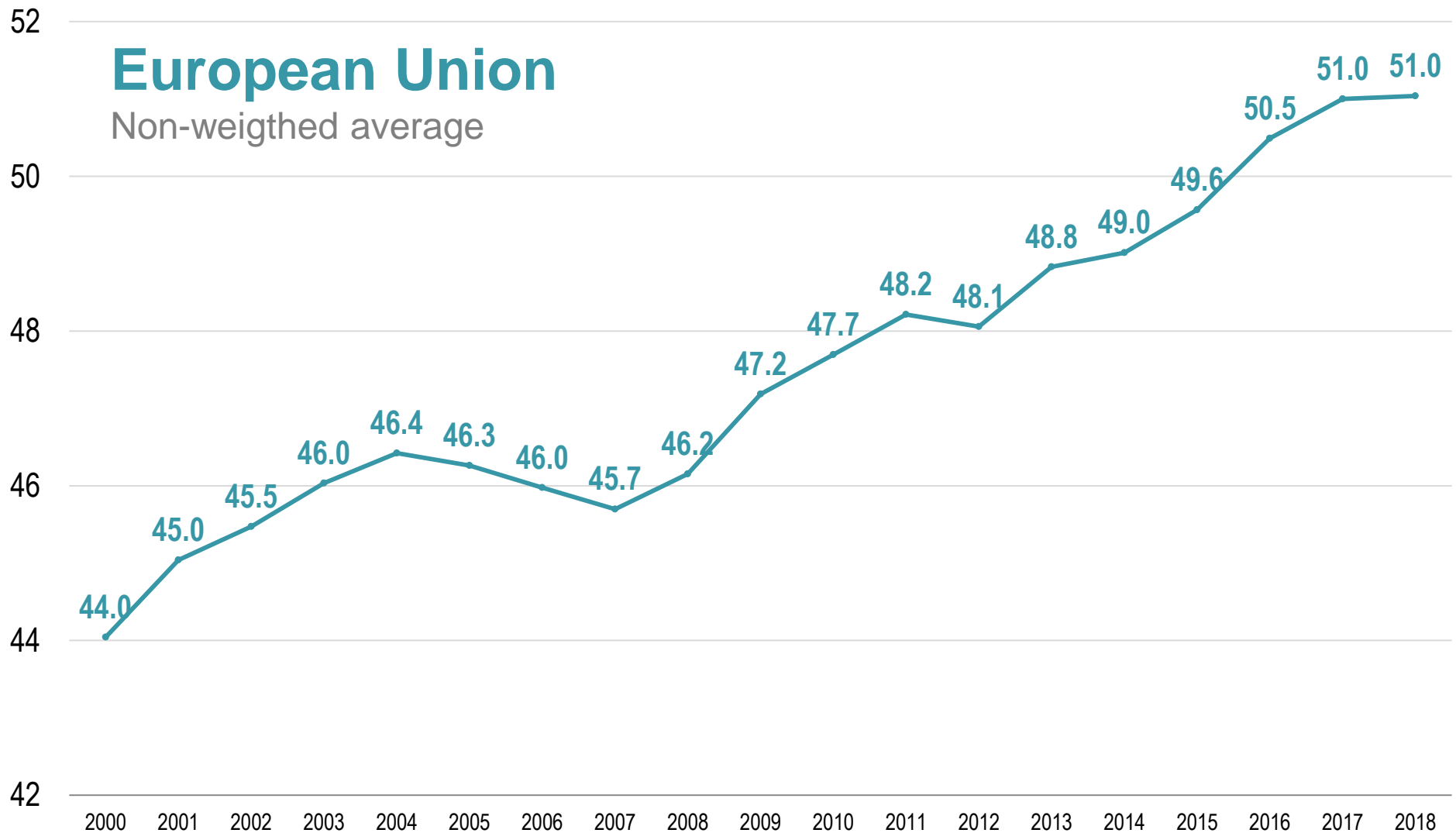
# Demands for structural Increases of Minimum Wages in Europe



	Current MW	Trade Union Demands	Increase
<b>Belgium</b>	9,66 EUR/Hour 1593,81 Euro/Month	<b>14,00 EUR/Hour</b> , FGTB	<b>45%</b>
<b>Germany</b>	9,35 EUR/Hour	<b>12,00 EUR/Hour</b> ,DGB	<b>28%</b>
<b>France</b>	10,15 EUR/Hour 1.539,42 EUR/Month	<b>1.800 EUR/Month (= 11,87 EUR/Hour)</b> , CGT	<b>17%</b>
<b>UK</b>	8,72 GBP/Hour	<b>10,00 GBP/Hour</b> , TUV	<b>15%</b>
<b>Ireland</b>	10,10 EUR/Hour	<b>12,30 EUR/Hour = Living Wage</b> , ITUC	<b>22%</b>
<b>Luxembourg</b>	12,38 EUR/Hour	<b>13,62 EUR/Hour</b> = Structural Increase by 10% , OLGB	<b>10%</b>
<b>Netherlands</b>	10,14 EUR/Hour 1.653,60 EUR/Month	<b>14,00 EUR/Hour</b> FNV	<b>38%</b>
<b>Austria</b>	1.500 EUR/Month	<b>1.700 EUR/Month</b> , ÖGB	<b>13%</b>
<b>Portugal</b>	3,83 EUR/Hour 635 EUR/Month	<b>800 EUR/Month (= 4,82 EUR/Hour)</b> UGT <b>850 EUR/Month (= 5,12 EUR/Hour)</b> CGTP	<b>26%</b> <b>34%</b>
<b>Slovakia</b>	3,33 EUR/Hour 580 EUR/Month	<b>640 EUR/Month; 3,68 EUR/Month</b> = 60% of average wage, KOZ SR S	<b>10%</b>
<b>Spain</b>	5,76 EUR/Hour 950 EUR/Month	<b>1.000 EUR/Month (= 6,06 EUR/Hour)</b> target 60 % of average wage: <b>1.200 EUR/Month (= 7,27 EUR/Hour)</b> CC.OO und UGT	<b>5%</b> <b>26%</b>
<b>Czechia</b>	<b>87,30 CZK/Hour</b> 14.600 CZK/Month	<b>108 CZK/Hour; 18.025 CZK/Month</b> = 50% of average wage, ČMKOS	<b>24%</b>

# Minimum Wages in the EU

in % of median wages of full-time workers



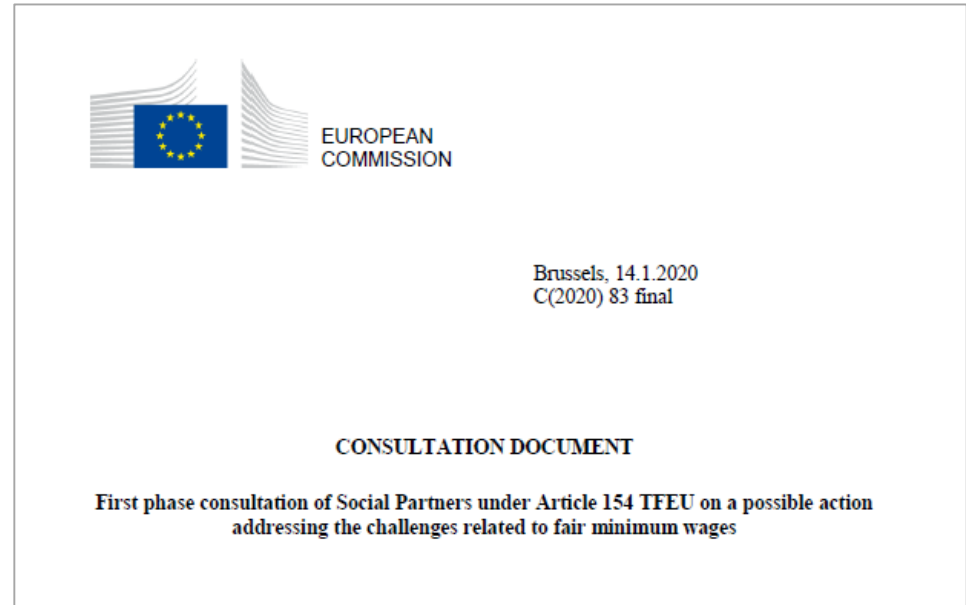
# The New Initiative on Minimum Wages

by the European Commission



## Action required:

- **Wage adequacy**,  
i.e. the level  
of minimum wages
- **Wage coverage**  
(no exemptions!)
- Involvement of  
**Social Partners**
- Mechanisms guiding  
the **Adjustments** of  
statutory minimum wages



