



Social Protection Through Adequate Minimum Wage in the States of the European Union

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Abstract

The need to improve living and working conditions in the European Union, but also the idea of ensuring economic and social progress within it, required that the minimum income of each worker could be determined transparently and predictably by each member state, in accordance with social reality and in accordance with national legislation. Directive 2.041/2022 on the adequate minimum wage in the EU, states that from the moment of its entry into force (October 2022), member states have two years to transpose the provisions into domestic legislation. Not all EU countries will have the same adequate minimum income. Each state will establish its level according to social and economic conditions, purchasing power, productivity level and the evolution of macroeconomic indicators at the national level, but having as a guide precisely the provisions of the European directive and the principles it includes. Thus, countries that already have a minimum wage per economy are committed to changing its level according to a formula that ensures a decent living, is consistent with the inflation rate and can cover the minimum shopping basket for various necessary goods and services. Member States are recommended to update their minimum wages at least every two years, and in countries using an automatic indexation mechanism, at least every four years. In order to correctly calculate this income, the directive recommends that member states take as a starting point the value of the consumption basket (as provided by national statistical reports), or set this income at 60% of the median salary or at 50% of the salary gross average per economy. For example, a consumption basket for a decent living can be composed of costs for: food, clothing and footwear, housing insurance, furnishing and maintenance, household products and personal hygiene, services, education and culture, health care, recreation and vacation, savings fund. Romania (with just over 600 euros) ranks among the last EU countries, in 20th place out of 22, just ahead of Hungary and Bulgaria, on a scale of this indicator between 2,387 euros in Luxembourg and 399 euros in Bulgaria. The EU directive will generate greater transparency, certainty, stability and predictability on the labor market, and in times of crisis it will become an anchor for vulnerable citizens from EU countries, implicitly also for those from Romania.

Keywords: decent living; adequate minimum wage; consumption basket

1. Introduction

1.1 Social Protection Through Adequate Minimum Wage

The need to improve living and working conditions in the European Union, but also the idea of ensuring economic and social progress within it, required that the minimum income of each worker could be determined transparently and predictably by each member state, in accordance with social reality and in accordance with national legislation.

Directive 2.041/2022 on the appropriate minimum wage in the EU¹, provides that from the moment of its entry into force (October 2022), the member states have two years to transpose the provisions into domestic legislation. The directive is a consequence² of the permanent concerns of the European Union regarding the social market economy with a high degree of competitiveness, which tends towards full employment and social progress. This necessarily implies respect for the health, safety and dignity of workers, their right to fair remuneration, sufficient to ensure a decent standard of living for them and their families.

The initiative of this regulation dates back to 2017³, when the entire institutional set of the European Union proclaimed the European Pillar of Social Rights. Its principle number six refers to the "fair minimum wage", with the express mention that in the EU there is a need to ensure a decent income for all workers, considering that adequate minimum wages have an important role in protecting vulnerable categories.

Not all EU countries will have the same adequate minimum income. Each state will establish its level according to social and economic conditions, purchasing power, productivity level and the evolution of macroeconomic indicators at the national level, but having as a guide precisely the provisions of the European directive and the principles it includes.

Thus, countries that already have a minimum wage per economy are committed to changing its level according to a formula that ensures a decent living, is consistent with the inflation rate and can cover the minimum shopping basket for various necessary goods and services (but not limited to the list of essentials, but can additionally cover even certain expenses dedicated to well-being and the running of recreational, cultural, educational or social activities).

Member States are recommended to update their minimum wages at least every two years, and in countries using an automatic indexation mechanism, at least every four years.

In order to correctly calculate this income, the directive recommends that member states take as a starting point the value of the consumption basket (as provided by national statistical reports), or set this income at 60% of the median salary or at 50% of the salary gross average per economy. For example, a consumption basket for a decent living can be composed of costs for: food, clothing and footwear, housing insurance, furnishing and maintenance, household products and personal hygiene, services, education and culture, health care, recreation and vacation, savings fund.

