

6

Adequate Wages Across the EU

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I. Adequate Minimum Wages: A Shield against In-work Poverty

The need to ensure adequate wages and decent standards of living is emphasised by the fact that ‘for too many people, work no longer pays’, as statistics on in-work poverty (IWP) show.¹ This issue has become even more urgent due to the impact of the Covid-19 pandemic and the consequent economic downturn, which has had a significant impact particularly on those sectors, such as the service sectors, small firms, and non-standard and precarious work, that have felt a greater impact of the Covid-19 pandemic crisis, thus exacerbating an existing trend consisting of job polarisation and an increasing ‘share of low-paid and low-skilled occupations’. The situation is worsening and increasing wage inequality in several EU Member States.²

To this respect, it must be noted that minimum wage policies and increasing minimum wage levels cannot be considered as a panacea in fighting inequalities and in coping with IWP. It is acknowledged that there is a weak connection between low wages and poverty: on the one hand, although the risk of in-work poverty is higher for low-paid workers, relatively few of them actually experience it. On the other hand, in many countries in-work poverty is also linked to the intensity of work within households and to the low quality of the employment.³ Indeed, while the notion of IWP is related to the household income – more precisely to the family equivalised disposable income – the notion of low-wage worker refers to a single person whose hourly earnings is less than two-thirds of median hourly earnings. Therefore, the impact of low wages on an individual worker’s risk of

¹ U Von der Leyen, State of the Union address of September 2020, in ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655.

² The need of action in this respect is highlighted also by L Visentini, ‘Directive on adequate minimum wages: European institutions must respect the promise made to workers!’ (2021) 4 *Italian Labour Law e-Journal* 33.

³ D Checchi and W Salverda, ‘Labour-market institutions and the dispersion of wage earnings’, IZA Discussion Paper no 8220/2014 (2014).

IWP necessarily depends on the composition of that person's household and the institutional 'safety net' provided to both the individual worker and their family.⁴ Thus, establishing an EU framework favouring an increase in minimum wages to a level allowing for a decent standard of living can only partially help to reduce this phenomenon.

Though insufficient alone to prevent IWP, adequate minimum wages are a necessary safeguard – a type of shield.⁵ Furthermore, reasonable minimum wages may have a significant role in ensuring adequate social security benefits by having an impact on their amount, particularly where no minimum benefits are provided.

Wage dumping not only undermines the dignity of work, but also risks penalising those entrepreneurs who pay decent wages and distorting fair competition in the Single Market.

Thus, fair and adequate wages – even more than a minimum wage – pursue more than one objective: to 'make work pay', to prevent unfair competition, and, last but not least, as established by international laws, as a matter of human dignity: indeed, the 'respect for the dignity of the worker as a human being dictates that human labour should not be sold for less than a certain minimum'.⁶

In this chapter, the analysis of the notions of fair and adequate wages at national and international level (section II), as well as the study of the debate on the concept and the methods of calculation of living wage (section III), is the basis for a more in-depth reasoning on the criteria for the assessment of fairness and adequacy of minimum wages adopted at EU level in the Directive 2022/2041 (sections IV and V). The chapter concludes on a conceptualisation of what the fair and adequate wage should ideally be, ie a benchmark notion of fair and adequate wages against in-work poverty (section VI).

II. The Notion of Fair and Adequate Wages at National and International Level

Despite some differences – particularly with regard to the sources, the notions, the methods of enforcement, and the functions of minimum wages – crucial aspects derive from the notions of fair and adequate wage at national and international level.

⁴W Salverda, 'Low earnings and their drivers in relation to in-work poverty' in H Lohmann and I Marx (eds), *Handbook on In-work Poverty* (Cheltenham, Elgar, 2018); B Maitre, B Nolan and C T Whelan, 'Low pay, in-work poverty and economic vulnerability' in H Lohmann and I Marx (eds), *Handbook on In-work Poverty* (Cheltenham, Elgar, 2018); B Vanhercke, D Ghailani and S Sabato (eds), *Social Policy in the European Union: State of Play 2018* (Brussels, OSE-ETUI, 2018).

⁵A Horton and J Wills, 'Impacts of the living wage on in-work poverty' in H Lohmann and I Marx (eds), *Handbook on In-work Poverty* (Cheltenham, Elgar, 2018).

⁶G Davidov, *A Purposive Approach to Labour Law* (Oxford, Oxford University Press, 2016) 73 ff.

Reasoning on the role of wages in fighting against IWP, it is crucial to begin by focusing on the notion of fair and adequate wages and on the concept of a decent standard of living that a reasonable wage should ensure.

The importance of ensuring a fair and adequate wage as a means to protect human dignity is acknowledged. As an example, in Italy the notion of a fair and adequate wage expressly arises from Article 36 of the Constitution, which establishes two criteria for ensuring reasonable wage – the principle of proportionality and the principle of adequacy – that, at the same time, also identify the main functions of salary: it is due in return for the work or service provided and it should grant a decent standard of living.⁷ While the principle of proportionality requires that wages match with the work performed by the employee, the ‘social function of the wage’ implies that the employer may sometimes be obliged to remunerate its employee even when the latter is not working, for instance when sick or pregnant.⁸ According to the principle of adequacy, wages must be at least sufficient for a free and dignified existence. Thus, at least in theory, this principle aims to guarantee workers and their families not only the minimum income required for subsistence, but an income that also supports their social needs and enables a socially acceptable standard of living.⁹

The reference to human dignity is also relevant in other EU Member States, for instance with respect to the Belgian legal system. Article 23 of the Belgian Constitution states a more general right ‘to lead a life worthy of human dignity’, which implies fair working conditions, including the right to fair remuneration. Its content is intentionally left open. Even though there is no specific definition of the term ‘fair remuneration’ in the Constitutional provision, on the basis of the

⁷ Pursuant to para 1 of Art 36 of the Constitution, ‘workers have the right to a remuneration commensurate to the quantity and quality of their work and in any case such as to ensure them and their families a free and dignified existence’.

⁸ L Zoppoli, *La corrispettività nel contratto di lavoro* (Napoli, ESI, 1991); P Ichino, ‘La nozione di giusta retribuzione nell’articolo 36 della costituzione’ (2010) 1 *Rivista italiana di diritto del lavoro* 719.

