

USING THE MINIMUM WAGE DIRECTIVE TO STRENGTHEN COLLECTIVE BARGAINING: A TRADE UNION TRANSPOSITION GUIDE

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June 2022, after intense negotiations, the EU institutions found a deal on a new Directive on Adequate Minimum Wages. Commissioner for Employment, Nicolas [Schmidt](#), called it "*a game changer, and I think this game changer will bring an essential element - the fight against in-work poverty, but also the strengthening of the idea of the social market economy*".

According to many experts, the Directive does indeed have the potential to be a cornerstone of a social Europe. Not only because it sets out clear procedures for setting minimum wages, but above all because it obliges EU countries to adopt policies that promote collective bargaining.

Through a series of general articles, all European countries are expected to promote collective bargaining, and those with less than 80% coverage must do so, additionally, by drawing up national action plans for strengthening collective bargaining.

However, change does not come automatically and whether this directive will be historic or not will depend very much on its transposition and implementation at national level.

With this text, UNI Europa wants to help affiliates to read through the Directive and identify those articles and aspects that may be essential for the promotion of collective bargaining at national level.

Further reading

The current text is far from exhaustive. It focuses exclusively on the **collective bargaining** part of the Directive and in that, only discusses a selection of articles. More details can be found here:

- On the transposition, we refer to the [expert report](#) on the transposition of the minimum wage directive.
- On minimum wages and collective bargaining systems in Europe, see the ETUC [wage-up website](#).
- On policy ideas on how to strengthen collective bargaining see the UNI Europa report '[Time for Action](#)'
- On how to make the most of the Directive, see the [IndustriAll Europa](#) report

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Article 1: Objective: promotion of collective bargaining

The first article of the Directive clearly states that its purpose is to promote collective bargaining for the purpose of determining wages. The recitals also stress the importance of collective bargaining as a way of ensuring adequate minimum wages.

This clearly means that any legislation which has the explicit or implicit aim of weakening collective bargaining on wage-setting can or should be seen as contrary to the aims of this Directive.

Article 1 – subject matter

With a view to improving living and working conditions in the Union, in particular the adequacy of minimum wages for workers in order to contribute to upward social convergence and reduce wage inequality, this Directive establishes a framework for: (...)

(b) promoting collective bargaining on wage-setting;

Article 3: Collective bargaining is a right of trade unions

Article 3 of the Minimum Wage Directive sets out a number of definitions which apply for the purposes of the Directive. A key definition is that of 'collective bargaining', which explicitly refers to negotiations between employers (or their organisations) on the one hand and trade unions on the other, with a view to determining terms and conditions of work and employment.

The Directive explicitly mentions trade unions, ensuring that they are recognised as the main actors in collective bargaining. This is a significant victory for the labour movement as it confirms that agreements negotiated by non-union bodies (e.g. works councils) do not count under the directive. Only agreements negotiated by trade unions will count towards the 80% collective bargaining coverage that Member States must aim for, and this interpretation is confirmed by the expert report of the European Commission.

This recognition of the role of trade unions strengthens their bargaining power and ensures better quality agreements. It also encourages governments to develop national action plans to increase collective bargaining coverage. While Member States have the flexibility to adapt the Directive's definitions to their systems, they must respect the principle that collective bargaining is a trade union prerogative.

Importantly, the definition also clearly refers to collective bargaining as bipartite bargaining without the state as a third party. Tripartite agreements cannot therefore be considered collective agreements.

Article 3 – Definitions

For the purposes of this Directive, the following definitions apply: (...)

(3) 'collective bargaining' means all negotiations which take place according to national law and practice in each Member State between an employer, a group of employers or one or more employers' organisations on the one hand, and one or more trade unions on the other, for determining working conditions and terms of employment;

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Article 4.1(a): capacity building, specifically on the sectoral level

Irrespective of a country's collective bargaining coverage, the Directive requires countries to promote collective bargaining. One of the ways of doing this is by "promoting and building the capacity of the social partners", "in particular at sectoral or cross-industry level".