# The New Initiative on Minimum Wages

by the European Commission



## Criteria for fair Minimum Wages:

- **Kaitz-Index:**  
60% of Median Wage
- **Gross or net wages?**  
Responsibility for fair wages:  
Employer or the State
- **Basket of Goods:**  
Living Wages  
Difficult to find a European-wide approach
- **Kaitz-Index as the most feasible and pragmatic criterion!!!**

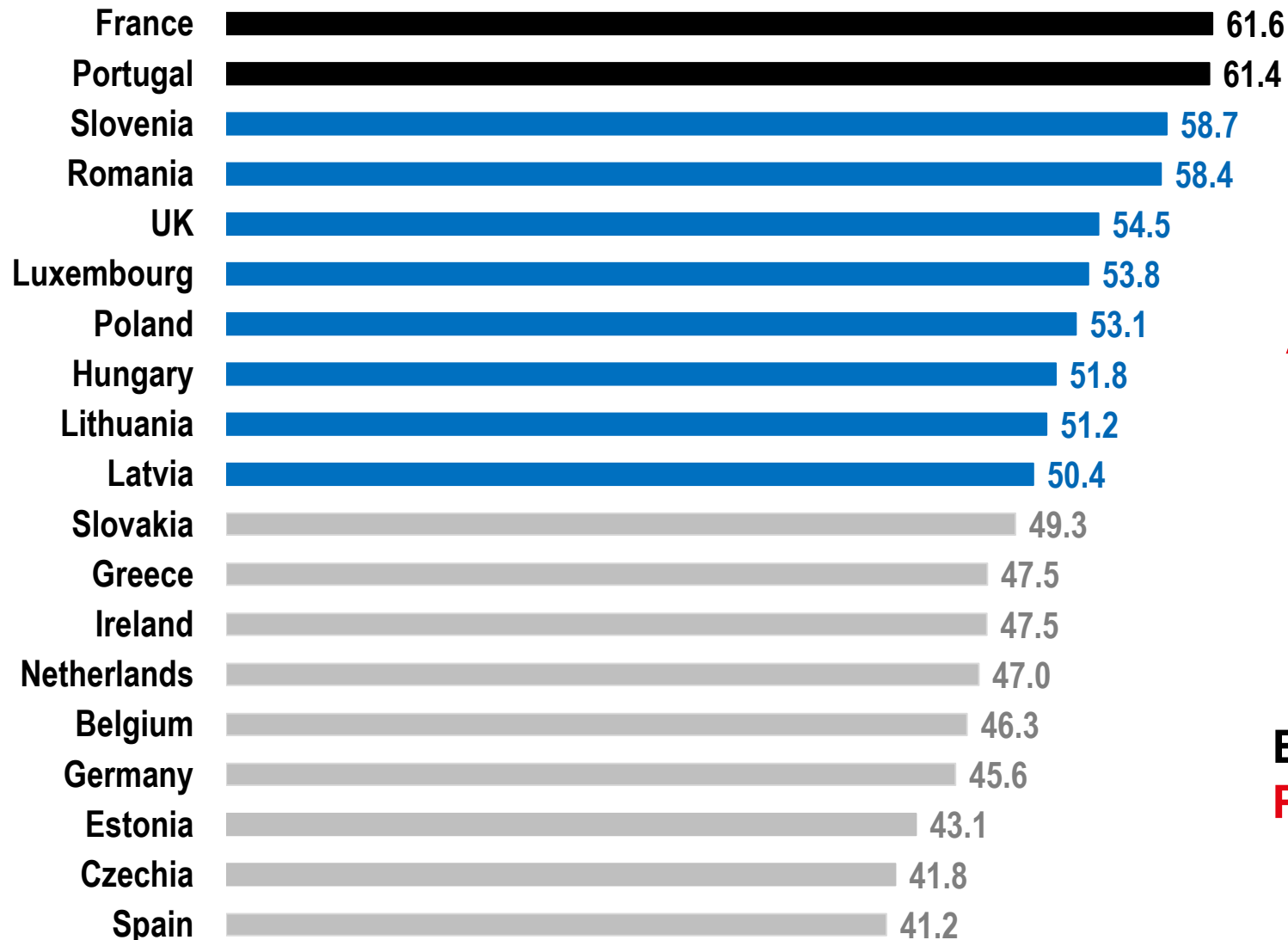


Brussels, 14.1.2020  
C(2020) 83 final

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First phase consultation of Social Partners under Article 154 TFEU on a possible action  
addressing the challenges related to fair minimum wages

# Minimum Wages in % of Median Wages 2018



**Below 60%:  
At-risk-of-  
Poverty Wages**

**Below 50%:  
Poverty Wages**

Source: OECD



# The New Initiative on Minimum Wages

by the European Commission



## Criteria for fair Minimum Wages:

- **Kaitz-Index:**  
60% of Median Wage
- **Not always working!**  
In Countries with very low median wages
- **Reality check:**  
60% median wage to be checked against national basket of goods
- **Strengthen collective bargaining to increase median wages!!!**



Brussels, 14.1.2020  
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# Further Information: WSI Minimum Wage Database

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[WSI-Tarifarchiv](#) > [Was verdient was?](#) > [Mindestlöhne](#) > [WSI Minimum Wage Database International](#)

## WSI MINIMUM WAGE DATABASE

[Map of Europe](#) | [Minimum Wages in Europe](#) | [Global comparison](#)

**Minimum Wage Database**

Minimum Wages in:

- EU countries
- other European countries
- no national Minimum Wage



**WSI** Das WSI ist ein Institut der Hans-Böckler-Stiftung

**WER VERDIENT WAS?**

[Tarifvergleichen](#)

**Mindestlöhne**

- Mindestlöhne in Deutschland
- WSI-Mindestlohnatenbank International
- WSI Minimum Wage Database International
- Online-Datenbank LohnSpiegel

### ETUI Policy Brief

European Economic, Employment and Social Policy  
 N° 1/2020

#### The European minimum wage on the doorstep

—  
 Torsten Müller and Thorsten Schulten

Torsten Müller is Senior Researcher at the European Trade Union Institute (ETUI) in Brussels, Belgium. Thorsten Schulten is head of the Collective Agreements Archive of the Institute of Economic and Social Research (WSI) within the Hans-Böckler-Stiftung in Düsseldorf, Germany. He is also Honorary Professor at the University of Tübingen, Germany.

**Key points**

- On 14 January 2020, the European Commission published a consultation document with a view to take legislative action to establish fair minimum wages in Europe;
- In this policy brief we argue for a pragmatic approach of taking the 'in-work-poverty-wage' threshold of 60 per cent of the national full-time gross median wage as the reference to assess the adequacy of minimum wages;
- In countries in which a high proportion of workers earn very low wages, the whole wage structure, and therefore the median wage, is very low; therefore, a minimum wage of 60 per cent of the national median wage may still not be enough to ensure a decent living standard;
- The Commission initiative should, therefore, include an obligation to subject the 60 per cent target to a real-life test by examining, for instance on the basis of a country-specific basket of goods and services defined with the full involvement of trade unions and employers' organisations, whether a minimum wage of 60 per cent of the national median wage really amounts to a wage that ensures a decent living standard;
- In addition, the Commission should develop further proposals for measures to support sectoral collective bargaining as the primary tool to stabilize and raise the overall wage structure in order to ensure that 60 per cent of the national median wage really is a fair minimum wage which provides for more than mere subsistence by enabling participation in society and some scope for workers to insure against unforeseen shocks.