⁹ However, according to the notion provided for by settled Italian case law – which is relevant since there is no statutory provision establishing a minimum wage – what constitutes fair remuneration is usually determined through reference to the ‘basic wages’ established in the national collective agreements signed by the most representative unions in that sector, even though – it must be said – such wage rates must be considered as non-binding parameters. Cf I Senatori, ‘The Precarious Balance among Hierarchy, Coordination and Competition in the Italian System of Labour Law Sources’ in T Gyulavári and E Menegatti (eds), *The Sources of Labour Law* (Kluwer Law International, 2019). More precisely, when an employee claims before a court that his or her wage does not satisfy the principle of fairness and adequacy provided for in Art 36 of the Constitution, on the basis of their competence in accordance with Art 2099 of the Italian Civil Code, the courts determine the wage level, usually referring to the minimum wage rates set by national collective agreements for the sector. There are many issues concerning the effective functioning and enforcement of contractual minimum wages: for instance, the existence of a variety of agreements that might be applied by the employer regardless of the business conducted, that often results in severe reductions in terms of wages, and the increasing number of ‘pirate’ collective agreements signed by non-representative or poorly representative unions, which often negotiate downward as compared to the pay levels set in collective agreements signed by the most representative trade unions. Cf G Centamore, *Contrattazione collettiva e pluralità di categorie* (Bologna, BUP, 2020); E Menegatti, ‘Wage-setting in Italy: The Central Role Played by Case Law’ (2019) 12(2) *Italian Labour Law e-Journal* 61.

preparatory documents of the Parliament, remuneration must take into account the basic social, cultural and economic needs of the workers and their families, and also enable them to engage in education and social activities.¹⁰

The significance of minimum wage policies in ensuring the satisfaction of the needs of all workers and their families is emphasised also at international level,¹¹ for instance in ILO Recommendations and Conventions, that interestingly also include among the criteria to be taken into account in determining the level of minimum wages ‘the needs of workers and their families’ and the cost of living.¹² With regard to the assessment of the needs of workers and their families, Article 3 of ILO Minimum Wage Fixing Convention No 131 (1970) further specifies that ‘the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups’ are relevant elements. Thus, even though the Convention uses the term minimum wage, it seems to refer to a wage level that ensures a steady income and livelihood security.

Also, Article 4 of the European Social Charter (ESC) recognises the ‘right of workers to a remuneration such as will give them and their families a decent standard of living’, importantly taking into account the relationship between the wage level and standard of living. According to the interpretation of this provision by the European Committee of Social Rights (ECSR), ‘the concept of “decent standard of living” goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities’.¹³

The ECSR has also developed a notion of fair remuneration, according to which ‘the minimum wage paid in the labour market must not fall below 60% of the net average national wage’. According to ECSR’s case law, if the lowest wage in a Member State does not satisfy the 60 per cent threshold, ‘but does not fall very far below’, meaning that it is between 50 per cent and 60 per cent, the State will be asked ‘to provide detailed evidence that the lowest wage is sufficient to give the worker a decent living standard even if it is below the established threshold’. In particular, consideration will be given to certain costs, including health care, education, transport, and to some compensatory factors, such as taxes and substantial social benefits, including family and housing benefits. Only in

¹⁰To be more precise, the request of taking into account the needs of the family has been interpreted by some as giving a mandate more directed towards the design of social and fiscal policies. Cf A Barrio, E De Becker and M Wouters, ‘National Report on in-work poverty in Belgium’, Working, Yet Poor Project (2021).

¹¹This is the case, for instance, in Art 23 of the Universal Declaration of Human Rights, Art 7 of the International Covenant for Economic, Social and Cultural Rights (ICESCR), the preamble to the International Labour Organization (ILO)’s Constitution of 1919, and ILO Declaration on Social Justice for a Fair Globalization of 2008.

¹²R Zimmer, ‘Living wages in international and European law’ (2019) 25(3) *Transfer* 285.

¹³Digest of the case law of the European committee of social rights, 2018, quoting Conclusions 2010, Statement of Interpretation on Article 4§1; Conclusions XIV-2 (1998), Statement of Interpretation on Article 4§1, rm.coe.int/digest-2018-appendix-en/1680939f7e.

‘extreme cases’, if the lowest wages are less than half the national average wage will the State be considered ‘in breach of Charter independently of such evidence’. According to the ECSR,

a wage does not meet the requirements of the Charter, irrespective of the percentage, if it does not ensure a decent living standard in real terms for a worker, i.e. it must be clearly above the poverty line for a given country.¹⁴

Nevertheless, in international provisions, the importance emerges of balancing this social function of wages, linked to workers’ needs and their right to a dignified existence, with other factors, such as economic and labour market considerations and benefit system. For instance, for the purpose of determining the minimum wage levels, ILO Minimum Wage Fixing Recommendation, no 131 (1970) also refers to criteria, such as ‘(d) social security benefits; (e) the relative living standards of other social groups’, and, lastly, ‘(f) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment’. The significance of these factors is confirmed by the case law on Article 4 of ESC: according to the ECSR, the assessment of the fairness level is based on net amounts, after deducting social security contributions and taxes on earned income, excluding indirect taxes and social transfers or welfare benefits which are not directly linked to the wage, thus taking into account any ‘redistributive effects of contributions and taxes.’¹⁵ In this way, the Committee stresses the importance of taking into account other factors when assessing the fairness of the remuneration as a ‘decency threshold for the lowest wage’, for example taxes and an appropriate coordination with the welfare system.¹⁶

III. The Different Functions of Wages: Is there a Case for a Living Wage?

In the reasoning on fair and adequate minimum wages, different functions of wages must be taken into account, as well as the tensions between them, ie between the idea of ‘wages as price’, reflecting workers’ productivity and/or on the employers’ ability to pay, and the concept of ‘wages as living’, linked to the cost of living. These entail different perspectives in regard to what constitutes a fair wage.¹⁷ As long as wages are the main source for supporting living standards, the latter seems

¹⁴ *ibid.*

¹⁵ *ibid.*

¹⁶ Z Adams and S Deakin, ‘Art. 4. The right to a fair remuneration’ in N Bruun et al (eds), *The European Social Charter and the Employment Relation* (Oxford, Hart, 2017).

¹⁷ J Rubery, M Johnson and D Grimshaw, ‘Minimum wages and the multiple functions of wages’ in I Dingeldey, D Grimshaw and T Schulzen (eds), *Minimum Wage Regimes. Statutory Regulation, Collective Bargaining and Adequate Levels* (Abingdon, Routledge, 2021).

to be a convincing argument for establishing a minimum wage to protect against poverty.¹⁸

From this perspective, focusing on the social functions of minimum wages, the notion of living wage is of some interest: affirming that fair and adequate wages shall provide a decent standard of living to workers and their families entails that the notion of adequate wage is related to the idea of a living wage.¹⁹

Yet, minimum wage and living wage 'are not the same'. In setting minimum wages, two competing objectives must be taken into consideration: 'a desire to reduce poverty and provide for the needs of workers and their families through work' and a desire to stimulate – or not to undermine – employment and economic growth.²⁰ It has been emphasised that due to such 'cautious' fixing mechanism of minimum wage, 'it often falls short of providing recipients with a basic and decent standard of living'.²¹ Conversely, a living wage can be defined as an income from work that allows an employee a modest but socially acceptable standard of living.²² It is generally calculated on an estimation of costs for a basic acceptable living standard. Thus – as it is widely acknowledged – living wage is something independent from the notion of minimum wage: it belongs to the moral economy and is closely related to the subsistence and needs of individuals.²³

A. The Notion of Living Wage and its Normative, Economic and Moral Justification

One of the first formulations of the living wage concept was elaborated by Adam Smith, who supported the idea that 'a man must always live by his work, and his wages must at least be sufficient to maintain him' and preferably 'something more, otherwise it would be impossible for him to bring up a family'. More importantly, Smith defined the sufficient wage by identifying the 'necessaries' that the wage is intended to cover, understanding with this term 'not only the commodities which

¹⁸ L Ratti, 'The proposal for a Directive on adequate minimum wage in the EU' (2021) 3 *EU LAW LIVE*. Weekend edition, Special Issue 'In-work poverty in the EU', 7 ff.