With this article, the European Union emphasises the importance of collective bargaining at a level above the company level. By emphasising sectoral and cross-industry bargaining, the Directive addresses the need for broader agreements that can significantly increase coverage.

Capacity-building measures may include financial or non-financial support and should aim to enable the social partners to participate fully in the collective bargaining process. Such measures do not need to be legislated and can therefore include more general policies and practices.

Trade unions in all countries can use this article to call for some measures to support the functioning of sectoral trade unions.

In addition, the Directive (in recital 16) makes a clear reference to the fact that sectoral bargaining has come under pressure in the aftermath of the 2008 financial crisis, while sectoral bargaining is essential for decent pay. It follows that any repetition of these measures should be seen as contrary to this Directive.

One of the measures to support trade union capacity could be to provide easy access for trade unions to workers and vice versa. This is explicitly mentioned in Recital 24 of the Directive. Given that many EU countries do not have clear, transparent and effective rules to ensure access, this provision could be an opportunity for trade unions to engage in such a discussion.

Article 4 - Promotion of collective bargaining on wage-setting

1. With the aim of increasing the collective bargaining coverage and of facilitating the exercise of the right to collective bargaining on wage-setting, Member States, with the involvement of the social partners, in accordance with national law and practice, shall:

(a) promote the building and strengthening of the capacity of the social partners to engage in collective bargaining on wage-setting, in particular at sector or cross-industry level;

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Article 4.1(b): bargaining on an equal footing

In addition, countries should promote collective bargaining by ensuring constructive, meaningful and informed negotiations between social partners on an equal footing, with both parties having access to appropriate information for the negotiations.

This article is crucial as it signals that countries should ensure collective bargaining negotiations happen on an **equal footing** meaning there should be a balance of power between the negotiating parties.

One way in which the balance of power can be disturbed is through unequal access to information. Therefore, the Directive states that both parties must have access to appropriate information. The expert report on the Directive further specified that this could be information on macroeconomic developments, sectoral productivity and any other information that could be relevant to wage bargaining.

However, the Directive does not provide a specific list of information to be provided.

Nevertheless, trade unions can use this article to put pressure on governments to ensure that companies and sectors are required to provide timely, accurate and complete information that could be useful in collective bargaining. Information is power and the Directive requires a level playing field in collective bargaining.

Article 4 - Promotion of collective bargaining on wage-setting

1. With the aim of increasing the collective bargaining coverage and of facilitating the exercise of the right to collective bargaining on wage-setting, Member States, with the involvement of the social partners, in accordance with national law and practice, shall: (...)

(b) encourage constructive, meaningful and informed negotiations on wages between the social partners, on an equal footing, where both parties have access to appropriate information in order to carry out their functions in respect of collective bargaining on wage-setting;

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Article 4.1(c) and (d): Protection of workers and trade unions in wage negotiations

Article 4(c) requires Member States to take measures to protect workers and trade union representatives from discrimination or retaliation related to their participation in collective bargaining. This includes protecting them from measures such as dismissal or other reprisals that may discourage their participation in collective bargaining. These protections are essential to counter anti-union tactics and promote a supportive environment for collective bargaining.

Note that the Directive doesn't just require protection against dismissal, but also a wider protection against discrimination or retaliation. This could be an opportunity to look at trade union representatives being denied promotion opportunities because of their representative role, or other forms of discrimination.

Article 4(d) focuses on preventing interference between the social partners. It requires Member States to ensure that trade unions and employers' organisations are protected against interference by the other party or its members in their establishment, functioning or administration.

This article ensures that countries cannot unduly interfere in the functioning of trade unions. Importantly, this part also has implications for the right to strike. As we all know, collective bargaining is inextricably linked to the right to strike, because without it we would be talking about collective begging.

It follows that strike regulations should ensure the effective use of the strike weapon, and trade unions can use this article to push for changes in strike regulations.

