

Is Ireland in breach of the Adequate Minimum Wage Directive?

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(Speaking in a personal capacity)

Outline

- Irish Government's actions 2020-2025
- Irish Government's stance on transposition
- Is Ireland in breach of specific provisions affecting the National Minimum Wage (NMW)?
- Is Ireland in breach of provisions promoting collective bargaining?
- Conclusion
- (Danish case)

Irish Government actions 2020-2024

- February 2021: **Signed letter to Council Presidency** arguing a Recommendation would be a better legal instrument as it would provide the 'flexibility for Member States to achieve the objectives'; letter co-signed with Austria, Denmark, Estonia, Hungary, Malta, Netherlands, Poland, and Sweden.
- October 2022: did vote for Directive in Council, whereas Denmark & Sweden voted against and Hungary abstained; vote was by qualified majority (no national veto)
- 2023: **Did not intervene** in Denmark's CJEU legal challenge (backed by Sweden) against Directive to support it - unlike Belgium, Germany, Greece, Spain, French, Luxembourg, Portugal.
- April 2024: **Appended statement** to La Hulpe Declaration on future of European Pillar of Social Rights (which refers to further 'reinforcing' collective bargaining):
'The system of industrial relations in Ireland is **essentially voluntary in nature**. There has been agreement on all sides that the terms and conditions of employment of workers is best determined by the process of voluntary collective bargaining between an employer or employers' association and one or more trade unions, **without the intervention of the State.**'

(Sweden and Austria did not sign. Hungary also appended statement – on gender)

Irish Government's Position on Transposition

‘The Directive on Adequate Minimum Wages in the European Union was **transposed** on 15th November 2024, meeting the transposition deadline...It was necessary to amend Ireland's National Minimum Wage Act 2000 to give effect to the Directive. This was done by way of an SI, entitled European Union (Adequate Minimum Wages) Regulations 2024 [no.633/2024], made under the European Communities Act 1972.

The [Low Pay Commission] was **already largely already in compliance** with the provisions of the Directive, although there were some **minor amendments** required to the National Minimum Wage Act 2000 to bring the framework **completely into line** with the Directive’.

(Dept. of Enterprise, Trade and Employment, 2025:50)

Article 2: Personal Scope?

- Directive applies to workers with employment contract or relationship, in consideration of CJEU case-law (i.e. **work, subordination, pay**)
- European Commission's 2020 Impact Assessment accompanying proposal identified **workers taking part in statutory apprenticeships, close family relatives of employer**, and **prisoners** as all exempt from NMW.
- Recital 21 gives examples of non-standard workers who fulfill CJEU criteria as within scope - includes apprentices.
- DETE says it is now '**engaging**' with Depts. of Further and Higher Education and of Justice re 'three exemptions from National Minimum Wage Act 2000 (i.e. close family members; statutory apprentices; and certain activities undertaken by prisoners within prison' (DETE, 2025:49).
- If Directive fully transposed, why is DETE engaging on these exemptions?

Article 5: Procedure for setting adequate statutory minimum wages (re ‘overarching objectives’)?

- ‘...setting and updating shall be guided by criteria set to contribute to their adequacy, with the **aim of achieving a decent standard of living, reducing in-work poverty,...promoting social cohesion and upward social convergence, and reducing the gender pay gap.**’ (Art.5(1).
- ‘...implementation of Article 5 should **foster the achievement of the overarching objectives** spelled out in Article 5(1), but...there is no obligation of result [and] overarching objectives themselves will not be assessed in light of the Directive.’ (European Commission, 2023:31)
- Are **over-arching objectives** acknowledged, explicitly or implicitly, in Irish legislation?

Article 5: Procedure for setting (re national criteria)?

- Setting and updating shall be guided by criteria **to contribute** to adequacy [of NMW]
- National criteria must be **defined in a clear way**.
- National criteria shall include at least the following elements:
 - (a) **purchasing power** of statutory minimum wages, taking cost of living into account;
 - (b) **general level** of wages and their **distribution**;
 - (c) **growth rate of wages**;
 - (d) **long-term national productivity levels and developments** (Art. 5(2))
- ‘Member States **may** decide on relative weight of those criteria, including the [obligatory elements], taking national socioeconomic conditions into account’.
- ‘The guiding criteria to set and update the statutory minimum wages should be set to contribute to their adequacy (European Commission, 2023:30)’.

Art.5 – Procedure for setting (re purchasing power)?

Article 5(2) obligatory element

(a) purchasing power of statutory minimum wages, taking cost of living into account.

Irish legislation

‘When making a recommendation...the [LPC] shall have regard to:

- **likely effect on...cost of living,**
- purchasing power of the national minimum hourly rate of pay, **taking into account the cost of living.**

(Clear and contributes to adequacy?)

Art.5 – Procedure for setting (re general level of wages, their distribution and growth rate)?

Article 5(2) obligatory elements:

(b) General level of wages and their distribution

(c) Growth rate of wages

Irish legislation

When making a recommendation...the [LPC] shall have regard to:

- **changes** in earnings during the relevant period, **including** their growth rate, general levels, and distribution.

(Clear and contributes to adequacy?)

Art.5 – Procedure for setting (re long-term national productivity)?

Article 5(2) obligatory elements

(d) long-term national productivity levels and developments

‘[This] establishes a link between minimum wages and economic fundamentals that ensures the sustainability of wage growth and employment levels over time. **In particular, this formulation (with “national”) aims at avoiding that the Directive is interpreted as giving grounds to lower minimum wages for some workers** based on productivity measured at an individual level. In addition, the reference to “long-term” productivity aims at avoiding that the Directive is interpreted as giving grounds to lower minimum wages in crisis times. The aim is to ensure that minimum wage earners benefit from national productivity gains.’