¹⁹ R Peña-Casas and D Ghailani, 'A European minimum wage framework: the solution to the ongoing increase in in-work poverty in Europe?' in B Vanhercke, S Spasova and B Fronteddu (eds), *Social policy in the European Union 2020* (Bruxelles, ETUI, 2021); Z Adams, 'The EU Minimum Wage Directive: A Missed Opportunity?' (2020) in uklabourlawblog.com/2020/11/12/the-eu-minimum-wage-directive-a-missed-opportunity-by-zoe-adams.

²⁰ R Anker and M Anker, *Living Wages Around the World. Manual for Measurement* (Cheltenham, Elgar, 2017).

²¹ Eurofound, *Concept and practice of a living wage* (Luxembourg, Publications Office of the European Union, 2018).

²² This is the definition provided by the United Kingdom Living Wage Commission. Cf P Kelly, A Ferro and S Jones, *In-work poverty in Europe: A growing problem* (Brussels, European Anti-Poverty Network, 2011).

²³ A Werner and M Lim, 'The Ethics of the Living Wage: A Review and Research Agenda' (2016) 137(3) *Journal of Business Ethics* 433. On the evolution of the notion of living wage in thinking, see also D Hirsch and L Valadez-Martinez, *The Living Wage* (Newcastle upon Tyne, Agenda Publishing, 2017).

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'. He comprehended not only the bare minimum, but also those commodities which 'the established rules of decency have rendered necessary to the lowest rank of people'.²⁴

A similar notion was proposed by John Ryan, who restated the idea that the wage has to maintain decently all workers and provide a living standard that includes both basic needs, such as food, housing and clothes, as well as the possibility to participate in cultural and social life. He understood it as an absolute right, grounded in the human dignity of the person.²⁵

The Webbs advocated for a national minimum wage, operating as 'ultimate' tool, while the standard rate must be settled by collective bargaining and set at a feasible subsistence level, on the basis of 'the cost of the food, clothing, and shelter physiologically necessary, according to national habit and custom, to prevent bodily and mental deteriorations'. In their opinion, it is an instrument 'to secure the community against the evil of industrial parasitism'. They harshly reprimanded those companies that did not pay living wages, as they de facto externalised the social costs of guaranteeing the workers' subsistence on to society.²⁶

Considering the economic justification for the living wage concept, recently many academics have stressed the importance of introducing adequate minimum wages, as research has shown no – or minimal – adverse economic effects or negative impacts on employment levels of the increases in minimum wage, which, on the contrary may help in establishing a level playing field and boosting economic growth.²⁷ Minimum wages are also a means to regulate competition. Some argue that the only way to guarantee sustainable wages, allowing for a decent standard of living, is to make an adequate minimum wage – a living wage – a precondition for businesses to compete in the labour market.²⁸

In addition, starting from the proposition that 'poverty and severe economic inequalities are unacceptable', it can be argued that a living wage 'is the most appropriate antidote' to these intertwined problems, even though not a panacea.²⁹ Therefore, in addressing the issues of the function of wages, the importance of wages that not only enable workers to sustain themselves, but also to reduce inequalities and 'to improve their abilities as workers and as members of society

²⁴ A Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Metalibri Digital library, 1789/2007).

²⁵ JA Ryan, *Living Wage: Its Ethical and Economic Aspects* (London, Macmillan, 1912).

²⁶ S Webb, 'The Economic Theory of a Legal Minimum Wage' (1912) 20 *Journal of Political Economy* 993. Cf also BE Kaufman, 'Sidney and Beatrice Webb's institutional theory of labor markets and wage determination' (2013) 52(3) *Industrial Relations* 765.

²⁷ M Mazzucato et al, 'Higher statutory minimum wages and stronger collective bargaining are good for the economy' (2021), available at www.etuc.org/sites/default/files/press-release/file/2021-05/Min%20wages%20op%20ed%20EN.pdf.

²⁸ Z Adams, 'Ancora sulla proposta di direttiva sui salari minimi adeguati nell'UE' (2021) 2 *Diritto delle relazioni industriali* 283.

²⁹ JL Waltman, *The Case for the Living Wage* (New York, Algora, 2004).

and to enhance those abilities in their children' must be considered.³⁰ This idea is linked to an interesting argument in favour of living wage policies: the capability approach. Guaranteeing a reasonable standard of living enhances citizens' freedom and autonomy and allows them to develop and effectively exercise their physical, intellectual, moral and spiritual faculties.³¹ In this perspective, work contributes to participation in activities in the community and fosters political participation, in this way enhancing social cohesion and trust.³² Furthermore, capability discourse is related to the idea of living wage as an absolute right, grounded in the human dignity of the person. The ability of workers to provide a decent living for themselves and their families strengthens their self-esteem and self-respect. It must be deemed also 'as part of our ability to live in dignity'.

B. Satisfaction of the Needs of Workers and their Families

The identification of an actual living wage level is closely related to the question of who is responsible for ensuring that every worker earns a sufficient minimum wage, the notion of the decent standard of living that the living wage is intended to guarantee, and the methods of calculation of the living wage.

It must be preliminarily said that the idea that minimum wages should be at least living wages is not universally accepted. According to the neoclassical economics perspective, employers pay workers only on the basis of their marginal individual productivity, thus only if it is economically sustainable. This is linked to the conception of wage as a 'market wage', as the price of a commodity. That perspective leads to a controversial issue concerning the question of who is responsible for ensuring that every worker earns a fair minimum wage. For neoclassical economics, it is the responsibility of the state to provide income support in order to guarantee workers with a minimum subsistence income level. From the opposite perspective based on the concept of living wage, it is the responsibility of the employer to provide an adequate wage level.³³

This means that ensuring the satisfaction of the needs of workers and their families, guaranteeing a decent standard of living, may be considered as an obligation of the employer or of the welfare state on the basis of different economic theories.³⁴ This is not a trivial issue.

³⁰ DR Stabile, *The Living Wage. Lessons from the History of Economic Thought* (Northampton, Elgar, 2008).

³¹ A Sen, *Development as a Freedom* (Oxford, Oxford University Press, 1999).

³² Waltman (n 29); Werner and Lim (n 23).

³³ Z Adams, 'Understanding the Minimum Wage: Political Economy and Legal Form' (2019) 78(1) *Cambridge Law Journal* 42.

³⁴ I Dingeldey, T Schulten and D Grimshaw, 'Introduction. Minimum wage regimes in Europe and selected developing countries' in I Dingeldey, T Schulten and D Grimshaw (eds), *Minimum Wage Regimes. Statutory Regulation, Collective Bargaining and Adequate Levels* (Abingdon, Routledge, 2021). The relevance of this issue is also stressed by Davidov (n 6) 74 ff.