In addition, the recognition and authorisation of secondary and solidarity strikes could significantly strengthen trade unions' bargaining power and increase workers' participation in the economy.

Article 4 - Promotion of collective bargaining on wage-setting

1. With the aim of increasing the collective bargaining coverage and of facilitating the exercise of the right to collective bargaining on wage-setting, Member States, with the involvement of the social partners, in accordance with national law and practice, shall: (...)

(c) take measures, as appropriate, to protect the exercise of the right to collective bargaining on wage-setting and to protect workers and trade union representatives from acts that discriminate against them in respect of their employment on the grounds that they participate or wish to participate in collective bargaining on wage-setting;

(d) for the purpose of promoting collective bargaining on wage-setting, take measures, as appropriate, to protect trade unions and employers' organisations participating or wishing to participate in collective bargaining against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

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Article 4.2 – national action plans should be clear

Countries with collective bargaining coverage of less than 80% will have to draw up national action plans to promote collective bargaining. This article is absolutely crucial as it forces the majority of EU countries to make explicit how they will strengthen collective bargaining in the coming years. Unfortunately, the National Action Plans are an 'obligation of effort' rather than a 'obligation of results'. This means that countries have to show that they are trying to strengthen collective bargaining, and only that.

However, four aspects are important. Firstly, the national action plans must be drawn up in a certain way. Countries can choose between consulting the social partners, reaching an agreement with the social partners or responding to a joint request from the social partners. In each of these scenarios, trade unions will need to be involved in some way. So national trade unions should use this to ensure that they are properly involved in the process.

Second, the national action plans (NAPs) need to be concrete, with clear timetables and measures that would increase collective bargaining coverage. They must also be public and updated regularly, at least every five years. Trade unions can use these provisions to ensure effective and ambitious NAPs that evolve and learn from past experience.

Thirdly, the content of the national action plans is left open. The Directive does not specify how collective bargaining should be promoted. It does so to some extent in Article 4.1 (see above), but the national action plans can go beyond this and include any kind of policy that is likely to increase bargaining coverage. Unions can use this to be creative and ambitious in their demands. A recent UNI Europa [publication](#) may provide some inspiration.

Fourth, when after a couple of years the action plan does not lead to the desired results (a higher collective bargaining coverage), the countries are obliged to review and update the plan in order to make it more effective. This is clearly stated as such

Article 4 - Promotion of collective bargaining on wage-setting

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

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

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

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in the expert report on the Directive and provides a tool for the trade unions to push for more effective measures at least every five years.

All in all, the national action plans give trade unions a clear opportunity structure to push countries to strengthen collective bargaining. Given that it is an obligation of effort, the risk is that some plans might be ineffective and paper tigers. It will be up to the trade unions to use this instrument to the full and push for effective and ambitious national action plans. Not only now, but also in the future.

Article 8: effective minimum wages and collective agreements through inspection

Having a minimum wage or a collective agreement is one thing, but enforcing it properly is another. That's why the directive has a specific article on the enforcement of minimum wages and collective agreements through access to inspection services.

Specifically, labour inspectorates must carry out effective, proportionate and non-discriminatory inspections, focusing on sectors with high levels of non-compliance, such as agriculture, hotels and restaurants.

Given the observed decline in labour inspectorates in Europe, this article provides a good opportunity for trade unions to lobby their national governments to strengthen inspection services.

Article 8 - Effective access of workers to statutory minimum wages

Member States shall, with the involvement of the social partners, take the following measures to enhance the effective access of workers to statutory minimum wage protection as appropriate, including, where appropriate, strengthening its enforcement:

- (a) provide for effective, proportionate and non-discriminatory controls and field inspections conducted by labour inspectorates or the bodies responsible for the enforcement of statutory minimum wages;*
- (b) develop the capability of enforcement authorities, in particular through training and guidance, to proactively target and pursue non-compliant employers.*

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Article 9: Public procurement must respect workers' rights and wages

Put your money where your mouth is. If governments are to support collective bargaining, they should also adapt their procurement policies in the same direction. This is why Article 9 of the Directive states that public authorities must ensure that economic operators and subcontractors involved in public procurement comply with the wage standards laid down by law or by sectoral collective agreements.

