

# The Negotiations on Collective Bargaining in the Adequate Minimum Wages Directive, 2020-2022

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Ger Gibbons,  
Social Policy & Legislative Officer, ICTU

# Introduction

- Provisions of Directive promoting collective bargaining (i.e. Art.4) are perhaps the most significant of the entire Directive - Adequate Minimum Wages Directive has been called the '**collective bargaining directive in disguise**' (*Müller & Schulten, 2024*)
- Will trace **origins and evolution** of these provisions: from 2014; 2019 European Parliament (EP) elections and election of new European Commission (EC) president; consultations of European social partners in 2020; EC's proposal of October 2020; EP's and Council's consideration of proposal over 2021, and to 'trilogue' negotiations in 2022.
- **Focusing on Article 4**, and not on **other articles** that also touch on collective bargaining (e.g. Articles 1, 3, 9, 10 etc) or on **transposition**.
- Key point - Article 4 reflects **impact of unions'** engagement with this initiative.
- Conclusions

# Some Significant developments - 2014-2018

- Jean Claude Juncker, inaugural address to EP, 15 July 2014
  - ‘...it is necessary for all EU Member States to **put in place a minimum wage** and basic guaranteed income’.
- ETUC Action Programme 2014-2019, October 2014
  - ‘Minimum wages alone cannot offer an adequate response to labour-cost competition and in-work poverty. **Strengthening collective bargaining systems and their coverage is essential...**’.
- European Pillar of Social Right, proclaimed November 2017:
  - Principle 6 – ‘workers have the right to fair wages that provide for a decent standard of living. Adequate minimum wages shall be ensured...’
  - Principle 8 - [The social partners] ‘**shall be encouraged to negotiate and conclude collective agreements** in matters relevant to them, while respecting their autonomy and the right to collective action...’

# 23-26 May 2019 EP elections

- ETUC 2019 manifesto, February 2019
  - '[The way] **to raise wages and achieve better standards of living and work for all...is collective bargaining**...EU and national law [is needed] to reinforce the capacity and strength of social partners, to enable collective agreements to be negotiated and put into practice, and to enlarge their coverage among workers'
- Commitments on collective bargaining in S&D and Left manifestos; EPP's referred to working with unions to reduce impact of globalisation on most vulnerable workers; no apparent references in others.
- EPP 182, S&D 154, RE 108, Greens 74, ID 74, ECR 62, GUE/NGL 41, NI 57.
- July 2019 – EP election of new EC President – 374 votes needed.

# 16 July 2019 – EP elects new EC President

- Von der Leyen's 'Political Priorities' for 2014-2019 EC, 16 July
  - '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. Minimum wages should be set according to national traditions, **through collective agreements or legal provisions**'
- Von der Leyen's inaugural address to EP, 16 July.
  - '...the **optimal option is to have collective bargaining by employers' unions and trade unions**, because they tailor the minimum wage to the sector or to the region as necessary. Of course, I am aware there are different models, but we have to create the framework'.
- Elected by 383 v 327, 22 abstentions, 1 invalid - secret ballot
- New EC took office 1 December 2019.

## EC first stage consultation of social partners (Jan.-Feb.2020)

- Before issuing proposal in social policy field, **Art.154** Treaty on Functioning of EU requires EC to hold two-stage consultation of European social partners: first on 'possible direction'; second on 'content' of initiative
- EC's **first stage consultation document**, 'possible action addressing the challenges related to fair minimum wages', referred to **supporting member states**, within limits of treaties and ECJ case law, **to ensure** social partners **'are encouraged to conclude collective agreements'**
- Asked if social partners willing to enter into negotiations under **Art.155**
- 5 union confederations responded, with ETUC's also representing 10 sectoral confederations
- 18 employers' organisations, including BusinessEurope and SMEUnited.

# EC's (June 2020) summary of first stage responses

'Most [**employers**'] organisations – 'EU has **no competence** to **introduce a legal instrument** on minimum wages or **collective bargaining**...'

'All European **workers**' organisations:

- '[there] **is scope for EU action** ...to promote and safeguard (sectoral and cross-sectoral) collective bargaining, including capacity building of social partners...'
- '...any action must **fully respect** the **autonomy of social partners** and **safeguard well-functioning** collective bargaining systems
- '...proposed requiring Member States to **take action** to increase the **collective bargaining coverage** rate when it is **below 70%**.
- '...suggested a **variety of measures to promote collective bargaining** (such as making sure that the necessary institutions are in place, strengthening collective bargaining for all sectors of the economy, and ensuring the **respect of the right to collective bargaining**).
- Re. Art.155 '..workers' organisations were open to start negotiations, but considered it premature at this stage.... None of the European employers' organisations has so far shown willingness....'