It also involves the choice of taking into account net or gross wages as a reference to assess the adequacy of minimum wages: this is closely related to the decision to assign the responsibility of ensuring fair minimum wages entirely to employers or to the state. Taxes and social security contributions can significantly reduce the take-home pay of workers. Opting for net minimum wages as reference means that the issue of ensuring fair and adequate take-home pay is the responsibility of the state, by reducing taxes and social contributions, thus ‘externalizing the costs’ of the business practice of paying unfair wages to society.³⁵ From the opposite perspective, considering the gross wage as a parameter means making it the responsibility of employers. Also, in the latter case, a cost for society stems from low wages, as they need to be supplemented by welfare payments to ensure a decent standard of living, which, according to some authors, substantially risks subsidising employers who pay unfair wages.³⁶ Once more, this varies on the basis of the commentators’ different economic and political inclinations.

The matter of the responsibility for guaranteeing an adequate take-home pay entails the consideration of further social security and social assistance measures, such as benefits and the role of minimum income schemes. As it is a matter of balance between different policies and it is largely dependent on the welfare state features, it should be on the Member States to evaluate the interaction between them. In this view, ‘the indirect costs of employment’ should also be taken into account. For instance, Davidov argues that respect for human dignity implies that costs related to health and well-being of workers, such as those linked to workplace accidents and more in general to physical, psychological or social well-being, should also be taken into account when the worker is compensated. On the contrary, ‘when compensation is below a certain minimum’, the employer does not take into account the long-term costs associated with the work: in such cases, ‘businesses in fact externalize the indirect costs that flow from their profit-making activities’.³⁷

Another topic linked to the living wage discourse concerns the notion of a decent standard of living, whether it only includes basic material needs or something more, including those goods and services allowing for a truly free and dignified existence, ie ‘the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country’.³⁸ Some scholars researching on living wages argue that the cost of a ‘basic but decent life style’, namely food, housing, and other essential expenses, must be considered, ‘then adding a small margin for sustainability and emergencies’.³⁹ Certainly, it is an intricate debate.

³⁵ T Müller and T Schulten, ‘The European minimum wage on the doorstep’ (2020) ETUI Policy Brief no 1/2020.

³⁶ Ryan, *Living Wage* (n 25).

³⁷ Davidov (n 6) 74 ff.

³⁸ The quote is a section of art 3 of Italian Constitution. On the relevance of these elements with regard to living wage, cf B Fabo and SS Belli, ‘(Un)belivable wages? An analysis of minimum wage policies in Europe from a living wage perspective’ (2017) 4(6) *IZA Journal of Labor Policy* 1.

³⁹ Anker and Anker (n 20).

In addition, in literature, as well as in international legislation and charters, it is controversial whether the living wage is intended to cover the needs of the worker or also of the worker's family, and how to calculate such living wage as the number of dependants of a worker is very variable.⁴⁰ It is arguable that, looking at living or adequate minimum wage issue from an anti-poverty perspective, the household composition and the take-home pay necessary to maintain the family should be considered, as 'an in-work poor person is a working person who lives in a poor household'.⁴¹ Therefore, an adequate wage policy or, in the worst case, a poverty-avoiding minimum wage policy should take this factor into consideration, at least in the calculation of an average basket of goods and services that ensure a decent living standard.

For the aforementioned reasons, it is difficult to identify a reasonable living wage level. As is well known, there is no universally accepted method of calculating a living wage, as it largely depends on the heterogeneity of wage-setting systems and welfare states, and the definition of the necessities of a decent life is also affected by cultural and geographical factors, thus differing from country to country. For this reason, the importance of setting the living wage by calculating the cost of the basket of essential goods and services at a national level or even locally is widely acknowledged.⁴²

The case of the UK living wage, one of the most well-known and successful living wage campaigns, is interesting. It is promoted by the Living Wage Foundation with the aim of protecting the right of every worker to earn a sufficient wage to guarantee himself/herself and his/her family a decent living. The promoters had, in fact, noted that, despite having two or more minimum wage jobs, many workers still had income that was too low compared to family needs and did not have enough time for their families. This is not a statutory minimum rate, but a wage that any employer can voluntarily decide to apply. It is a system that relies on moral persuasion, based on the reputation of firms as responsible businesses and the Living Wage Foundation offers accreditation for employers paying a living wage.⁴³

This living wage is calculated on the basis of the cost of living. It is more than a subsistence wage, as the calculation is based on a basket of goods and services, which draws on the Minimum Income Standard, which is estimated on the basis

⁴⁰ Werner and Lim (n 23); Stabile (n 30); J Rubery, M Johnson and D Grimshaw, 'Minimum wages and the multiple functions of wages' in I Dingeldey, T Grimshaw and D Schulten (eds), *Minimum Wage Regimes. Statutory Regulation, Collective Bargaining and Adequate Levels* (Abingdon, Routledge, 2021).

⁴¹ L Ratti, A Garcia-Muñoz and V Vergnat, 'The Challenge of Defining, Measuring, and Overcoming In-Work Poverty in Europe: An Introduction' in L Ratti (ed), *In-Work Poverty in Europe. Vulnerable and Under-Represented Persons in a Comparative Perspective* (Alphen aan den Rijn, Wolters Kluwer, 2022) 11; H Lohmann, 'The concept and measurement of in-work poverty' in H Lohmann and I Marx (eds), *Handbook on In-work Poverty* (Cheltenham, Elgar, 2018) 7 ff.

⁴² Anker and Anker (n 20).

⁴³ In its implementation, also promoting a living wage through public procurement and requiring employers to promote the Living Wage among their suppliers have been crucial. Cf M Johnson, A Koukiadaki and D Grimshaw, 'The Living Wage in the UK: Testing the limits of soft regulation?' (2019) 25(3) *Transfer* 319.

of ‘public consensus as to what constitutes an adequate standard of living’. Many household types are taken into account, therefore there are many baskets ‘varying by family type to reflect their specific requirements.’⁴⁴ More in detail – as described in the briefing written by the Resolution Foundation involved in the calculation of the living wage on behalf of the Living Wage Foundation – it is

calculated by taking a weighted average of the earnings required (accounting for tax and benefits) for a range of family types (with and without children) to earn enough to afford the items in that basket of goods and services, and therefore to meet that standard of living.⁴⁵

Taxes and benefits systems are also considered, as they affect the households’ take-home pay and their capacity to afford the items within the basket of goods and services.⁴⁶ In this way, the UK living wage considers the issue of the suitability of supporting an individual and also providing a worker with sufficient income to support their family.⁴⁷

The case of UK living wage makes clear that, since it is necessarily also related to the welfare system, a cautious balance and a wide political agreement is necessary when determining the methods of calculation of an adequate minimum wage.

IV. A Coordinated Minimum Wage Policy at EU Level

In recent decades and, particularly, since the 2010s, the issue of fairness and adequacy of wages has also been topical in the political debate.