(European Commission, 2023:30)

Irish legislation

When making a recommendation...the [LPC] shall have regard to:

- ‘Whether during the **relevant period**, productivity has been **increasing or decreasing**, both **generally and in the sectors most affected...**’

...

- ‘long-term national productivity levels and developments’

(Clear and contributes to adequacy?)

Article 7: Involvement of social partners in setting and updating of statutory minimum wages?

- Member States **shall involve** the social partners [‘voluntary participation’] in setting and updating of NMW, including through participation in consultative bodies (e.g. LPC), and **in particular** as concerns:
 - For example, selection and application of criteria for determining NMW (i.e. Art.5)
 - Giving social partners **possibility to provide opinions**, and to receive **reasoned response** to opinions prior to presentation of proposals, on wage-setting and updating and before any decisions are taken, could contribute to proper involvement’ (Recital 26)
- European Commission (2023:41)
 - ‘Member States should design a procedure or mechanism that will ensure that social partners will be involved, **not only through their participation in consultative bodies**, but through additional mechanisms or procedures listed in Article 7
 - ‘...social partners have a role to play in monitoring compliance with the Directive and should inform the Commission in case of perceived non-compliance.’ (European Commission 2023:41).
- Done with respect to S.I. 633 of 2024?

Article 6: Variations and Deductions?

- Any variations (e.g. reduced rates for young workers) and deductions must respect principles of non-discrimination and proportionality, including pursuit of a **legitimate aim** (Art.6(1)).
- ‘It is the responsibility of Member States to review their variations by the transposition deadline against the requirements set by Article 6 and to **eliminate those that are discriminatory and/or not proportionate**’ (European Commission, 2023:37).
- Low Pay Commission (March 2024) was unable to identify any specific “legitimate aim” or justifications with a ‘sufficient evidentiary base’ for retention and, in absence of any objective justification, recommended abolition, from Jan. 2025.
- July 2024: DETE announced commissioning of **economic assessment** of LPC’s recommendation – report expected by July 2025.
- 15 April 2025: ‘Decisions on youth sub-minimum wage rates will be deferred’
(DETE statement re development of Action Plan on Competitiveness and Productivity),

Article 12: Right to redress and protection against adverse treatment and consequences?

- Member States shall protect workers and workers' representatives, **including those who are trade union members or representatives**, against **adverse treatment** by employer or other **adverse consequences** as a result of complaints about breaches of rights relating to minimum wage protection.
- Applies to NMW and to Employment Regulation Orders (European Commission, 2023:18).
- NMW Act 2000 prohibits victimisation of employees in several circumstances, including where they have 'exercised' or 'proposed to exercise a right' under the Act
- 'Unlike the Directive, the Act does not expressly confer protection from victimisation on workers' representatives' (**Bell and Eustace**, 2024:487).
- Presumably does not also protect 'trade union members or representatives'.

Article 13: Penalties?

- Member States shall provide penalties that are '**effective, proportionate and dissuasive**' for infringements of rights and obligations falling relating to minimum wage protection derived from national law (e.g. NMW and EROs in Ireland)
- Presumably also applies with respect to infringement of right to redress and protection against adverse treatment and consequences for **workers' representatives, including trade union members or representatives**, under Article 12?

Conclusion - Article 4: Promotion of Collective Bargaining?

- Article 4 obliges Member States to take specific actions with aim of **increasing collective bargaining coverage** and of **facilitating the exercise of the right** to collective bargaining.'
- Range of actors including the National Economic and Social Council (2022), the Economic and Social Research Institute (2023), the Irish Human Rights and Equality Commission (2024) highlighted the **non-existent or weak right to collective bargaining** in Ireland.
- 'There were no legislative changes on the collective bargaining and enforcement side because (1) the relevant provisions...**are already being given effect** and (2) the formulation of the action plan to promote collective bargaining does not need a legislative underpinning (DETE, 2025:50).
- Not disputed establishment of action plan doesn't need legislative underpinning as it's 'part of the implementation, and not of the transposition of the Directive' (European Commission, 2023:51-52).
- But can **obligation to promote collective bargaining** be reconciled with Government's view that 'terms and conditions of employment is best determined by voluntary collective bargaining '**without the intervention of the state**' (Ireland's statement on La Hulpe Declaration, 2024)?

Conclusion

- Presentation sought to make the case Ireland may be in breach of its obligations with respect to provisions concerning statutory minimum wages.
- But Adequate Minimum Wages Directive has been described as the **Collective Bargaining Directive in disguise** (Muller and Schulten, 2024:71).
- ‘Far from being just one of the many EU directives on social policy, the AMWD marks a **change of paradigm...** (whether in the positive or the negative will be for readers to assess) in EU labour law which will have socio-economic and regulatory effects in the decades to come’ (Ratti, Luca, 2024:2)
- ‘...Member States are not in a position to equivocate. The obligations in Article 4 are clear: Member States **shall promote collective bargaining**. For Member States like Ireland...where the State has traditionally been (at best) a passive observer, **change must come**.’ ‘...the success of the Directive in promoting collective bargaining coverage will depend significantly on the level of action (or inaction...) by legislators and regulators at both national and EU level.’ (Doherty, 2024:224).
- ‘We see this legislation as the **most significant and progressive** to emerge from the European Union in a generation and, if transposed and implemented as intended, to be potentially transformative and enormously beneficial for industrial relations in Ireland’ (Reidy, 2024)
- In this context, how Ireland complies with its obligations will undoubtedly determine trade unions’ stance on future of EU.

Key References

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