## Second stage consultation (June - September 2020)

- Under ‘policy objectives’, specific objectives of EU initiative would be ‘to ensure...  
**‘Well-functioning collective bargaining in wage-setting is in place’**;
- Said this ‘implies that **all types of employers and employees are duly represented** and ensures that wage conditions are consistent with workers’ and employers’ needs and are responsive to changing economic circumstances’;
- Under ‘possible policy measures’:
  - ‘All Member States could thus provide **incentives to promote well-functioning collective bargaining on wage issues**, especially where it is less developed. In addition, the initiative could provide a **non-exhaustive list of possible actions** to support collective bargaining on wage-setting’

Again asked if social partners willing to negotiate under Article 155.

## EC's (October 2020) summary of second stage responses

- 3 from union confederations, with ETUC's again representing 10 sectoral confederations, 16 from employers.
- 'While the **trade unions** called on the Commission to **propose a Directive** with binding minimum requirements, none of the employers' organisations was in favour of a binding directive...'
- 'Most [**employers**] organisations **reiterated** that...the **EU has no competence** to introduce a legal instrument on wage setting mechanisms or collective bargaining, which fall within the competence and authority of the Member States and national social partners'.
- Re Art.155 - '...no agreement among social partners to enter into negotiations to conclude an agreement at Union level...'

# EP and Council's consideration of draft Directive (October 2020-October 2022)

- EP's Employment and Social Affairs Committee appointed two co-rapporteurs 21 February 2021
  - Dennis Radke, MEP since 2017. Full-time official with German Mining, Chemicals and Energy Union (BCE) 2006-2017. Member of Employment and Social Affairs committee since 2017.
  - Agnes Jongerius, MEP since 2014, Full-time official with Dutch FNV, 1987-2012. Member of Employment Committee since 2014.
  - Both had worked together as co-rapporteurs on another EP resolution adopted in December 2020.
- EP Committee's proposed amendments to EC's text approved by 37 to 10 with 3 abstentions, 11 November 2021, and endorsed by plenary by 443 to 192 with 58 abstentions, 25 November 2021.
- Council's amendments to EC's text (its 'general approach') approved 6 December 2021
- Trilogue negotiations between EP, Council and EC over first half of 2022, compromise by June.
- Compromise text approved by Council and by EP, October 2022

# EC's proposal for Article 4 (October 2020)

‘1. With the aim to **increase the collective bargaining coverage** Member States shall take, in consultation with the social partners, at least the following measures:

- (a) promote the **building and strengthening of the capacity** of the social partners to engage in collective bargaining on wage setting at **sector or cross-industry level**;
- (b) **encourage constructive, meaningful and informed negotiations** on wages among social partners;

2. Member States where collective bargaining **coverage is less than 70%** of the workers defined within the meaning of Article 2 shall in addition provide for **a framework of enabling conditions for collective bargaining**, either by law after consultation of the social partners or by agreement with them, and shall **establish an action plan to promote collective bargaining**. The action plan shall be made public and shall be notified to the European Commission.’

# An Analysis of Origins and Evolution of Adopted Article 4(1) (‘red’ EP-inspired? ‘blue’ Council? ‘green’ trilogue?)

1. With the aim of increasing the collective bargaining coverage and of facilitating the exercise of the right to collective bargaining on wage-setting, Member States, with the involvement of the social partners, in accordance with national law and practice, shall:
  - (a) promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting, in particular at sector or cross-industry level;
  - (b) encourage constructive, meaningful and informed negotiations on wages between the social partners, on an equal footing, where both parties have access to appropriate information in order to carry out their functions in respect of collective bargaining on wage-setting;
  - (c) take measures, as appropriate, to protect the exercise of the right to collective bargaining on wage-setting and to protect workers and trade union representatives from acts that discriminate against them in respect of their employment on the grounds that they participate or wish to participate in collective bargaining on wage-setting;
  - (d) for the purpose of promoting collective bargaining on wage-setting, take measures, as appropriate, to protect trade unions and employers’ organisations participating or wishing to participate in collective bargaining against any acts of interference by each other or each other’s agents or members in their establishment, functioning or administration.

## And of Adopted Article 4(2)

2. In addition, each Member State in which the collective bargaining coverage rate is less than a threshold of 80% shall provide for a framework of enabling conditions for collective bargaining, either by law after consulting the social partners or by agreement with them.

Such a Member State shall also establish an action plan to promote collective bargaining. The Member State shall establish such an action plan after consulting the social partners or by agreement with the social partners, or, following a joint request by the social partners, as agreed between the social partners. The action plan shall set out a clear timeline and concrete measures to progressively increase the rate of collective bargaining coverage, in full respect for the autonomy of the social partners.

The Member State shall review its action plan regularly, and shall update it if needed. Where a Member State updates its action plan, it shall do so after consulting the social partners or by agreement with them, or, following a joint request by the social partners, as agreed between the social partners. In any event, such an action plan shall be reviewed at least every five years. The action plan and any update thereof shall be made public and notified to the Commission.