Trade unions could push for an ambitious public application of this article, where public authorities include wage conditions and respect for collective agreements in the performance requirements of public

contracts, or even give preference to companies with collective agreements. This will ensure that workers at all stages of the supply chain, including subcontractors, are properly paid and covered by a collective agreement.

Unions can also campaign for tougher enforcement measures, such as fines, early termination of contracts or exclusion from future tenders for companies that do not respect collective agreements or legal minimum wages. By highlighting these violations, unions can hold contractors to account and protect workers from exploitation.

Article 9 - Public procurement

In accordance with Directives 2014/23/EU, 2014/24/EU and 2014/25/EU, Member States shall take appropriate measures to ensure that, in the awarding and performance of public procurement or concession contracts, economic operators and their subcontractors comply with the applicable obligations regarding wages, the right to organise and collective bargaining on wage-setting, in the field of social and labour law established by Union law, national law, collective agreements or international social and labour law provisions, including ILO Freedom of Association and the Protection of the Right to Organise Convention No 87 (1948) and ILO Right to Organise and Collective Bargaining Convention No 98 (1949).

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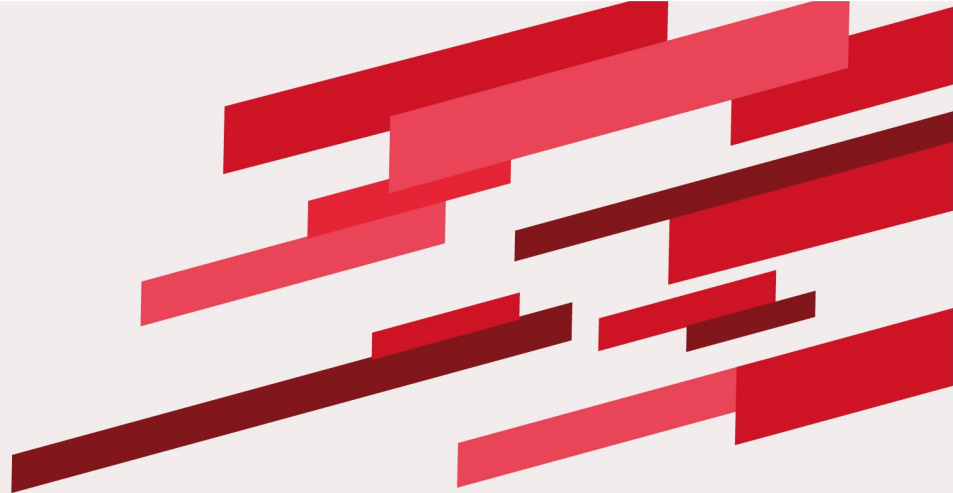
Conclusion

Whether the minimum wage directive will be a unique opportunity to rebuild trade unions in Europe, or a window-dressing exercise, is an open question. Much will depend on the transposition and implementation of the Directive and the development of national action plans.

This text aims to identify some of the key articles of the Directive that trade unions could use and build on to strengthen collective bargaining in their country. Of course, there is more to the Directive than this, as it also covers many issues relating to data collection or the right to redress. Trade unions are invited to make the most of the Directive and, at the very least, to build on the stepping stones outlined in this text.

The reports show that the Directive gives a number of hooks to trade unions for doing so in terms of capacity building of trade unions, inspection services, public procurement, protection of union representatives and the guarantee that collective bargaining is a trade union prerogative.

Additionally, the stipulation that countries with bargaining coverage below 80% have to make national action plans provides trade unions with a durable opportunity structure to strengthen collective bargaining now, and in the future.



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