From the latest Eurostat data on the monthly minimum wage, it appears that Romania⁴ (with just over 600 euros) ranks among the last countries in the EU, in 20th place out of 22, just ahead of Hungary and Bulgaria, on a scale of this indicator comprised between 2,387 euros in Luxembourg and 399 euros in Bulgaria.

The EU directive will generate greater transparency, certainty, stability and predictability on the labor market, and in times of crisis it will become an anchor for vulnerable citizens from EU countries, implicitly also for those from Romania.

Directive no. 2.041/2022 on adequate minimum wages in the European Union does not establish a value of the gross minimum wage at the European level, i.e. one to be respected by all member states, which would be impossible to achieve in the near future anyway, but it imposes on them member states, i.e. also Romania, a series of minimum criteria⁵ that must be the basis of an adequate minimum salary:

- the purchasing power of the minimum wage, taking into account the cost of food, clothing and housing expenses, as well as, possibly, the need to participate in cultural, educational and social activities;
- the general level of salaries and their distribution;

1 Published in the Official Journal of the European Union, L 275/33 of 25 October 2022

2 Alexandru Țiclea, Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 regarding adequate minimum wages in the European Union, in the Romanian Labor Law Review no. 1/2023, p. 29

3 Dan Țop, European social law, 2nd edition, Zven publishing house, Târgoviște, 2018, p.191

4 Claudia Sofianu, Romania must implement the appropriate European minimum income by 2024. What an impact does it have a mandatory directive for Romanians? *avocatnet.ro*, February 16, 2023

5 Dan Țop, Turning points in labor relations in Romania. Reintroduction of the possibility of negotiating the collective labor agreement at the national level, *Revue Européenne du droit social* no. 2 (59) 2023, pp. 7-10

- the salary growth rate;
- long-term national productivity levels and developments.

The transposition deadline of the directive is November 15, 2024 and, in the context in which in Romania not only does there not currently exist a nationally applicable collective labor contract/agreement⁶, nor does the coverage percentage of collective negotiations come close to that suggested in the directive (80%), the discussions in the Government will have to be about the choice between the adequacy of the salary according to the average salary and the adequacy according to the median salary⁷.

Member States may use indicative benchmarks commonly used at international level, such as 60% of the gross median wage and 50% of the gross average wage, and/or indicative benchmarks used at national level, and most likely it will go according to the option that the minimum salary represents 50% of the average salary because, in Romania, "nobody calculates the median salary officially".

The Economic and Social Council (CES) publicly presented the report of the study on "Correlation of the minimum wage with what is necessary for a minimum decent living"⁸, in which the provisions of Law no. 174/2020⁹, which stipulates that the minimum wage should be calculated mainly based on the consumption basket for a decent living.

According to the law, the value of the minimum consumption basket for a decent living must be established annually by the National Institute of Statistics (INS). "The official non-calculation by the INS of the value of the minimum consumption basket for a decent living was attributed by the INS representatives to technical reasons: the annex to Law no. 174/2020 does not include the quantities for all items, which makes it impossible to calculate the value of those items and, consequently, the total value of the minimum basket for a decent living," the CES report states. As such, as indicated in the CES report, Law 174/2020 needs additional changes so that the INS can calculate the consumption basket in a concrete and useful way.

In the study carried out, CES analyzed three scenarios of correlation of the minimum wage with the value of the consumption basket necessary for a decent living in Romania:

- keeping the current situation, in which the Government, together with the social partners (unions, employers) decide the methodology for increasing the minimum wage and the amount of the increase, without making a correlation with the minimum consumption basket (for a decent living);
- the increase in the weight of the minimum wage to the average of the 21 European states included in the analysis, correlation with the consumption basket
- the correlation of the minimum wage with the value of the consumption basket for a minimum decent living, in accordance with Law no. 174/2020.

In Romania, the minimum guaranteed salary is much lower than the minimum income necessary for a decent living, if we consider that: the minimum gross monthly salary at the national level (from January 1, 2023): 3,000 lei (to whom it belongs, depending of deductions, a net of approximately 1,900 lei); the value of the minimum consumption basket for a decent living for a single adult: 2,708 lei per month¹⁰; the average gross salary is 6,430 lei, and the average net salary is 3,974 lei.