**Prof. Dr. Thorsten Schulten**  
 thorsten-schulten@boeckler.de

# The need for a pay rise in Eastern Europe

S&D Workshop: Building decent minimum  
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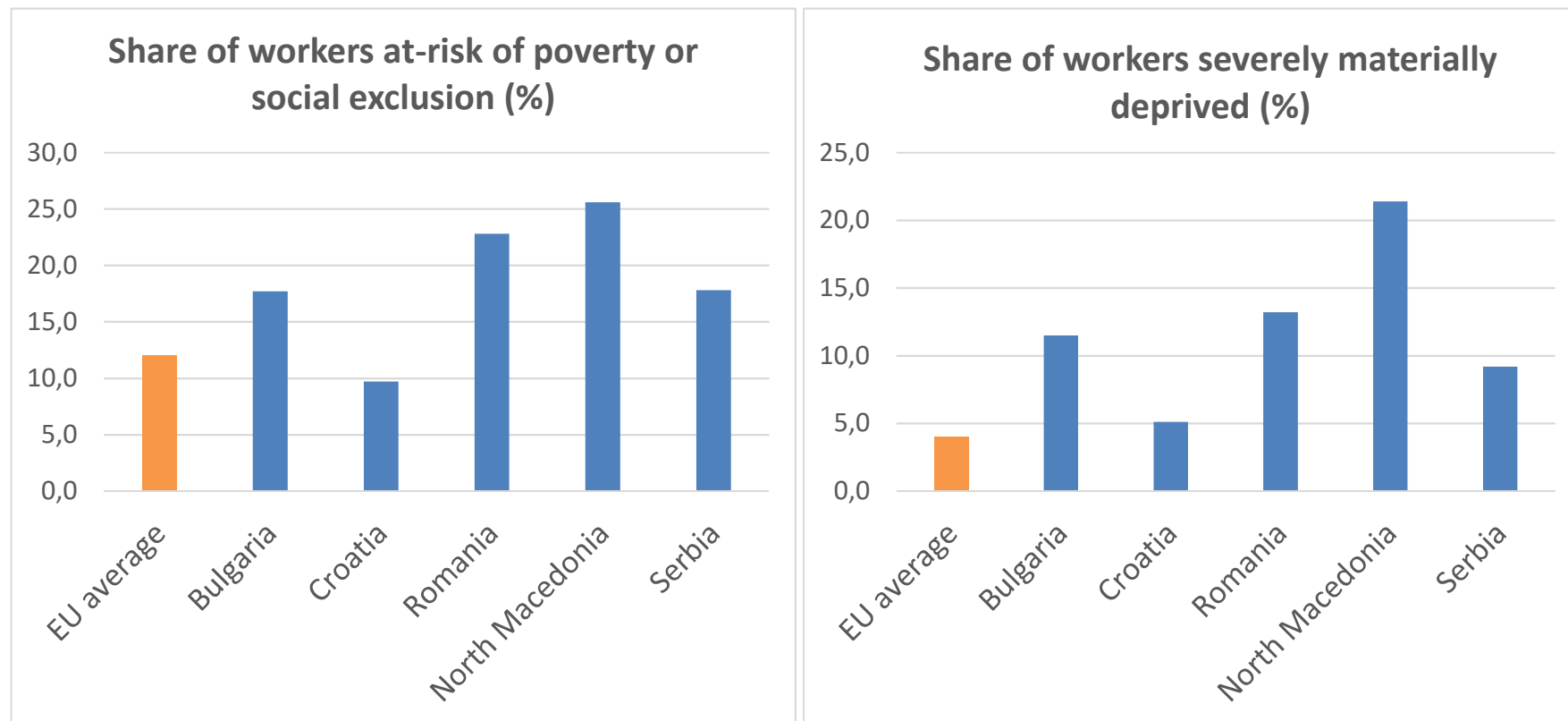
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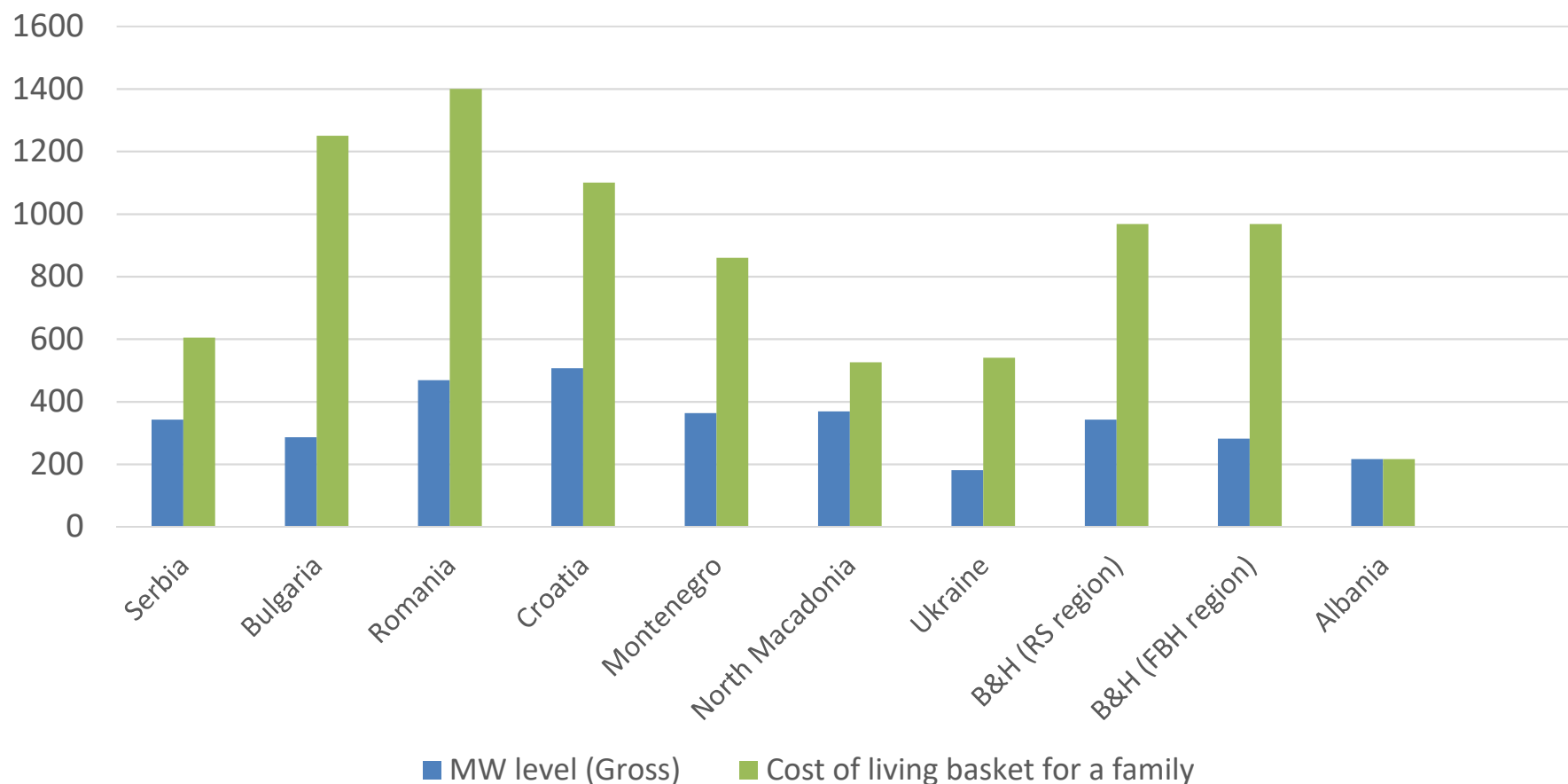
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# What's in a name? From minimum wages to living wages in Europe

Transfer  
2019, Vol. 25(3) 267–284  
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## Summary

The development of a European minimum wage policy is back on the political agenda. While in the past the debate about a European minimum wage policy was largely detached from developments at national level, more recently the debate has been based on various national-level initiatives to ensure a living wage that enables workers and their families to enjoy a decent standard of living. Based on an introduction to the living wage concept, this article analyses how recent living wage initiatives in several EU Member States and the development of a European minimum wage policy could mutually reinforce each other and eventually result in a European living wage policy. In view of the significant heterogeneity of minimum wage regimes and welfare state traditions across Europe, the article calls for a pragmatic approach that adopts a common European target of 60 per cent of the national median wage as the benchmark for an adequate minimum wage.