# Adopted Article 4 reflects engagement by unions

- ‘On the occasion of the first consultation...the **labour side of the social partners** [orientated] **the EU legislative action towards the kind of intervention which actually characterises the present text of Article 4**’ (*Lo Faro, 2024, p.184*)
- ‘It was only through the intervention of the European trade unions that the European minimum wage initiative also became an initiative to strengthen collective bargaining in Europe’...In contrast, the employers rejected the Directive on constitutional grounds...This fundamental opposition of the employers essentially meant that they took themselves out of the game entirely; they played no significant role in the ensuring discussions about the concrete content of the Directive’ (*Müller, 2024, p.71-72*)
  - EP Transparency register of co-rapporteurs’ meetings lists seven meetings with ETUC from November 2020 to May 2022 but none apparently with BusinessEurope and SMEUnited (were some with other sectoral employers’ and national employers’).
  - Expert Group report – 56 references to ETUC interventions, 7 by BusinessEurope, 1 by SMEUnited over its eight meetings between March and November 2023.

# What next?

- 15/11/2024 – Deadline for transposition; EC to then assess compliance
- **‘By end of 2025’** – Member states below 80% to establish **Action Plans** (Expert Group report, p.51)
- By **1/10/2025** – Member states to provide **reports** covering 2021-2023 to EC on **‘rate and development of collective bargaining coverage’** (and thereafter every 2 years, e.g. by 1/10/2027 re 2024 & 2025)
- After 1/10/2025 – EC to analyse ‘data and information’ provided in reports and in Action Plans, report to EP and Council and publish data and information received (and thereafter every 2 years)
- By 15/11/2029 – EC shall, after consulting member states and EU social partners, evaluate Directive
- After 15/11/2029 – EC shall submit report to EP and Council reviewing implementation ‘and propose, where appropriate, legislative amendments’ (Article 15)

# Article 4 part of EU paradigm change?

## **Future Union policy priorities for the European Pillar of Social Rights** (Endorsed by EPSCO, 11 March 2024)

- ‘...the declining trends in trade union density, the low share of workers covered by collective agreements in most Member States, the declining wage share, as well as the persistent lack of agreements at Union level between EU social partners, **may require further efforts in this direction**’ (*Opinion of Council’s Employment and Social Protection committees*)

## **La Hulpe Declaration on future of EPSR** (signed by EU institutions, ETUC and SMEUnited and others, 16 April 2024):

- ‘We strive to bring more people into employment, increase productivity and improve working conditions and work-life balance, including through social dialogue and collective bargaining’ (para 19); ‘Decent working conditions are vital to attract and retain workers, while strong collective bargaining, adequate and fair wages, supporting inclusive growth and preventing in-work poverty are essential to restore the labour share of income’ (21); Reinforcing collective bargaining and social dialogue as well as promoting employee involvement and workers’ and their representatives’ right to information, consultation and participation, is key for a flexible and inclusive adaptation to the upcoming changes in the European labour market and to enable them to have an active role in anticipating and managing the digital and green transitions (22)

## **Letta report ‘Much more than a market’** (April 2024)

- ‘The EU Directive on Adequate Minimum Wages in the European Union, the Council Recommendation on Strengthening Social Dialogue in the EU and the future Pact for European Social Dialogue **embody the European Union’s renewed commitment to social dialogue and collective bargaining**. Ensuring an ambitious transposition of these texts into national legislation and, more importantly, into national and European practice is also key to ensuring that the Single Market benefits the many and not the few’.

# Conclusions

- Adopted Directive underlines **importance** and **potential** of unions engaging with EU.
- Needs to continue re **transposition and implementation** – EC will ‘duly examine any complaints it may receive in this regard from citizens or social partners’ (EG report re Art.13 but applicable for all)
- Article 4 is about promoting collective bargaining on wage-setting, but as EC notes, it ‘would also benefit collective bargaining in general’ (EG report p.27).
- Ireland’s stance? One of only two member states to issue ‘statements’ on La Hulpe Declaration – on collective bargaining (Hungary on gender equality).

# References

European Commission documentation <https://ec.europa.eu/social/main.jsp?catId=1539>

Eur-Lex procedure file on adoption of Directive (2020-2022)

<https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:32022L2041&qid=1715763808999>

Ratti, Luca, Brameshuber, Elisabeth and Poetrogiovanni, Vincenzo (2024) *The EU Directive on Adequate Minimum Wages*

Torsten Müller, Torsten and Schulten, Torsten (2024), *The Collective Bargaining Directive in Disguise – How the European Minimum Wage Directive Aims to Strengthen Collective Bargaining*, in Ratti et al (2024).

Lo Faro, Antonio (2024) *Promotion of Collective Bargaining on Wage-Setting (Article 4)*, in Ratti et al (2024).