At the level of the Ministry of Labor, there is already a working group, in order to transpose the European directive into the national legislation, the option being agreed that the minimum wage should represent 50% of the average wage because, in Romania, no one calculates the median wage officially. And, then, the variant of 60% of the median salary would require other changes and other calculations to be made by the INS in addition. The directive gives us the opportunity to choose between the two options - and, implicitly, in this situation, we choose the option that the minimum wage is 50% of the average wage.

The topic of the minimum income is still positioned as a priority on the work agenda of the European institutions.

The transposition of the "Minimum Wages Directive" is analyzed in the *Revue de Droit du Travail* no. 2/2023¹¹, but also in the *Romanian Review of Labor Law* no. 1/2023¹².

6 Simona Voiculescu, *By the end of the year, the Government should establish the appropriate minimum wage, but relating it to the minimum basket for a decent living will not be so easy*, loc.cit

7 www.juridice.ro, March 9, 2023

8 www.juridice.ro, March 9, 2023

9 Report of the People's Advocate

10 Published in the *Official Monitor of Romania*, Part I, no. 741 of August 14, 2020

11 Alan Eustace, João Zenha Martins, *Directive sur les salaires minimaux adéquat: quelle réception pour les member states? (second part)*

12 Alexandru Țiclea, *Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October*

Thus, the object of the Directive is to establish a legal framework at Union level to ensure that minimum wages are set at an appropriate (ie suitable, appropriate) level, as well as that workers have access to minimum wage protection, in the form of a statutory or established by collective agreements/contracts. The Directive does not interfere with the freedom of Member States to set minimum wages and to protect the minimum wage through collective agreements.

The scope of the directive includes workers who have concluded employment contracts or an employment (service) relationship defined by legislation, collective agreements or practices in each member state. Workers in atypical forms of employment, such as domestic workers, on-demand workers, temporary workers, bogus self-employed workers, online workers, interns and apprentices, may also fall within the scope, as long as they meet the criteria set by the Court of Justice regarding the definition of worker. Indeed, undefined by the rules of the E.U. the concept of worker was defined by the jurisprudence of the Court of Justice.

As a rule, the category of workers includes¹³ those who perform an economic activity, remunerated, for a certain period of time, within an employment relationship and who are subordinate to the beneficiaries of their work. From this perspective, workers are: employees, regardless of the type of their individual employment contract; those who are in a professional training/training internship (at employers); civil servants, including those with special status.

They are not workers, those who exercise liberal professions (for example, lawyers, authorized natural persons, those who perform independent activities, etc.). are assimilated to workers, expressly, by certain EU directives. and other people (those who are looking for a job, the unemployed who are able to work and who were previously employed, people who are incapacitated for work or occupational diseases, people who have reached the normal retirement age during the activity in the host state¹⁴.

The text of art. 4 seeks to expand collective bargaining. To this end, Member States are required to take measures for the social partners to carry out constructive, meaningful negotiations for determining wages. In addition, those states where collective bargaining coverage does not benefit at least 80% of workers are required to provide an action plan to promote collective bargaining, particularly regarding adequate minimum wages¹⁵.

Art. 5 requires the member states with legal minimum wages to provide: national criteria for establishing and updating the legal minimum wage; regular and timely updates; the establishment of advisory bodies on minimum wages. Atari criteria must include at least the purchasing power of minimum wages, the general level of gross wages and their distribution, their growth rate and the evolution of the level of labor productivity. The criteria in question must be defined in accordance with national practices, either by normative acts, or by decisions of the competent bodies or by tripartite agreements (organizations of workers, employees and the state).

In order to promote an appropriate degree of adequacy of minimum wages for all categories of workers, member states are requested, through consultation with the social partners, to limit the variations of the legal minimum wage, as well as the duration and extent of their application. Art. 6 also provides for the protection of legal minimum wages against unjustified or disproportionate deductions¹⁶.