## Résumé

Le développement d'une politique européenne du salaire minimum a fait sa réapparition à l'agenda politique. Alors que dans le passé, le débat relatif à une politique européenne du salaire minimum était largement déconnecté des évolutions en cours au niveau national, les discussions les plus récentes sont basées sur différentes initiatives prises au niveau national pour garantir un *living wage* qui assure un niveau de vie décent aux travailleurs et à leurs familles. Sur la base d'une introduction au concept de *living wage*, cet article analyse comment les récentes initiatives adoptées dans plusieurs États membres de l'UE à propos du *living wage* et le développement d'une politique européenne du salaire minimum peuvent se renforcer mutuellement, et finalement déboucher sur une politique européenne du *living wage*. Compte tenu de l'hétérogénéité considérable qui prévaut en Europe en matière de régimes de salaire minimum et de traditions de protection sociale, l'article plaide pour une approche pragmatique, qui vise un objectif européen commun correspondant à 60% du salaire médian national comme norme de référence en termes de capacité de la rémunération minimale à garantir un niveau de vie décent.

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## Zusammenfassung

Die Entwicklung einer europäischen Mindestlohnpolitik ist zurück auf der politischen Agenda. Während in der Vergangenheit die Diskussion über eine europäische Mindestlohnpolitik weitgehend losgelöst von realen Entwicklungen auf nationaler Ebene stattfand, wird die jüngste Debatte durch verschiedene nationale Initiativen zur Sicherung eines Living Wage gestützt, der den Beschäftigten und ihren Familien einen angemessenen Lebensstandard ermöglichen soll. Basierend auf einer Einführung des Living Wage-Konzepts untersucht der Artikel, wie sich die jüngsten Living Wage-Initiativen in mehreren EU-Mitgliedsstaaten und die Entwicklung einer europäischen Mindestlohnpolitik gegenseitig unterstützen und letztendlich zu einer europäischen Living Wage-Politik führen können. Angesicht der Heterogenität der Mindestlohnsysteme und der Wohlfahrtsstaatstraditionen in Europa plädiert der Artikel für einen pragmatischen Ansatz. Dieser definiert einen gemeinsamen europäischen Standard von 60 Prozent des nationalen Medianlohns als Maßstab für die Bewertung, inwieweit Mindestlöhne in der Lage sind, einen angemessenen Lebensstandard zu garantieren.

## Keywords

Minimum wage, living wage, trade unions, campaign, European minimum wage policy

## Introduction

In July 2019, the new president of the European Commission, Ursula von der Leyen, presented her 'Agenda for Europe', in which she announced a European initiative on minimum wages: 'Within the first 100 days of my mandate, I will propose a legal instrument to ensure that every worker in our Union has a fair minimum wage. This should allow for a decent living wherever they work' (Von der Leyen, 2019: 9). In many European countries the issue of minimum wages also played a prominent role in the 2019 election campaigns for the European Parliament, particularly in France and Germany. In France, President Emmanuel Macron repeatedly proposed 'a minimum European wage appropriate to each country and discussed collectively every year' (Macron, 2019). In Germany, Chancellor Angela Merkel confirmed that minimum wages had become a 'current topic in the European Union' and called for 'comparable minimum wages that take into account the different living standards in our countries' (Merkel, 2019). The German labour minister, Hubertus Heil, even announced the preparation of a concrete 'initiative for a European minimum wage' to be launched during the German EU presidency in 2020 (Heil, 2019). Because, furthermore, the introduction of a European minimum wage policy seems to have gained support from almost all parts of the political spectrum it will most likely be a key issue on the EU policy agenda in the future.

The debates on a European minimum wage policy, however, are anything but new. They go back to the 1990s when the EU discussed the implementation of the EU Charter of the Fundamental Social Rights of Workers of December 1989, according to which all workers in the EU 'shall be assured of an equitable wage, that is, a wage sufficient to enable them to have a decent standard of living' (Schulten, 2008). Since then the debate on a European minimum wage policy has arisen frequently, especially during European election campaigns. Apart from a few non-binding European Parliament resolutions, however, the issue has never been transformed into concrete policies. Most recently, the former president of the European Commission, Jean-Claude Juncker, paid lip-service to the idea of a European minimum wage policy before his election but



did not launch any political initiative when in office. Even the adoption of the European Pillar of Social Rights in 2017, which again contains a ‘right to fair wages that provide for a decent standard of living’ and called for ‘adequate minimum wages’ to prevent in-work poverty, has not yet led to any concrete policy initiatives.

In the literature, various arguments have been raised that purport to show why the implementation of a European minimum wage policy would be difficult, if not impossible. First, there are substantial differences in minimum wage levels, ranging from around €12 per hour in Luxembourg to below €2 in Bulgaria (Schulten and Lübker, 2019). It is therefore obvious that a European regulation on minimum wages is not about setting a single European minimum wage rate, but rather defining a common European target for national minimum wages in relation to average or median national wage levels.

Second, the national minimum wage regimes in the EU, namely the procedures, institutions and actors who determine the minimum wage, also vary significantly. While a majority of 22 EU countries have a single national minimum wage, mainly established by law, there are six countries with no national minimum wage, but a strong tradition of autonomous collective bargaining and high bargaining coverage. The latter include, in particular, the Nordic countries, where not only almost all political parties but also the trade unions are strongly resistant to a European minimum wage policy, which they regard as a fundamental threat to the Nordic wage-setting model (Schulten et al., 2015; Seeliger, 2018).

Third, there is the question of whether or not the EU has a solid legal basis for a European minimum wage policy. According to Article 153(5) of the Treaty on the Functioning of the European Union (TFEU), the issue of pay is explicitly excluded from EU social policy competences (De Baere and Gutman, 2017). On the other hand, various international and European conventions call for political action in order to guarantee the right to decent pay (see Zimmer, 2019). Despite the legal uncertainty, however, the EU has a longstanding practice of, at least formally, non-binding recommendations on pay issues, including minimum wages, as in the context of the European Semester, not to mention EU interventionism in countries covered by the EU bailout programme (Schulten and Müller, 2015).

Fourth and finally, debates on a European minimum wage have often been more symbolic in character, aimed at emphasising the notion of a more social Europe rather than defining a concrete policy project. These debates therefore have usually remained fairly abstract, without really attempting to work out details for implementation. Moreover, these European debates have usually borne no relation at all to current minimum wage policies at national level.

Considering all the obstacles and resistance to a European minimum wage policy, it might well be that the current debates and proclamations will again lead to nothing. In this article, however, we will argue that things may be different this time. The differences are grounded in more recent initiatives and political struggles in many EU countries in favour of a more substantial increase of minimum wages. Despite all national particularities, the common feature of all these initiatives is the concept of a living wage, although the explicit use of the term is still limited mainly to Anglophone countries. As a matter of fact, in most EU countries minimum wages are set at rather low levels, often below the poverty threshold, and do not allow for a decent living without additional income support from the state; in other words, they are not living wages.

In what follows we will first provide a brief introduction to the living wage concept, and its moral and economic justification, as well as examining how it differs from other forms of wages and income. We will then provide a comparative overview of recent living wage initiatives in Europe. Finally, we will discuss whether these initiatives might become the real basis for a European minimum wage policy, which would therefore be a policy on living wages.

## The concept of a living wage: economic and normative arguments

In the first instance the living wage concept belongs to the moral economy and draws on normative assumptions. The Scottish economist and moral philosopher Adam Smith is considered to be one of the first people to formulate a living wage concept (Clary, 2009). According to Smith, ‘a man must always live by his work, and his wages must at least be sufficient to maintain him’. Moreover, ‘they must even upon most occasions be somewhat more, otherwise it would be impossible for him to bring up a family’ (Smith, 1789/2007: 57–58). What exactly Smith meant by a sufficient wage becomes clear from what he said about the ‘necessaries’ that have to be covered by the wage: ‘By necessaries I understand not only the commodities which are indispensably necessary for the support of life, but whatever the custom of the country renders it indecent for creditable people, even of the lowest order, to be without’ (Smith, 1789/2007: 676). Later on, Karl Marx (1887: 121) added that the value of labour always contains a ‘historical and moral element’, which depends on the state of social and cultural development, but also on the wage struggle between capital and labour.

The term ‘living wage’ dates back to the late 19th century and was first of all a reaction to the poverty wages at the time. The term came to be used more widely in the early 20th century, when it was popularised by John A Ryan’s book *A living wage – its ethical and economic aspects* (Ryan, 1912). The living wage concept basically determines the normative demand for a wage income, which is supposed to provide all workers with a decent living regarding both the provision of basic needs, such as food, housing and clothes, as well as the possibility to participate in cultural and social life. Moreover, the living wage concept was also seen as key to the emancipation of the working class as it would provide the economic freedom necessary for political participation (Glickman, 1997: 3).