‘Adequate wages are an essential component of the EU model of a social market economy.’ This is one of the stated reasons for the proposal for a directive on adequate minimum wages in the European Union.⁴⁸ Guaranteeing adequate working and living conditions is one of the promises of the integration project, as stated in Article 3(1) of the Treaty on European Union (TEU): the European Union aims to promote peace, its values, and also ‘the well-being of its peoples’. Furthermore, pursuant to para 3, the EU ‘shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social

⁴⁴ C D’Arcy and D Finch, ‘The calculation of a living wage: the UK’s experience’ (2019) 25(3) *Transfer* 301 ff; A Davis et al, *A Minimum Income Standard for the United Kingdom in 2021* (Joseph Rowntree Foundation, 2021).

⁴⁵ N Cominetti, ‘Calculating the Real Living Wage for London and the Rest of the UK: 2020–21’ (Resolution Foundation, 2020) available at www.resolutionfoundation.org/publications/calculating-the-real-living-wage.

⁴⁶ On the role of the state and employers, cf D’Arcy and Finch (n 44) 301 ff.

⁴⁷ Cf EAPN task force on decent work, ‘Background Note on Living Wages’ (EAPN, 2015).

⁴⁸ Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union, Brussels, 28.10.2020, COM (2020) 682 final.

progress’, ‘it shall combat social exclusion and discrimination, and shall promote social justice and protection’, and it shall ‘promote economic, social and territorial cohesion, and solidarity among Member States’. These objectives are emphasised in Article 9 of the Treaty on the Functioning of the European Union (TFEU), according to which, in defining and implementing its policies and activities, the EU shall take into account requirements also linked to the guarantee of adequate social protection and the fight against social exclusion. Thus, an action of the EU on minimum wages is desirable – or this is supposed – since this is an issue that touches EU citizens deeply in their lives and ‘convergence across Member States in this area contributes to the promise of shared prosperity in the Union.’⁴⁹

For instance, Article 5 of the Community Charter of Fundamental Social Rights of Workers of 1989 states that ‘all employment shall be fairly remunerated’, meaning that ‘workers shall be assured an equitable wage, i.e. a wage sufficient to enable them to have a decent standard of living’.

The 1993 Commission Opinion on an Equitable Wage has restated the importance of the right ‘of all workers to be assured of an equitable wage, with particular attention being paid to the more vulnerable members of the labour force’. It also justifies the concept of ‘equitable wage’ with the fact that ‘all workers should receive a reward for work done which in the context of the society in which they live and work is fair and sufficient to enable them to have a decent standard of living’. Furthermore, in the same Opinion, the Commission reaffirms that ‘the pursuit of equitable wages is to be seen as part of the process of achieving the Community’s basic objectives of greater economic and social cohesion and a more harmonious development within the framework of an increasingly integrated European economy’.⁵⁰

Considering the most recent policy developments at EU level, the connection between wages and a decent standard of living – or, ever more, a dignified existence – described in the sections above can be found in Principle no 6 of European Pillar of Social Rights (EPSR), which also expressly links the right to fair and adequate wages to the prevention of in-work poverty. The introduction of the Social Scoreboard for monitoring the progress in the areas covered by the EPSR within the European Semester is also important, due to the social consequences of the decisions and policies in the context of the social governance.⁵¹

Based on this principle, the approval of the Directive 2022/2041 on adequate minimum wages in the European Union results of great political relevance: it has been considered a ‘watershed’⁵² – or a ‘paradigm shift’⁵³ – in EU policies, as

⁴⁹ *ibid.*

⁵⁰ Commission opinion on an equitable wage (93/C 248/04), COM(93) 388 final.

⁵¹ S Garben, ‘The European Pillar of social rights: an assessment of its meaning and significance’ (2019) 21 *Cambridge Yearbook of European Legal Studies* 101; B Hacker, ‘A European Social Semester? The European Pillar of Social Rights in practice’, ETUI working paper 2019.05 (2019).

⁵² T Müller and T Schulten, ‘Minimum-wage directive: yes, but ...’, in *Social Europe*’ (2020), available at socialeurope.eu/minimum-wage-directive-yes-but.

⁵³ Mazzucato et al (n 27).

it is a crucial step in ensuring the dignity of work across the EU.⁵⁴ Not long ago, austerity measures and country-specific recommendations required a moderate wage policy, consisting of reviewing wage-setting systems and wage indexation, aligning them with productivity developments.⁵⁵ With Directive 2022/2041, minimum wages are no longer exclusively viewed as an impediment to downward flexibility of wages and increasing competitiveness, as they were considered in the past.

This is clear also with respect to the stated goals of the Directive, which aims at improving living and working conditions and ‘in particular the adequacy of minimum wages for workers in order to contribute to upward social convergence and reduce wage inequality’. To this purpose, it intends to achieve the adequacy of statutory minimum wages, to promote collective bargaining on wage-setting, and to enhance ‘effective access of workers to rights to minimum wage protection where provided for in national law and/or collective agreements’.⁵⁶ Furthermore, it is doubtless that an upward convergence in the framework for minimum wages – and in general in social policy – is also relevant for the functioning of the single market, preventing significant discrepancies and competitive advantages between Member States, as well as in cross-border activities. For this reason, the Directive contributes to enabling fair competition based on innovation and productivity respecting adequate social standards.

From a political point of view, the importance of Directive 2022/2041 is undebatable.

Nevertheless, there are some inconsistencies. For instance, the scope of application is a critical issue. Pursuant to Article 2, the Directive applies to workers who have an employment contract or an employment relationship as defined by the law, collective agreements or practice in each Member State, with consideration of the case law of Court of Justice of the European Union.⁵⁷ Solo self-employed are therefore excluded, even though in many cases they experience financial or even personal dependence on a single client and their remuneration mainly or totally depends on the income generated from the business relationship with said client, often facing economic-social weakness.

Some provisions are arguably made in the light of ensuring a proper adequate wage that protects workers and their families from the risk of poverty and enables

⁵⁴ Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union [2022] OJ L 275/33.

⁵⁵ On EU economic governance during the ‘austerity’ period, cf L Bordogna and R Pedersini, ‘What kind of europeanization? How EMU is changing national industrial relations in Europe’ (2015) 3 *Giornale di diritto del lavoro e delle relazioni industriali* 183; T Schulten and T Müller, ‘A new European interventionism? The impact of the new European economic governance on wages and collective bargaining’ in D Natali and B Vanhercke (eds), *Social Developments in the European Union 2012* (Bruxelles, ETUI, 2012); D Grimshaw, *Minimum Wages, Pay Equity and Comparative Industrial Relations* (Abingdon, Routledge, 2013).

⁵⁶ Article 1, para 1, Directive 2022/2041.

⁵⁷ On the notion of ‘worker’ under EU law, cf N Countouris, ‘The Concept of “Worker” in European Labour Law: Fragmentation, Autonomy and Scope’ (2018) 47(2) *Industrial Law Journal* 192.

a dignified existence: the ones specifying criteria for setting adequate minimum wages are the most problematic.