It is provided in art. 7 of the Directive, an effective and active involvement of the social partners in establishing and updating legal minimum wages, including through the participation of advisory bodies. The member states are requested to involve the social partners in defining the criteria mentioned in art. 5 in updating the minimum wages, in establishing the variations and deductions mentioned in art. 6, as well as in collecting data and conducting studies in the field.

The text of art. 8 requires member states to take the necessary measures, in cooperation with the social partners, to ensure the effective access of workers to the protection of the legal minimum wage. They are aimed at strengthening the system of controls and inspections, in particular, at employers, providing guidance for law enforcement authorities and adequate information to workers about the applicable legal¹⁷ minimum wages.

Art. 9 requires economic operators and their subcontractors to comply with the obligations regarding applicable wages, the right to organize and collective bargaining for the establishment of these wages, in the execution of public procurement or concession contracts, respecting European and international norms.

Art. 10 refers to the creation of an effective system for monitoring and collecting data on minimum wages. Member

2022 regarding adequate minimum wages in the European Union, art. cit., pp. 29-43

13 *Ibidem*, p. 33

14 IT Ștefănescu, *Theoretical and practical treatise on labor law*, ed. IV, revised and added, Universul Publishing Legal, 2017, pp. 80-81

15 Alexandru Țiclea, *Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October*

2022 regarding adequate minimum wages in the European Union, art. cit., p. 35

16 *Ibidem*, p. 37

17 *Ibidem*, p. 38

States are required to require competent authorities to develop effective and reliable data collection tools that allow them to report to the European Commission relevant data on the coverage and adequacy of minimum wages.

From the point of view of the amount of the gross minimum wage, there are differences between EU member countries, as follows:

- with values between 332-642 euros are registered in Bulgaria, the Czech Republic, Croatia, Estonia, Poland, Romania¹⁸, Hungary;
- with a minimum salary between 758 euros (Greece) and 1100 euros (Spain) there are also Malta, Portugal, Slovenia;
- more than 1500 euros are registered in Belgium, Germany, France (1555 euros), Holland, Luxembourg (2202 euros).

At the same time, the Directive requires Member States to ensure that information on collective agreements and their wage clauses is transparent and publicly available. At the same time, the text also establishes¹⁹ obligations for the European Commission regarding the analysis of the data and information transmitted by the member states and the presentation of reports to the European Parliament and the Council once every two years.

Article 11 requires Member States to ensure that information on legal minimum wages and the protection of the minimum wage established by convention is made available to the public in a comprehensive and accessible way.

The text of article 12 concerns the operative (quick) and useful resolution of disputes in case of violation of rights related to minimum wages or the protection of the minimum wage and the production of damages that give rise to reparations [par. (1)]. Special importance is given to the protection of workers and their representatives, trade union members and trade union representatives against unfavorable treatment by employees [para. (2)], and art. 13 requires²⁰ Member States to provide for effective, proportionate and dissuasive sanctions in case of violation of national provisions establishing the protection of the minimum wage.

2. Conclusion

Currently, the minimum wage is regulated²¹ in 21 of the EU member countries. In Austria, Denmark, Finland and Sweden there are no national regulations imposing such a salary, but here there are collective labor contracts (conventions) concluded by the social partners that provide for minimum salary thresholds, from which individual negotiation starts.

According to art. 16, the application of the Directive cannot lead to a reduction in the level of protection already offered to workers, especially in terms of the reduction or elimination of minimum wages (paragraph 1). Also, the member states have the freedom to apply their own rules or to allow the social partners to adopt more favorable provisions than those offered by the Directive (paragraph 2). At the same time, these provisions do not affect another right conferred on workers by other legal acts of the Union (paragraph 3)²².

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¹⁸Government Decision no. 1447/2022 (published in M. Of no. 1186 of December 9, 2022) established the salary minimum gross in Romania, starting from January 1, 2023 at 3000 lei.

¹⁹ Alexandru Țiclea, Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 regarding adequate minimum wages in the European Union, art. cit., p. 39

²⁰ Ibidem, p. 40

²², art. cit., p. 42