During the 20th century the living wage concept found its way into various international documents and conventions (Anker, 2011; Schulten et al., 2015; Zimmer, 2019). It started with the Preamble to the Constitution of the International Labour Organisation of 1919, which referred explicitly to ‘the provision of an adequate living wage’. Later on, demands for a ‘fair’ or ‘decent’ wage were included, for example, in the UN Universal Declaration of Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966 and ILO Convention No. 131 on Minimum Wages of 1970. In Europe, similar provisions can be found in the European Social Charter of the Council of Europe of 1961, the EU Charter of the Fundamental Social Rights of Workers of December 1989 and, most recently, the European Pillar of Fundamental Social Rights of 2017. In all these documents a living wage is defined as a fundamental social right for all workers.

Despite its normative foundations, right from the beginning there was also always an economic justification for the living wage concept (Stabile, 2008, 2016). For Smith and Marx as representatives of the labour theory of value, paying living wages was a necessity for the reproduction of labour as a commodity and for the functioning of a capitalist economy. Later on, Beatrice and Sidney Webb developed their critique of what they called ‘parasitic trades’, which were based on business models that depended on paying non-subsistence wages (Webb and Webb, 1887). According to the Webbs, companies that do not pay living wages externalise their social costs to society as a whole, which as a consequence has to guarantee workers’ subsistence. A legal minimum wage, therefore, has the objective ‘to secure the community against the evils of industrial parasitism’ (Webb, 1912: 993). The argument became fairly prominent in the 1930s when US president Franklin D Roosevelt used it to justify his demand for the introduction of a nationwide minimum wage: ‘It seems to me to be equally plain that no business which depends for existence

on paying less than living wages to its workers has any right to continue in this country. (...) by living wages I mean more than a bare subsistence level – I mean the wages of decent living' (Roosevelt, 1933).

The concept of a living wage stands in sharp contrast to the neoclassical view of the labour market and its theory of marginal productivity. The latter assumes that companies will pay workers only in line with their individual productivity. If a worker's productivity is below their basic living costs the employer cannot pay a living wage because this would not be economically sustainable. From such a perspective, it is the responsibility of the state to guarantee the workers' subsistence by providing additional income support. All concepts of negative income tax or in-work benefits follow such a logic. By contrast, proponents of a living wage view such payments as unjustified subsidies and consider companies responsible for paying decent wages.

Another historical pioneer in developing economic arguments in favour of a living wage was the Wisconsin Institutional School of Economics, which was one of the intellectual masterminds behind the New Deal in the 1930s and its new emphasis on labour market regulation (Stabile, 2016: 24–42). In their critique of neoclassical labour market theory, the representatives of traditional American institutional economics formulated their own economic rationale for minimum wages, based primarily on four points (see Kaufman, 2010). First, they followed the microeconomic assumption that the bargaining power of labour and capital was structurally unequal, which had to be offset by labour market institutions such as collective bargaining or minimum wages. The case discussed in modern monopsony theory (Manning, 2005) was thus assumed to be the rule in capitalist economies.

Second, they emphasised the role of minimum wages as a macroeconomic stabiliser because they boost private demand and help to prevent deflation and ruinous price competition. These arguments partly anticipated the theories developed later on by Keynes and post-Keynesians (Herr et al., 2017). Third, the American institutional economists assumed that adequate minimum wages have positive effects on job satisfaction and workers' productivity, as recognised later in modern efficiency wage theory (Yellen, 1984). Finally, they adopted the Webbs' arguments that, without living wages, the state has to cover significant consequential costs by providing inefficient subsidies, which hamper both economic and social progress.

## **The calculation of living wages**

Looking at the different living wage initiatives around the world or even only in Europe, there is no universally accepted approach. A wide variety of calculation methods are used in the various countries. Although some scholars have tried to develop a generally applicable approach to calculating living wages (Anker and Anker, 2017; Guzi and Kahanec, 2018), there are some fundamental arguments against attempts at international standardisation. First, as recognised already by Adam Smith (1789/2007: 676), the definition of the necessities of a decent life depends partly on cultural and geographical factors and differs, therefore, from country to country. Second, the determination of living wages also depends on the national welfare state and public infrastructure, which strongly influence the costs that need to be covered by the wage income. Third, a universally standardised definition of living wages would be rather technocratic as it would ignore the fact that any concrete definition of a living wage is always the result of social discourses and disputes and marks a certain compromise between different social forces. If a living wage is calculated using a globally standardised method, as is done, for example, by the Wage Indicator Foundation (Guzi and Kahanec, 2018), the figures might differ significantly from those used in

national debates on the basis of national calculation methods.<sup>1</sup> Thus there are good reasons to accept the existence of different calculation methods, which all have their own logic and justification in the national context.

Despite all national differences, however, there are also a few common features and requirements that have to be taken into account when calculating a living wage. First of all, almost all living wage concepts are based on a basket approach, in which a selection of ‘necessary’ goods and services are taken as a basis for measuring the costs of a decent living. The items in the basket, as well as the methodology by which its composition is determined, however, can also differ significantly. Hirsch and Valadez-Martinez (2017: 26) identify at least four different methods for establishing what people need in order to have an acceptable life: expert knowledge, observation of how people actually live, public opinion and workers’ surveys. Moreover, because the basket only covers regular expenses, another question concerns the extent to which a living wage has to be able to cover unforeseen expenses.

Second, a core issue for calculating living wages is the type of household it should be designed for. Historically, the living wage has always been defined as a ‘family wage’, which as a rule was based on a family household with at least two children and a traditional male breadwinner (Gottschall and Schröder, 2013). Today the concept of the family has become much more diverse, including often two or at least one and a half working household members, so that there is no longer a standard type of household for calculation. Hence, the living wage calculation becomes much more diverse. While some living wage initiatives decided to base the calculation of the living wage on the needs of a single person working full-time, others have tried to continue with a traditional family household composed of two adults and two children, while still others calculate the living wage based on average wages required by different types of households (Hirsch and Valadez-Martinez, 2017; see also D’Arcy and Finch, 2019). The question of which type of household is considered for the calculation of the living wage is also closely linked to the corresponding welfare state and the more fundamental question of which type of income should cover which type of costs (Hurley et al., 2018: 16–17). The latter becomes, for example, extremely relevant when considering the costs of child care and education.

A third issue for calculating the living wage is the underlying type of employment, whether full-time or part-time. Only a few approaches also include part-time work when considering a household with one and a half working members. Most living wage calculations, however, rely on full-time employment only. Considering the broad trend towards part-time work, however, this could lead to a situation in which hourly wages might be well above the living wage standards, while on a monthly basis they fall under the subsistence level and become poverty wages. In this case the problem is not so much the living wage as such but ensuring sufficient ‘living working hours’ (Ilsøe, 2016).

To sum up, despite some common features and requirements there is no single best model for calculating a living wage. Instead, there are a great variety of living wage definitions that depend heavily on the particular circumstances in the respective countries. In the end, the concept of a living wage, as it is used in the political sphere, is always the result of a social agreement or compromise between different social actors.

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1 This is the case, for example, for Germany where according to the Wage Indicator Foundation the minimum wage is well above the living wage level (Fabo and Belli, 2017), while in national debates it is largely viewed as a non-subsistence poverty wage (see below). The same seems to be the case for other western European countries.