V. The Criteria for Fairness and Adequacy Assessment of Minimum Wages in EU Directive 2022/2041

Directive 2022/2041 is based on the idea that adequate minimum wages shall be determined by law or through collective bargaining, in line with national practices, protecting the autonomy of the social partners. It is structured on two pillars, which are also its main objectives: adequacy and coverage. The first pillar, concerning adequacy, exclusively addresses Member States with statutory minimum wages; the second concerns the promotion of collective bargaining on wage-setting, on the basis of the inference that high collective bargaining coverage corresponds to wage adequacy, as stated in Recital 25. Indeed, according to recent studies, the countries with high collective bargaining coverage tend to present a lower share of low-wage workers and higher minimum wages relative to the median wage.⁵⁸

On the one hand, Article 5 addresses the issue of adequacy with regard to national statutory minimum wages, listing some minimal principles and criteria for statutory minimum wage setting and updating. On the other hand, Article 4 aims at increasing the collective bargaining coverage and promoting the capacity of social partners to engage in collective bargaining on wage setting, requiring Member States to establish an action plan to promote collective bargaining, where collective bargaining coverage does not reach at least 80 per cent of the workers.

A. Procedure and Criteria for Setting Adequate Statutory Minimum Wages

The provisions concerning statutory minimum wages are enshrined in Chapter II of the Directive. This Chapter opens with Article 5, which notably identifies some elements aiming at ensuring statutory minimum wage adequacy. Thus, the criteria set for the adequacy assessment of wage levels seem to be applicable only to statutory minimum wages.

Article 5 provides that ‘Member States with statutory minimum wages shall establish the necessary procedures for the setting and updating of statutory minimum wages’ and lists some criteria to ensure the adequacy of wages, to achieve decent living conditions and upward convergence, as well as to eradicate the gender pay gap. Recital 28 specifies that the adequacy of statutory minimum

⁵⁸ Dingeldey, Schulten and Grimshaw, ‘Introduction’ (n 34).

wages is assessed in view of ‘national socioeconomic conditions, including employment growth, competitiveness and regional and sectoral developments’. Interestingly, in the approved version, there is a specific reference also to the purpose of reducing in-work poverty, that must guide these setting and updating procedures. The list of elements that must ‘at least’ be taken into account in assessing the adequacy of wages includes criteria already enshrined in other international documents, namely ‘(a) the purchasing power of statutory minimum wages, taking into account the cost of living; (b) the general level of gross wages and their distribution; (c) the growth rate of gross wages; (d) long-term national productivity levels and developments’. Yet, such criteria seem to be ‘too generic’ to effectively guarantee the adequacy of minimum wages. For this reason, it is important to read them in the light of the above-mentioned directive’s preambles and objectives.⁵⁹

With a view to simplify the assessment, Article 5 requires MSs to use indicative reference values in relation to the general level of gross wages, inspired to the ones adopted at international level. The recommended threshold of 60 per cent of the gross median wage or 50 per cent of the gross average wage is ambitious: actually, in 2020 in all EU Member States minimum wages were lower than the percentage set by these indicators and too low to provide a decent living.⁶⁰

Concerning the use of indicative reference values, Recital 28 states that ‘minimum wages are considered to be adequate if they are fair in relation to the wage distribution in the relevant Member State and if they provide a decent standard of living for workers based on a full-time employment relationship’. This seems to suggest an equation between fairness in relation to the wage distribution and adequacy in providing a decent standard of living. A relative approach, such as the one identifying a threshold in relation to the gross median or average wage, is of course explanatory of the effect of minimum wages on wage inequality. Notwithstanding this, it has been argued that it is a ‘rough indicator’ for an adequate level of minimum wage that aims at providing a decent standard of living. Actually, in those countries where the majority of workers earn very low wages, the percentage of the median/average wage ‘might be very high, but the absolute level still very low and often not sufficient to cover the costs of a decent living’.⁶¹

Commenting on the initial proposal for a directive on minimum wages in the EU, some authors suggested to adjust this relative indicator using the national criteria defining a sort of living wage, ie a reference income on the basis of a country-specific basket of goods and services or ‘the wage that prevents workers

⁵⁹ Peña-Casas and Ghailani (n 19) 135 ff; Ratti (n 18) 7 ff.

⁶⁰ In 2020, not one EU Member State fulfilled the double decency threshold of 60% of the median and 50% of the average wage. Cf T Müller, K Vandaele and W Zwysen, ‘Wages and collective bargaining: Is social Europe really back on the agenda?’ in N Countouris, R Jagodzinski and S Theodoropoulou (eds), *Benchmarking Working Europe 2021. Unequal Europe* (Bruxelles, ETUI/ETUC, 2021), who elaborate data from the OECD earnings database 2021.

⁶¹ T Schulten and T Müller, ‘What’s in a name? From minimum wages to living wages in Europe’ (2019) 25(3) *Transfer* 267.

from relying on additional wage top-ups by the state in order to make a living⁶². This option – closer to an ‘absolute’ or ‘needs-based’ approach – would consider the ability ‘to make ends meet’ that ensures a decent standard of living.

For this reason, it is significant that Recital 28 of the approved Directive proposes ‘among other instruments’, to adopt ‘a basket of goods and services at real prices established at national level’ to determine the cost of living ‘with the aim of achieving a decent standard of living’. In addition, importantly, this basket ‘could’ take into account not only ‘material necessities such as food, clothing and housing’, but also ‘the need to participate in cultural, educational and social activities’. This results to be in line with the idea of guaranteeing an adequate minimum wage that allows citizens to develop and effectively exercise their physical, intellectual, moral and spiritual faculties, and fosters participation in activities in the community, in this way making the concept of citizenship more effective.

B. Promotion of Collective Bargaining on Wage-setting: Benefits and Pitfalls

Taking a closer look on the part concerning the promotion of collective bargaining, further – and more serious – concerns arise with regard to Article 4, as amended after interinstitutional negotiations in the so-called ‘trilogue’. First, the provision requires Member States to undertake action to increase the collective bargaining coverage and to strengthen the capacity of the social partners to engage in collective bargaining on wage setting at sector or cross-industry level, also guaranteeing that ‘both parties have access to appropriate information in order to carry out their functions’. Article 4 also requires Member States to take measures to prevent all acts which undermine the right of workers and trade unions representatives to participate in collective bargaining on wage-setting discriminating them, and to protect social partners participating or wishing to participate in collective bargaining ‘against any acts of interference’.

Moreover, with the aim of closing gaps in coverage of minimum wage protection for workers, where collective bargaining coverage is less than 80 per cent of workers, Article 4 requires Member States to ‘provide for a framework of enabling conditions for collective bargaining’ and, after consulting the social partners or by agreement with the social partners, ‘establish an action plan to promote collective bargaining’, that is public and notified to the Commission. In this way, the approved version of Article 4 has transformed a relatively generic obligation – such as the one contained in the original version of the proposed directive – into a potentially crucial instrument operating on a procedural level. Indeed, in full respect for the autonomy of the social partners and after consulting or by agreement with them, Member States shall set out, review and update if needed, an action plan providing

⁶² *ibid.*

for a ‘clear timeline and concrete measures to progressively increase the rate of collective bargaining coverage.’