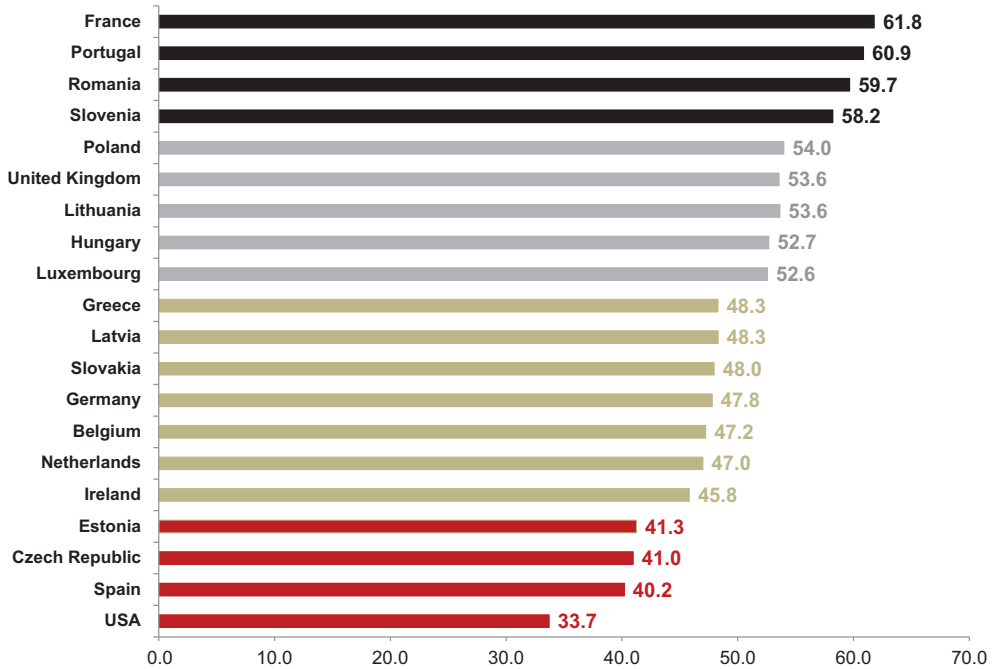
## An alternative determination of living wages

Because the different political initiatives at national level make standardisation of the different national living wage concepts neither feasible nor very useful, one has to look for alternative ways of measuring living wages in a comparative perspective. One established standard for the international comparison of minimum wages is the so-called Kaitz Index, named after the American labour statistician Hyman Kaitz (1970), which measures minimum wage levels in relation to the average or median wage of the respective regions or countries. Originally, the Kaitz Index was created in order to assess the ‘bite’ of minimum wages and their influence on national wage structures. As the Kaitz Index is also an indicator of the relative position of minimum wage earners in the overall wage distribution, it also became part of the debates on living wages. The calculation of the London Living Wage, for example, was for a long time based on a combination of a ‘basic living cost approach’, measured by a basket of goods and services, and an ‘income distribution approach’, measured by the Kaitz Index (Greater London Authority, 2015; see also D’Arcy and Finch, 2019).

The link between the Kaitz Index and the debates on living wages leads via a detour into international poverty research, where the use of relative thresholds as a percentage of average or median income is well established. International comparisons usually refer to the median income rather than the average income because the former is less susceptible to distortions by extremely high or low outliers. The threshold of 60 per cent of the national median income, for example, is a widely accepted standard for defining poverty. More differentiated concepts take 60 per cent of median income as the ‘at-risk-of-poverty’ threshold, while 50 per cent marks the threshold for ‘absolute poverty’ (UNECE, 2017). Even though in-work poverty can be attributed to a variety of factors such as insufficient working hours or the number of household members to be supported, the low level of wages is another important factor that contributes to many people across Europe not being able to make a living from what they earn. Accordingly, 60 per cent of the national median wage can be seen as the ‘at-risk-of-poverty’ wage threshold established with the goal of ensuring that workers are not dependent on the state (through tax credits or in-work benefits) for relief from poverty. By the same token, wages below 50 per cent of the median wage can be regarded as ‘poverty wages’.

Based on these criteria most minimum wages in the EU are in fact below the poverty threshold (for the following, see Figure 1). Only four countries (France, Portugal, Romania and Slovenia) are above or close to the 60 per cent threshold. Another five (Poland, United Kingdom, Lithuania, Hungary and Luxembourg) have minimum wages with a Kaitz Index between 50 and 55 per cent and are thus above the threshold of poverty wages. In a relative majority of 10 EU Member States (for which data are available) minimum wages are nothing more than poverty wages. They include Germany, Belgium, the Netherlands and Ireland, which in absolute terms have comparatively high minimum wage levels (Schulten and Lübker, 2019). There are even three countries in the EU, namely Estonia, the Czech Republic and Spain, that have an extremely low Kaitz Index of around 40 per cent. This is even more common outside Europe. In the United States, for example, the national minimum wage is below 35 per cent of the median wage.

In order to constitute a living wage, minimum wages have to be set at least at 60 per cent of the median wage. As a living wage indicator the Kaitz Index also has its limits, however, in particular in countries in which a great majority of workers earn very low wages. In these countries, the Kaitz Index, measured as a percentage of the median wage, might be very high, but the absolute level still very low and often not sufficient to cover the costs of a decent living. A prominent example is Turkey, where the minimum wage corresponds to more than 70 per cent of the median wage



**Figure 1.** Kaitz index in EU Member States. Minimum wages in per cent of median wages for full-time workers, 2017.

Source: Schulten and Lübker (2019) on the basis of OECD data (<https://stats.oecd.org/>).

(Schulten and Lübker, 2019). The 60 per cent threshold according to the Kaitz Index is, therefore, nothing more than a rough indicator for a living wage. This threshold may work in some European countries, but its capacity to ensure a living wage needs, in any case, to be calibrated against the national criteria used for defining a living wage, such as a country-specific basket of goods and services or simply the wage that prevents workers from relying on additional wage top-ups by the state in order to make a living.

## Recent initiatives for living wages in Europe

Modern living wage initiatives had their origin in the USA in the 1990s, but quickly spread around the world, in particular in Anglophone countries (Figart, 2004; Anker and Anker, 2017; Hirsch and Valadez-Martinez, 2017; Hurley et al., 2018). Overall, these new initiatives can be regarded as a response to increasing wage and income inequality, a growing low-wage sector and rising in-work poverty. At the same time, minimum wages were often unable to prevent these social dislocations, as they were not properly adjusted to general wage development and therefore were not set at a sufficient level. While historically the notion of a *minimum wage* and a *living wage* were largely treated synonymously, based on the dominant view that minimum wages should be fixed at living wage levels, more recently the two terms have become widely regarded as representing two different concepts.

The starting point of modern living wage movements is considered to be a development in Baltimore, Maryland, where in 1994 the city council passed a so-called ‘living wage ordinance’,

according to which all companies and organisations that received public grants or were under public contracts had to pay their employees at least the prescribed local living wage, which at the time of its introduction was more than 70 per cent above the national minimum wage (Luce, 2002). This new regulation was a result of a campaign organised by a broad alliance of different social forces, including trade unions and religious organisations, which aimed to tackle the problem of in-work poverty. From Baltimore, the living wage movement spread rapidly throughout the country, and led in various cities, counties and even individual US states to new living wage ordinances or at least substantial increases of minimum wages above the national minimum wage level (Luce, 2012).

Since 2012 living wage campaigns reached a new peak with the development of the ‘Fight for 15’ movement (Rolf, 2016). In recent years, an ever-increasing number of US cities (among them, Seattle, Los Angeles, San Francisco and New York City) and several US states have adopted a gradual introduction of a minimum wage of US\$15, which is more than twice the national minimum wage of US\$7.25. In July 2019, the campaign finally reached the House of Representatives, where a Democrat majority adopted the ‘Raise the Wage Act’, according to which the national minimum wage is supposed to be gradually increased to US\$15 within a period of six years. Although it is still rather doubtful whether this Act will also get a majority in the Republican-dominated Senate, the ‘Fight for 15’ is already one of the most successful campaigns ever, leading to substantial minimum wage increases for millions of US workers (Tedeschi, 2019).

In Europe, the first living wage initiatives in the United Kingdom were launched in the early 2000s (Heery et al., 2017). They started in London and afterwards spread to the whole country, supported by various local and regional initiatives. The UK living wage movement was first of all a reaction to the low level of the national minimum wage introduced in 1999. There are two living wage rates (one for London and one for the rest of the country), which are determined and regularly adjusted by the Living Wage Foundation, an organisation supported by trade unions and various other social organisations, as well as by some private companies (<https://www.livingwage.org.uk>). The calculation of living wages is based on a sophisticated methodology that regularly analyses the ‘real costs of living’ (D’Arcy and Finch, 2019). The current UK living wage rate is about 10 per cent higher than the national minimum wage, while the London rate is nearly 30 per cent higher. The implementation of living wages in the United Kingdom is based on the certification of employers through the Living Wage Foundation. This means that employers voluntarily commit themselves to pay at least the living wage. Through their procurement activities, public bodies play an important role in promoting the living wage by encouraging contractors also to pay the living wage. Despite the remarkable success of the Living Wage Foundation in accrediting employers, due to the voluntary nature of the living wage the overall spread of living wage employers in the United Kingdom is still rather limited (see Johnson et al., 2019).