However, it is arguable that a ‘well-functioning’ collective bargaining on wage setting – which is an important means to ensure that workers are protected by adequate minimum wages – should be considered as such only if it remains a prerogative of truly representative social partners, ‘and it is not opened to other actors, obscure and non-representative associations or groups.’⁶³ This is a problematic issue in countries where the proliferation of a variety of competing sectoral collective agreements – particularly where they may be applied by employers regardless of the activity performed – lead to downwards negotiation and wage reductions.⁶⁴ Therefore, this ‘equation’ between adequacy and coverage on which the directive is structured is – at least – ‘challenging’.⁶⁵

In addition, in a directive promoting the adequacy of minimum wages, it is cause for concern that it does not illustrate what is the notion of adequacy, ie it does not indicate the criteria to assess whether the contractual minimum wages are fair and adequate, with regard to Member States where minimum wage protection is provided exclusively by collective bargaining.⁶⁶

VI. Conclusion: A Benchmark Notion of Fair and Adequate Wages against In-Work Poverty

On the basis of the analysis in the previous sections and of the debate on the directive providing a framework for adequate minimum wages in the EU, as well as keeping in mind the important theories on and campaigns for living wage, a desirable notion of fair and adequate wage can be identified.

To this purpose, a reasonable balance is necessary, that takes into account the many aspects of setting adequate wage levels: sufficiency of the wages to make

⁶³ ETUC, Reply of the European Trade Union Confederation (ETUC) to the Second Phase Consultation of Social Partners under Article 154 TFEU on a possible action addressing the challenges related to fair minimum wages (2020), available at www.etuc.org/en/document/reply-etuc-2nd-phase-consultation-social-partners-fair-minimum-wages.

⁶⁴ This is the case of Italy, where the increasing number of ‘pirate’ collective agreements – signed by non-representative or poorly-representative unions – often result in severe reductions in terms of wages and working conditions. In addition, it must be noted that in Italy, sometimes also collective agreements signed by long-standing unions provide for an unfair wage level, determining a worrying downward competition. Since employers can apply a sectoral collective agreement regardless of the business conducted, they sometimes ‘choose’ the most convenient one, giving rise to competition between these collective agreements. See N De Luigi, G Marchi and E Villa, ‘In-work poverty in Italy’ in L Ratti (ed), *In-Work Poverty in Europe. Vulnerable and Under-Represented Persons in a Comparative Perspective* (Alphen aan den Rijn, Wolters Kluwer, 2022) 121 ff.

⁶⁵ Ratti (n 18) 7 ff.

⁶⁶ M V Ballestrero and G De Simone, ‘Riallacciando il filo del discorso. Dalla riflessione di massimo Roccella al dibattito attuale sul salario minimo’ WP CSDLE ‘Massimo D’Antona’ IT 447/2021 (2021); O Razzolini, ‘Salario minimo, dumping contrattuale e parità di trattamento: brevi riflessioni a margine della proposta di direttiva europea’ (2021) *Lavoro Diritti Europa*.

ends meet, equality and contractual fairness of wages, as well as the interactions of minimum wage levels with social assistance policies, the welfare system and economic considerations. The multifaceted nature of this issue has consequences in identifying a benchmark notion of fair and adequate wages and measures and policies to ensure adequacy of minimum wages.

According to the notion arising from the interpretation of international charters and declarations, a fair and adequate wage is intended to ensure a decent standard of living for workers and their families, thereby guaranteeing the protection of human dignity. In understanding the relevance of these international instruments in our reasoning, it is remarkable that the EPSR mentions the fundamental social rights set out in the ESC as a reference for Member States in pursuing the promotion of employment and improved living and working conditions in line with Article 151 TFEU. The preambles of Directive 2022/2041 also refer to Article 4 of ESC and to ILO Convention 131, as standard and as a tool for teleological interpretation.

In the attempt to provide a benchmark notion of fair and adequate wages that may be helpful in the prevention and fight against IWP, it is a good starting point to consider the meaning of two essential concepts – adequacy and fairness, which describe different characteristics that minimum wages should have. Adequacy refers to ‘the fact of being enough or satisfactory for a particular purpose.’⁶⁷ As stated by the ECSR, the purpose of adequate wages is to guarantee all the resources necessary to participate in cultural, educational and social activities in society, beyond material basic needs, and to prevent IWP. Therefore, reasonably, an adequate minimum wage should not be lower than the poverty threshold.⁶⁸ Fairness describes ‘the quality of treating people equally or in a way that is right or reasonable.’⁶⁹ The importance of reducing inequality is widely acknowledged, not only because it is ‘morally objectionable’, but also because it negatively affects the fairness of political and economic institutions: it is a prerequisite to promoting the opportunity for all to take part in the cultural, social and economic organisation of a country.⁷⁰ More in detail, with regard to pay, fairness may have two different meanings: it can be interpreted as concerning the distribution of wealth, but also in relation to disparities of pay within organisations between employees, in particular between employees and the top management.⁷¹ To this respect, the fairness of pay concerns – as Collins clearly explains – the associational principles of interpersonal justice, the principles of desert and of due recognition, that contain ‘a strong egalitarian impulse’. Indeed, the first one

⁶⁷ Cambridge dictionary online.

⁶⁸ E Menegatti, ‘Much ado about little: The Commission proposal for a Directive on adequate wages’ (2021) 14 *Italian Labour Law e-Journal* 21.

⁶⁹ Cambridge dictionary online.

⁷⁰ TM Scanlon, *Why Does Inequality Matter?* (Oxford, Oxford University Press, 2018).

⁷¹ H Collins, ‘Fat cats, production networks, and the right to fair pay’ (2022) 85(1) *The Modern Law Review* 7.

acknowledges that everyone should be rewarded in accordance with their contribution. The principle of due recognition insists that disparities in pay should not be so great as to imply that any member's contribution is worthless or of little significance with the consequence that they lose self-respect.

Therefore,

the reason why the growing disparity in wages within organisations is morally wrong is that it appears to treat the contribution and abilities of some employees in a way that tends to undermine self-esteem and denies recognition to the low paid.⁷²

On the basis of these notions, it is clear that 'fair and adequate' is not a hendiadys. Actually, these adjectives describe two different concepts: fairness concerns the relation to other wages, while adequacy addresses the sufficiency of the wages to make ends meet. Thus, 'fair and adequate wage' is a multidimensional concept.⁷³ On these premises, a 'combined' approach must be undertaken in order to identify what a fair and adequate wage should be.

Firstly, in order to ensure the fairness of a minimum wage, it seems important to take a relative – thus a 'distribution-oriented'⁷⁴ – and more 'pragmatic'⁷⁵ approach, such as the one adopted within the ECSR and proposed in the EU Directive. Member States should be required to use an indicative reference equal to 60 per cent of the national median wage or 50 per cent of the average wage. This threshold would boost minimum wages in the majority of the Member States, at least those with national statutory minimum wages, since in almost all Member States minimum wages do not meet these requirements.⁷⁶

However, adequacy cannot be exclusively linked to a given percentage of median or average wages, as it may still not be enough to ensure a decent living standard, particularly in countries in which the entire wage structure is very low. Otherwise, it would 'make adequacy a function of the relationship between the lowest wage and the wages of others, rather than costs of living'.⁷⁷

For this reason, in addition to the relative approach, it is necessary to use an absolute or needs-based approach, that takes into account the cost of living, based on country-specific baskets of goods and services. This option is preferable to setting a common basket of basic goods and services at EU level. The determination of a living wage depends on the country-specific features, and, not least, is more appropriate in accordance with EU competence and principles of subsidiarity and proportionality, as it respects well-established national traditions in minimum wage setting.