Despite its limited scope, however, the living wage movement in the United Kingdom has had a significant impact on the development of the minimum wage. In 2016, the Conservative government introduced a new so-called ‘National Living Wage’, which de facto is a new higher minimum wage rate for all workers aged 25 or above. At the same time the government declared its intention to increase substantially this new National Living Wage to 60 per cent of the median wage in 2020 (Department for Business, Economy and Skills, 2015). More recently, the debate continued with the British Trade Union Congress TUC, as well as the Labour Party, demanding a substantial minimum wage increase of 22 per cent to £10 per hour in order to make the statutory minimum wage a real living wage (O’Grady, 2019; TUC, 2019).

Influenced by developments in the United Kingdom a living wage initiative was set up in Ireland in 2014 (Hurley et al., 2018: 23). The initiative originally came from civic and religious organisations, but was soon also supported by the Irish trade unions. Every year, a so-called

'Living Wage Technical Group', composed of researchers and representatives from unions and other social organisations, calculated a new living wage rate for an individual worker. In 2019 it came up with a living wage rate of €12.30, which at the time was 26 per cent above the statutory minimum wage of €9.80. The living wage became an important benchmark in the debates on the regular adjustment of the Irish minimum wage. Many organisations, such as the Irish Trade Union Congress (ITUC), advocate 'that over the medium term the hourly rate of the Minimum Wage be aligned with the Living Wage' (ITUC, 2018: 10).

The use of the term 'living wage' is largely limited to the Anglophone world. Debates on structural increases of minimum wage levels in order to allow for a decent living can be found in almost all EU countries, however (Hurley et al., 2018: 24–25, see also Table 1). In Germany, for example, the whole campaign for the introduction of a statutory minimum wage was justified with the argument that wages must be enough to live on without additional state payments. When the minimum wage was introduced in 2015, however, it was clear right from the beginning that the level was not sufficient for a decent life. While there have always been advocates for a much higher minimum wage, more recently the two left parties in parliament (SPD and Die LINKE), as well as growing parts of the German trade unions, started to demand a structural increase to €12 per hour (Schulten and Pusch, 2019). The latter is regarded as a minimum wage that comes much closer to a living wage. It would require an increase of 31 per cent from the current minimum wage of €9.19. Moreover, the current debates on minimum wages are also closely linked to the debate on a European minimum wage policy. The German trade union confederation DGB now endorses the idea that minimum wages across Europe should be at least 60 per cent of the median wage, which in Germany would correspond to around €12 (Hoffmann, 2019).

Recent initiatives for a more substantial increase of minimum wages can also be found in all three Benelux countries. In Belgium, a national campaign 'Fight for 14' was launched by the trade union confederation FGTB in 2018, calling for a minimum wage of €14 per hour (Flohimont, 2019). This would be 41 per cent above the current Belgian minimum wage of €9.66. In 2019, a similar campaign was launched by the Dutch trade union confederation FNV, which also demands a minimum wage of €14 (FNV, 2019; Vlot, 2019). Both campaigns are modelled on the US campaign 'Fight for 15'. Finally, in Luxembourg the trade union confederation OGB-L asked for a 'structural' 10 per cent increase of the minimum wage on top of the regular adjustment, which would boost it to €13.30 per hour. Although Luxembourg already has by far the highest minimum wage in Europe, according to calculations of the Chamber of Labour the current level is not sufficient for a decent life in the country (CSL, 2018).

Even in France, which has one of the highest relative minimum wage levels, with a Kaitz Index of around 60 per cent of the median wage, the unions, with support from some political parties, are demanding a so-called 'coup de pousse', that is, a structural augmentation of the minimum wage. The French trade union confederation CGT, for example, is calling for a minimum wage of €1800 per month (= €11.87 per hour), which would be 18 per cent above the current level (CGT, 2018). Traditionally, there has been relatively broad support for a European minimum wage policy in France, although the proposals for a European minimum wage target vary considerably, ranging from 50 per cent of the median wage (Macron's List, La République En Marche) to 60 per cent (Green Party, Les Verts), 65 per cent (Socialist Party, PS) and 75 per cent (Left group, La France insoumise) (Barthet and Charrel, 2019).

Living wages are also a core political issue in Spain, where the government has just increased the minimum wage by 22 per cent to €900 per month (Ministerio de Trabajo, Migraciones y Seguridad Social, 2018). Furthermore, the ruling socialist party PSOE has declared that it wants



**Table 1.** Living wage campaigns and demands for substantial minimum wage increases in Europe and the USA.

Country/current minimum wage*	Demands or developments	(Target) increase**
Austria €1500 per month	Austrian trade union confederation ÖGB demands €1700 per month as the lowest pay grade in collective agreements (Hofmann and Zuckerstätter, 2019)	13%
Belgium €9.66 per hour	The trade union confederation FGTB launched a campaign 'Fight for 14' in order to increase the minimum wage to €14 per hour (Flohmont, 2019) This would correspond to an increase of 45%.	45%
Czech Republic 13,350 Crowns per month	The trade union confederation CMKOS demands a substantial increase of the minimum wage to 15,000 crowns per month from 2020. This would correspond to an increase of more than 12%. (ČTK, 2019).	12%
France €10.03 per hour	The trade union confederation CGT demands an increase of the SMIC to €1800 per month (= €11.87 per hour) (CGT, 2018). This would correspond to an increase of 18%.	18%
Germany €9.19 per hour	Some political parties (SPD, Die LINKE), the German trade union confederation DGB and various other social organisations demand a minimum wage of €12 per hour (Schulten and Pusch, 2019). As this demand corresponds to a minimum wage level of around 60% of the median wage, the DGB also endorses a European minimum wage policy (Hoffmann, 2019).	31%
Ireland €9.80 per hour	The Living Wage Technical Group (2019), which is supported by many Irish trade unions, demands a Living Wage of €12.30 per hour. The ITUC trade union confederation wants to reevaluate the minimum wage to become a living wage in the medium term (ITUC, 2018). This would correspond to an increase of 26%.	26%
Luxembourg €12.08 per hour	The trade union confederation OGB-L and the Workers Chamber (CLS) demand a 'structural' 10% increase of the minimum wage on top of the regular adjustment (CSL, 2018). Such an increase would lead to an hourly minimum wage of €13.30.	10%
Netherlands €10.03 per hour	In April 2019 the trade union confederation FNV launched a campaign for an increase of the minimum wage to €14 per hour by 2021 (FNV, 2019; Vlot, 2019). This would correspond to an increase of 39%.	39%
Poland 2250 zloty per month	The trade unions NSZZ 'Solidarność', OPZZ and FZZ demand a monthly minimum wage increase of 270 zloty from 2020, which would be an increase of 12% (Solidarnosc, 2019).	12%
Slovakia €2.99 per hour	The trade union confederation KOZ demands a monthly minimum wage of €635 (= €3.60 per hour) by 2020, which would correspond to 60% of the average wage. This would require an increase of 22% (KOZ, 2019); the Slovak government in principle supports the longer-term objective of increasing the minimum wage to 60% of the average wage (Slovak Spektator, 6 November 2018).	22%
Slovenia €5.10 per hour	As early as 2009 the trade union confederation ZSSS launched a campaign for a substantial increase of the minimum wage in order to push it above the subsistence level. As a result, in 2010 it was increased by 23% and since then has hovered around 60% of the national median wage (Poje, 2019).	23% (in 2010)

(continued)

Table 1. (continued)

Country/current minimum wage*	Demands or developments	(Target) increase**
Spain €5.45 per hour	On 1 January 2019 the Spanish government increased the minimum wage by 22 per cent to €900 per month (Ministerio de Trabajo, Migraciones y Seguridad Social, 2018). The ruling socialist party PSOE has declared that it wants to increase the minimum wage to €1200 per month (€7.27 per hour) by the end of the current term in order to reach a level of 60% of the average wage, as recommended by the European Social Charter of the Council of Europe (Socorro, 2019). This would correspond to a further increase of 33%. The Spanish trade unions CC.OO and UGT endorse this target.	22% (in 2019) +33%
United Kingdom £8.21 per hour	The Living Wage Foundation, which is supported by many trade unions, demands a living wage of £9.55 in the UK and £10.55 in London ( <a href="https://www.livingwage.org.uk/">https://www.livingwage.org.uk/</a> ). The Conservative government introduced a new National Living Wage (a minimum wage for all workers from the age of 25) in 2016 with the intention of increasing it to 60% of the median wage in 2020 (Department for Business, Economy and Skills, 2015). The TUC and the Labour Party want the minimum wage to increase to the living wage level of £10 (O'Grady, 2019; TUC, 2019). This would correspond to an increase of 22%.	22%
USA US\$7.25 per hour	Since 2012 the 'Fight for 15' campaign has, with major support from the SEIU trade union, been carried out across the country (Rolf, 2016). In 2019 the House of Representatives adopted the 'Raise the Wage Act', according to which the national minimum wage should gradually increase to US\$15 by 2025. This would correspond to an increase of 107%.	107%

\*August 2019 (Source: WSI Minimum Wage Database).

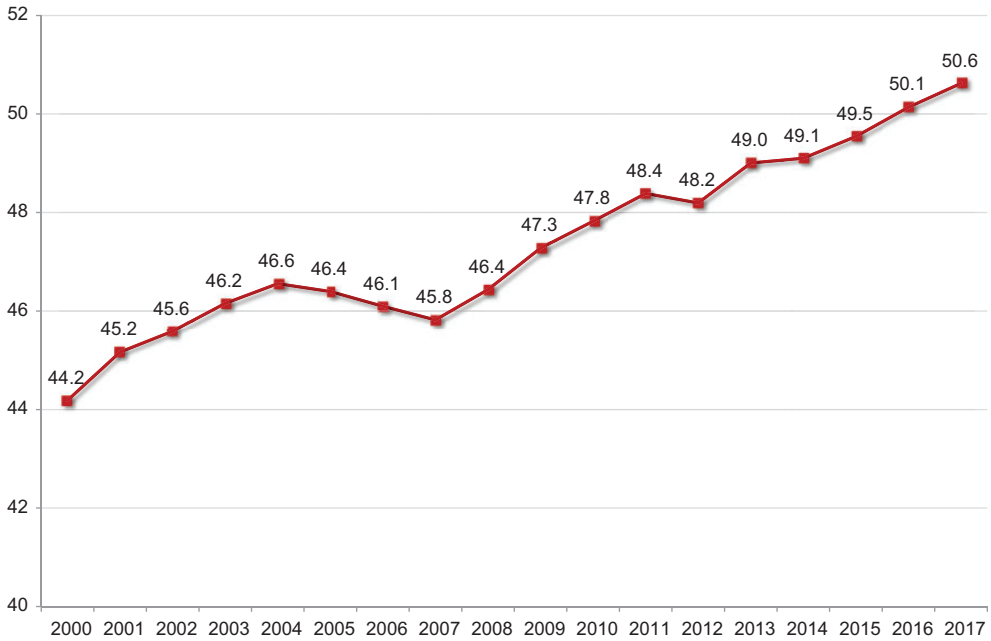
\*\*Increase from the current minimum wage level to the target level.

Source: Authors' own compilation.

to increase the minimum wage to €1200 per month by the end of the current term in order to reach a level of 60 per cent of the average wage, as recommended by the European Social Charter of the Council of Europe (Socorro, 2019). This would correspond to a further increase of 33 per cent. The Spanish trade unions CC.OO and UGT endorse this target.

A special case in the debate on living wages is Austria, as it is one of the few EU countries that has no national statutory minimum wage, but does have extremely high collective bargaining coverage, so that there is comprehensive minimum wage protection through collective agreements. The Austrian trade union federation ÖGB, however, has a long tradition of determining a national minimum wage target for collective bargaining. After €1500 has been reached as the lowest wage grade in almost all collective agreements, the new target is €1700, which is 13 per cent above the current level (Hofmann and Zuckerstätter, 2019). The Austrian case is also a good example of how a European minimum wage policy can be implemented in countries without a statutory national minimum wage.

Finally, there are also numerous initiatives for substantially higher minimum wages in Central and Eastern Europe. In Slovenia, the trade union confederation ZSSS launched a broad campaign in 2009, which was extremely successful. In 2010 the minimum wage was raised by 23 per cent and



**Figure 2.** Average Kaitz Index in the EU, 2000–2017\*. Minimum wages as a percentage of median wages for full-time workers.

\*Unweighted average of national Kaitz indices for 19 EU Member States: Belgium, Czech Republic, Estonia, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, United Kingdom; up to 2004, without Germany and Slovenia, up to 2014 without Germany.

Source: Schulten and Lübker (2019) on the basis of OECD data (<https://stats.oecd.org/>).

thus pushed above the subsistence level. Since then Slovenia has had one of the highest relative minimum wage levels, at around 60 per cent of the median wage (Poje, 2019). The Slovenian case can be seen as one of the first successful living wage campaigns in Europe.

Currently, it is the trade unions in the eastern Visegrád countries in particular that are calling for a substantial increase of minimum wages, by 12 per cent in Poland and the Czech Republic and even 22 per cent in Slovakia (Table 1). In all countries the living wage is an important point of reference to justify such demands. Moreover, in all three countries the unions strongly support the idea of a European minimum wage policy with a joint target of 60 per cent of the median wage. In Slovakia, the union confederation KOZ has explicitly justified its demand for a minimum wage increase with this European target norm (KOZ, 2019).

## A European living wage policy – a pragmatic solution

For the past two decades, on average, minimum wages in Europe have increased more strongly than average wages (Schulten and Lübker, 2019). In 2000, the average (unweighted) Kaitz Index in the EU was at the extremely low level of 44.2 per cent of the median wage. It grew to 50.6 per cent in 2017 (Figure 2). Despite this trend, however, the average minimum wage in the EU is still only slightly above the poverty wage threshold.

Against this background, campaigns for living wages have become a core issue in many European countries. Demands for substantial minimum wage increases coming from trade unions and other social forces vary between 10 per cent and 45 per cent (Table 1). While in some countries the demands aim at the next minimum wage adjustment, in others the campaigns have a more mid-term perspective. Despite all differences and national particularities, however, the common aim is to transform existing minimum wages into living wages, so that wage floors are set at a level that allows for a decent living.

In a growing number of countries the living wage initiatives have started to link their national debates to the European discussion of a common minimum wage policy. A European approach would therefore not emerge out of the blue, but would be based on real developments in many European countries. This is also probably the main difference from previous periods when debates on a European minimum wage policy were rather decoupled from developments at national level. Today, a European approach would offer the opportunity to coordinate and reinforce the various national initiatives.

If it is to overcome the remaining problems and obstacles, a European minimum wage policy should follow a pragmatic approach in terms of both its content and its regulatory setting. In terms of content the first thing to recognise is that a European approach is not about standardising various national living wage definitions into one uniform European concept. Such a technocratic approach would ignore the historically evolved approaches at national level, as well as their embeddedness in specific national welfare systems.

Instead, an imperfect but pragmatic and feasible approach would be to use the Kaitz Index as an instrument to measure the adequacy of a minimum wage level. Here the 60 per cent of the median wage has become widely accepted as the at-risk-of-poverty threshold for wages.<sup>2</sup> A European minimum wage target according to which all national minimum wages increased to at least 60 per cent of the national median wage would bring millions of low-wage workers in the EU significant pay increases and a significant improvement of their life situation (Fernández-Macías and Vacas-Soriano, 2016). In addition, the national actors should examine in line with their national approaches whether 60 per cent of the median wage really is a living wage in the respective country. If it is not they should have the opportunity to set an even higher minimum wage level.

In terms of its regulatory setting a pragmatic way to circumvent the legal uncertainties would be to integrate a European minimum wage policy into the European Semester, as proposed in a report of the French Parliament (Cordery, 2016). Although such a procedure would not be legally binding, it could establish a regular monitoring and reporting system and a definitive commitment to which actors at national level could refer. If such a soft-law solution does not yield the expected results, a debate needs to be opened on whether the Treaty needs to be changed or whether new forms of binding regulation can be sought that go beyond the EU's established regulatory framework. In any case it should be emphasised that a European policy on minimum wages is not a technocratic project, but has to be based on social movements at national and European level that promote its transformation towards a European living wage policy.

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2 Sometimes there are also still much lower thresholds in the debate. For example, Macron's party *La République En Marche* proposed a Kaitz Index of between 40 per cent and 50 per cent (Bourgeois, 2019). Such proposals, however, would de facto cement the status quo of poverty wages and would in the worst case even exert downward pressure in countries with a higher minimum wage level, such as France.

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