At EU level, an indicative list of goods and services to be considered can be suggested. It is intended to be a control mechanism – 'a real-life test' – of the

⁷² Ibid 16.

⁷³ Eurofound (n 21).

⁷⁴ Dingeldey, Schulten and Grimshaw, 'Introduction' (n 34).

⁷⁵ Müller and Schulten (n 35).

⁷⁶ Müller, Vandaele and Zwysen (n 60).

⁷⁷ Adams (n 19).

60 per cent target. It is a way to assess ‘whether a minimum wage of 60 per cent of the national median wage really amounts to a wage that ensures a decent living standard’.⁷⁸ In this way, the needs-based approach would also reduce the risks of cross-border unfair competition, stemming from an ‘only relative’ approach, based on a purely national application of the reference value.

This absolute approach would ensure the adequacy of minimum wages. In this sense, it is closer to a living wage concept, as it is intended to allow ‘an employee a basic but socially acceptable standard of living’.⁷⁹ Therefore, an appropriate basket of goods and services must be identified, which ensures a basic living standard, that must include resources for effective participation in cultural, social and political activities, ie those means that make the concept of citizenship effective.⁸⁰

Undeniably, the identification of goods and services to be included in the basket requires a significant political compromise, as well as specialist knowledge, in order to also assess the foreseeable impact of the proposed living wage on employment levels. For this reason, the full involvement of trade unions and employers’ organisations is crucial, as well as that of civil-society stakeholders, academics and experts. The creation of a ‘living wage commission’ involving all these sides would fit this purpose.

In Member States where minimum wage protection is provided exclusively by collective bargaining, collectively-agreed minimum wages should also be subjected to this absolute approach.

Furthermore, as a ‘well-functioning’ collective bargaining on wage setting has proved to be an effective instrument to promote adequate minimum wages, it is important to set up an effective monitoring and data collection system. A national reporting procedure not only on the adequacy of statutory minimum wages and on the coverage of collective bargaining on wages, but also on wage levels set by collective agreements, and on how many and what sectors and workers do not have access to adequate minimum wage protection may also be beneficial. This may be a starting point to promote effective actions of Member States in ensuring effective collective bargaining on wages, and ensuring that this remains the prerogative of truly representative social partners.

While the relative approach has been conveniently included within the EU Directive on adequate minimum wages, inserting the absolute approach in hard law provisions may be more problematic, due to the difficulties in identifying cross-country comparable baskets of goods and services. For this reason, a soft

⁷⁸ Müller and Schulten (n 35).

⁷⁹ This is the notion of the living wage according to the UK Low Pay Commission.

⁸⁰ As it is acknowledged, if not adequately addressed, the phenomenon of people ‘working, yet poor’ risks emptying the substantive content of citizenship. Cf M Ferrera and M Jessoula, ‘Poverty and Social Inclusion as Emerging Policy Arenas in the EU’ in R Halvorsen and B Hvinden (eds), *Combating Poverty in Europe. Active Inclusion in a Multi-level and Multi-Actor Context* (Cheltenham, Elgar, 2016) 62; C Joerges, ‘Europe’s Economic Constitution in Crisis and the Emergence of a New Constitutional Constellation’ (2014) 15(5) *German Law Journal* 15, 985 ff.

law instrument seems to be more suitable. Thus, for instance, the assessment of adequacy of wages through this absolute approach may be embedded in the European Semester, since country-specific recommendations have already been made on similar issues: these recommendations are one of the most appropriate instruments to consider countries specific characteristics. In addition, this seems less intrusive in national systems and social partners autonomy, compared to the imposition of this second approach by a Directive.

This may be the proper instrument for an overall assessment of the national systems of setting adequate and fair levels of minimum wages in order to ensure at least a decent standard of living of workers and their families. In this assessment, the role of the welfare state and the legal and institutional arrangements involved in the attempt to ensure workers a decent standard of living should and can also be properly assessed. To this respect, the commission should not only identify a feasible basket of goods and services for the absolute approach – in this way assessing the adequacy of wages – but also take into account the national institutional and regulatory framework and social security systems. In addition, this commission may also elaborate further policy proposals concerning those measures and characteristics, which can ensure households an adequate standard of living. As it is debated whether the living wage should be based on the needs of an individual or a family and by referring to what kind of households, the question concerning the relevance of welfare payments in determining a living wage rate is also problematic and requires broad political and social agreements, particularly since this issue involves the assessment of elements, such as the welfare state and its public infrastructure, that require a fair balance between the role of the state and the role of a minimum or living wage.

Finally, equally important appears to be transparent and publicly accessible information regarding minimum wage protection, collective agreements and wage provisions therein, as stated in Article 10, Directive 2022/2041. Pay transparency is crucial in ensuring a fair wage and in preventing discrimination. This would have a role also in supporting the principle of equal pay, as emphasised in the Directive to strengthen the application of the principle of gender equality.

In addition, in line with the promotion of contractual fairness of pay, transparency may play a role in contrasting wage disparity within organisations, discouraging excessive remunerations, through the disclosure of pay ratio of different wage groups inside companies, such as the ratio of median wages of employees and CEOs, and the determination of maximum wage ratio between highest and lowest paid workers.⁸¹ As suggested in the literature, this may be implemented by requiring employers to engage in information and consultation procedures with works councils or company-level trade union representatives or, in order to make the right to fair pay even more effective, by providing a legal

⁸¹ For example, it is the purpose of the ‘Wagemark’ international standard. Cf Collins (n 71) 20–21.

right – for the workers or the trade unions or both – to claim a pay rise and thus enforce this rationale.⁸²

In conclusion, the introduction of a framework for a fair and adequate wage is not a remedy for in-work poverty, or at least not ‘as a sole-standing policy’.⁸³ However, a policy promoting a fair and adequate wage is a step in the right direction: as argued by some leading economists in Europe, ‘adequate minimum wages and strong collective bargaining are not only good for the people, they are clearly also good for the economy’.⁸⁴ For these reasons, this must be a policy priority and a ‘social and economic necessity’.⁸⁵ Only by taking into account all the mentioned factors and dimensions, and reasonably balancing them, will the minimum wage be effectively adequate, fair and equitable.

⁸² *ibid* 22 ff. Collins argues that not only single entities, but also ‘closely integrated production networks’ should be included in the disclosure and calculation of pay ratios; otherwise, ‘business will be able to minimise pay differences in the core business whilst exporting all the low paid jobs to other contractors’.

⁸³ Ratti (n 18) 15; A Horton and J Willis, ‘Impacts of the living wage on in-work poverty’ in H Lohmann and I Marx (eds), *Handbook on In-work Poverty* (Cheltenham, Elgar, 2018).

⁸⁴ Mazzucato et al (n 27).

⁸⁵ Adams (n 19).